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## I'm Bringing Notice Back: Registration Alone Is Not Enough to Prompt Accrual of a Copyright Claim

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# I'M BRINGING NOTICE BACK: REGISTRATION ALONE IS NOT ENOUGH TO PROMPT ACCRUAL OF A COPYRIGHT CLAIM

**Abstract:** On November 14, 2018, the United States Court of Appeals for the Second Circuit held, in *Wilson v. Dynatone Publishing Co.*, that copyright registration alone is not enough to trigger accrual of an ownership claim. In so doing, the Second Circuit concluded that mere registration does not put a rational and attentive copyright owner on notice of adverse claims. The Second Circuit determined that holding otherwise would impose an onerous and impractical burden on authors to investigate the Copyright Office registry continuously to insure against registered illegitimate claims of authorship. Furthermore, the Second Circuit reasoned that such a holding would run counter to the purpose of § 205 of the Copyright Act. Thus, the Second Circuit joined the Third, Sixth, and Seventh Circuits in a split from the First Circuit, which interpreted § 205(c) to mean that registration is enough to put others on constructive notice of the author's ownership. As a result of the First Circuit's ruling, an author would be time-barred from asserting competing claims more than three years after another registered for sole ownership. This Comment argues that the Second Circuit's approach is correct because it furthers the legislative intent of the Copyright Act and distinguishes the unique facts of the First Circuit case. The Second Circuit's approach also promotes the protections of the copyright registration system by encouraging authors to register their creative works, while not imposing unrealistic obligations upon copyright owners that actually could deter registration.

## INTRODUCTION

The Copyright Act of 1976 aims to promote the production of original literary, artistic, and musical expression for public consumption.<sup>1</sup> The 1976 revisions introduced more progressive, lenient policies by removing the requirement of strict observance to copyright formalities of the Copyright Act of 1909.<sup>2</sup> Generally, copyright law safeguards original works of authorship by

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<sup>1</sup> Copyright Act of 1976, 17 U.S.C. § 102(a) (2018). The U.S. Constitution grants Congress the power to establish copyright protections for the innovative works of authors. U.S. CONST. art. I, § 8, cl. 8.

<sup>2</sup> Fred Koenigsberg, *The 1976 Copyright Act: Advances for the Creator*, 26 CLEV. ST. L. REV. 515, 525 (1977). Today, the Copyright Act of 1976 is the primary legislation for U.S. copyright law. Daniel Porter, *Then I Saw the Contract, Now I'm a Believer: Why "Concept Groups" Are "Works for Hire" and Cannot Invoke Statutory Termination Rights After 2013*, 32 N. ILL. U. L. REV. 507, 511

recognizing property rights in expressive information.<sup>3</sup> Copyright protection is not conditional upon registration, but rather is established when an author fixes an original work in a “tangible medium of expression.”<sup>4</sup> Registration, although not mandatory, nevertheless provides certain legal benefits to authors.<sup>5</sup> An important advantage of registration is that recordation of a document with the

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(2012). In 1976, Congress conducted its first substantial revision of the U.S. Copyright Act since 1909. Koenigsberg, *supra*, at 515. These revisions directly responded to the 1909 Copyright Act’s rigid procedures regarding copyright registration, notice, and deposit. *Id.* at 525. For instance, under the 1909 Copyright Act, incorrect placement or accidental exclusion of notice regularly resulted in the withdrawal of copyright owners’ rights to their work. *Id.* Congress also enacted these significant revisions in 1976 to address the major technological developments that occurred since 1909, such as the introduction of television and sound recordings. Porter, *supra*, at 511. Additionally, in anticipation of the United States’ participation in the upcoming Berne Convention, Congress amended the Copyright Act of 1909 to ensure that the United States was complying with international copyright principles. *Copyright Timeline: A History of Copyright in the United States*, ASS’N RES. LIBRS., <https://www.arl.org/copyright-timeline/#Top> [<https://perma.cc/JDK9-27Y2>]. Enacted in 1886, the Berne Convention for the Protection of Literary and Artistic Works is an agreement that safeguards the rights of authors over their creative works. *What Is the Berne Copyright Convention?*, WHAT IS COPYRIGHT.ORG (Oct. 23, 2017), <https://whatiscopyright.org/what-is-the-berne-copyright-convention/> [<https://perma.cc/49M8-DR6B>]. The agreement protects authors of member countries and aims to advance international uniform standards in copyright protections. *Copyright Timeline*, *supra*. The Berne Convention is responsible for several transformative revisions, including the establishment of the duration for copyrights, banning of copyright formalities as a condition of protection, and acknowledgement of authors’ moral rights. *Id.*

