

Sending Yourself Mail or Copyright Registration: not the same.

Q: I think this has probably been covered and covered or is so elementary that everyone already knows this as true - do I correctly recall that with we anything we write, song, story, novel, poem, theatrical play, screenplay, we can make the copy[right] mark on, our name and the date and mail to ourselves and that is an effective, legal 'common law' copyright?

A: There may be value in receiving mail; nothing lifts the spirit like receiving a screenplay or manuscript in the mail - that's why Hollywood movie producers are all so happy all the time. **However, so far as the copyright law is concerned there is almost zero value in mailing a copy of anything to yourself.** There may have been some truth to it prior to 1976; under the "old copyright law" because some of your rights might be saved without a registration – it might have been helpful in proving your work was in existence prior to publication but there is no value any more. Since 1989 the US Copyright law is that you have a copyright in your work as soon as it's in tangible form, when the pen is off the paper, the worlds are on the computer screen, when the light hits the proverbial film, when the music is on the tape. All of this came to be when the US joined the Berne convention in 1989.

So why register your copyright? The registration of a copyright provides significant benefits for one: establishment of a public record of your copyright claim. You get "bonuses" if the registration is made within three months from the date the work was made public, the legal definition of published. The benefits are that the work will be presumed to be yours; the facts as stated in the certificate are deemed evidence of those facts. This means that it is no longer up to you to prove you wrote the work but the burden now shifts to the defendant to prove you did not. Timely registration will also allow you to ask the court for a presumption of damages up to \$150,000 per infringement instead of having to prove actual damages; you will also be permitted to ask the court to award you the costs of having to take the infringer to court, including reimbursement for your attorney fees. Registration is easy, fill out the copyright registration form for manuscripts available at (<http://www.copyright.gov/forms/formtxi.pdf>) send it in with a copy of what is to be registered, the deposits, with a check for \$45 (price increase July 1, 2006).

Presumption of damages as a practical matter means you can petition the court for the unpermitted use of your work as a lump sum; instead of being limited to actual damages which might limit your claim tolling up the infringements and then assigning a value to each one. You will have to discover the number of shirts made from the same guy you are accusing of using the work without permission. If you think that will be easy to discover, think again. If you cannot prove how you have been harmed by any claimed infringement the courts might consider your claim of damages too speculative and courts are reluctant to require payment of speculative damages - you won't have to prove you lost a customer, lost a big order, or prove how many infringing copies they made - registration obviates the issue. With a registered copyright, the possibility that an infringer may have to pay your attorney's fees plus their own may encourage a quick resolution to the dispute.

You can, of course, register your work at any time during the life of the copyright, which is your lifetime plus 70 years under the current law. If the infringement comes after the registration you will have the full force of the protection but usually the infringement occurs before the registration. This means no presumption of damages and no attorney fees. For work that originated in the United States, you must have registered the work before you can commence an

action for infringement. The courts have been very strict about registration and the availability of the rewards. The reasoning behind this is that part of the purpose of copyright protection is to “promote the progress of the ... arts” and it is believed that purpose is better served by timely registration.

This article is not intended as a substitute for legal advice. The specific facts that apply to your matter may make the outcome different than would be anticipated by you. You should consult with an attorney familiar with the issues and the laws.