To Register or Not

The Berne Copyright Convention (see: www.wipo.int) specifically states that copyright protection should not be subject to any formalities such as registering or depositing a work, or marking it with a copyright symbol like ©. Article 5(2) of the Convention states:

The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work…

All member countries must adhere to this article. Canada, for instance, has never had any requirements to register or deposit a work in order for it to be protected by copyright. The U.S., however, changed its copyright law with respect to registration, depositing a work, and marking a work, when it became a member of the Berne Convention in 1989. (See: http://www.copyright.gov/circs/circ1.html for more information.) Thus, in the 160 Berne Convention countries, copyright protection is automatic upon the creation of a work, provided that work is original and in some sort of fixed form. In most, if not all, of these countries, copyright authors and owners may register their works with a national copyright office. These national “voluntary” registration systems are consistent with Article 5(2) of the Berne Convention and in fact provide several positive roles.

Establishes Author/Owner

A voluntary registration of a work provides rights owners with a simple way to establish authorship and/or ownership of rights. In Canada, registration of a work provides the applicant with several advantages should she ever be involved in a court proceeding. In such a case, the certificate of registration of copyright is proof that copyright subsists and it creates a presumption that the person registered is the owner of the copyright. Thus, it is up to the other party to prove otherwise. An applicant may register his work at anytime, though the earlier the better, in order to establish the earliest date possible of creation and ownership of a work.

In Canada (and Germany too), registration does not involve deposit of a copy of a work, and if the applicant does submit a copy, that copy is returned to the applicant without any validation that it matches the copyright registration application. As such, many Canadian authors and owners register both in Canada and the US, in Canada, for the court presumptions mentioned above, and in the US, so that a copy of the work is filed with the registration application.

In the U.S., registration prior to an infringement or within three months of publication of a work allows a court to award a plaintiff extraordinary remedies such as statutory damages and lawyers’ fees, if the copyright owner wins that infringement proceeding. Without registration, the court may only award actual damages, profits and other remedies.
Aids Searchers

A registration system provides users of copyright-protected materials a first and sometimes final spot to locate copyright holders. The Canadian Copyright office (www.cipo.gc.ca) can be searched via the Internet for copyright registrations from 1991 to date, and in the “physical” search room on microfiches, microfilm or registers. In the U.S., registrations prior to 1978 are available for public search in the Copyright Office. For records from 1978 to date, online searches via the Web site are possible.

These searches, of course, can be helpful not only in locating copyright holders, and transfers of copyright, but also aid in determining whether a work is in the public domain and may be used without permission of the copyright holder.

Recordations of Transfers

National copyright offices also often take recordations of transfers of ownership. Again, this is very helpful for searchers trying to determine the chain of ownership of a work. Recordation of a license or assignment may also have advantages for a rightsholder. In the U.S., where a document of a registered work is recorded, recordation is constructive notice of the facts set out in that document. A recorded document also has priority over any conflicting transfers or exclusive licenses that have not been recorded with the copyright office.

Further Advantages

The contents of a national registry (and depository) can serve other purposes, not necessarily for the direct benefit of an author/owner or user of that copyright-protected material. For instance, information in the registry can be a resource for national statistics on creativity and culture. Also, the deposited work may help a country create a national archive or library of works published in its country.

For information from an international perspective on this subject, see WIPO’s document, *Survey of National Legislation on Voluntary Registration Systems for Copyright and Related Rights* at: http://www.wipo.int/edocs/mdocs/copyright/en/sccr_13/sccr_13_2.pdf.

© 2006-2010 Lesley Ellen Harris. This is reproduced from Copyrightlaws.com.