<sup>3</sup> Marshall A. Leaffer, UNDERSTANDING COPYRIGHT LAW 1–2 (6th ed. 2014). The term “original work of authorship” refers to a work that has been individually designed by its author, occurring in any form of expression. *Original Work of Authorship Law and Legal Definition*, USLEGAL, <https://definitions.uslegal.com/o/original-work-of-authorship/> [<https://perma.cc/F8C2-ZTXR>]. As society has become more technologically advanced, the need for increased protections over information industries and intangible products has grown rapidly. See Leaffer, *supra*, at 1–2 (describing how the United States’ transition from an industrial society to an information and communication-based society resulted in intellectual property concerns taking on paramount significance).

<sup>4</sup> 17 U.S.C. §§ 102(a), 408(a); see 9 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 2 (Matthew Bender ed., rev. ed. 2019) (summarizing § 408(a) to state that registration is not required to enact copyright protection). Registration, moreover, is not even necessary to establish a copyright. See Leaffer, *supra* note 3, at 281 (describing registration as a liberal, noncompulsory procedure that can take place at any point within the copyright’s term); see also 17 U.S.C. § 408(a) (stating that an author may register a claim for sole ownership of a copyright at any time during the copyright’s term). In fact, the practice of copyright registration is entirely exclusive to the American legal system. Leaffer, *supra* note 3, at 277.

<sup>5</sup> NIMMER & NIMMER, *supra* note 4, § 202. The benefits of copyright registration briefly include the following: establishment of a public record of the copyright detailing important facts concerning the piece’s authorship, securing an author’s right to file a copyright infringement suit for works originating in the United States, establishment of prima facie evidence regarding the copyright’s authenticity, and the expansion of remedies available to an author when filing a copyright infringement lawsuit, including statutory damages and legal fees. *Id.*; Leaffer, *supra* note 3, at 281–82. In totality, early registration of a copyrighted work becomes critical in enabling authors to enforce the legal and ownership rights to which they are entitled. Leaffer, *supra* note 3, at 287. In 2017, the U.S. Copyright Office reported that it filed 453,122 claims for registration and recorded approximately 14,644 documents that included titles of over 418,900 works. U.S. COPYRIGHT OFFICE, FISCAL 2017 ANNUAL REPORT 2 (2017).

U.S. Copyright Office constitutes constructive notice to all persons that copyright is claimed in the work.<sup>6</sup>

In 2018, in *Wilson v. Dynatone Publishing Co.*, the U.S. Court of Appeals for the Second Circuit joined the Third, Sixth, and Seventh Circuits in holding that it would be unduly cumbersome to authors, and would open the floodgates to groundless registrations, to find that copyright registration alone provides adequate notice to copyright owners of adverse claims.<sup>7</sup> The First Circuit previously determined, contrary to its sister circuits, that § 205(c) of the Copyright Act of 1976 instructs that registration of a copyright is sufficient to establish a claim for sole authorship.<sup>8</sup> As a result, the First Circuit held that the act of registration was enough to place others on constructive notice of any adverse claims and to start the tolling of the statute of limitations.<sup>9</sup> Therefore, by aligning with the majority of the circuits that have addressed this question, the Second Circuit's ruling made the First Circuit an outlier.<sup>10</sup>

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<sup>6</sup> NIMMER & NIMMER, *supra* note 4, § 202. In copyright law, registration is a process that is entirely distinct from recordation. *Id.* § 202.3. Registration of a copyright claim entails submitting an application, delivering copies, and providing a filing fee, whereas recordation is the process by which documents pertaining to copyright claims, such as a promise to transfer title, are recorded. *Id.*; see 17 U.S.C. § 205 (distinguishing the concepts of registration and recordation). Recordation, moreover, can occur even when the owner has not registered the copyright. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 2303 (3d ed. 2017) [hereinafter COMPENDIUM]. The term “constructive notice” refers to notice that a party is presumed by law to have attained, based upon the presence of certain facts and circumstances. *Notice*, BLACK'S LAW DICTIONARY (11th ed. 2019).

<sup>7</sup> See 908 F.3d 843, 844 (2d Cir. 2018) (determining that the statutory language of the constructive notice provision in § 205(c) does not mean that registration is sufficient to establish accrual of a copyright ownership claim); *Brownstein v. Lindsay*, 742 F.3d 55, 71–72 (3d Cir. 2014) (holding that registration alone is not enough to refute co-authorship because co-authors are not obligated to monitor the registry of copyrights for competing claims); *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC*, 477 F.3d 383, 390 (6th Cir. 2007) (determining that ownership claims are time-barred when there is a clear and explicit rejection of a claim of ownership); *Gaiman v. McFarlane*, 360 F.3d 644, 654–55 (7th Cir. 2004) (holding that it is not expected of authors to constantly check for adverse claims to their copyrights because it is neither the objective of registration, nor copyright notice, to trigger the running of the statute of limitations).

