
INFORMATION NOTE

Copyright Registration System in Selected Places

1. Introduction

1.1 The purpose of this information note is to provide Members of the Panel on Commerce and Industry with background information on the operation of the central copyright registration system in the United States (US) and Canada, including the registration procedure, benefits of copyright registration, and limitations of the copyright registration system. The avenues currently available for registering copyright in the United Kingdom (UK) are also studied, notwithstanding the absence of a central copyright registry in the country.

2. Copyright protection

2.1 In general, copyright gives the owner of a creative work the legal rights to exclude others from copying, selling, performing, displaying or making derivatives of his/her work without permission.¹ The purpose of copyright is to allow creators to gain economic rewards from their efforts so as to encourage future creativity and the development of new materials.

2.2 Copyright protection rules are similar worldwide: copyright protection arises automatically upon creation of a work by its author, and no formalities such as registration, deposit or notice² are required for obtaining copyright protection. This has to do with the widespread adoption of the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention), an international copyright treaty stipulating automatic copyright protection for its 162 contracting countries, including Canada, the US, the UK and other developed countries.

Berne Convention

2.3 The Berne Convention was concluded in 1886 to require contracting countries to recognize works authored by nationals in other contracting countries as copyright works. The Berne Convention has been revised/amended a number of times to cope with technological developments. It is administered by the World Intellectual Property Organization, a specialized agency of the United Nations established to promote the protection of intellectual property around the world.

¹ See Stim (2001).

² Registration involves giving details of a work to a central registering office, deposit means giving a copy or copies of a work to a central library or depository, and notice refers to placing a notice of copyright on a published work.

2.4 The Berne Convention prescribes, among other things, automatic copyright protection for contracting countries. In other words, copyright protection cannot be conditioned upon compliance with any formalities. The Berne Convention also sets out the principle of national treatment, i.e. a contracting country must treat nationals of other contracting countries as its own nationals for copyright purposes. In addition, each contracting country is required to protect moral rights³ in a work and to stipulate the minimum term of copyright protection to be the life of the author plus 50 years.

Central copyright registry

2.5 Since the Berne Convention provides for automatic copyright protection without any need for registration, most contracting countries do not keep copyright registries. Nevertheless, a few countries, such as the US and Canada, maintain a central copyright registry providing *voluntary* registration services for copyright works. The purpose of establishing such a system is to maintain a public record of the basic facts of a particular copyright work, such as its authorship and ownership, thereby facilitating the enforcement of copyright protection.

3. Copyright registration in the United States

3.1 In the US, copyright registration is the process through which a formal claim to copyright in a work is filed with the US Copyright Office. Headed by the Register of Copyrights, the US Copyright Office is established by the US copyright law as a division of the Library of Congress to process applications for copyright registration and to issue certificates of copyright registration to applicants. The US copyright law also sets out other functions of the US Copyright Office, which include recordation of transfers of copyright ownership, retention of deposit materials in which copyright is claimed, maintenance of records of registrations, provision of expert assistance to Congress on intellectual property matters and search services of the registration records.

³ Moral rights are the rights to claim authorship of a work and to object to derogatory treatment of that work which could harm the creator's reputation.

Registration procedure

3.2 In the US, copyright registration is voluntary and can be made at any time while the work remains protected by copyright.⁴ However, it becomes mandatory if a party decides to bring legal actions against infringement of a copyright work of US origin.⁵ In order to register a work with the US Copyright Office, an applicant must submit the following:

- (a) a completed application form for the type of works being registered;
- (b) a non-refundable filing fee of US\$45 (HK\$350)⁶ for each application; and
- (c) a non-returnable deposit of one or two copies of the work being registered.

3.3 When the copyright registration application is filed at the US Copyright Office, a copyright examiner will review the application to determine the work's registerability. The examination of the applications for copyright registration is not as substantive as in trademark and patent applications. The examiner often looks into the following areas when evaluating an application for copyright registration:

- (a) whether the work of authorship falls within one of the categories of copyrightable subject matter;
- (b) whether there is a sufficient amount of authorship present in the work;
- (c) whether the applicant has complied with the requisite deposit formalities; and
- (d) whether the application has been completed properly.

