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On July 1, 2008 the U.S. Copyright Office began accepting applications for copyright registration through its new online registration portal. Dubbed “eCO” for “electronic Copyright Office,” the new online system has been in beta testing for a number of months, and promises to make the registration process easier and less expensive for copyright owners, and, supposedly, more efficient for the Copyright Office. Indeed, recent reports suggest that it takes about eight months to process a registration claim; the Office claims the new eCO initiative will help reduce the backlog.

Given this relatively revolutionary shift in copyright registration practice (copyright lawyers have been waiting patiently for years for the Office to finally jump on the online bandwagon), I thought it might be an ideal time to discuss some basics of copyright registration, what it means, how it works, and how to register your own works.

But first, as usual, a quick note about jurisdiction: While virtually all developed countries have some mechanism for copyright pro-

tection and enforcement, many do not have a copyright registration scheme. The United Kingdom, for example, has no formal, government-sponsored registration process. In the United States, the process is provided for by the Copyright Act and is managed by the Copyright Office, which is a unit of the Library of Congress. This column focuses principally on the law and registration practice of the United States.

Also important to understand at the outset is that while registration provides certain benefits, it is not a prerequisite for copyright protection. Copyright protection subsists from the moment a copyrightable work is fixed in a tangible medium of expression. Put differently, to obtain copyright protection, a creator need only create a copyrightable work. Registration is, thus, a “good idea,” but not essential.

Benefits of Registration

What, then, does registration do for the copyright owner? For one, registration provides public notice of a copyright owner’s claim. Because the Office’s public database is fully searchable online (www.copyright.gov/records), registration puts would-be users of copyrighted works on notice of the copyright claim, and provides contact information for the copyright owner or administrator. The public notice makes it more difficult for an infringer to argue later that he or she was unaware that the infringed work was protected by copyright.

Moreover, the copyright registration certificate serves as evidence that the work is validly copyrightable, eliminating the need to prove that point at an infringement trial and when attempting to obtain a preliminary injunction to prevent impending or ongoing infringement.

But perhaps the most important feature of a registered copyright is that it entitles the copyright owner to bring suit for infringement. While copyright protection originates from the mere creation of a work, the right to sue for infringement comes from registration. For purposes of enabling suit, it does not matter when a copyright owner seeks registration, so long as it comes before the lawsuit is filed.

Timing of registration does matter, however, in determining whether a copyright owner may be entitled to statutory damages and attorney’s fees in the event of an infringement. The availability of these so-called enhanced

damages is frequently touted as the most important benefit of registration.

Timing Considerations

If the copyright in an infringed work was registered either (1) prior to the infringement; or (2) within three months of publication, the court may award the copyright owner up to \$150,000 per infringement, regardless of the actual damages or lost profits sustained by the copyright owner (damages may also be as low as \$200 depending on circumstances; see my March 2008 column on copyright damages for more). The copyright owner may also collect attorney’s fees. If the work is unregistered, the owner may sue only for actual damages or lost profits, the magnitude of which may be difficult to establish.

Because the either/or nature of the registration requirement can be confusing, here are a couple examples to illustrate the timing principles:

Example 1: Roger writes a planetarium show script and registers the copyright before submitting the script to IPS Eugenides Script Writing Competition (assume entry into the competition is deemed a “publication” for

The image shows a "Certificate of Registration" from the U.S. Copyright Office. It includes the following information:
- Title: Columbus Redwood Mammals
- Author: CHRISTOPHER S. REED
- Copyright claimant: CHRISTOPHER S. REED, 1600 S. EADS ST., #830N, ARLINGTON, VA, 22202, United States
- Rights and Permissions: Name: CHRISTOPHER S. REED, Email: creed.m@gmail.com, Address: 1600 S. Eads St, #830N, Arlington, VA, 22202
- Completion/Publication: Year of Completion: 2007, Date of Publication: June 17, 2007, Name of Publication: United States
- Certification: Name: CHRISTOPHER S. REED, Date: September 9, 2007
The certificate also features a signature of the Register of Copyrights and a registration number: VA 1-622-793.

A copyright registration certificate serves as evidence that the work listed on the face of the certificate is validly copyrightable. Photo by Chris Reed.

our purposes). The script is unfortunately intercepted by an unscrupulous delivery service employee who scans it and posts it on his web site, though he never generates any revenue from the script. Upon learning about the theft, Roger brings suit against the delivery service employee for copyright infringement. At the trial, Roger admits that he had

General Counsel is intended to serve as a source of general information on legal issues of interest to the planetarium community. Planetarians seeking information on how the principles discussed in a General Counsel column apply to their own circumstances should seek the advice of their own attorneys.



The Copyright Office's online registration database provides critical information about registered U.S. copyrights. Image by author

no plans to commercialize the script and that he wrote it solely for his personal enjoyment. Roger ultimately prevails on his infringement claim, and because the work was both registered within three months of publication, and at the time of infringement, he is entitled to statutory damages and attorney's fees.

Example 2: Same facts as above, but now assume that the script was stolen one week after Roger mailed it to IPS, and that he registered the copyright two months after that. Although the copyright was not registered at the time of infringement, Roger is still entitled to statutory damages and attorney's fees because the registration came within three months of publication.

Example 3: Elaine, a composer, is hoping to make it big in the space music industry. She records a demo CD featuring several compositions that she subsequently sends to various planetariums and show producers (assume sending the CDs constitutes publication). The CD's label is clearly marked with her name and contact information as well as a copyright notice. She hears nothing. Four months later, Elaine attends the opening of a new show at her local planetarium, which is, of course, one of the facilities to which she sent a demo. To

her surprise, the score was comprised entirely of her music. The next day, Elaine registers the copyright. She subsequently sues the offending planetarium, claiming infringement. Although Elaine prevails at trial, she is entitled only to actual, provable, damages because the copyright was not registered at the time of infringement, nor was it registered within three months of publication.

Example 4: Same facts as above except that Elaine registers her copyright six weeks after she sends copies to the planetariums and show producers. Evidence at trial demonstrates that Elaine's music was not synchronized with the planetarium show until just a few days before its premiere. Even though the copyright was not registered at the time of infringement, because Elaine registered it within three months of publication, she is entitled to statutory damages and attorney's fees.

Example 4 raises an important point about the effective date of copyright registrations. Copyright registration is effective on the date the Copyright Office receives a complete filing, not when they get around to processing the application and issuing a registration certificate. Accordingly, when sending materials to the Office, it's always advisable to use

a traceable delivery service, or certified mail with a return receipt requested. Note, though, that Postal Service deliveries to the Office are often significantly delayed due to mail security procedures in Washington, D.C., where the Office is headquartered. Of course, these issues are eliminated when one uses the new electronic registration system which allows registrants to submit everything, including the registration fee, online.

The Registration Process

The mechanics of applying for copyright registration are relatively straightforward, although there are some issues to be aware of, particularly for planetariums who may seek to register complete planetarium shows, or other materials that contain various elements contained by multiple individuals or entities.

Although the electronic registration system has streamlined the process somewhat, the system is still in its infancy and, accordingly, limitations remain. Fortunately, the traditional registration process, using paper forms remains an option for those who prefer the hardcopy route. I will discuss the nuts and bolts of the registration process in the December 2008 issue. Until then... ☆