<sup>8</sup> *Compare Saenger Org., Inc. v. Nationwide Ins. Licensing Assocs., Inc.*, 119 F.3d 55, 66 (1st Cir. 1997) (holding that authors' copyright ownership claims accrue upon registration with the U.S. Copyright Office), *with Gaiman*, 360 F.3d at 655 (distinguishing its holding from the First Circuit in *Saenger* upon reasoning that the purpose of registration is neither to trigger the tolling of the statute of limitations, nor to commence accrual of authors' ownership claims).

<sup>9</sup> See *Saenger*, 119 F.3d at 66–67 (ruling that § 205(c) dictates that registration of a copyright is adequate notice to others of ownership claims and, therefore, registration under § 205(c) tolls the statute of limitations); *infra* notes 22, 108–109 and accompanying text. Adverse claims generally arise in two scenarios: (1) when the U.S. Copyright Office obtains multiple registration applications for identical works that include inconsistent statements concerning ownership and/or authorship and are submitted by separate applicants; and (2) when a party applies for registration and contends that another party's claim to the copyrighted work is illegitimate or baseless. COMPENDIUM, *supra* note 6, § 1808.

<sup>10</sup> *Compare Wilson*, 908 F.3d at 845 (holding that a claim of exclusive ownership does not automatically accrue upon registration of a copyright), *Brownstein*, 742 F.3d at 71–72 (determining that registration alone is not sufficient to repudiate, meaning revoke, a competing claim of sole author-

Part I of this Comment gives an overview of the law of copyright registration, including the manifestation of notice under § 205(c), and outlines the facts and procedural history of *Wilson*.<sup>11</sup> Part II analyzes the legal framework of copyright registration and discusses the existing circuit split, with the Third, Sixth, and Seventh Circuits taking a position contra to the First Circuit's 1997 ruling in *Saenger Organization v. Nationwide Insurance Licensing Associates, Inc.*<sup>12</sup> Finally, Part III posits that the First Circuit's holding in *Saenger* is properly limited to its facts, and concludes that the Second Circuit's ruling in *Wilson* is a more practical application of § 205(c), given the legislative intent of § 205(c)'s constructive notice provision as well as the larger goals of the Copyright Act of 1976.<sup>13</sup>

### I. COPYRIGHT REGISTRATION, NOTICE, AND *WILSON* BASICS

In *Wilson*, the Second Circuit held that mere registration of a copyright does not establish sufficient notice to copyright owners of competing claims, and thereby trigger the tolling of the statute of limitations.<sup>14</sup> Section A of this Part discusses the fundamental concepts of copyrights and copyright registration.<sup>15</sup> Section B explains the importance of notice, both actual and constructive, under § 205(c) of the Copyright Act of 1976.<sup>16</sup> Section C analyzes the facts and procedural history of *Wilson*, from its origins in the Southern District of New York to its disposition in the U.S. Court of Appeals for the Second Circuit.<sup>17</sup>

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ship), *Roger Miller Music*, 477 F.3d at 390 (holding that mere registration does not constitute clear and adequate repudiation of an adverse claim of ownership), and *Gaiman*, 360 F.3d at 655 (ruling that the intention behind copyright registration and notice was not to prompt accrual of an ownership claim), with *Saenger*, 119 F.3d at 66–67 (holding that registration is sufficient to place others on notice of a registrant's claim of sole authorship and commence the running of the statute of limitations for adverse ownership claims). Possessing exclusive ownership in a copyrighted work equips a copyright holder with six critical rights: (1) the right to duplicate and create copies of the initial work; (2) the right to develop secondary works emanating from the initial work; (3) the right to disburse duplications to others by sale or other methods of transmission; (4) the right to openly showcase the work; (5) the right to openly display the work; and (6) the right to play sound recordings openly via automated audio transmission. 17 U.S.C. § 106. Thus, exclusive ownership equips copyright holders with an important bundle of rights, whereas authors that do not possess ownership rights in their copyrighted works may only have a limited portion of these rights or none at all. Richard Stim, *Who Owns and Holds the Rights to a Copyright: When Might a Copyright Be Owned by Someone Other Than the Creator?*, NOLO, <https://www.nolo.com/legal-encyclopedia/copyright-ownership-rights-29953.html> [<https://perma.cc/RM8E-EZY5>].