The US Copyright Office may require the applicant to submit further information for the application should the need arise.

3.4 If the application is accepted, the US Copyright Office will register the copyright by issuing a certificate of registration to the applicant. The certificate is a photocopy of the application form bearing the seal of the US Copyright Office, the signature of the Register of the Copyrights, the registration number and the effective date of registration. The registration process normally takes four to five months, although expedited registration is possible at a cost.

⁴ Under the Copyright Act 1976, copyrights on works created on or after 1 January 1978 last for the life of the author plus 70 years. For works created before 1 January 1978, the duration time varies with the years of publication/creation.

⁵ See Section 411 of Title 17 of the United States Code.

⁶ Based on the average exchange rate of HK\$7.777 per US dollar in 2005.

Cost recovery of the registration services

3.5 The US Copyright Office does not aim at full-cost recovery of the basic registration service, since a high filing fee might discourage registrations and work against the benefits of maintaining a central copyright registry.

3.6 Nevertheless, services mandated by statute, with the exception of the basic registration filing service, are charged on a full-cost recovery basis. These statutory fees include the fees for making renewal registration, recording transfers of copyright ownership and providing additional certificates of registration. Meanwhile, the US Copyright Office provides a number of other services not mandated by statute (e.g. registration expediting service), which are also charged on a full-cost recovery basis. The full-cost charging principle reflects the policy of the US Copyright Office to recover all the costs incurred on providing services which are optional or commercial in nature.

Benefits of copyright registration

3.7 The US is governed by the Berne Convention not to condition copyright protection upon registration at the US Copyright Office. Therefore, the main purpose of running a central copyright registry in the US is to maintain a public record of copyright works, thereby facilitating the enforcement of copyright protection. In order to encourage copyright registration, the US copyright law provides the following incentives to copyright owners:

Legal presumption of the validity of copyright ownership

3.8 A person applying for copyright registration will be issued a certificate of registration if his/her application is accepted by the US Copyright Office. While the certificate of copyright registration does not prove ownership of copyright, registration within five years of the first publication of a work constitutes prima facie evidence of the validity of the copyright and of the facts stated in the certificate of registration, such as authorship, ownership and date of publication. If registration is not effected within the first five years following publication of the work, then the evidentiary weight to be accorded to the registration certificate is left to the discretion of the court.⁷ All in all, the certificate of registration confers a legal advantage that may benefit the copyright owner when enforcing copyright against infringers.

3.9 In infringement proceedings, the evidentiary presumptions afforded by copyright registration will put the burden on the defendant to disprove or show, with sufficient evidence, the falsity or invalidity of the registration. Without registration, the plaintiff will have to prove infringement by providing evidence of his/her ownership of copyright and impermissible copying by the defendant.⁸

⁷ See Section 410(c) of Title 17 of the United States Code.

⁸ Impermissible copying is usually demonstrated by showing that the defendant has access to the copyright work and there is a substantial similarity between the infringed and infringing works.

Entitlement to statutory damages and attorney fees

3.10 The US copyright law provides for a registered copyright owner to be granted two important remedies for copyright infringement: the possibility of recovering statutory damages and attorney fees.

3.11 If registration is made within three months after publication of the work or prior to an infringement of the work, the copyright owner may recover his/her attorney fees⁹ as well as actual damages plus defendant's profits¹⁰ should he/she prevail in an infringement lawsuit. Alternatively, the copyright owner can elect to receive statutory damages in lieu of actual damages and defendant's profits, although the election must be made before the court makes the final judgement. Without registration, the copyright owner is only entitled to receive actual damages and defendant's profits.

3.12 Statutory damages are a range of monetary damages specified under the US copyright law that judges are allowed to award a plaintiff in a copyright infringement lawsuit in lieu of actual damages. It is stipulated¹¹ that the court, at its discretion, can award statutory damages of a range from US\$750 (HK\$5,833) to US\$30,000 (HK\$233,310) unless the infringement is categorized as either wilful or innocent.¹² The significance of statutory damages is that the copyright owner can be guaranteed a minimum amount of damages without the evidentiary burden of proving actual monetary loss. In fact, it is often an arduous, sometimes impossible, task to prove the actual loss because evidence as to the extent of infringement is usually difficult to find.

