

# Supreme Court Resolves Circuit Split on Copyright Registration

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**On March 4, 2019, the Supreme Court of the United States in *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC* unanimously held that the U.S. Copyright Office must issue a copyright registration prior to a copyright claimant filing a lawsuit alleging infringement.**

The idea of pre-suit registration is not itself novel. Section 411(a) of the Copyright Act of 1976 states “no civil action for infringement of the copyright in any United States work shall be instituted until . . . registration of the copyright claim has been made in accordance with this title.” (17 U.S.C. § 411(a)). Thus, the question of when a lawsuit can commence in a copyright infringement suit is determined by the interpretation of when a copyright registration “has been made in accordance with this title.” Until the March 2019 decision, U.S. Courts of Appeals interpreted this clause in two ways.

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**The Supreme Court held that the Eleventh Circuit’s interpretation is correct: the Copyright Office must issue registration, and not merely receive a complete application, before a claimant can commence a lawsuit alleging copyright infringement.**

The Court of Appeals for the Eleventh Circuit interpreted this statute to mean that the Copyright Office must register the copyright prior to a plaintiff commencing suit. (See *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 856 F.3d 1338, 1341 (11th Cir. 2017)).

However, the Court of Appeals for the Ninth Circuit interpreted this statute to mean that a plaintiff can commence a lawsuit at any time after the claimant’s complete application for copyright registration is received by the Copyright Office. (See *Cosmetic Ideas, Inc. v. IAC/Interactivecorp*, 606 F.3d 612, 621 (9th Cir. 2010)).

The Supreme Court’s decision hangs on the interpretation of the first two sentences of Section 411(a) of the Copyright Act. The first sentence of Section 411(a) states that registration is

required prior to filing a claim of infringement. The second sentence provides: “where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form, and registration has been refused, the applicant is entitled to institute a civil action for infringement if notice thereof . . . is served on the Register of Copyrights.” (17 U.S.C. § 411(a)). The Court reasoned that the second sentence is an exception to the first sentence, which the Ninth Circuit’s interpretation would render superfluous. Taken together in light of the Supreme Court’s ruling, these sentences mean that a copyright claimant must be issued registration by the Copyright Office prior to filing a lawsuit for copyright infringement, but if no such registration is issued, the copyright claimant may still institute the lawsuit, as long as the Copyright Register is notified and provided the opportunity to participate in the lawsuit with regard to copyright validity. While the Supreme Court’s interpretation of the pre-suit registration requirement institutes a more significant administrative hurdle for entities seeking to file claims of copyright infringement, the Court also noted that its ruling does not preclude copyright claimants from recovering damages for actions that occurred before registration.

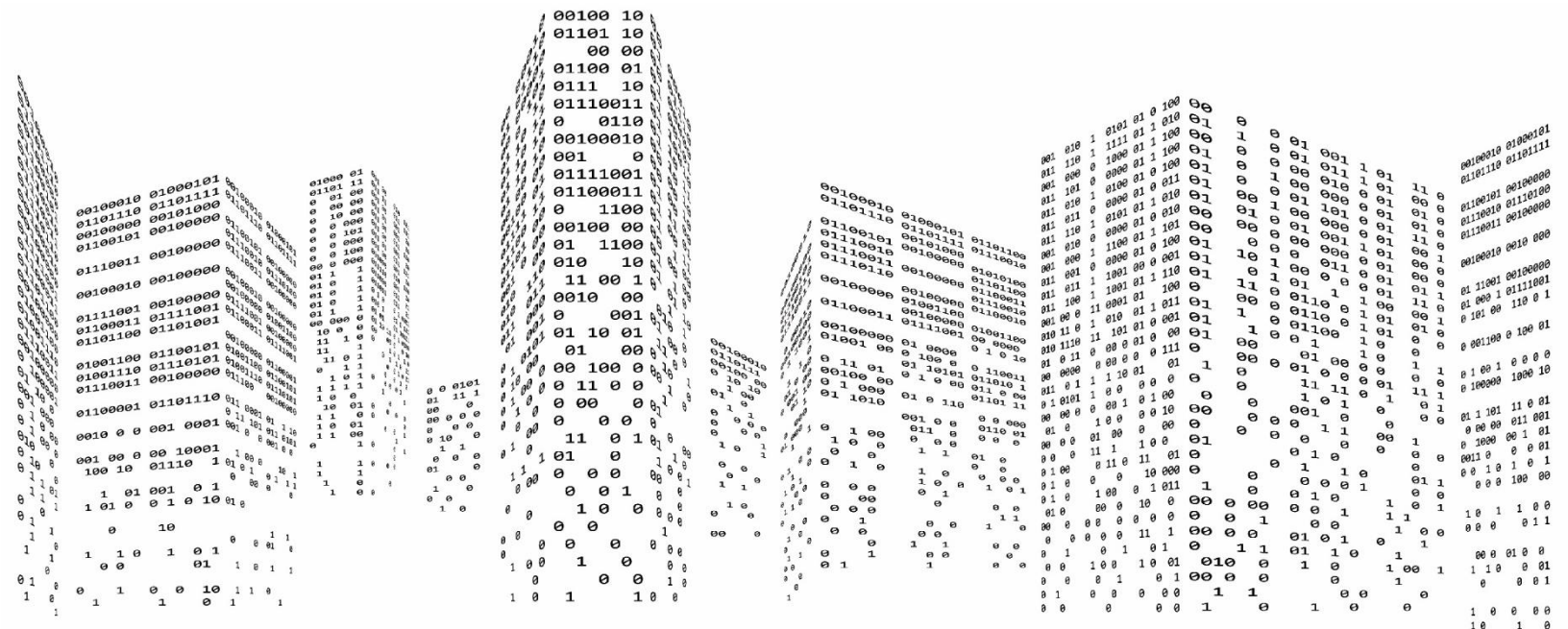
DisputeSoft’s software copyright infringement experts keep abreast of legal developments such as the Supreme Court’s ruling in *Fourth Estate* to ensure that they are prepared to cost-effectively assist counsel. For more information about DisputeSoft’s copyright infringement experience, visit our services page, browse the firm’s representative copyright infringement matters, or review the backgrounds of DisputeSoft copyright infringement experts such as Jeff Parmet, Josh Siegel, and Nick Ferrara.

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Since joining DisputeSoft in 2016, T.J. Wolf has consulted for clients on a variety of software related matters, including breach of contract disputes, software implementation failure matters, and intellectual property matters involving allegations of copyright infringement and trade secret misappropriation. By researching and analyzing documentation to produce content and support for expert reports, T.J. has become deeply involved in analyzing the root causes of many IT failure cases and assessing misappropriation in intellectual property matters.



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