

# **EXHIBIT B**

■  
UNDERSTANDING  
COPYRIGHT LAW

THIRD EDITION

■  
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LexisNexis

permissive, registration confers important advantages on the registrant, and early registration is rewarded. Generally, the advantages of registration are: (1) it establishes a public record of the claim of copyright; (2) it secures the right to file an infringement suit for works whose country of origin is the United States;<sup>28</sup> (3) it establishes *prima facie* validity of the copyright;<sup>29</sup> (4) it makes available a broader range of remedies in an infringement suit, allowing recovery of statutory damages and attorney's fees;<sup>30</sup> and (5) only if registration is made, will recordation of a document in the Copyright Office give constructive notice of the facts stated in the recorded document.<sup>31</sup> These substantial advantages provide a strong inducement to register, particularly because registration is relatively inexpensive and involves no examination for basic validity of the copyright, in contrast to the procedure for obtaining a patent.

### § 7.5 Registration Procedures

Any copyright owner, including an owner of an exclusive license to a work, may register a claim for copyright. The claimant must send three elements in the same envelope to the Register of Copyrights.<sup>32</sup> These are (1) a properly completed application form; (2) a non-refundable fee<sup>33</sup> for each application; and (3) a deposit copy of the work to be registered. Copyright registration is effective on the date of receipt in the Copyright Office of all the required elements in acceptable form, no matter how long it takes for the actual registration to issue from the Copyright Office.<sup>34</sup> For persons needing a rapid issuance of a certificate, the Copyright Office has

<sup>28</sup> See 17 U.S.C. § 411. Before March 1, 1989, all persons were required to register a claim for copyright before they could bring a suit for copyright infringement. After March 1, 1989, registration as a prerequisite for bringing an infringement suit will no longer be required of works whose country of origin is a Berne Convention country. See 17 U.S.C. § 101 (Berne Convention Works) and § 104(b).

<sup>29</sup> See 17 U.S.C. § 410(c).

<sup>30</sup> See 17 U.S.C. § 412.

<sup>31</sup> See 17 U.S.C. § 205(c).

<sup>32</sup> See 17 U.S.C. §§ 408, 409.

<sup>33</sup> Under the Copyright Office's proposed fee schedule, effective July 1, 1999, the basic fee is \$30.00. The previous amounts have been \$20.00 (per regulatory change) and \$10.00 (under the 1976 Act as originally promulgated). Beginning in 1995, the Register of Copyrights, at five-year intervals, was authorized to increase fees, including the fee for registration, to reflect changes in the Consumer Price Index. For fee schedules for such services as recordation, searches, and special handling, see Copyright Fees, *Copyright Office Circular 4*.

<sup>34</sup> See 17 U.S.C. § 410(d).

instituted a procedure called "special handling" to expedite the registration process.<sup>35</sup>

The application forms are printed by the Copyright Office, and only these official forms can be used; photocopies are not allowed. For example, form TX<sup>36</sup> is designated for published and unpublished non-dramatic literary works (books, computer programs, etc.), and form SR is designated for published and unpublished sound recordings.<sup>37</sup> The forms are basically self-explanatory and relatively easy to complete.

The second and third elements of registration, the deposit copies and the application fee, must accompany the application form.<sup>38</sup> The deposit copies must comply with the statutory requirements and regulations established by the Copyright Office.<sup>39</sup> The Register of Copyrights has exempted certain categories of works from the deposit requirement, allowing identifying material to be sent instead.<sup>40</sup>

Under § 410(a),<sup>41</sup> the Register of Copyright shall register, after examination, a claim to copyright if

the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements . . . have been met.<sup>42</sup>

<sup>35</sup> Special handling will be granted only in cases involving pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited process. The current fee for special handling is \$330. See 59 Fed. Reg. 38,369 (July 28, 1994).

<sup>36</sup> See Appendix to Chapter 7 *infra*, for a sample TX form for registration of a literary work.

<sup>37</sup> The other forms are VA, for pictorial, graphic, and sculptural works; PA, for the performing arts; SE, for serials; and GR/CP, an adjunct application for copyright registration covering a group of contributions to a periodical. See *Copyright Office Circular* Rlc.

