

## WHY DO I NEED TO REGISTER MY COPYRIGHTS?

Question: If I have a copyright in a work as soon as the “pen leaves the paper” why would anyone bother to register?

Answer: Good Question. Registration is not mandatory. You have an enforceable copyright without doing a thing. However, there are some very practical reasons for registration.

The registration of a copyright, while not mandatory, provides significant benefits for those who do register. The benefits that come from registration are: establishment of a public record of the copyright claim. If the registration is made within three months from the date the work was published, the legal definition of published, the work will be presumed to be yours; the facts as stated in the certificate are deemed “prima facie” 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. This timely registration will also allow you to ask the court for a presumption of damages up to \$150,000 instead of having to prove actual damages.

Presumption of damages as a practical matter means you can petition the court for \$10,000 for the unpermitted use of artwork on a t-shirt; instead of being limited to actual damages which might limit your claim to \$1 per shirt - times the number of shirts made. 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. This can also be quite difficult, if you cannot show a “track” record of your previous earnings and the loss of such earnings. Without this history, proving that you have been harmed by any claimed infringement appears to the courts as too speculative and courts are reluctant to offer speculative damages. The ability to obtain statutory damages eliminates the need for you to prove what harm you actually suffered – by proving your economic damages – you won't have to prove situations like did you lose a customer, lose a big order, or proving how many copies they made? Without registration, you may recover the infringer's profits made from the infringement but that can be difficult to prove - 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 discourage that would be infringer. This is a big deal.

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 infrequent occurs before the registration. 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 that purpose is better served by timely registration.

While registration is optional, albeit very advisable, the Copyright law refers to a mandatory deposit of copies for works published in the United States. The law requires that the deposit be made within three months of the date of publication. And so as long as you have to make a

deposit, you can satisfy that requirement by making a registration instead since you have to send in the required number of copies when you register. I know of no cases where the copyright office has enforced its right to require deposits of copies the law is still in place. As long as you might be required to send in the deposits you might as well fill out the form, write the check for \$30 and complete the registration, which is easy to follow and is available online from the copyright office ([www.copyright.gov](http://www.copyright.gov))

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