

Contents

Copyright Registration	1
I Disclaim	1
Why Register the Copyright?	1
The Book Business	1
Copyright Statutory Damages	2
Hollywood	3
Links To Optional Extra Info	6

Copyright Registration

For Authors & Writers

I Disclaim

I am an author and sometimes a screenwriter. I'm also a lawyer, and I teach Entertainment Law at the University of Nebraska College of Law, but I am not *your* lawyer, and the text you find here is *not* legal advice.

To paraphrase Hunter Thompson:

The entertainment industry is a cruel and shallow money trench ... a long plastic hallway where thieves and pimps run free and good men die like dogs.

It's no place to be guessing about your legal rights. If you need legal advice, *get a lawyer!* Please.

Richard Dooling

Why Register the Copyright?

The Book Business

Ask someone in the publishing industry if you should copyright your manuscript before submitting it to agents and publishers, and they'll say, "Why? The publisher will copyright the book for you."

This is true, and nobody seems too worried that the author's precious words might be stolen before the book is published and the copyright is registered in the author's name. If the book never finds a publisher, then it's probably not worth stealing.

Publishing professionals review manuscripts for a living. The idea that some unscrupulous idiot in the publishing industry would "pirate" the manuscript of a first novel, or "steal the idea" and write their own novel based upon a promising premise seems most unlikely.

Would-be authors are lucky if anybody will read, let alone steal, their manuscripts. And in the case of the "high concept" thriller? (You don't understand, this isn't just zombies, it's *alien* zombies, with chainsaws for hands!) The fear is that the idea will be stolen. It never fails to remind me of computing pioneer Howard Aiken's taunt to industry noobs:

Don't worry about people stealing your idea. If your idea is any good you'll have to ram it down their throats.

Publishing insiders slipping a loose galley of the latest Stephen King novel to a production company or a studio might be a problem, but an unpublished first novel is probably safe. If the author or her agent are concerned about infringement, copyrighting a manuscript is simple and costs only \$35.00. It's easy to go ahead and do it, if it makes an anxious author sleep easier.

Lawyer and programmer, [Ken Liu](#), has a great explanation at the Science Fiction and Fantasy Writers of America site.

Do I have to register to get copyright protection?

You do not. There was a time when registration made a difference in whether a work was protected by US copyright, but current law is explicit that "[registration is not a condition of copyright protection](#)."

Copyright attaches as soon as "original works of authorship" are "[fixed in any tangible medium of expression](#)." In other words, your words are copyrighted as you write them down, whether they're in a notebook, a Microsoft Word file, a blog post, a forum posting, or even a Facebook comment.

Copyright Statutory Damages

Normally, when someone infringes your copyright, you're entitled only to "actual damages" and "profits of the infringer that are attributable to the infringement" [17 USC §504\(b\)](#). This can be a burden that makes pursuing a legal remedy not worthwhile: How do you prove the profits

that some random web site made from publishing your story without permission? And how do you prove what sales you might have lost because of the web site's unauthorized publication of your story? Since the US operates under the "American Rule" where each party pays their own lawyers, you might not even be able to afford to pay a lawyer to stop the infringing activity.

But with timely registration, you get the option of electing statutory damages instead. [17 USC §504\(c\)](#). This can be between \$750 to \$30,000 per work (and up to \$150,000 per work if the infringement was willful). Plus, you may get attorney's fees and costs at the court's discretion, making it more likely that you can retain a lawyer on a contingency fee basis. [17 USC §505](#). With these benefits, it may well make sense to pursue cases that otherwise you would not.

Ken Liu, [The Benefits Of Copyright Registration](#).

So much for the publishing world. Authors probably don't need to register their manuscripts before submission, but if they do, they too will enjoy the protections outlined below.

Hollywood

Screenplay Copyright Registration

Registration is not required to enjoy copyright protection, but there are good reasons to register spec screenplays with the copyright office. Registration of the screenplay brings added protections, most important, the screenwriter seeking infringement will enjoy the statutory damages described above.

Most screenwriters don't register their screenplays with the copyright office, probably because they register them with a script registration service operated by the Writers Guild of America. The two leading software programs used by most screenwriters ([Final Draft](#) and [Movie Magic Screenwriter](#)) include built in tools linking to a "script registration service" operated by the Writers Guild of America. The script registration service is nothing more than a time-and-date stamp service. Presumably if a writer later filed a copyright suit and wanted to establish a script registration date, the WGA would send someone to court to testify about when the script was "registered" with the Writers Guild.