Protection against importation of infringing copies

3.13 If a claim to copyright in a work has been registered at the US Copyright Office, the registration can be recorded with the Customs Service for the protection against any importation of infringing copies into the US. The Customs Service will seize at the border any imported copies that are the same or highly similar to the recorded works, thereby preventing them from being distributed throughout the country. The Customs Service may institute proceedings to determine whether the detained copies are an infringement subject to forfeiture.

⁹ See Sections 504 and 505 of Title 17 of the United States Code.

¹⁰ Actual damages are the dollar amount of any demonstrable loss the copyright owner suffered as a result of the infringing activity. Any profits made by the infringer in excess of the actual damages may also be awarded to the copyright owner if such profits arise out of the infringing activity.

¹¹ See Section 504(c) of Title 17 of the United States Code.

¹² Statutory damages can be as high as US\$150,000 (HK\$1.17 million) for wilful infringement, or as low as US\$200 (HK\$1,555) if the infringer has no reason to know that his/her acts constitute copyright infringement.

3.14 Foreign authors whose nationality or domicile meets the conditions set out in the US copyright law can also register their works at the US Copyright Office¹³, and subsequently record the registration with the US Customs Service for protection against the importation of infringing copies into the US.

Beneficiaries of copyright registration system

3.15 According to the US Copyright Office, a central copyright registry helps maintain a public official registration record to the benefit of the following entities:

Users of copyright works

3.16 A central registry facilitates copyright users to ascertain the copyright status of a particular work. In particular, it provides a faster and easier way of locating the identity and address of a copyright owner, thereby facilitating those who wish to create derivative works¹⁴ to seek permission from copyright owners of the original works.

Copyright industries

3.17 In the US, any or all of the copyright owner's exclusive rights or any subdivision of those rights can be transferred, but the transfer of exclusive rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.

3.18 The US Copyright Office also records transfers of copyright ownership.¹⁵ Recordation helps determine which transfer prevails in the case of overlapping transfers, where a copyright owner has made multiple transfers of the same rights to two or more parties. The transferee who first registers at the US Copyright Office is entitled to copyright protection and establishes priority among the various transferees. However, the first transferee is only given a one-month grace period to register for copyright protection. If the first transferee does not record the transfer after the grace period has elapsed, a subsequent transferee is regarded as the legal owner of the copyright if he/she can record before the first transferee.

¹³ For example, the author must be a national or domiciliary of a sovereign authority or foreign nation that is a party to a copyright treaty to which the US is also a party.

¹⁴ A derivative work is one based upon one or more pre-existing works to which enough original creative work has been added to constitute a copyright work of itself. Examples of derivative works include a Chinese translation of a work written in English and a movie based on a play or book.

¹⁵ A document that transfers copyright ownership can be recorded in the US Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if the document is accompanied by a sworn or official certification that it is a true copy of the original signed document.

3.19 Keeping record of the transfer documents also establishes what the law refers to as "constructive notice" to the public about the existence and content of the transfer. The recorded document prevents an infringer from successfully claiming that he/she has no knowledge of the existence of the transfer. In general, an infringer who acts with knowledge is likely to be liable for more penalties than an innocent one. According to the US Copyright Office, such legal protection is conducive to commercial transactions relating to the transfer of copyright ownership.

Judicial system

3.20 Since registers maintained by the US Copyright Office are statute-based and thus considered to be more authoritative, any administrative rulings made by the US Copyright Office on the registerability of the work concerned will help the court determine its copyrightability. Moreover, as the issue of copyrightability has become more and more complex, the court may, at times, rely on the US Copyright Office to provide the expertise to give an initial judgement on a copyright work.

Limitations of copyright registration

Registration does not prove ownership

3.21 Registration of copyright at the US Copyright Office does not prove ownership. It only constitutes prima facie evidence of the validity of the copyright and of the facts stated in the certificate of registration. The US Copyright Office does not compare works deposited for registration, nor does it render opinions concerning the validity of claims to copyright. Indeed, it processes an application for copyright registration under the rule of doubt. In other words, a work can be registered even though the US Copyright Office has a reasonable doubt as to whether the material deposited for registration constitutes copyrightable subject matter or whether other legal requirements of the copyright law have been satisfied or not.

