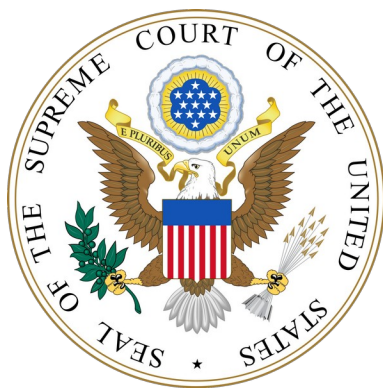


BREAKING NEWS: The Supreme Court Rules that You Need a Copyright Registration to Sue for Copyright Infringement in Federal Court

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by Bruce R. Ewing



This morning, the Supreme Court resolved a longstanding circuit split about whether a copyright infringement plaintiff must first obtain a registration from the Copyright Office for the work upon which its claim is based before initiating an infringement lawsuit, or whether it need only file an application for registration of that work before filing suit. The short answer is – yes, you need a registration. In line with the Second and Eleventh Circuits, and rejecting the approach taken in the Ninth Circuit, the Court's decision in *Fourth Estate Public Benefit Corp. v.*

Wallstreet.com LLC makes clear that the issuance of a registration for the work upon which an infringement claim is based must occur before a federal lawsuit is filed, absent the applicability of certain specific statutory exceptions, and that the mere filing of an application to register does not satisfy the Copyright Act's requirement in Section 411 that suit may be initiated only when a "registration . . . has been made."

Today's decision does not alter the state of the law in those circuits that already required the issuance of a registration for the allegedly infringed work as a prerequisite to the initiation of a claim for copyright infringement, but it will have some impact in those circuits that allowed such claims to be initiated based upon the mere filing of an application for registration. However, because the Copyright Office allows for the expedited issuance of a registration upon the payment of additional fees when a lawsuit is contemplated – an alternative that can shave months off the standard time it takes for a copyright registration to issue – copyright plaintiffs with well-founded claims still have the ability to initiate legal action promptly, notwithstanding today's holding. And, they still have the ability to recover compensatory damages incurred before and after the registration issues.

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