

THOUGHTS ON COPYRIGHT

It is hard for me to understand why so few professional photographers do not regularly register their work with the Copyright Office. It has been estimated that less than 10% of professional photographers do so. Since those are the only ones that have a realistic chance of taking their copyright cases to court and winning, I just don't understand why more folks are taking not the time for this very simple process.

You are probably asking yourself why you need to register your work at all since you thought it was copyrighted at the moment of creation. Well, you are right – it is. It is just not eligible of the maximum level of legal protection unless it is formally registered and deposited with the United States Copyright Office. Here is what the US Copyright Office says:

COPYRIGHT REGISTRATION

In general, copyright registration is a legal formality intended to make a public record of the basic facts of a particular copyright. However, registration is not a condition of copyright protection. Even though registration is not a requirement for protection, the copyright law provides several inducements or advantages to encourage copyright owners to make registration. Among these advantages are the following:

- Registration establishes a public record of the copyright claim.
- Before an infringement suit may be filed in court, registration is necessary for works of U. S. origin.
- If made before or within 5 years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate.
- If registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.

Please take note of two key items – the second and the last bullet. The second bullet states that if you want to file a claim in the court for a work created in the U.S. the work has to be registered. The last bullet, “Otherwise, only an award of actual damages and profits is available to the copyright owner”. In other words, if the work is not registered and you take the infringing party to court all you are going to get is actual damages

and profits – not statutory damages and not attorney’s fees. Thus, in most cases, it is going to cost you more to take the case to court than you are going liable to make in the judgment. These two items seem to be more than enough reason to make the investment in registering your images with the US Copyright Office.

Hopefully I have convinced you that it makes sense to at least consider registering your images – and hopefully to register them within three months of publication. There are different processes for registering published vs. unpublished photographs. What I am going to address is my process for unpublished photographs. If you have not been registering your work (and I assume that you have not or you would have quite reading a long time ago) then I am sure that you have a number of published photographs that are not registered and probably should be. There are a number of ways to register photographs that have been previously published. I strongly encourage you to go to the US Copyright web site at <http://www.copyright.gov> and read through the various options and see which one works best for your particular situation.

If the photograph has not been published then you are allowed to register a group of them at one time for one fee (currently \$30.00). The “group” is of your choosing and must have a unique name. I have been selecting all of the photos that I have shot over a three month period (or less, usually using enough photos at 600 pixel size on longest dimension at maximum resolution jpgs that will fit on a CD) and giving them a name like “Michael D Early Photos January to March 2005”.

In detail, the process works like something like this. I set up my all my photos for registration as soon as I have finished “processing” them for each days shoot in CS2/Bridge. As soon as I have made my basic selection on the images that I am going to keep from my photo shoots, I make sure that the images are fully populated with all my standard metadata information --- copyright information, location, descriptions, keywords, and a tag for this particular copyright submission (CR-##). I then use Image Processor in CS2 (since it will constrain the height or width to a specific size --- I use 600 pixels since I want the image to be large enough to see – you can do it however you want -- the key here is to make sure the image is clear when viewed and not so large that you can only get a few on the CD – 600 and max resolution seemed to be a good trade-off to me), along with an action (that does some basic sharpening and adds a text layer with a copyright line) to save the file as a jpg (at maximum – 12) in a “copyright folder”. About every three months those folders are burned to a CD and submitted to the US Copyright Office using the Short Form VA <http://www.copyright.gov/forms/formvas.pdf> since I am

positive nothing has been published. The form is pretty much self-explanatory, and I just use the name for the submission as I described earlier. Put the CD and the form in a FedEx envelope so that I have a record of when it got to the US Copyright Office – since that is when the “registration” officially starts.

Then I just start a folder for the next submission process by incrementing the CR-## “tag” by 1. Change my template to make sure all my new images that I will be processing have the new CR-## information and I am ready to go.

When the registration form is returned – usually in about five, or six, weeks – then I use Bridge to do a search on that particular copyright submission tag and then replace that tag with the Copyright Registration Number that is returned with the form.

This way for the sum of about \$120.00 per year I am registering all of my images and providing myself with the maximum protection allowed by law.