3.22 Given the aforementioned limitation, the court will only accord evidentiary legal presumptions to copyright registrations which have been duly and validly issued. There are cases where the courts rebut the presumptions due to reasons such as registrants failing to advise the US Copyright Office facts which may have resulted in rejection of the copyright applications¹⁶, or the work registered does not constitute copyrightable matter.¹⁷

¹⁶ O'Well Novelty Co. v. Offenbacher, Inc., 2000 U.S. App. LEXIS 18526 (U.S. App., 2000).

¹⁷ Carol Barnhart, Inc. v. Economy Cover Corp., 773 F.2d 411 (U.S. App., 1985).

Cases of unauthorized registrations

3.23 The US Copyright Office generally accepts the factual assertions of the copyright claimants as true and does not verify whether the applications for claim to copyright are legitimate or not.¹⁸ Therefore, it is likely that the US Copyright Office may accept a copyright registration made by an unauthorized party. It is also possible for the US Copyright Office to issue a second registration of the same work to a different party without cancelling the first one¹⁹ and let the parties litigate the ownership issue. No cross reference is made on either registration to the other, since the US Copyright Office does not adjudicate factual controversies between parties.

3.24 According to the US Copyright Office, "[w]here the Copyright Office is aware that two or more persons or organizations are adversely claiming copyright in, and are seeking separate registrations for, the same material, the Office may inform each applicant of the existence of the other claim(s) and inquire concerning the basis of each claim. All such claims will be registered if they are reasserted and if they are in order as confirmed by the response to the Copyright Office inquiry. The Copyright Office does not conduct "opposition" or "interference" proceedings²⁰ such as those provided by the Federal trademark and patent laws."

Limited retention period for copyright deposits

3.25 Due to space consideration, the US Copyright Office only retains deposit materials for a limited period of time and not for the full term of copyright protection. This may affect the enforcement of copyright protection, as deposit materials constitute a further proof that a copyright work has existed in a certain form at the date of registration. Nevertheless, the US copyright law permits a depositor to apply for the retention of his/her work for the full term of copyright²¹, and the depositor has to pay a fee for the service if his/her application is granted.

¹⁸ See Federal Register (1985).

¹⁹ According to Section 201.7 of 37 C.F.R., the US Copyright Office cancels a copyright registration only under limited circumstances such as:

- (a) it is clear that no registration should be made because the work does not constitute copyrightable matter, or fails to satisfy other legal and formal requirements for obtaining registration of a copyright; or
- (b) registration may be authorized, but the application, deposit material, or fee does not meet the requirements of the Copyright Office regulations, and the Office is unable to get the defect corrected.

²⁰ An opposition proceeding is an administrative process available under the patent and trademark law which allows third parties to dispute the validity of a granted patent or trademark. For interference proceeding, it is an administrative proceeding to determine the priority issues of multiple patent applications. See Wikipedia (2006).

²¹ See Section 704 of Title 17 of the United States Code.

Limited recognition of certificates of registration by other countries

3.26 According to the US Copyright Office, "[w]hile only the United States law accords certificates of registration special evidentiary effects, foreign courts may, in their discretion, accord United States certificates persuasive weight." Industry Canada²² and the UK Patent Office²³ share a similar view on the acceptability of the US certificates of registration as prima facie evidence of copyright ownership in the Canadian and UK courts.

3.27 According to Industry Canada, the extent to which the Canadian courts may accept registration documents from other countries is a matter of the federal and provincial rules on evidence. The Canadian legislation has not prescribed any copyright registers maintained in other countries for the purpose of facilitating copyright owners in infringement proceedings. According to the UK Patent Office, whether the prima facie evidence constituted by the US certificates of registration is admissible or not "would be something that the courts would have to decide on a case by case basis". There is also no provision in the UK copyright law prescribing the acceptance of any registration documents issued by other countries.

4. Copyright registration in Canada

4.1 In Canada, copyright registration is the process by which the Canadian Copyright Office records the details of a copyright claim and issues a certificate of registration attesting the claim. The Canadian Copyright Office, directed by the Registrar of Copyrights, falls under the jurisdiction of the Canadian Intellectual Property Office (CIPO).