<sup>11</sup> See *infra* notes 14–55 and accompanying text.

<sup>12</sup> See *infra* notes 56–85 and accompanying text.

<sup>13</sup> See *infra* notes 86–113 and accompanying text.

<sup>14</sup> 908 F.3d at 844.

<sup>15</sup> See *infra* notes 18–22 and accompanying text.

<sup>16</sup> See *infra* notes 23–27 and accompanying text.

<sup>17</sup> See *infra* notes 28–55 and accompanying text.

### A. Copyright and Registration Basics

Copyrights provide legal protection for authors' ownership rights in their creative works that have been produced in a material form of expression.<sup>18</sup> The U.S. Copyright Office encourages authors to register their works of authorship with the Register of Copyrights.<sup>19</sup> Although not required, registration offers certain legal protections and benefits, such as allowing authors of works originating in the United States to bring actions for infringement, and registration also establishes prima facie evidence of legitimacy to their copyrights.<sup>20</sup> To register a copyright, an owner must meet three requirements: (1) complete a formal application, (2) provide payment for each claim, and (3) produce copies

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<sup>18</sup> 17 U.S.C. § 102(a) (affording authors copyright protection for the novel works they create that have been fixed in a physical form of expression and can then be copied, identified, or transmitted). A work is "fixed in a tangible medium of expression" when it is recorded or directed by the author in some permanent form, such that the work can be perceived, copied, or transmitted. Jonathan Bailey, *What Does 'Tangible' Mean in Copyright*, PLAGIARISM TODAY (Oct. 3, 2017), <https://www.plagiarismtoday.com/2017/10/03/with-copyright-what-does-tangible-mean/> [<https://perma.cc/E7Y9-RRWU>].

<sup>19</sup> NIMMER & NIMMER, *supra* note 4, § 202. Registration is encouraged because it provides owners with important legal advantages while also serving the interests of users and the general public. *Id.* Registration enables owners to claim priority of authorship and thus gain protection from unauthorized third party uses. Leaffer, *supra* note 3, at 280. Additionally, works created in the United States must be registered with the U.S. Copyright Office before an author can file suit for copyright infringement. 17 U.S.C. § 411. Authors can also obtain statutory remedies for works that have been registered prior to infringement or within three months of publication. *Id.* § 412. In addition to these advantages, registration also provides benefits to users by establishing a public record of important information regarding the ownership and authorship of the registered work. U.S. COPYRIGHT OFFICE, CIRCULAR 1: COPYRIGHT BASICS 5 (2017), <https://www.copyright.gov/circs/circ01.pdf> [<https://perma.cc/V2PY-75JA>]. As a result, both authors and users can easily track registered works of authorship. *See* Leaffer, *supra* note 3, at 280 (describing the manner in which the registration system fosters the transfer of copyright ownership, tracks assignments, and promotes licensing, all of which allow potential purchasers to detect the status of a piece and to acquire any pertinent information regarding market availability). The legitimacy and efficiency inherent in this process, moreover, makes prospective transferees more willing to participate in the registration system because it provides key evaluative information regarding available works. *Id.* Although registration confers numerous benefits upon both authors and users, the system has also been criticized for being inaccurate because information in the Copyright Office records can be imprecise and lacking. *Id.* This, in part, is because the Copyright Office generally does not make findings of fact and, instead, accepts as true all plausible facts stated in the registration documents. COMPENDIUM, *supra* note 6, §§ 309.2, 602.4(C). Furthermore, when works are not available within the Copyright Office records, this does not mean that they are without protections, as many authors refrain from registering their copyrights. Leaffer, *supra* note 3, at 280. Authors who choose not to register their works, however, still acquire basic copyright protections once their works are secured in a tangible medium of expression, such as the ability to copy, sell, and act out the copyrighted work. *What Rights Do I Have if My Copyright Is Unregistered?*, LEGAL-MATCH, <https://www.legalmatch.com/law-library/article/unregistered-copyrights.html> [<https://perma.cc/R448-TALA>]; *see* 17 U.S.C. § 106 (outlining the exclusive rights that owners inherently possess with respect to their copyrighted works).

