



THE IMPORTANCE OF COPYRIGHT REGISTRATION

The Huffington Post published a great article by Cat Weaver about the current state of copyright law seen through the lens of a particular picture, and its transformation and use by a handful of artists. If you haven't read it already, go read it [here](#). (For those who don't want their attention diverted from my writing, and who can blame you, two artists working together took a picture of a panda, changed it up a bit, and turned it into a t-shirt. A third artist then came along and took an exact copy of the panda graphic, made it into a pattern, and turned it into a large piece of wall art, which he presumably made a bunch of money off of).

Read it? Good. There's a lot going on in this article -- it really makes you think about what copyright law should look like and what the best way to promote the arts and reward artists for their creativity really is -- but what jumped out at me is how hamstrung artists Jimi Benedict and AJ Dimarucot are. Why are their options so limited? They never registered their copyright. Why does that limit them so much? Read on.

To understand the problem, you need to understand the difference between a copyright and a copyright *registration*. A copyright (which is really a bundle of rights that prevents others from using your work without your permission in a variety of ways) exists as soon as your original, creative work is fixed in a tangible medium of expression. That, of course, is just an overly complex way of saying that the creation is more than just an idea in your head, you've made it real. Whether that means you've written it down, drawn it, painted it, recorded it, or filmed it, it all counts. And as soon as you've made your idea into a reality, you have a copyright on it, no one can use it without your say so (except for all the exceptions that have been carved out, but that's for another day).

A copyright *registration* is something you file with the US Copyright Office that basically tells them who you are, what you made, and when you made it. Again, you don't need to file this registration in order to hold a copyright, this filing just puts the government and anyone searching the archives of the Copyright Office on notice of your copyright.

So why's this important? Statutory damages. When someone uses your creation without your permission, there's only a limited number of things you can do. You can ask them nicely to stop doing so (or to compensate you for the use), you can tell them angrily to stop doing so (or to compensate you for the use), or you can take them to court. Since the first two don't always work out so well, if you really want to protect your creation there's a good chance you'll need to go to court to do so.

So here's the big difference: if your creation wasn't *registered* at the time the other person used it, you'll have to prove your damages when you go to court. In other words, you'll have to prove to a judge or jury exactly how much money you lost or exactly how much money the other person gained by using your creation without your permission. That's hard to do. What's more, it can be expensive to do if you need to hire an expert to testify as to the nature of a particular market and your creation's place in it. Even worse, once you prove your damages, that's what you're stuck with, you can't get any more money than that. If there's not a lot of money involved, you can be sure that your legal costs will far exceed anything you get back in court. For the individual artist then, the person most in need of protection, it makes it virtually impossible to actually protect your work.

If, on the other hand, your work *was* registered at the time the other person started using it, you can get statutory damages. Depending on your perspective, statutory damages are either the greatest thing the US Congress has ever created or an unconstitutional and outdated black mark on US intellectual property law. I don't like them when applied in some instances (most notably in certain file-sharing cases), but when it comes to protecting individual artists I think they're absolutely essential.

So how it works is this: if you've registered before the infringement (the unauthorized use), you don't have to prove any damages, the Copyright Act lays out how much you get. Depending on certain factors, like how willful the infringement was, the creator can be awarded anywhere between \$200 and \$150,000 per act of infringement. You're also eligible for court costs and attorney's fees on top of any damages award. That's a heck of a lot better than having to prove how much you're owed.

Going back to the article, the two artists who turned the panda photo into a t-shirt never registered their copyright in the image, so if they went to court they would have had to prove how much they were owed, rather than just how bad of a guy the infringer was. That's a big risk going into a copyright case, but more than that it limited damages to a fairly small amount of money. The practical effect? They couldn't get a lawyer, let alone a judgment. As individual artists, they don't have the money to bankroll litigation in federal court, and no lawyer is going to finance the case by taking it on contingency if there isn't the promise of big payoff in exchange for their big risk.

If the artists had just registered, their damages ceiling would have been much higher, their burden of proof much lower, and they'd probably have a lawyer and a quick settlement. But they didn't, so they got a flash mob, and we see how well that worked out.

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