4.2 In addition to registering copyrights, the Canadian Copyright Office also maintains the official Register of Copyrights, a public record containing information such as names or titles of works and other subject-matters, as well as addresses of authors, owners and any agents for the applicants.²⁴ The Office also provides information to the public about the registration process.

²² Industry Canada oversees the Canadian Intellectual Property Office, which is a special operating agency responsible for the administration of the greater part of intellectual property in Canada. The Canadian Intellectual Property Office operates registration services for copyright works through its executive agency, the Canadian Copyright Office.

²³ In the UK, the Patent Office is responsible for developing and carrying out policies on all aspects of intellectual property.

²⁴ See Section 54 of the *Copyright Act*.

Registration procedure

4.3 According to CIPO, copyright registration in Canada is voluntary and can be made at any time while the copyright of the work is protected under the Canadian copyright law. In order to register a work in Canada, the applicant must submit the following to the Canadian Copyright Office:

- (a) a completed application form for the type of works being registered; and
- (b) a non-refundable registration fee C\$65 (HK\$417)²⁵ for postal application and C\$50 (HK\$321) for on-line application through the CIPO website.

4.4 Unlike the case in the US, the applicant is not required to submit a copy of the work along with his/her application. Any copy of a work sent to the Canadian Copyright Office will be returned to the applicant, without any examination or verification of its relation to the application.

4.5 The application form is reviewed by a copyright reviewer of the Canadian Copyright Office to ensure that the information provided by the applicant is clear and accurate.²⁶ The objective of the review is to ensure that all necessary information pertaining to the work is provided. It is not intended to verify the information, or to prove ownership of the work. The Canadian Copyright Office normally takes about three weeks to process an application. If the application is accepted, the Canadian Copyright Office will enter the relevant information into the Register of Copyrights and issue a certificate of registration to the applicant.

Cost recovery of the registration services

4.6 The expenditure of CIPO is financed by a revolving fund, with its revenue sourced from the fees charged on the services provided. As part of CIPO, the Canadian Copyright Office provides its services on a full-cost recovery basis.

Benefits of copyright registration

4.7 Since the Canadian government operates a voluntary registration system for works protected by copyright, in order to encourage copyright registration, the Canadian copyright law provides the following incentives to copyright owners:

²⁵ Based on the average exchange rate of HK\$6.42 per Canadian dollar in 2005.

²⁶ The applicant must provide title and type/category of the work, information of the applicant, and date and place of publication on the application form.

Legal presumption of the validity of copyright ownership

4.8 A certificate of registration confers on the registered owner the legal presumption that copyright subsists in the work and that the registrant is the owner of the copyright. In infringement proceedings, these legal presumptions will shift the burden of proof to the defendant, who must present a preponderance of contrary evidence indicating the falsity or invalidity of the registration.

4.9 In addition, registration is deemed notice of the existence of copyright in a work, thereby creating a presumption that the defendant should have knowledge of the existence of copyright. In infringement proceedings, the defendant will find it difficult to defend that he/she has no notice of copyright for the work which has already been registered at the Canadian Copyright Office.

Entitlement to monetary damages

4.10 Unless copyright is registered at the Canadian Copyright Office, a plaintiff is entitled to an injunction²⁷ only if the defendant proves that he/she was not aware of the copyright and had no reasonable grounds for suspecting that copyright subsisted in the work.²⁸ If the work has been registered, the defendant cannot resort to this defence and may be liable to both injunction and monetary damages.

4.11 As to the monetary damages, the plaintiff can elect to receive either prescribed statutory damages, or damages based on his/her actual damages suffered from the infringement and the defendant's profits. Statutory damages allow the copyright owner to receive an amount between C\$500 (HK\$3,210) and C\$20,000 (HK\$128,400) in respect of each work or subject matter infringed by the defendant. The precise amount of statutory damages is entirely within the court's discretion.

