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## 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, *Please get a lawyer.*

Richard Dooling

### Why Register the Copyright?

Copyright protection attaches as soon as “original works of authorship” are “[fixed in any tangible medium of expression](#).” In the old days, registration mattered whether a work was protected by US copyright, but the current law is explicit: [Registration is not a condition of copyright protection](#).” I use “author” below to refer to the author of the copyrightable work, or to the copyright holder of the work.

Copyright registration comes with benefits other than bare protection, including the following:

1. By registering copyright in a work, the author creates a public record of the author's claim to ownership.
2. Registration is a prerequisite to suing infringers in federal court. Although original works of authorship are protected from the moment of creation, the author must register copyright in the work before suing for infringement. [§ 411\(a\)](#)
3. Proof of claim. If the author registers copyright in the work *before* the work is published, or within 5 years after publication, registration creates the presumption that the copyright is valid.
4. Statutory damages, attorneys' fees, and costs. By registering the work, the author is entitled to statutory damages and attorneys' fees for infringement. The author of an unregistered, unpublished work, like a screenplay, would not be entitled to statutory damages and attorneys fees for infringement.
5. Registration allows the author to record the registration with U.S. Customs to protect against the importation of infringing copies into the US.

Of the benefits listed, probably none is more important than statutory damages and attorneys fees. Otherwise an author claiming copyright infringement must prove "actual damages," or prove the "profits of the infringer that are attributable to the infringement"

### Copyright Statutory Damages

§ 504. Remedies for infringement: Damages and profits

An infringer of copyright is liable for either:

1. the copyright owner's actual damages and any additional profits of the infringer; or
2. statutory damages ...

**Actual Damages versus Statutory Damages** The author is usually entitled only to "actual damages" and "profits of the infringer that are attributable to the infringement" [17 USC §504\(b\)](#).

In a case where damages are uncertain or are hard to prove, statutory damages and attorneys' fees are often preferred and range from not less than \$750 or

more than \$30,000 as the court considers just. And in the case of *willful* infringement, the court may award up to \$150,000.

Proving damages can be such a burden that it often makes litigation not worth the trouble. How does the screenwriter prove how she was injured when a producer stole her work and made a movie that lost money? Timely registration enables the screenwriter to seek statutory damages instead, and the screenwriter could also seek attorneys fees and costs, making it more likely for an entertainment lawyer to take the case. [17 USC §505](#).

See also: [What are the benefits of registering a copyright?](#)

## The Book Business

Ask someone in the publishing industry if an author should copyright her manuscript before submitting it to agents and publishers, and they'll probably ask, "Why? The publisher will copyright the book for the author."

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. This fear 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.

If a publishing insider slips a manuscript copy of the latest Stephen King novel to a production company or a studio that might be a big legal 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. But most publishing people don't bother.

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 the added protections outlined above, most important, the screenwriter pursuing a claim of infringement will be entitled to seek the statutory damages and attorneys' fees.

Alas, 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. The writer gets a fat paycheck, including residuals and benefits negotiated by their powerful guilds, but owns no rights in the works they create.

**Spec Screenplays** Screenwriters trying to break into the industry often write screenplays "on spec," meaning nobody hired the writer to write the screenplay. Spec is short for speculation, because like gold speculators, spec screenwriters 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 the script 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 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? Because of 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 unpublished spec screenplays, then, two dates are crucial:

1. The date the copyright was registered;
2. The date infringement commenced.

The writer of a spec screenplay usually does not “publish” the screenplay, meaning, the writer does not offer it for sale or distribution to the public. Unlike novels or how-to books, screenplays are not stand-alone works of art. In the words of screenwriter Paul Schrader (*Raging Bull*, *Taxi Driver*), screenplays are “invitations to others to collaborate on a work of art.” Unless they get made into films, screenplays are often both unregistered and “unpublished,” both disfavored states under the Copyright Act, which favors works that are both registered and published.

So assuming that screenplays are not published, the author cannot collect statutory damages or attorneys’ fees for any infringement commenced before registration of the work.

In the typical situation in which an aspiring screenwriter registers his work with the Writers Guild of America, but does not register his work with the Copyright Office, and then learns, years later perhaps, that someone has infringed on his unpublished screenplay, it is too late to obtain statutory damages.

**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.

**Is a Screenplay Ever “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 infringing 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 others about 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](#)