

## Dispelling The “Poor Man’s Copyright” Myth

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The old myth goes: an author places a copy of his work in a self-addressed, stamped envelope and mails it to himself. When he receives the envelope with the dated postmark, he slips the envelope into a drawer without opening it so that he will have it to show “just in case.”

The myth leads a “Poor Man’s Copyright” holder to believe that, for the cost of postage, he can later walk into federal court waving the unopened envelope, prove that he is the owner of a valid copyright and sue for copyright infringement of his work. While the unopened envelope may help show that the person holding the envelope is the author of the work and the work was created on a certain date, the myth is misleading because it implies falsities regarding what a copyright holder really needs to bring and establish a case for copyright infringement in court and ignores the benefits that only a federal registration will provide.

**Falsity:** *A poor man’s copyright holder can sue for copyright infringement*

**Fact:** *A plaintiff must have a federal copyright registration to sue for infringement*

Before a lawsuit can be brought in federal court, the plaintiff must obtain a federal copyright registration or show that he or she tried to obtain a registration but was denied – without either the case will be dismissed. The federal courts will not substitute a “poor man’s copyright” for a federal copyright registration. Thus, the poor man who was trying to save by not filing for a federal registration now has to pay the filing fees for a federal registration before he can sue for infringement.

If cost is truly the real concern for not electing to apply for a federal registration, authors should be aware that a federal registration filed under normal circumstances costs \$30 in filing fees. However, a federal registration can take at least 6 months to obtain and if you have to expedite the registration for litigation, expect to spend a minimum of \$610 in filing fees alone to receive the registration.

**Falsity:** *A Poor Man’s Copyright will prove the validity of the copyright.*

**Fact:** *A federal copyright registration, timely filed, is prima facie evidence of validity.*

If an author files for a copyright registration within five (5) years after the work is published (i.e. made available to the public), the certificate of registration is prima facie evidence of the validity of the copyright and the facts stated in the certificate. Establishing ownership of a valid copyright is the first step in all copyright infringement actions. A plaintiff that holds a federal registration,

obtained within the five-year window, shifts the burden to the defendant to prove invalidity.

Conversely, the Poor Man's Copyright holder will have to prove the validity of his copyright, which entails a showing of more than the contents of his envelope and the postmark. Thus, obtaining a registration within the five-year time frame significantly reduces the litigation costs in having to establish the validity of an untimely registered copyright.

### **The Perk\$ That Only A Federal Copyright Registration Can Afford**

Additionally, if an author files for a copyright registration within three months after the work is "published," (i.e. made available to the public) the author is entitled to elect statutory damages and receive attorneys' fees in a copyright infringement action, even if the act of infringement occurred before the author filed his application for registration. These remedies are not available to authors who file for a registration after an act of infringement has occurred outside that three-month window. Statutory damages can range from not less than \$250 to no more than \$30,000 or in the case of willful infringement, not more than \$150,000.

### **The Moral We Can Learn From The Myth**

Save your postage for mailing your copyright application to the U.S. Copyright Office. And register early to be eligible for all the benefits a federal registration affords – "just in case."

*The Intellect Law Group in cooperation with The Arts Council will be hosting a copyright seminar on How To Protect Your Works Of Art Through Copyright Registration for Artfest artisans on March 26, 2003. For more information contact The Intellect Law Group (772) 283-8224.*