Limitations of copyright registration*Registration does not prove ownership*

4.12 The Canadian Copyright Office does not examine whether the claim to copyright ownership is legitimate, nor does it require the applicant to support the application with a copy of his/her work. The Canadian Copyright Office will register an application as long as the information required by the Canadian copyright law is clearly indicated on the application for registration. As a result, the evidentiary weight to be accorded to the registration certificate is left to the discretion of the court.

²⁷ An injunction is an order made by a court ordering someone to refrain from carrying on the activities which constitute the infringement.

²⁸ See Section 39 of the *Copyright Act*.

Limited power to rectify registration records

4.13 The Canadian Copyright Office has very limited power to alter a registration after a certificate of registration has been issued. It can only correct clerical errors found in the recorded documents. Other serious errors found in the copyright registration can only be rectified by the court. These include intentionally fraudulent errors that are serious enough to warrant the cancellation of a copyright registration. According to the Canadian copyright law, only the courts can order the rectification of the Register of Copyrights with respect to:

- (a) the making of any entry wrongly omitted to be made in the Register;
- (b) the expunging of any entry wrongly made or remaining on the Register; and
- (c) the correction of any error or defect in the Register.²⁹

No deposit requirement for copyright works

4.14 In Canada, the registration procedure does not require the submission of a copy of the work being registered to the Canadian Copyright Office. Deposit materials constitute a further proof that a copyright work has existed in a certain form at the date of registration. The lack of deposit requirement for the copyright works may affect the enforcement of copyright protection.

Cases of unauthorized registrations

4.15 According to CIPO, the Canadian Copyright Office does not review or assess works in any way, nor does it check to see whether the title of a work has already been used. As such, it is possible for the same version of a work to be registered more than once.

Limited recognition of certificates of registration by other countries

4.16 According to Industry Canada, whether a particular foreign country accepts Canadian registration documents is a matter of law of that country. It would be determined by the procedural or evidentiary rules of that country.

²⁹ See Section 57(4) of the *Copyright Act*.

5. Copyright registration in the United Kingdom

5.1 In the UK, the Patent Office is responsible for developing and carrying out policies on all aspects of intellectual property. As an executive agency of the Patent Office, the Intellectual Property and Innovation Directorate deals with the policy on copyright and related rights. Unlike its counterparts in the US and Canada, the Intellectual Property and Innovation Directorate does not operate an official copyright registration system for works and other subject matters protected by copyright. Copyright protection is automatic without any need for registration or other formalities, provided that the work is original and fixed/recorded in some tangible form (i.e. copyrightable).

Alternative methods for registering copyright

5.2 The lack of a central copyright registry may be a concern for copyright users, when they seek to ascertain whether a particular work is copyright protected or not. It may also affect copyright owners for they are unable to establish legal presumption of copyright ownership through registration at a central copyright registry. Against this, some copyright owners have made use of alternative methods for registering their works so as to safeguard against infringing activities.

Registration with non-governmental organizations

Private registries

5.3 In the UK, there are a number of private companies offering registration services for copyright works. In general, the registration procedure requires the applicant to submit a completed application form to a private registry, accompanied by a registration/filing fee and a non-returnable copy of the work. The registry keeps the copy of the work and issues the applicant a certificate as confirmation of the registration. In addition, it also stores the information of the applicant into its database for record. In the event of a dispute over copyright, the private registry will verify to the court the time the work was first registered and produce the copy of the work as proof of the materials it received at the registration date.

Professional associations/authors' unions

5.4 There are also some "specialized" registration and deposit schemes available for registration of copyright in the UK. These schemes are referred to as "specialized" since they are established by professional associations/authors' unions for registering the copyright of the types of works which they represent. These specialized schemes serve mainly the association/union members, who are required to follow the registration procedure similar to that stipulated by the private registries. In general, they must submit a completed application form, accompanied by a registration/filing fee and a non-returnable deposit of their works. In return, they will obtain independent, dated evidence of the creation of their works.

Limitations of registration with non-governmental organizations

5.5 The private registries and the professional associations/authors' unions do not verify the originality or authenticity of the materials deposited for registration purpose, nor do they make comparisons of the materials deposited. Moreover, unlike the registration with a central copyright registry, the registration services operated by these non-governmental organizations do not offer legal presumption of copyright ownership. Nevertheless, the registration does prove that the work is in existence at a certain date and pre-dates the infringing copies.

