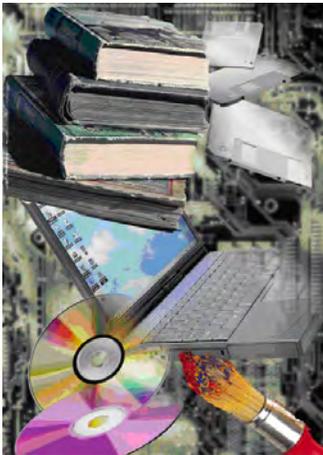


Copyright Protection: The Importance of Early Registration

Copyright law protects all forms of creative content, including books, music, video, artwork, software, websites – nearly anything that has some minimal amount of creativity. The current U.S. Copyright Act eliminated formalities for copyright protection, so that registration with the U.S. Copyright Office is not required for copyright protection. However, the permissive nature of registration is highly deceptive, leading too many copyright owners to neglect registration of their works, to their significant detriment.

Even though copyright registration is technically not mandatory, it is crucial for copyright owners to register their works as early as possible, for several reasons:



1. Registration is mandatory for filing suit. Registration is required before an owner can file a lawsuit against an infringer.¹ Many owners feel they can wait until an infringement occurs to register their works, but a copyright application can take many months to register. Expedited service can be requested in anticipation of litigation for an additional fee, but this can be costly if multiple works are infringed.² Thus, without advance registration, a copyright owner must either pay more money or sit idly by for months while an infringer continues to unlawfully use its work before a suit can be filed.

2. Registration is mandatory for statutory damages and attorney's fees.

Perhaps more importantly, a copyright owner may lose the ability to recover monetary damages if the works are not registered before infringement occurs. If a work is registered with the Copyright Office *before* an infringement occurs, or within 3 months after first publication of the work, the owner may be able to recover “statutory damages” and attorneys’ fees from the infringer. If the work is not registered until after the infringement occurs, statutory damages and attorneys’ fees are precluded.

Statutory damages are monetary awards that a court may grant regardless of whether the copyright owner actually suffered any monetary damages, or whether the infringer actually profited from the infringement. A court may award statutory damages from \$200 (for an innocent infringement) to \$150,000 (for a willful infringement) per work infringed. Actual damages (either the owner’s loss of profits or the infringer’s profits derived from infringement), if any, are often difficult to prove. Therefore, the ability to recover statutory damages and attorneys’ fees can often mean the difference between coming out financially in the black or in the red at the end of the lawsuit.³ If an owner must spend a small fortune to stop an infringer, with no ability to recover any money, the result could be

¹ A few courts will allow an owner to file suit after a copyright application is *filed*. However, a majority of courts require the copyright application to mature to registration before a lawsuit can be filed.

² The expedited fee is \$760 (in 2010). The standard application fee is \$35 (in 2010).

³ In the landmark case *UMG Recordings v. MP3.com*, a New York court awarded the plaintiffs \$25,000 in statutory damages per CD unlawfully uploaded on the MP3.com system. With a minimum of 4,700 CDs uploaded, the damages amounted to over \$118 million.

nothing but a pyrrhic victory. Given that the cost of a lawsuit can be thousands of times the cost of a copyright application, it is clearly beneficial to file copyright applications as early as possible for any works that you wish to protect.

3. Registration grants a legal presumption of validity. Once a copyright registration is issued, the work is granted a presumption of being a validly copyrighted work – *provided* that the work is registered *within five years after first publication*. This presumption is important in litigation; without it, the owner has the burden of first proving that the copyright is valid before the court will consider whether the defendant infringed the work.



4. Registration has a valuable “scare” value against infringers.

When sending cease and desist letters demanding an infringer stop its unlawful use of a work, it is helpful to include a copy of certificate of registration. Seeing that an owner has made the effort of registering the work shows the infringer that the owner is more serious about protecting the work, and may make the infringer more readily cease his infringing use.

Registration is generally not necessary for everything that an organization creates, e.g., promotional brochures or advertisements. However, early registration is strongly recommended for all works which an organization would not want another party to copy, such as websites, publications, software, videos, and any other substantive content. Organizations that rely on intellectual property in their business, such as media and entertainment companies, educational organizations, and nonprofits engaged in information dissemination, should especially take care to register their works as early as possible.

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