



INSIDE IP LAW

Protect your software code through proper copyrights

Most software companies are aware that in addition to patent law (if applicable), software can also be protected under copyright law. However, many do not understand the importance of registering those copyrights with the U.S. Copyright Office and how difficult a position they will be in if they have not registered and their work is ever infringed. In fact, many are wary of registering their trade-secret code for fear of unintended disclosure through the registration process with the federal government.

Technically, you have copyrights in your code once it is written or otherwise fixed in a tangible form. However, registering your copyright with the U.S. Copyright Office is necessary in order to enforce your copyrights should your work be used or copied without your permission. Registration involves a simple two-page form that can be completed with little legal help. One sends the form, the \$45 fee, and the material to the copyright office.

BENEFITS OF COPYRIGHTS

Enforcing copyrights/filing suit. Most importantly, registering your copyright gives you the right to file suit in federal court in the event your copyrights are infringed. In fact, you must have a copyright registration in order to file suit, and if you do need to pursue infringement in court, the registration establishes a presumption that your copyright and the facts stated in the registration certificate are valid.

GUEST COLUMN



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Enhanced damages. If your work is infringed and you registered before the infringement began or within three months of publication, you will have gained the right to request attorney's fees and statutory damages from the court. Statutory damages are damages the court can assess, in its discretion, if you are unable to prove actual damages (lost profits or the infringer's profits), or if actual damages would be insufficient to do justice. Statutory damages currently range from \$200 for innocent infringement to as much as \$150,000 for willful infringement. The point is that, by registering your copyrights in a timely manner, you would have a greater choice of remedies that could give you greater leverage and make enforcing your copyrights easier or more cost-effective.

Pursuing piracy. A big problem these days is piracy. Registering gives you the right to pursue such infringement through the U.S. Customs Service.

Often, the excuse for not registering is that the code is a trade secret and so disclosing it to the U.S. government does not sound like a good idea. It is true that materials deposited with the Copyright Office are considered public records and therefore may be inspected by anyone. However, public inspection must be done at the

copyright office in Washington, D.C., or the Library of Congress if applicable, so this is not normally done.

"If your company has created work that qualifies for copyright protection, you should register that copyright as soon as possible, using the special provisions for trade-secret code if necessary."

To further protect proprietary works, the registration process provides software owners with a method of registering without divulging trade secrets, such as filing the first and last 25 pages of source code with trade secrets blocked out, among other methods. More information and full instructions are on the copyright office website.

If you have created work that qualifies for copyright protection, you should register it as soon as possible, using the special provisions for trade-secret code if necessary. Otherwise, you are putting yourself at a distinct disadvantage if you are ever the victim of copyright infringement or piracy.

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