<sup>38</sup> See 17 U.S.C. § 409.

<sup>39</sup> See 37 C.F.R. § 202.20 (1987).

<sup>40</sup> See, e.g., 37 C.F.R. § 202.21 (1987), which allows in certain cases identifying material instead of an actual copy of the work. For a discussion of the deposit requirement, see §§ 7.10–7.15 *infra*.

<sup>41</sup> 17 U.S.C. § 410(a).

<sup>42</sup> *Id.* The Copyright Office has adopted a long-standing principle that all copyrightable elements embodied in the work are covered by a single registration. See 37 C.F.R. § 202.3(b)(2)(3). For example, the Office will accept registration on a single form to cover all copyrightable expressions in a computer program including screen displays. However, if a screen display is claimed in the registration of a computer program, deposit must include a reproduction of the screen display. See 37 C.F.R. § 202.20(c)(2)(vii)(C) (1989); 53 Fed. Reg. 21817, June 10, 1988. Most courts have followed the Copyright Office approach. They have held that the program code and the screen display are integrally related and form one work, even though the nature of authorship on screens may be different from computer program code authorship. In sum, copyright in a computer program extends to screen displays as well, and infringement of one will infringe the other. See *Whelan Assoc., Inc. v. Jaslow*

Alternatively, the Register of Copyright is given the authority to refuse registration when the claim is invalid and most courts defer to the Register's decision in refusing the claim.<sup>43</sup> The examination is carried out by the Examining Division of the Copyright Office, which limits its inquiry to the material deposited and the application for registration.<sup>44</sup> The examiner scrutinizes the application for obvious discrepancies, but does not try to verify the facts set forth in it.<sup>45</sup> The examination conducted by the Copyright Office has little in common with the Patent Office's search of the prior art or the Trademark Office's search of registered marks confusingly similar to the applicant's. Unlike the Patent and Trademark Office, the Copyright Office does not institute interference proceedings to determine who has the priority between two conflicting applications.<sup>46</sup>

## § 7.6 The Importance of Registration

### [A] Prerequisite to Bringing Suit for Infringement

The 1976 Act, as originally enacted, required registration of a claim for copyright as a prerequisite for bringing a suit for infringement. Effective March 1, 1989,<sup>47</sup> registration as a prerequisite for bringing an infringement suit is required only for works whose country of origin is the United States. In general, a work that is first published in the United States is considered a work whose country of origin is the United States. For these works, the registration requirement is jurisdictional, and a federal court cannot hear the case unless the requirement is met.<sup>48</sup> The only exception to the registration requirement for works of U.S. origin applies to an action brought for a violation of the rights of attribution and integrity for works of visual arts under § 106A of the Copyright Act.<sup>49</sup> Apart from this

*Dental Lab., Inc.*, 797 F.2d 1222 (3d Cir. 1986), cert. denied, 479 U.S. 1031 (1987). But see *Digital Communications Assoc., Inc. v. Sofklone Distrib. Corp.*, 659 F. Supp. 449 (N.D. Ga. 1987).

<sup>43</sup> See, e.g., *Norris Indus., Inc. v. International Tel. & Tel. Corp.*, 696 F.2d 918 (11th Cir.), cert. denied, 464 U.S. 818 (1983).

<sup>44</sup> See *Compendium II of Copyright Office Practices* § 108.

<sup>45</sup> See *id.* at § 108.05.

<sup>46</sup> The Copyright Office has adopted a principle of interpretation, known as the "Rule of Doubt," which is consistent with the passive role it takes in the examination process. Under the Rule of Doubt, the Office

will register the claim even though there is a reasonable doubt about the ultimate action which might be taken under the same circumstances by an appropriate "court" with respect to whether the material deposited for registration constitutes copyrightable subject matter or the other legal and formal requirements of the statute have been met.

*Id.* at § 108.07.

<sup>47</sup> See 17 U.S.C. § 411(a).

<sup>48</sup> See *Proulx v. Hennepin Tech. Ctrs.*, 1981-1983 Copy. Dec. ¶ 25,389 (D. Minn. 1981).

<sup>49</sup> 17 U.S.C. § 411(a).

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<sup>56</sup> See 17 U.S.C.