

COPYRIGHT REGISTRATION

Copyright registration is not required for a software program, game, book or other creative work to be "copyrighted" – as soon as an original work of authorship is fixed in a tangible medium of expression, the work is protected by U.S. and international copyright laws. However, there are important benefits to registering a work with the U.S. Copyright Office.

- First, one cannot sue an infringer of a work created in the U.S. until the copyright has been registered. Fortunately, this can be done any time during the term of copyright.
- Second, a certificate of registration obtained within five years of publication will be deemed by courts to be evidence of the facts it recites. In other words, if you do sue an infringer, your timely copyright registration provides cost-saving evidentiary benefits.
- Third, and most significantly, the owner of a registered work can claim statutory damages and attorney's fees for infringements occurring after registration (or after publication, as long as the work is registered within three months of publication). Statutory damages can reach up to \$30,000 for each infringed work

involved in the action, and up to \$150,000 if the infringement is found to be willful. (If the work is not timely registered, only an award of actual damages and profits – which must be proven, and may be minimal – is available to the copyright owner.)

The potential for statutory damages and attorneys' fees could discourage infringement or, where it occurs, encourage a copyright infringer to cease infringement and negotiate a settlement. For example, a software licensee that has exceeded the scope of its license grant has engaged in copyright infringement. If the infringed work was registered at the time of the infringement, the licensee potentially would be liable for statutory damages in an infringement action, so the licensee would have an incentive to agree to a settlement with the copyright owner to avoid these damages.

Perhaps best of all, relative to other forms of intellectual property protection, copyright registration is inexpensive – registration fees are just \$30.00 and, as the copyright registration process is straightforward, attorneys' fees are usually low.

If you would like additional information on the benefits and process of copyright registration, please contact Howard Zaharoff or Michael Cavaretta at 781-622-5930.

The MORSE, BARNES-BROWN & PENDLETON TECHNOLOGY, LICENSING & INTELLECTUAL PROPERTY PRACTICE counsels businesses of all sizes on creating, protecting and transferring IP assets, including advice on trademark, copyright, advertising, Internet and technology law.

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