<sup>20</sup> COMPENDIUM, *supra* note 6, § 202; *see supra* note 19 and accompanying text (describing the benefits of copyright registration, with an emphasis on the legal protections afforded to authors and the extensive accessibility to registered works of authorship enjoyed by the public).

of the material for which registration is being sought.<sup>21</sup> Under the Copyright Act, the statute of limitations for all civil claims is three years and begins to toll upon claim accrual.<sup>22</sup>

### B. Notice and § 205(c) Basics

Section 205, commonly referred to as the recording statute, outlines the U.S. Copyright Office's process for approving documents for recordation.<sup>23</sup> Recordation is the process by which copyright-related documents are filed with the Copyright Office and then made available to the public for examination through publication of correct and precise copies.<sup>24</sup> The general purpose of § 205 is to

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<sup>21</sup> See 17 U.S.C. §§ 408, 409 (listing the three necessary conditions for copyright registration).

<sup>22</sup> *Id.* § 507(b). The time at which a claim accrues is difficult to discern, especially within the context of competing claims for copyright ownership. Leaffer, *supra* note 3, at 541–42. In an attempt to resolve this issue, courts have taken diverging views. Compare *Gaiman*, 360 F.3d at 654–55 (holding that the claimant's co-authorship claim was timely because registration was not enough to start the tolling of the statute of limitations), with *Ritchie v. Williams*, 395 F.3d 283, 289 & n.5, 290 (6th Cir. 2005) (holding that an ownership claim was time-barred after the claim had been repudiated more than three years prior to the filing of the lawsuit).

<sup>23</sup> See 17 U.S.C. § 205(c) (describing the requirements for recordation, which include submission of documents relating to the copyright, along with authentic copies signed by the executing party, and payment of fee to the U.S. Copyright Office).

<sup>24</sup> U.S. COPYRIGHT OFFICE, CIRCULAR 12: RECORDATION OF TRANSFERS AND OTHER DOCUMENTS 1 (2016), <https://www.copyright.gov/circs/circ12.pdf> [<https://perma.cc/ED3V-HFPA>]. The recordation process is comprised of: (1) obtaining documents related to copyrights for recordation from remitters; (2) inspecting documents to certify that they are suitable for recordation; (3) cataloguing the information in the documents for the purpose of publishing them in the U.S. Copyright Office's public directory of recorded materials; (4) providing copies of the documents that will then be made available for public review; and (5) returning to remitters those documents that have been labelled as recorded. *Id.* at 1–2. A remitter is an individual who transmits payments to another. *Remitter*, BLACK'S LAW DICTIONARY, *supra* note 6. The three most common types of documents eligible for recordation are copyright ownership transfers, termination notices, and miscellaneous documents relating to a copyright. *Document Recordation*, COPYRIGHT.GOV, <https://www.copyright.gov/recordation/> [<https://perma.cc/3GYD-CGZP>]; see also 37 C.F.R. §§ 201.4, 201.10 (2020) (describing the conditions for submitting registration transfers of copyright ownership, notices of termination of transfers and licenses, and other documents pertaining to a copyright). Ownership transfers allow for a holder in the copyright to convey all or partial ownership rights in the copyright. 17 U.S.C. § 201(d). Termination notices permit copyright holders to discontinue agreements that conveyed or licensed the holder's copyright to a third party. COMPENDIUM, *supra* note 6, § 2304.1(A). Congress passed two acts creating alternative methods of recordation in 1990. NIMMER & NIMMER, *supra* note 4, § 7.25. The Visual Artists Rights Act created a system in which any author of a work could record their identity and address with the Copyright Office. *Id.*; see 17 U.S.C. § 106A (providing that works of art that satisfy certain statutory requirements afford their creators moral rights). Moral rights, as referenced in this act, encompass specific noneconomic rights that are viewed as personal to an author. *Authors, Attribution, and Integrity: Examining Moral Rights in the United States*, COPYRIGHT.GOV, <https://www.copyright.gov/policy/moralrights/> [<https://perma.cc/J3MK-R33Q>]. Additionally, the Computer Software Rental Amendments Act established a similar recordation procedure that permitted the Register of Copyrights to record any document designated as relating to computer shareware. NIMMER & NIMMER, *supra* note 4, § 7.25; see 17 U.S.C. § 109(b)–(d) (granting rental rights to copyright owners of computer programs, effectively prohibiting purchasers of said computer programs from renting or lending them for

establish priority between adverse claims of ownership when there are transfers of title.<sup>25</sup> Section 205(c) further illustrates the larger importance of § 205 because it highlights two fundamental copyright issues—the establishment of constructive notice of ownership and the ability of a subsequent transferee to claim ownership of a copyrighted work over a prior transferee.<sup>26</sup> Thus, given today’s global marketplace and the high degree to which transfers of intellectual property occur, § 205 serves an important function in facilitating transfers of title.<sup>27</sup>

