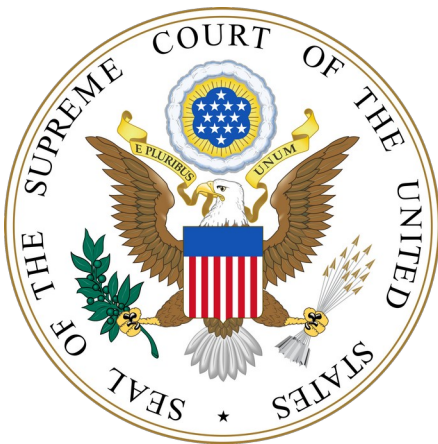


# BREAKING NEWS: The Supreme Court Finally Will Resolve the Copyright Registration Circuit Split

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by Jeffrey R. Cadwell



Under U.S. Copyright Law, copyright protection affixes to “original works of authorship fixed in any tangible medium of expression.” While copyright registration is not required to claim copyright rights, Section 411(a) of the Copyright Act requires registration prior to commencement of a federal copyright lawsuit. The registration requirement has not been interpreted consistently across the federal circuit courts.

We have previously reported about the Eleventh Circuit’s decision in *Fourth Estate Public*

*Corporation v. Wall-Street.com, LLC*. There, the court adopted the so-called “registration approach,” which means that a plaintiff must be in possession of a registration certificate issued by the United States Copyright Office before bringing suit. Accordingly, the Eleventh Circuit dismissed the plaintiff’s claims because it had not registered the works at issue before it filed its lawsuit.

In addition to the Eleventh Circuit, the Tenth Circuit is on record as adhering to the “registration approach.”

Other circuit courts, such as the Fifth Circuit and Ninth Circuit, have followed the “application approach,” which means that a plaintiff must only have *filed* its application for copyright registration with the Copyright Office.

The remaining circuit courts have either not yet adopted a position or have not been consistent in interpreting the meaning of “registration” under Section 411 of the Copyright Act.

The Copyright Office, in its amicus brief to the Supreme Court, has backed the registration approach, stating that the “text, structure, and history of the Copyright Act

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confirm that the Register [of Copyrights] must have acted on an application for copyright registration—either by approving or refusing registration—before the copyright owner may institute a copyright-infringement suit.” The Copyright Office further states that “registration” must be read as meaning official recording of an accepted copyright claim and that following the application approach renders portions of Section 411(a) superfluous.

On June 28, 2018, the United States Supreme Court agreed to take up the issue by granting review of the *Fourth Estate* case.

For what it’s worth, the Supreme Court may have already signaled its position on the issue in the “Raging Bull” decision a few years ago, stating: “Although registration is “permissive,” *both the certificate and the original work must be on file with the Copyright Office* before a copyright owner can sue for infringement.” (emphasis added)

Here at The TMCA, we will keep you apprised of all meaningful developments in this important copyright case.