

ALERTS AND UPDATES

Ninth Circuit Holds Application for Copyright Registration Sufficient to Bring Suit in Federal Court

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In the United States, before a suit for copyright infringement can be filed in federal court, one must register the claim with the U.S. Copyright Office. This requirement is stated in 17 U.S.C. § 411(a). While an online application bears a filing fee of 35 USD, an expedited application bears fees of 760 USD per claim. An unexpedited application can take several months for processing to registration, while an expedited application can be processed in just a few days.

However, there is a split in the U.S. circuit courts in determining what constitutes "copyright registration" sufficient to satisfy the § 411(a) prerequisite. In two circuit courts, one who has not registered the copyright in a given work must file an application, but need not expedite it prior to bringing suit for copyright infringement. The U.S. Court of Appeals for the Ninth Circuit recently joined those circuit courts by holding that plaintiffs only have to file a complete application before filing suit, and they do not have to wait until the Copyright Office issues a certificate of registration.

This holding, in *Cosmetic Ideas, Inc. v. IAC*¹, is consistent with those from the Fifth and Seventh Circuits, which have also held the registration requirement is satisfied once a plaintiff has delivered a complete application to the Copyright Office.

Among other reasons for its holding, the Ninth Circuit found that allowing a plaintiff to file an infringement suit once it delivers a complete application to the Copyright Office prevents unnecessary delay in copyright infringement litigation. Such delay might "permit an infringing party to continue to profit from its wrongful acts" while the harmed party waits for the certificate of registration to be issued.

The Fifth, Seventh and Ninth Circuit holdings are at odds with cases arising from the Tenth and Eleventh Circuits. The latter adhere to a strict reading of § 411(a), holding that only a certificate of registration will satisfy the statutory registration requirement.

Unless and until the U.S. Supreme Court resolves the split in the circuit courts, the rule will be different in the Fifth, Seventh and Ninth Circuits from that in the Tenth and Eleventh Circuits. The remaining circuit courts have yet to weigh in.

The removal of uncertainty and the other advantages of early registration are likely to be significant, and include eligibility for statutory damages and attorneys' fees for damages predating the suit. Copyright holders may want to consider registering their works well before contemplating bringing suit against infringers.

For Further Information

If you would like more information on this topic, please contact any of the [attorneys](#) in our [Intellectual Property Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Note

1. *Cosmetic Ideas, Inc. v. IAC*, 2010 WL 2039170 (May 25, 2010).