

Copyright Registration Is a Prerequisite to Suing for Infringement

March 4, 2019

On March 4, 2019, a unanimous Supreme Court held that a copyrighted work must be registered with the Copyright Office before the copyright owner may sue for infringement of the work.

In reaching this result, the Court rejected the approach endorsed by the Fifth and Ninth Circuits, whereby a copyright infringement suit could be brought as soon as the copyright owner submitted a registration application to the Copyright Office, but before the Copyright Office had registered the copyright. The Court held that the plain text of Section 411(a) of the Copyright Act requires that the Copyright Office register the copyright before the copyright owner sues for infringement.

The Supreme Court's ruling has important practical implications, because, as the Court notes, "the average processing time for registration applications is currently seven months." Slip Op. at 11. Thus, under the Court's ruling, a copyright holder must typically wait an average of seven months after submitting an application before bringing an infringement suit. A copyright holder seeking to commence litigation sooner can request expedited processing of its application pursuant to the Copyright Office's "special handling" procedures, which shortens the wait time substantially—often to one or two weeks. See Slip Op. at 11 n.6.

Although today's ruling establishes that an infringement suit must await the Copyright Office's registration of the copyright, it also makes clear that once the copyright has been registered, a copyright owner can recover for infringement that occurred both before and after registration. Slip Op. at 1 & 10.

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The Court also explained that its decision does not affect two statutory exceptions that permit infringement suits to be brought before registration of the copyright. The first exception is for works that have been preregistered with the Copyright Office. As the Supreme Court explained, “[i]f a copyright owner is preparing to distribute a work of a type vulnerable to predistribution infringement—notably, a movie or musical composition—the owner may apply for preregistration,” and may bring suit once the work has been preregistered. Slip Op. at 3-4. The second exception concerns live broadcasts, and allows a copyright owner to sue for infringement before the live broadcast has been registered with the Copyright Office. Slip Op. at 4.