



## Registration Required: Supreme Court Resolves Circuit Split Over Requirements for Copyright Action

***A unanimous U.S. Supreme Court rules that copyright owners must have a copyright registration before pursuing infringement claims in court.***

Resolving a circuit split and a question facing any copyright owner wishing to file an infringement suit, the U.S. Supreme Court unanimously held in *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*, Case No. 17-571, that a claimant may sue only once the Copyright Office issues a decision on registration.

For years, courts have been split over the meaning of Section 411(a) of the Copyright Act, which provides that a claimant could only bring a copyright infringement suit after "registration ... has been made." The U.S. Courts of Appeal for the Fifth and Ninth Circuits interpreted Section 411(a) to mean a suit could be initiated after filing the required application, deposit, and fee with the Copyright Office. The U.S. Courts of Appeal for the Tenth and Eleventh Circuits, on the other hand, held that the statute meant claimants can only bring suit after the Copyright Office issued a decision on registration. Like the latter courts, the Supreme Court determined that the phrase "registration ... has been made" referred to "when the Register has registered a copyright after examining a properly filed application."

The case originated when Fourth Estate sued Wall-Street.com for copyright infringement, based only on a pending copyright application. The district court dismissed the claim and the Eleventh Circuit affirmed, holding that the Copyright Act only allowed for suit once the Copyright Office issued a registration.

In affirming, the Supreme Court determined that the registration approach "reflect[ed] the only satisfactory reading of §411(a)'s text" that would not render other sections of the Copyright Act superfluous. The Court also noted that, in multiple instances over the years, Congress had "rejected proposals that would have eliminated registration or tied it to the copyright claimant's application."

The Court found Fourth Estate's concerns regarding losing the ability to enforce overstated, noting that average processing times of seven months still leave "ample time to sue" within the Copyright Act's three-year statute of limitations, and that damages are available for infringement before and after registration.

Going forward, copyright owners should develop a strategy for registering works early where litigation is anticipated.



Meredith M. Wilkes  
Cleveland



Jessica D. Bradley  
Washington



Anna E. Raimer  
Houston

*[Mallory McKenzie](#), an associate in the Washington Office, assisted in the preparation of this Alert.*

---

SUBSCRIBE

SUBSCRIBE TO RSS



---

Jones Day is a global law firm with more than 2,500 lawyers on five continents. One Firm Worldwide<sup>SM</sup>

**Disclaimer:** Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at [www.jonesday.com](http://www.jonesday.com). The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2019 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113