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U.S. Supreme Court Requires Copyright Owners to Register Before Filing Suit

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On March 4, 2019, the U.S. Supreme Court issued its decision in *Fourth Estate Public Benefit Corp. v. Wall-Street.com*, holding that, with very limited exceptions, copyright owners must receive a registration from the U.S. Copyright Office, and not only have an application on file, before they can file suit claiming copyright infringement. The Supreme Court's decision does not change the alternate provision that allows plaintiffs to bring suit after the Copyright Office has rejected a plaintiff's application to register copyright in its work.

Prior to this decision, some courts allowed litigants to file a lawsuit when the plaintiff only had a copyright application on file but had not yet received a registration, known as the "application" approach. Other courts followed the "registration" approach, where the plaintiff needed to actually receive the registration before filing suit. The Supreme Court, in this unanimous decision authored by Justice Ginsburg, resolved the circuit split in favor of the registration approach. In very limited cases, plaintiffs can still bring suit before obtaining a registration, namely, with preregistration and live broadcasts. However, in almost all cases, the courthouse door will not open to other copyright owners before the Copyright Office registers or rejects a copyright application.

What This Means to You

The Copyright Office typically processes copyright applications within 7 to 15 months on a normal basis and offers expedited registration for an additional fee in the case of threatened claims or other select circumstances. Accordingly, although copyrighted works gain some protection from the moment of

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creation, creators and owners of copyrighted works would do well to register such works promptly in order to enforce their rights quickly when infringed.

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If you have a question as to the implications of this case or any related matter, please contact Daan Erikson or your Husch Blackwell attorney.

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