### C. Factual and Procedural History of Wilson

In *Wilson*, the Second Circuit deliberated over competing claims of copyright ownership rights in the context of both a musical composition and a sound recording.<sup>28</sup> Plaintiffs John Wilson, Charles Still, and Terrance Stubbs (collectively, the Band) were former members of the musical performance group “Sly Slick & Wicked.”<sup>29</sup> While touring with the Band, plaintiff Wilson composed “Sho’ Nuff (You Really Love Him)” (Sho’ Nuff).<sup>30</sup> In April 1973,

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profit). The rental rights established through this act protect copyright holders, in that they prohibit owners of valid copies of computer programs from renting them out for commercial gain. U.S. COPYRIGHT OFFICE, CIRCULAR 92: COPYRIGHT LAW OF THE UNITED STATES 22–24 (2016), <https://www.copyright.gov/title17/title17.pdf> [<https://perma.cc/KD9T-EM86>].

<sup>25</sup> NIMMER & NIMMER, *supra* note 4, § 2. The recodation statute’s constructive notice element becomes particularly significant when conflicts emerge between transfers of title in copyright. Leaffer, *supra* note 3, at 289. Under these circumstances, the transfer first executed receives priority, provided that the transfer has been timely recorded in the United States and recodation is properly completed so as to establish constructive notice. 17 U.S.C. § 205(d); Leaffer, *supra* note 3, at 289; *see Gaiman*, 360 F.3d at 655 (concluding that the purpose of the constructive notice provision in § 205(c) is to demonstrate priority in the event that disputes arise). Thus, priority is critical in that it dictates who ultimately possesses rights in the copyrighted work following a transfer of interest. Leaffer, *supra* note 3, at 289.

<sup>26</sup> *See* 17 U.S.C. § 205(c) (outlining the constructive notice provision of § 205).

<sup>27</sup> *Id.*; *see* STUART MEYER, FENWICK & WEST LLP, THE TRANSFER OF INTELLECTUAL PROPERTY RIGHTS: CAN THERE BE TOO MUCH FREEDOM IN THE MARKETPLACE FOR IDEAS? 1 (2009), [https://www.fenwick.com/FenwickDocuments/Transfer\\_IP\\_Rights.pdf](https://www.fenwick.com/FenwickDocuments/Transfer_IP_Rights.pdf) [<https://perma.cc/S3Q8-8KU5>] (observing that the existence of intellectual property transfers has allowed for new industries to emerge, as rights in intellectual property are easily transmitted between parties, thereby developing an entirely new form of trade).

<sup>28</sup> 908 F.3d at 843. A musical work is distinct from a sound recording, in that the composition—the song itself—is the musical work, whereas a sound recording refers to the song as performed by a specific artist. COMPENDIUM, *supra* note 6, § 802.8(A). Copyright registration for a musical work comprises of the lyrics and music within that composition, but does not include a precise recording of that composition. *Id.*

<sup>29</sup> *Wilson v. Dynatone Publ’g. Co.*, 892 F.3d 112, 115 (2d Cir. 2018). The Band, comprised of three Cleveland, Ohio natives, officially assembled in 1970 and sustained an enduring career through the production and composition of soul music. Greg McIntosh, *Sly, Slick & Wicked Biography*, ALLMUSIC, <https://www.allmusic.com/artist/sly-slick-wicked-mn0001294386/biography> [<https://perma.cc/Y6YB-CPA7>]. The Band performed on and off as a soul trio throughout the 1980s, 1990s, and 2000s, and eventually went on to receive significant accolades, such as an induction into the Motown Alumni Associate Hall of Fame. *Id.*

<sup>30</sup> *Wilson*, 892 F.3d at 115.

the Band recorded “Sho’ Nuff” at Studio 88 in New York City.<sup>31</sup> After the Band’s sound recording, Edward Perrell, a musical promoter, played the “Sho’ Nuff” recording for executives of People Records, a record label run by soul-funk icon James Brown.<sup>32</sup> Brown and Perrell subsequently altered the recording by “sweetening” the track through the addition of strings and bells.<sup>33</sup> The ensuing litigation before the Second Circuit, therefore, focused on establishing the individual ownership rights to both the Band’s sound recording and musical composition for its “Sho’ Nuff” single.<sup>34</sup>

With respect to the sound recording, on June 28, 1973, People Records put out a commercial release of the “Sho’ Nuff” single that incorporated the sweetening modifications.<sup>35</sup> In this release, People Records gave production credit to Brown and Perrell, and named Polydor, a British record label and company, as the owner of the copyright for the recording.<sup>36</sup> Prior to the commercial release, Polydor formally registered a copyright in the Copyright Office for the “Sho’ Nuff” sound recording, claiming both that the recording was

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<sup>31</sup> *Wilson v. Dynatone Publ’g. Co.*, 16 Civ. 104 (PAE), 2017 WL 1330336, at \*2 (S.D.N.Y. Apr. 10, 2017), *aff’d in part and vacated in part, remanded by* 892 F.3d 112 (2018).

