

Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

FOURTH ESTATE PUBLIC BENEFIT CORP. v. WALL-STREET.COM, LLC, ET AL.**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

No. 17–571. Argued January 8, 2019—Decided March 4, 2019

Petitioner Fourth Estate Public Benefit Corporation (Fourth Estate), a news organization, licensed works to respondent Wall-Street.com, LLC (Wall-Street), a news website. Fourth Estate sued Wall-Street and its owner for copyright infringement of news articles that Wall-Street failed to remove from its website after canceling the parties' license agreement. Fourth Estate had filed applications to register the articles with the Copyright Office, but the Register of Copyrights had not acted on those applications. Title 17 U. S. C. §411(a) states that “no civil action for infringement of the copyright in any United States work shall be instituted until . . . registration of the copyright claim has been made in accordance with this title.” The District Court dismissed the complaint, and the Eleventh Circuit affirmed, holding that “registration . . . has [not] been made” under §411(a) until the Copyright Office registers a copyright.

Held: Registration occurs, and a copyright claimant may commence an infringement suit, when the Copyright Office registers a copyright. Upon registration of the copyright, however, a copyright owner can recover for infringement that occurred both before and after registration. Pp. 3–12.

(a) Under the Copyright Act of 1976, as amended, a copyright author gains “exclusive rights” in her work immediately upon the work's creation. 17 U. S. C. §106. A copyright owner may institute a civil action for infringement of those exclusive rights, §501(b), but generally only after complying with §411(a)'s requirement that “registration . . . has been made.” Registration is thus akin to an administrative exhaustion requirement that the owner must satisfy before suing to enforce ownership rights. P. 3.

(b) In limited circumstances, copyright owners may file an infringement suit before undertaking registration. For example, a copyright owner who is preparing to distribute a work of a type vulnerable to predistribution infringement—*e.g.*, a movie or musical composition—may apply to the Copyright Office for preregistration. §408(f)(2). A copyright owner may also sue for infringement of a live broadcast before “registration . . . has been made.” §411(c). Outside of statutory exceptions not applicable here, however, §411(a) bars a copyright owner from suing for infringement until “registration . . . has been made.” Fourth Estate advances the “application approach” to this provision, arguing that registration occurs when a copyright owner submits a proper application for registration. Wall-Street advocates the “registration approach,” urging that registration occurs only when the Copyright Office grants registration of a copyright. The registration approach reflects the only satisfactory reading of §411(a)’s text. Pp. 3–12.

(1) Read together, §411(a)’s first two sentences focus on action by the Copyright Office—namely, its registration or refusal to register a copyright claim. If application alone sufficed to “ma[ke]” registration, §411(a)’s second sentence—which permits a copyright claimant to file suit when the Register has refused her application—would be superfluous. Similarly, §411(a)’s third sentence—which allows the Register to “become a party to the action with respect to the issue of registrability of the copyright claim”—would be negated if an infringement suit could be filed and resolved before the Register acted on an application. The registration approach reading of §411(a) is supported by other provisions of the Copyright Act. In particular, §410 confirms that application is discrete from, and precedes, registration, while §408(f)’s preregistration option would have little utility if a completed application sufficed to make registration. Pp. 4–7.

(2) Fourth Estate primarily contends that the Copyright Act uses the phrases “make registration” and “registration has been made” to describe submissions by the copyright owner. Fourth Estate therefore insists that §411(a)’s requirement that “registration . . . has been made in accordance with this title” most likely refers to a copyright owner’s compliance with statutory requirements for registration applications. Fourth Estate points to other Copyright Act provisions that appear to use the phrase “make registration” or one of its variants to describe what a copyright claimant does. Fourth Estate acknowledges, however, that determining how the Copyright Act uses the word “registration” in a particular provision requires examining the “specific context” in which the term is used. The “specific context” of §411(a) permits only one sensible reading: The phrase “registration . . . has been made” refers to the Copyright Office’s act grant-

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ing registration, not to the copyright claimant's request for registration.

Fourth Estate's contrary reading stems in part from its misapprehension of the significance of certain 1976 revisions to the Copyright Act. But in enacting §411(a), Congress both reaffirmed the general rule that registration must precede an infringement suit and added an exception in that provision's second sentence to cover instances in which registration is refused. That exception would have no work to do if Congress intended the 1976 revisions to clarify that a copyright claimant may sue immediately upon applying for registration. Noteworthy, too, in years following the 1976 revisions, Congress resisted efforts to eliminate §411(a), which contains the registration requirement.

