

# ILN IP Insider



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## Why Register Your Copyright?

BY DANIEL H. BLISS OF HOWARD & HOWARD ON AUGUST 3, 2016

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Suppose that you have expressed your idea into a tangible form such as producing a video. Although your copyright exists upon the moment of creation, should you register your copyright on the video with the U.S. Copyright Office? Suppose you don't and later you find out that a competitor has posted a copy of your video on their website. Should you register your copyright? The answer is YES!

Let's suppose you have created a video such as how to design a particular product. The video has value because it draws interested persons to your website. However, you did not register your copyright in the video with the U.S. Copyright Office before posting it on your website. Now, six months has passed and a competitor has obtained a copy of your video and has posted it on its website to draw traffic from your website to their website. What can you do to prevent this situation from continuing?

First, you need to register your copyright on the video with the U.S. Copyright Office before you can sue for infringement. Under 17 U.S.C. § 411, no civil action for infringement of a copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made.

Second, you need to register your copyright before the infringement occurs or within 3 months of publication of the work. The copyright laws allow an owner of a copyright that is infringed to sue for an injunction to stop any further infringement or recover damages for infringement. Under 17 U.S.C. § 502, any court having jurisdiction may grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright. Under 17 U.S.C. § 504, an infringer of a copyright is liable for either (1) the copyright owner's actual damages and any additional profits of the infringer or (2) statutory damages.

The copyright owner may recover actual damages and profits for the infringement. However, the copyright owner has to prove these damages, which may be hard to prove for a video that only draws people to a website.

Suppose you want to elect statutory damages before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for the infringement. Statutory damages provide with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, a sum of not less than \$750 or more than \$30,000 as the court considers just.

However, there are limitations on statutory damages. Under 17 U.S.C. § 412, no award of statutory damages or of attorney's fees shall be made for—(1) any infringement of copyright in an unpublished work commenced before the effective date of its registration; or (2) any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after the first publication of the work.

If you registered your copyright before the infringement occurs, statutory damages are available under 17 U.S.C. § 504. If you did not register your copyright before the infringement occurred, you will be entitled to statutory damages only if your work is registered within three months after the work was first published or distributed to the public. Otherwise, most courts do not allow a copyright owner to obtain statutory damages for infringement that occurred prior to registration. This is because the courts interpret 17 U.S.C. § 412(2) of “any infringement of copyright commenced after first publication of the work and before the effective date of its registration” to mean that the infringement prior to registration that continues after registration is one continuous infringement and not new individual infringements after registration.

Based on the above scenario, you should register your copyright immediately. You can still sue to stop your competitor from continuing to post your video on its website. However, you will only be entitled to recover actual damages that have occurred. If there are no or a small amount of actual damages, you will have missed an opportunity to obtain statutory damages. Therefore, the lesson to be learned is to register your copyright with the U.S. Copyright Office before publication of your work.

# ILN IP Insider

Executive Offices  
179 Kinderkamack Road  
Westwood, NJ 07675  
Tel: 201.594.9985/ Fax: 201.740.9765

## About the ILN IP Specialty Group

Headed by Eddie Powell of Fladgate LLP, London, and Norman Zivin of Cooper & Dunham LLP, New York, New York, the ILN's Intellectual Property Group provides the platform for enhanced communication, enabling all of its members to easily service the needs of their clients requiring advice on cross-border transactions. Members of the group meet regularly at ILN conferences and industry events, and have collaborated on discussions and publications of mutual interest.

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