<sup>32</sup> *Wilson*, 892 F.3d at 116. The iconic James Brown, known as the Godfather of Soul, was an African-American musician who revolutionized the music industry with his soul, funk sound, spurring the development of numerous musical genres. *James Brown*, ROCK & ROLL HALL OF FAME, <https://www.rockhall.com/inductees/james-brown> [<https://perma.cc/6WRE-CB5L>]. Brown had seventeen singles that made it to No. 1 on the *Billboard* R&B charts and in 1986 was inducted into the Rock and Roll Hall of Fame. Kristin Corpuz, *James Brown’s Biggest Billboard Hot 100 Hits*, BILLBOARD (May 3, 2017), <https://www.billboard.com/articles/columns/chart-beat/7775674/james-brown-songs-billboard-hot-100-hits> [<https://perma.cc/C59Y-MYTE>]. *Rolling Stone* later ranked Brown number seven on its list of the hundred greatest artists of all time. *100 Greatest Artists: The Beatles, Eminem and More of the Best of the Best*, ROLLING STONE (Dec. 3, 2010), <https://www.rollingstone.com/music/music-lists/100-greatest-artists-147446/james-brown-2-30248/> [<https://perma.cc/HM5P-JEBQ>]. Additionally, Brown is recognized as the most heavily sampled artist in history. *Inductees: James Brown*, ROCK & ROLL HALL OF FAME & MUSEUM (Dec. 2, 2006), <https://web.archive.org/web/20061202170408/http://www.rockhall.com/hof/inductee.asp?id=56> [<https://perma.cc/AJ3Z-VP8U>]; see *infra* note 44 and accompanying text. Additionally, Brown is credited as a co-producer on the “Sho’ Nuff” recording. *Wilson*, 892 F.3d at 116. Music producers are responsible for managing the recording and creation of a single, sound track, or record. CRAS, <https://cras.edu/music-production/> [<https://cras.edu/music-production/>]. Generally, their tasks include sound checking recordings, offering recommendations for modifications, or cooperating with other professionals to create a successful record. *Id.*

<sup>33</sup> *Wilson*, 892 F.3d at 116. Sweetening is a popular audio mixing function that adds extra audio to a soundtrack to enhance the overall sound and complexities of a musical composition. *Audio Sweetening and Mixing*, HENCAR, <http://hencar.com/processes/post-production/audio-sweetening-and-mixing/> [<https://perma.cc/24KN-YKFB>]. Audio sweetening can cover anything from adding music to a sound recording to manipulating an artist’s voice. *Id.*

<sup>34</sup> *Wilson*, 908 F.3d at 843.

<sup>35</sup> *Wilson*, 892 F.3d at 116.

<sup>36</sup> *Id.* Polydor was the successor-in-interest to People Records, as well as the predecessor-in-interest to Universal Music Group, Inc. (UMG). *Id.* Polydor rose to prominence by amassing an impressive roster of British pop and rock talent, while simultaneously establishing roots in the American music scene through its acquisition of well-known soul and R&B acts, such as Aretha Franklin. *About*, POLYDOR, <https://www.polydor.co.uk/about/> [<https://perma.cc/CE5J-FWRY>].

a “work made for hire” and that Polydor had exclusive ownership as the employer.<sup>37</sup> The Band disputed this claim, however, and asserted that it never agreed to “work made for hire” provisions or the transfer of renewal term copyrights, with either People Records or Perrell.<sup>38</sup> On December 21, 2001, the successor-in-interest to People Records, Universal Musical Group, Inc. (UMG), nevertheless proceeded to file a registration for a renewal term copyright of the “Sho’ Nuff” recording with the Copyright Office.<sup>39</sup>

With regard to the composition, on May 12, 1973, the Band registered a copyright claim for “Sho’ Nuff,” naming the three band members as co-authors.<sup>40</sup> On July 9, 1973, Perrell registered the “Sho’ Nuff” composition with Broadcast Music Inc. (BMI), and credited Dynatone Music, Belinda Music, and Perrell Music as publishers.<sup>41</sup> Subsequently, Chappell & Co., predecessor-in-interest to defendant Unichappell, registered a copyright for the “Sho’ Nuff”

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<sup>37</sup> *Wilson*, 892 F.3d at 116. Although copyrighted works typically become the property of the creator, there are exceptions when a work is produced for the benefit of an employer. U.S. COPYRIGHT OFFICE, CIRCULAR 09: WORKS MADE FOR HIRE 1 (2012), <https://www.copyright.gov/circs/circ09.pdf> [<https://perma.cc/J643-JMMJ>]. These works of authorship are referred to as “works made for hire,” in that employees produce such works during the course of their employment. 17 U.S.C. § 101. Thus, “works made for hire” credit the employer with authorship, even if an employee was actually responsible for its creation. *See id.* (defining a “work made for hire”).

