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# U.S. Supreme Court Clarifies Registration Requirement for Copyright Infringement Lawsuits

By William D. Cramer / Mar 06, 2019

## The Ruling

Under the Copyright Act (17 U.S.C. §411), “no action for infringement of the copyright in any work shall be instituted until registration of the copyright claim has been made in accordance with this title.” In other words, with a few exceptions, in order to enforce your copyright against an alleged infringer, you must first register the work with the U.S. Copyright Office. However, some circuits require you to wait for the Copyright Office to grant the registration, while other circuits simply require that you file an application for registration prior to filing your infringement lawsuit. On March 4, 2019, the Supreme Court of the United States settled the issue in *Fourth Estate Public Benefit Corp. v. Wall-Street.com LLC et al.* (Case 17-571). Fourth Estate sued Wall-Street.com for copyright infringement of news articles provided to Wall-Street.com pursuant to a content license agreement. After the parties cancelled their content license agreement, Fourth Estate discovered that its news articles were still available on the Wall-Street.com website. It first filed its application to register its copyright claim to the content and then filed its copyright infringement lawsuit. However, the district court dismissed the complaint because the Copyright Office had not yet registered the copyright. In a unanimous decision, the Court upheld the dismissal, ruling that an infringement lawsuit may be filed **only after** the Copyright Office has formally granted registration.

## Why it Matters

Broadly speaking, copyrights protect the clever way that you present information, whether that presentation is in one of the traditionally artistic forms, such as novels, songs, movies, and the like, or more commercial forms, such as computer software, news reports, photo journalism, and the like. And of course it can be a combination of both, for example, a commercial website may include facts and figures (not copyright protectable) that are presented using a clever visual layout (copyright protectable).

Unlike patent or trademark protection, which requires examination of the substance of the application, obtaining copyright registration merely requires submission of the completed application, the registration fee, and a copy of the claimed work. Nonetheless, the average processing time for a simple electronically-submitted application ranges from two to ten months, and if it is necessary for the Copyright Office to correspond with the applicant – for example because of an incomplete application – the processing time can take up to fifteen months.

The *Fourth Estate* case illustrates one of the problems relating to enforcement of copyrights for less traditional works: A book publisher may routinely submit a novel for copyright protection when it publishes the book, so that by the time a knock-off novel comes out, the Copyright Office has already granted the copyright registration. In contrast, a web content provider may not think about registering its daily or weekly content until after it discovers a few months later that a competitor is publishing the same content. Similarly, a software vendor may not think about registering a “dot release” of its new product until after it sees the competitor’s product on the shelves at the local store. Prior to *Fourth Estate*, the content provider or software vendor could electronically file a copyright application and then the same day file a copyright infringement lawsuit. Now, after *Fourth Estate*, the copyright owner must either wait two to fifteen months for the Copyright Office to process the application or else pay a non-trivial “expedited processing” fee.

## How Clark Hill Can Help

Whether you need to register a single work for copyright protection or need a strategy for systematically registering your works as you create them, Clark Hill can provide you with services to quickly and efficiently register your works. Our attorneys have assisted clients with registration of copyrights for a broad range of works, from traditional artistic works like music, art, literature, and motion pictures, to more mundane (but equally important) works like computer software, web content, and technical manuals.

If you have any questions about this new case or about copyrights in general, please contact Bill Cramer at [Bill.Cramer@clarkhillstrasburger.com](mailto:Bill.Cramer@clarkhillstrasburger.com).