

## Copyright Law Alert - U.S. Supreme Court Issues Two Copyright Opinions on Same Day

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On March 4, 2019, the Supreme Court issued two unanimous opinions regarding copyright. Both rulings—one concerning registration and the other regarding costs available under the Copyright Act—are firmly grounded in the statutory text.

In *Fourth Estate Public Benefit Corp v. Wall-Street.com, LLC* the Court resolved a Circuit split concerning when “registration” occurs, and an infringement action may be instituted, under 17 U.S.C. § 411(a). The Court adopted the “registration approach,” holding that “registration occurs, and a copyright claimant may commence an infringement suit, when the Copyright Office registers a copyright.” The Court found that the registration approach—as opposed to the “application approach,” under which “registration” occurs upon submission of an application to the Copyright Office—reflects the only satisfactory interpretation of the statutory text, which prohibits a copyright owner from bringing suit for infringement until “registration . . . has been made.”

In *Rimini Street, Inc. v. Oracle USA, Inc.* the Court, relying on statutory text and precedent, held that the Copyright Act’s provision for the discretionary award of “full costs” does not allow courts to award costs beyond the categories enumerated in the general “costs” statute. The Court found that the general costs statute serves as a default rule, such that when subject-specific statutes—like the Copyright Act—refer to “costs,” courts are confined to the six categories listed in 28 U.S.C. §§ 1821 and 1920. The Court reasoned that if Congress intended to award further costs, such as expert witness fees, under a subject-specific statute, then Congress could provide for them. The Court interpreted “full” in “full costs” to mean “all the ‘costs’ otherwise available under law,” rather than an expansion beyond the default rule. As the Court explained, “[a] ‘full moon’ means the moon, not Mars. A ‘full breakfast’ means breakfast, not lunch. A ‘full

season ticket plan' means tickets, not hot dogs. So too, the term 'full costs' means *costs*, not other expenses.”

Taken together, the two rulings have practical consequences for copyright holders and their counsel. *Fourth Estate* should incentivize copyright owners to register their works promptly. And *Rimini Street's* bright-line rule concerning recoverable costs should reduce certain cost-based motion practice. Finally, the two rulings may provide insight into the types of arguments likely to be successful in the currently-constituted Court: those rooted in the text of the Copyright Act.

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