

“Poor Man’s Copyright” – Why the Envelope Method Doesn’t Work

One of the most persistent myths in the area of copyright law is the notion that wrapping something in an envelope, mailing it to yourself, and then holding onto the delivered envelope somehow helps you protect your legal rights as the creator of a work. The “envelope method” not only doesn’t work, using it may result in you losing several important protections that other copyright holders enjoy.

The Theory

The argument in favor of the so-called “poor man’s copyright” goes something like this: under current U.S. and international law, copyright begins at the moment the work is created. No registration is required for a work to enjoy copyright protection under the law.

So far, so good. But proponents suggest using the envelope method as a way to prove that: 1) you are the author of the work; and 2) that you created it on or before the date of mailing. Once you can prove those two things, the argument goes, you can enforce your rights in court. Unfortunately, this part is wrong.

Your Envelope Doesn’t Prove a Thing

The only thing a postmarked envelope proves is that someone mailed an envelope. Not even a certified mail delivery can prove what was inside the envelope when it was mailed. But, some would say, opening a sealed envelope will show what’s inside. Yes, but that doesn’t prove that it was in the envelope when it was mailed. There are numerous tricks one can use, including sending the envelope unsealed, or steaming it open afterwards, or other tricks a careful Internet search might reveal, to put something in an

envelope after it has been mailed. It still comes down to the testimony of the putative copyright holder claiming that the envelope contained what it appears to.

No authority will take the envelope method seriously. One federal court called it “bizarre” and “mysterious” when a songwriter sued Mariah Carey, claiming that Carey had stolen a song the plaintiff wrote and had mailed to himself.¹ The court ridiculed the supposed author, even saying, “As to the mysterious envelope purportedly containing a copy of the... composition, [he] has made no effort to explain why he would have mailed a copy of the composition to himself in 1989.” Even the Copyright Office advises the public that the envelope method has no legal significance and does not substitute for actual registration.

Registration Requirement

Not only is the envelope method lousy proof, it doesn’t save you the minor trouble of having to register your copyright if you want to sue an infringer. In order to enforce a copyright in court, the author must first register it. This registration is usually inexpensive, but an author who needs a quick turnaround time in order to file a lawsuit may have to pay as much as ten times the normal fee for an “expedited” registration. Ultimately, the envelope method costs much more money than it saves.

Benefits of Registration

Using the envelope method may also waive several important benefits. First, the registration itself provides proof of the date the work was created. Second, an author who

registers a copyright before infringement can sue not only for actual damages, but also has the right to seek statutory damages, which in some cases may climb to the six-figure range for each violation. Finally, an author who registers before the infringement may also recover reasonable attorney’s fees incurred pursuing a lawsuit. The envelope method does not allow for any of these.

There’s Only One Place to Mail It

If you’re serious about protecting your copyright in something you’ve created, don’t cut corners by using the envelope method. For a relatively small fee, and only a few minutes filling out a simple form, you can register your work with the Copyright Office itself, giving you the peace of mind to know that you can enjoy the full protections of the law if someone tries to steal your work. If you’re not serious, then don’t waste the time, the postage, or the envelope.



Michael Alex Wasyluk is an attorney in Dade City, Florida. He represents clients in a number of areas including enforcement of copyrights. You can find more information on the web at <http://wasyluklaw.com>

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¹ *Seletti v. Carey*, 173 F.R.D. 96 (S.D.N.Y. 1997).