

Small Business Notes

Minnesota Department of Employment
and Economic Development (DEED)

***Certiorari* Sought in Case Questioning When Copyright Registration Occurs**

In this issue:

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Under 17 U.S.C. 411(a), “registration” of a copyright is a precondition to filing suit claiming copyright infringement. In a case of interest to any business that produces copyrighted materials, the U.S. Supreme Court is being asked to resolve a split among Federal Circuits as to when “registration” occurs: at the filing of an application with the Copyright Office, or only when that application is affirmatively acted upon by the Copyright Office ?

In its decision in *Fourth Estate Public Benefit Corp. v. Wall-Street.com LLC* [856 F. 3d 1338 (2017)] the U.S. Court of Appeals for the Eleventh Circuit upheld a lower court decision that only action by the Copyright Office effects registration of a copyright. There Fourth Estate, an organization that produces online journalism, had entered into an agreement with Wall-Street for licensing of several Fourth Estate articles for display on the Wall-Street news website. The agreement provided that Wall-Street would remove all Fourth Estate material when it closed its account. When Wall Street closed the account but continued to display Fourth Estate generated material, Fourth Estate filed for copyright infringement noting in its complaint that it had filed “applications to register (the) articles with the Register of Copyrights”. It did not argue that the application had been acted upon. The federal district court dismissed the suit absent evidence of actual registration by the Copyright Office.

Though the Court of Appeals noted the various precedents for both the “application” and “registration” positions, it made its decision on the language of the Copyright Act that registration occurs after “examination” by the Copyright Office of an application made seeking copyright.

The Eleventh Circuit Court of Appeals decision was delivered on May 18, 2017. On October 13, 2017 a petition for *certiorari* was filed with the U.S. Supreme Court.

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