Copyright Preregistration: A Study of the First Seven Years

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Origins of the Preregistration System

- *The problem: prerelease infringement* *(Hulk)*
- *The solution: preregistration*
  - The Family Entertainment and Copyright Act of 2005
  - 17 U.S.C. § 408(f)
The Preregistration System

• Requirements
  • Six eligible categories
    • motion pictures
    • sound recordings
    • musical composition
    • literary works to be published as books
    • computer programs and games
    • advertising photographs
  • Must be unpublished, intended for commercial distribution
  • Exclusive online application
  • No deposit requirement
The Preregistration System

- Benefits
  - Remedies: statutory damages, attorney fees
  - Immediate access to the courts

- Costs
  - Must eventually register for preregistration to be effective
  - $115 fee
Preregistrations By Category

- Motion Pictures: 40%
- Literary Works: 35%
- All Musical Works: 14%
- Computer Programs: 6%
- Works Claiming Multiple Categories: 4%
- Advertising Photographs: 1%
Use of the System by the Majors

- **Motion Pictures**
  - Less than 1/3 of major studio films are preregistered
  - 30% of the top 10 grossing films for 2006-2012 are not preregistered

- **Music**
  - No use by major record labels

- **Book Publishing**
  - Only a handful of preregistrations for high profile biographies and memoirs
Motion Picture Preregistrations
Registrations Rates of Preregistered Works by Category

- Advertising Photographs: 50.00%
- Computer Programs: 40.00%
- Literary Works: 30.00%
- Musical Compositions: 20.00%
- Sound Recordings: 10.00%
- Motion Pictures: 0.00%
Implications

• 1 – Copyright Office’s agency
• 2 – Distributional effects of formalities
• 3 – Follow on registration rates data can be used in policy making
• 4 – Effect on the public domain
• 5 - Lobbying