



New Ruling Requires Copyright Registration as Condition to Legal Action.

SLG Legal Update

By SLG Staff

In a landmark copyright case, the United States Supreme Court has held that copyright infringement suits can only be brought after the U.S. Copyright Office actually issues a registration – not, as some U.S. federal circuit courts had held, as soon as the claimant applies for copyright protection. *Fourth Estate Pub. Ben. Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881 (2019).

The U.S. Copyright Act is clear on the basic principle that “no civil action for infringement of the copyright in any United States work shall be instituted until . . . registration of the copyright claim has been made . . .” 17 U. S. C. §411(a). However, federal circuit courts had been split on the question of when registration is deemed to have been made – upon application or upon issuance of a valid registration by the U.S. Copyright Office.

In Fourth Estate, the plaintiff, a news organization, sued the news-website operator Wall-Street.com, LLC for continuing to display the plaintiff’s news articles – for which copyright applications had been filed but registration had not yet been issued – after the license agreement between them had been canceled. The U.S. Supreme Court agreed with the Eleventh Circuit’s affirmation of the case’s dismissal.

The *Fourth Estate* decision comes with several important caveats. First, there remains an option for “preregistration”: a copyright owner who is preparing to distribute a work of a type vulnerable to predistribution infringement—*e.g.*, a movie or musical composition—may apply to the Copyright Office for preregistration. 17 U.S.C. §408(f)(2). Second, even if registration is *refused* in response to a complete and proper copyright application, a plaintiff may still be able to institute a suit if notice is served on the Registrar. 17 U.S.C. §411(a).

This critical condition precedent to copyright litigation– that suing not an option until the U.S. Copyright Office actually registers the copyright – has tremendous ramifications. It could seriously undermine a copyright owner’s ability to take action against infringers. To ensure that you have full protection for your copyrighted works – and do not have to wait to go after infringers – it is essential that you move quickly to register all important copyrightable works; such as software, photographs, graphic designs, mobile and video games, music, and more.

Please do not hesitate to contact SLG to discuss any questions on this important matter at info@shelgroup.com



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