



ARE Copyright Law Alert: Supreme Court Resolves Two Circuit Splits Impacting Copyright Litigation in *Fourth Estate v. WallStreet.Com* and *Rimini v. Oracle*

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(March 6, 2019). On March 4, 2019, the United States Supreme Court issued two decisions which resolved circuit court splits impacting when copyright infringement cases may be brought and what costs may be recovered when completed.

In *Fourth Estate Public Benefit Corp v. WallStreet.Com, LLC* (No. 15-571), the Court held that a claimant cannot file suit for copyright infringement prior to the Copyright Office acting on the application to register. In other words, merely filing an application before commencing a copyright infringement suit is not enough. Rather, the Copyright Office must either issue the Registration or reject the application before a copyright infringement lawsuit may be brought in court. *Fourth Estate* repudiated the expansive approach that had been adopted by the Ninth Circuit, which permitted a copyright infringement lawsuit to proceed immediately after a copyright application had been filed — even if it had not been acted upon by the Copyright office. The *Fourth Estate* decision will have clear implications on the timing and commencement of copyright infringement suits. The losing side had argued unfairness to artists and authors. With respect to resulting damages, the court noted that upon registration a copyright owner can recover for infringement that occurred both before and after the registration. In addition, the copyright owner may still seek an injunction to prevent continued infringement. The copyright office offers expedited procedures for a fee which allows for quicker registration as a mechanism to offset some of the harsher consequences of the *Fourth Estate* decision.

In *Rimini Street Inc. et al. v. Oracle USA Inc.* (No. 17-1625), the Court addressed the issue of what constitutes “full costs” under the Copyright Act. Section 505 of the Act states that courts may issue a discretionary award of “full costs” to any party. The Court concluded that “full costs” do not include major litigation costs such as those for e-discovery vendors and experts, thereby eliminating the Ninth Circuit’s more expansive interpretation of the term. This narrow interpretation could affect the calculus of litigants as to whether or not to take a copyright case to trial when an award of costs is a significant portion of the likely ultimate recovery, with some arguing that the conclusion will place an undue burden on individuals and smaller companies with limited resources.

To learn more how these decisions may impact your copyrighted work, please feel free to



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