

---

## Copyright Registration for Virtual Goods: The Benefits of Timely Filing

by James G. Gatto, Jenna F. Leavitt and Benjamin T. Duranske

---

*Copyright registration is an important part of an overall intellectual property protection strategy for preventing infringement of virtual goods, along with patents, trademarks, trade secrets and terms of service agreements. The benefits of timely filing copyright applications for virtual goods include the ability to file suit in federal district court and collect statutory damages of up to \$150,000 per infringement, the potential for recovery of legal costs and attorneys' fees and certain legal presumptions regarding ownership and validity. To get some of these benefits however, you must timely file a copyright application, typically before the infringement or misuse of your virtual goods occurs, or within three months of first publication.*

---

### Copyright Basics

Under current U.S. copyright law, the author of an original work created on or after January 1, 1978, has copyright protection for that work from the moment when he or she creates it and fixes it in a tangible medium. These rights exist even before a copyright application is filed. The protections afforded by U.S. copyright law include entitling the copyright owner to prevent others from reproducing the work, creating derivatives based upon the work, and distributing copies without permission. Copyright registration is voluntary and may be done at any time the work is still protected by copyright. However, additional benefits result from timely filing a copyright application with the United States Copyright Office ("Copyright Office").

The registration procedure is not very time-consuming, complex or costly. However, it does require that the applicant take the time to correctly complete the appropriate copyright application form, which is available in hard copy or online, pay a non-refundable fee that is currently \$35 for each copyright application for online submissions and \$50-\$65 for mail-in submissions, and send or upload a deposit copy or copies of the work to the Copyright Office. Once the Copyright Office has approved the copyright application the copyright owner will receive a certificate of registration. The copyright registration process usually takes

from six months to one year, but in an emergency, such as pending litigation or contract negotiations, an expedited registration process that requires special fees can be utilized to obtain a registration in about one week.

### Benefits of Timely Copyright Registration

1. While copyrights exist from the moment a work is fixed in a tangible medium, filing a copyright infringement lawsuit requires a copyright registration, **if the work originated in the U.S.** By timely registering a copyright, the copyright owner can file a lawsuit immediately, if necessary. This also enables the copyright owner to send a "cease and desist letter" to the infringer with a meaningful threat that a lawsuit can be immediately filed.
2. In the event of a lawsuit based on a timely filed copyright registration, the copyright owner is entitled to statutory damages. Otherwise, the owner must prove actual damages. Statutory damages allow the copyright owner to obtain monetary damages within a set range, currently \$750 - \$30,000 per infringement, without having to prove actual damages. Statutory damages are useful, for example, when virtual goods are distributed for free or as a result of a player taking certain action and when the profits of the infringer are very small. The amount of statutory damages awarded in any case is discretionary and will depend upon how willful the infringement was deemed to be. If the copyright owner can show willful infringement, damages may increase to up to \$150,000 per infringement. Typically, the more deliberate and damaging the infringement, the greater the award.
3. Additionally, in the event of a lawsuit based on a timely filed copyright registration, the copyright owner may be entitled to "legal costs and attorneys' fees." The legal costs and attorneys' fees in a copyright infringement lawsuit may be extremely expensive. This is significant particularly where the potential damage recovery is relatively small compared to the attorneys' fees necessary to enforce the copyright. Often, in such cases, a copyright owner may elect to forgo enforcement if recovery of legal costs is not available. Thus, the ability to recover these amounts may be critical in making a business decision regarding whether to pursue action against someone who unlawfully copies virtual goods.
4. The certificate of registration resulting from a copyright application serves as prima facie evidence that the work is original and is owned by the registrant of the copyrighted work. This presumption can be desired if a rapid enforcement is important, for example, if the copyright owner wants to obtain a preliminary injunction against a copyright infringer. However, the presumption of validity will only apply if the work has been registered within five years from the publication date of the copyrighted work.

### What Constitutes Timely Registration

Statutory damages and attorneys' fees are only available if the copyright application was filed prior to an infringement taking place or within three months from the first publication date of the work. If the infringement occurs prior to the effective date of the copyright registration or after the three-month grace period, then the copyright owner will not be entitled to receive statutory damages and attorneys' fees for actions based on that particular infringement, but will still be able to seek actual damages. The effective date of copyright registration is the date when the Copyright Office receives the completed application for registration including the application, fee and required deposit.

In contrast to the distinction between U.S. and non-U.S.-originated works with respect to needing a registration to bring suit, no such distinction exists with respect to statutory damages or attorneys' fees. **Registration is required for any work upon which statutory damages or attorneys' fees are sought**, regardless of whether the work has a foreign or domestic origin. Therefore, in regards to recovering statutory damages and attorneys' fees, even foreign copyright holders can benefit from timely registering a copyright.

## Conclusion

Registering a copyright is relatively easy and inexpensive. But as shown above, many significant benefits result from timely filing for a copyright registration.

The benefits of registering a copyrighted work go beyond the above-noted advantages associated with copyright infringement lawsuits. Many copyright infringement matters are quickly settled by the parties without the need for lawsuits. Often, when confronted with a claim of infringement based on a timely filed copyright registration, the presumption of ownership and originality and the threat of statutory damages and legal costs and attorneys' fees is enough for the infringer to fold and settle the matter promptly without the need for litigation. Of course, if a suit is necessary, it can be filed promptly and a preliminary injunction or other expedited relief can be sought. For all of these reasons, virtual worlds operators and content creators should consult with a knowledgeable attorney to consider a strategy for timely and proper copyright registration.

---

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work or the attorney below.

James G. Gatto [\(bio\)](#)  
Northern Virginia  
+1.703.770.7754  
[james.gatto@pillsburylaw.com](mailto:james.gatto@pillsburylaw.com)

Jenna F. Leavitt [\(bio\)](#)  
Los Angeles  
+1.213.488.7459  
[jenna.leavitt@pillsburylaw.com](mailto:jenna.leavitt@pillsburylaw.com)

Benjamin T. Duranske [\(bio\)](#)  
Silicon Valley  
+1.650.233.4565  
[benjamin.duranske@pillsburylaw.com](mailto:benjamin.duranske@pillsburylaw.com)

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2010 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.