Fourth Estate also argues that, because "registration is not a condition of copyright protection," §408(a), §411(a) should not bar a copyright claimant from enforcing that protection in court once she has applied for registration. But the Copyright Act safeguards copyright owners by vesting them with exclusive rights upon creation of their works and prohibiting infringement from that point forward. To recover for such infringement, copyright owners must simply apply for registration and await the Register's decision. Further, Congress has authorized preregistration infringement suits with respect to works vulnerable to predistribution infringement, and Fourth Estate's fear that a copyright owner might lose the ability to enforce her rights entirely is overstated. True, registration processing times have increased from one to two weeks in 1956 to many months today. Delays, in large part, are the result of Copyright Office staffing and budgetary shortages that Congress can alleviate, but courts cannot cure. Unfortunate as the current administrative lag may be, that factor does not allow this Court to revise §411(a)'s congressionally composed text. Pp. 7–12.

856 F. 3d 1338, affirmed.

GINSBURG, J., delivered the opinion for a unanimous Court.

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 17–571

FOURTH ESTATE PUBLIC BENEFIT CORPORATION,
PETITIONER *v.* WALL-STREET.COM, LLC, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[March 4, 2019]

JUSTICE GINSBURG delivered the opinion of the Court.

Impelling prompt registration of copyright claims, 17 U. S. C. §411(a) states that “no civil action for infringement of the copyright in any United States work shall be instituted until . . . registration of the copyright claim has been made in accordance with this title.” The question this case presents: Has “registration . . . been made in accordance with [Title 17]” as soon as the claimant delivers the required application, copies of the work, and fee to the Copyright Office; or has “registration . . . been made” only after the Copyright Office reviews and registers the copyright? We hold, in accord with the United States Court of Appeals for the Eleventh Circuit, that registration occurs, and a copyright claimant may commence an infringement suit, when the Copyright Office registers a copyright. Upon registration of the copyright, however, a copyright owner can recover for infringement that occurred both before and after registration.

Petitioner Fourth Estate Public Benefit Corporation (Fourth Estate) is a news organization producing online journalism. Fourth Estate licensed journalism works to

respondent Wall-Street.com, LLC (Wall-Street), a news website. The license agreement required Wall-Street to remove from its website all content produced by Fourth Estate before canceling the agreement. Wall-Street canceled, but continued to display articles produced by Fourth Estate. Fourth Estate sued Wall-Street and its owner, Jerrold Burden, for copyright infringement. The complaint alleged that Fourth Estate had filed “applications to register [the] articles [licensed to Wall-Street] with the Register of Copyrights.” App. to Pet. for Cert. 18a.¹ Because the Register had not yet acted on Fourth Estate’s applications,² the District Court, on Wall-Street and Burden’s motion, dismissed the complaint, and the Eleventh Circuit affirmed. 856 F. 3d 1338 (2017). Thereafter, the Register of Copyrights refused registration of the articles Wall-Street had allegedly infringed.³

We granted Fourth Estate’s petition for certiorari to resolve a division among U. S. Courts of Appeals on when registration occurs in accordance with §411(a). 585 U. S. ___ (2018). Compare, *e.g.*, 856 F. 3d, at 1341 (case below) (registration has been made under §411(a) when the Register of Copyrights registers a copyright), with, *e.g.*, *Cosmetic Ideas, Inc. v. IAC/Interactivecorp*, 606 F. 3d 612, 621 (CA9 2010) (registration has been made under §411(a) when the copyright claimant’s “complete application” for registration is received by the Copyright Office).

¹The Register of Copyrights is the “director of the Copyright Office of the Library of Congress” and is appointed by the Librarian of Congress. 17 U. S. C. §701(a). The Copyright Act delegates to the Register “[a]ll administrative functions and duties under [Title 17].” *Ibid.*

²Consideration of Fourth Estate’s filings was initially delayed because the check Fourth Estate sent in payment of the filing fee was rejected by Fourth Estate’s bank as uncollectible. App. to Brief for United States as *Amicus Curiae* 1a.

³The merits of the Copyright Office’s decision refusing registration are not at issue in this Court.

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