A writer hired to work on a television show or a feature film doesn't have to worry about registering any copyrights. They are working for hire, the way the studio likes it, so that the studios own the copyright and not the writer. That's okay

because writers are usually very well-paid in Hollywood, with fringe benefits negotiated by their powerful guilds.

Spec Screenplays

Screenwriters trying to break into the industry write screenplays “on spec,” meaning nobody hired the writer to write the screenplay. Spec is short for speculation, because like gold speculators, spec writers hope that a production company or studio will buy their screenplays and hire them to write the movies. Also like gold speculators, the writers’ efforts often come to naught. Selling a spec screenplay is like sailing the Atlantic in a bathtub. It happens, but the odds of success are slim, especially if the screenwriter is mailing it in to an agent or producer she’s never met.

Meanwhile, if the screenwriter just registers the script with the Writers Guild, the screenplay may be time-and-date stamped courtesy of the WGA, but under the copyright laws the work is in a vulnerable state: It is an unpublished and usually unregistered work.

Several years ago, [Larry Zerner](#), a Los Angeles, entertainment lawyer who specializes in copyright law, warned screenwriters and other artists about not registering their works. He also [publicly called on the Writers of Guild of America](#) to shut down the script registration service, because it was making his job as a Hollywood copyright lawyer an exercise in frustration.

Why? Section 412 of the Copyright Act. It provides:

§ 412. Registration as prerequisite to certain remedies for infringement

In any action under this title . . . no award of statutory damages or of attorney’s fees . . . shall be made for —

- (1) any infringement of copyright in an unpublished work commenced before the effective date of its registration; or
- (2) any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after the first publication of the work.

[§ 412. Registration as prerequisite to certain remedies for infringement](#)

For copyrights in spec screenplays, then, three dates are crucial:

1. The date the copyright was registered;

2. The date of publication of the work;
3. The date infringement commenced.

We'll see that for spec screenwriters Section 412(1) of the U.S. Copyright Act means that in a lawsuit for copyright infringement, the screenwriter will receive neither attorney's fees nor statutory damages, unless they registered with the Copyright Office before the infringement commences. Unlikely for most scenarios.

When is Commencement of Infringement?

Zerner describes the problem well:

Judges interpreting §412 have interpreted "commencement" to mean the first act of infringement in a series of ongoing separate infringements. In the case of motion pictures, the first act of infringement would typically occur at the time a screenplay containing infringing material is written, *not the release of the movie*. This means that even if the aggrieved screenwriter finds out about the infringing movie and registers with the Copyright Office before the film's release, it's almost certainly too late. Since the writer registered after commencement of the infringement, he or she could not receive statutory damages or attorney's fees in any subsequent litigation.

Notice the operative date is when infringement commenced, not when the rights holder learned of the infringement.

When is a Screenplay "Published"

When a screenwriter circulates her script to agents and producers, it probably has not been "published." Deciding when to publish a work is one of those rights enjoyed by the rights holder, so it's not supposed to be something that happens accidentally. The Copyright Act says that, "The offering to distribute copies to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication." When a screenwriter sends out a spec screenplay, they are not seeking further distribution, they are seeking someone who will agree to turn the screenplay into a movie.

All of which means that spec screenplays are most probably both unpublished and unregistered works for the purposes of section 412, which also means that the screenwriter may not claim statutory damages or attorneys fees for "any infringement of copyright . . . commenced before the effective date of its registration."

In most cases, the writer doesn't learn about the infringement until the movie is about to be released. By then it is too late to register the screenplay and recover attorney's fees and statutory damages.

In all likelihood, a lawyer will not take such a case, unless the screenwriter will be able to claim statutory damages. Otherwise the lawyer can hope only for possibly a third of actual damages, and as we'll see when we discuss "net profits" clauses in talent contracts, nobody is more adept at hiding profits than Hollywood.

Just Do It, Don't Talk About

The sure sign of an amateur is a new writer in Hollywood, or an aspiring author in the publishing world, worried about idea protection. We discuss some of those fears in the chapter on Idea Protection. Putting a copyright symbol on your screenplay or a legend warning of copyright protection would scream amateur to most agents. But for the writer who is worried about infringement, copyright registration is the way to do it, not registration with the WGA.

Links To Optional Extra Info

- [Writers Guild of America Script Registration Service.](#)
- [Wikipedia: WGA Script Registration Service](#)
- [US Copyright Registration.](#)
- [Larry Zerner: Time For The Writers Guild To Shut Down The WGA Registry](#)
- [Larry Zerner: WGAw Registration vs. Copyright Registration](#)