

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, as we explained in an *IP News* on this topic two years ago, there are important benefits to registering a work with the U.S. Copyright Office.

Benefits of Copyright Registration

- ✓ One can immediately sue an infringer (no infringement suit can be brought until a copyright application has been filed).
- ✓ A certificate of registration obtained within five years of publication provides cost-saving benefits in litigation.
- ✓ If infringement occurs after registration, or after publication for works registered within three months of publication, the owner can claim statutory damages of \$30,000 for all infringements of a work (\$150,000 if the infringement is willful), as well as attorneys’ fees. If the work is not timely registered, only actual damages and profits are available.

Recent Case Examples

Two recent cases remind us of the significance of these rules.

In a 2006 case a wildlife photographer was unable to recover statutory damages and attorneys’ fees because the initial infringement occurred before registration. The plaintiff, Kent Dyer, conceded this, but

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Copyright registration of a software program, book or other creative work, although not required, has many important benefits, including:

- ✓ allowing the owner of the registered copyright to take the infringer to court
- ✓ providing cost-saving benefits in litigation
- ✓ allowing the owner to recover statutory damages and attorney’s fees.

Read on for details...

argued that each infringing act after registration was a new and separate infringement for which he could recover statutory damages and attorneys fees.

Not so, said the U.S. District Court for Arizona: the post-registration infringements were simply continuations of infringing activity commenced before registration. Therefore, having failed to register his work before the defendant began to infringe, the plaintiff could not collect statutory damages and attorneys’ fees when infringement recurred.

On the other hand, a later case reminds us of the value of timely registration. Here the plaintiff, WB Music, sued the defendants for creating seven infringing compilations of WB’s compositions. The district court had computed the award based on the seven separate CDs created, despite the fact that a total of 13 separate compositions were involved. The Second Circuit remanded the case for recalculation: 13 individual songs meant 13 infringed works, not seven.

As we noted in the prior *IP News*, the potential for statutory damages and attorneys’ fees generally discourages infringement. When infringement occurs, this potential for damages often encourages an infringer to stop infringing and agree to a settlement. Perhaps best of all, copyright registration is inexpensive — registra-

tion fees are just \$30 (\$45 effective July 1) 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 us.

The Morse, Barnes-Brown & Pendleton, PC, **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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