5.6 Another concern over registering with non-governmental organizations is that these organizations are not established by law to operate the registration services. There are no specific formalities or regulations governing their operation, particularly whether the materials deposited are stored in a safe place. Furthermore, the deposits kept with private depositories may be retained only for a limited number of years, subject to renewal. Some depositories may, without notifying the copyright owners, dispose of and destroy their works within a certain time period following the expiration of the time of deposit. In contrast, the US Copyright Office permits the registrants to apply for the retention of their works for the full term of copyright.

Poor man's copyright

5.7 "Poor man's copyright" is another avenue available for a copyright owner to register his/her work or other subject matter. This involves the copyright owner putting a copy of his/her work in a sealed envelope and mailing it to himself/herself by registered post. The envelope is kept unopened in a safe place and the postmark serves to indicate that the work existed by that date. The copyright owner will not open the envelope until an infringement lawsuit warrants him/her to do so before the court. Once opened before a judge, the postmark and the contents in the envelope will act as evidence demonstrating that his/her work existed in a certain form on a certain date.

5.8 If the copyright owner is sued for copyright infringement, the evidence can prove that any similarities between his/her work and the plaintiff's work are coincidental, if his/her work existed before the plaintiff's work. If the copyright owner sues someone for copyright infringement, the evidence can prove that the similarities between his/her work and the infringer's work are not coincidental, if his/her work existed before the infringer's work.

5.9 There are several variants on "poor man's copyright". A copyright owner can mail a copy of his/her work to a friend, who may, if necessary, serve as a witness regarding the copyright of the work. Alternatively, the copyright owner can deposit a copy of his/her work with a solicitor or a bank manager and obtain a dated receipt as evidence.

Limitations of "poor man's copyright"

5.10 The use of "poor man's copyright" has the merit that it documents a claim of ownership as of a point in time. In addition, it is the easiest and least expensive way of registering a copyright. However, in infringement proceedings, it is an arduous task for the copyright owner to convince the court that the envelope has never been tampered with or opened while in his/her possession. Furthermore, the copyright owner must rely solely on his/her own testimony, without the benefit of third party testimony provided by a private registry, or the legal advantage of the prima facie evidence of copyright ownership constituted by registering with a central copyright registry.

6. Summary of the copyright registration system in the United States, Canada and the United Kingdom

	The United States	Canada	The United Kingdom
Registration services available for copyright works	<ul style="list-style-type: none"> • A central registration system operated by the US Copyright Office. 	<ul style="list-style-type: none"> • A central registration system operated by the Canadian Copyright Office. 	<ul style="list-style-type: none"> • No central registration system. Registration services offered by private registries, professional associations and authors' unions.
Registration procedure	<ul style="list-style-type: none"> • Submission of an application form. • Payment of a filing fee. • Deposit of the work being registered. 	<ul style="list-style-type: none"> • Submission of an application form. • Payment of a registration fee. • No deposit of work required. 	<ul style="list-style-type: none"> • Submission of an application form. • Payment of a filing/registration fee. • Deposit of the work being registered.
Benefits of copyright registration	<ul style="list-style-type: none"> • Legal presumption of the validity of copyright ownership. • Entitlement to statutory damages and attorney fees for copyright infringement. • Protection against importation of infringing copies. 	<ul style="list-style-type: none"> • Legal presumption of the validity of copyright ownership. • Entitlement to monetary damages, including statutory damages, for copyright infringement. 	<ul style="list-style-type: none"> • Independent, dated evidence of existence of the work in a certain form.
Limitations of copyright registration	<ul style="list-style-type: none"> • Registration does not prove ownership. • Cases of unauthorized registrations. • Limited retention period for copyright deposits. • Limited recognition of certificates of registration by other countries. 	<ul style="list-style-type: none"> • Registration does not prove ownership. • Limited power to rectify registration records. • No deposit scheme for copyright works. • Cases of unauthorized registrations. • Limited recognition of certificates of registration by other countries. 	<ul style="list-style-type: none"> • Registration does not prove ownership and confers fewer benefits than those accrued to registration with a central registry. • No specific formalities or regulations governing the operation of registration services.

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17 July 2006
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