

Supreme Court Decision Impacts Copyright Registration

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The US Supreme Court this week provided yet another reason why early application for registration of copyrighted works is important. In ruling that a copyright owner must actually have its work registered by the United States Copyright Office prior to filing litigation to enforce its rights, the Supreme Court underscores the importance of early filing of copyright applications with the copyright office.

Copyright law protects any “original work of authorship.” While copyright is frequently associated with music, paintings, photography, and film, copyright protection also extends to presentations, articles, advertising copy, and computer software, as well as any other form of expression. In *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*, decided this week, the US Supreme Court resolved a split among courts around the country by holding that the mere filing of a copyright application is not sufficient to allow a copyright owner to file suit — actual approval of a copyright application by the United States Copyright Office is required before suit can be filed.

Given the fact that normal approval of an application can take seven months to more than a year (absent use of an expensive, expedited procedure still taking weeks), copyright owners should be vigilant to file applications early so as to be ready if copyright infringement does occur.

The *Fourth Estate* decision joins several other incentives that encourage the prompt filing of copyright applications. In addition to other remedies, copyright law allows for “statutory damages” of up to \$150,000 per work infringed upon, and also provides for the possibility of attorney fees being awarded to a prevailing party. However, these remedies are only available when an owner applies for registration either within 90 days of first publication of the work or before the infringement begins. If a copyright application for a published work is not filed until after the infringement begins, these statutory damages are unavailable, and attorney fees cannot be awarded. Thus, for any significant work of authorship, early application for registration is necessary for copyright owners to be able to act quickly and receive a maximum recovery.

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