<sup>38</sup> *Wilson*, 892 F.3d at 116. Prior to January 1, 1978, copyright owners could obtain protection for their works for an initial term of twenty-eight years, followed by one renewal term. U.S. COPYRIGHT OFFICE, CIRCULAR 6A: RENEWAL OF COPYRIGHT 1 (2017) [hereinafter CIRCULAR 6A], <https://www.copyright.gov/circs/circ06a.pdf> [<https://perma.cc/9UUH-AEE4>]. Now, however, copyright owners receive one term of protection that typically carries on for an author’s life plus seventy years. *Id.* at 1 n.1.

<sup>39</sup> CIRCULAR 6A, *supra* note 38, at 1 n.1. UMG succeeded to the rights of Polydor Records, the company that in 1971 purchased People Records, which was founded by James Brown. Josh Russell, *Royalties Claim Revived Over Timberlake Hit ‘Suit & Tie,’* COURTHOUSE NEWS SERV. (June 6, 2018), <https://www.courthousenews.com/royalties-claim-revived-over-timberlake-hit-suit-tie/> [<https://perma.cc/AT5M-T9Z6>].

<sup>40</sup> *Wilson*, 892 F.3d at 116. Co-authors or collaborators appear in the context of works of joint authorship. *Copyright Ownership: The Joint Authorship Doctrine*, FINDLAW, <https://corporate.findlaw.com/intellectual-property/copyright-ownership-the-joint-authorship-doctrine.html> [<https://perma.cc/A2RS-6HGP>]. As co-authors, each author can designate the rights and responsibilities of the work among themselves. *Id.*

<sup>41</sup> *Wilson*, 892 F.3d at 115. BMI is a membership organization that acts as a link between songwriters and the businesses that air their musical compositions for public benefit. BMI, <https://www.bmi.com/about> [<https://perma.cc/U5B4-HC7X>]. BMI facilitates business transactions between songwriters and music publishers in the collection of royalties. *Wilson*, 892 F.3d at 115. Royalties—specifically referred to as performance right royalties in the context of musical performances—are payments given to songwriters after a live, public performance of one of their songs. Heather McDonald, *How Performance Rights Royalties Are Paid*, BALANCE CAREERS (Jan. 4, 2019), <https://www.thebalancecareers.com/how-performance-rights-royalties-are-paid-2460913> [<https://perma.cc/YHL4-F7F3>]. Dynatone Music, Belinda Music, and Perrell Music are all current or former U.S.-based publishing entities. *Belinda Music, Inc. vs. Belinda Music Inc.*, DISCOGS, <https://www.discogs.com/forum/thread/704075> [<https://perma.cc/FVJ3-LNMB>]; *Dynatone Music Publishing*, DISCOGS, <https://www.discogs.com/label/1395404-Dynatone-Music-Publishing> [<https://perma.cc/R23Z-T7BR>]; *Perrell Music*, DISCOGS, <https://www.discogs.com/label/568738-Perrell-Music> [<https://perma.cc/UM9U-HS49>].

composition, designating Dynatone Publishing Company as claimant to ownership rights, and identifying plaintiffs as the songwriters.<sup>42</sup> When the Band filed a renewal registration, on November 19, 2015, it claimed ownership of the renewal term copyright for the composition.<sup>43</sup>

In the four decades since People Records released the “Sho’ Nuff” recording, the composition has achieved renewed commercial success through the use of sampling, a practice in which artists incorporate the recordings of others into their own musical works.<sup>44</sup> In mid-January of 2013, Justin Timberlake, a multi-platinum recording artist, sampled the “Sho’ Nuff” recording, which included the Band’s vocals, in the commercial release of his popular single,

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<sup>42</sup> *Wilson*, 892 F.3d at 116. Chappell & Co. Ltd. is a British publishing company that was founded in 1810. *Chappell & Co. Ltd.*, DISCOGS, <https://www.discogs.com/label/273333-Chappell-Co-Ltd> [<https://perma.cc/7BAD-XB8W>]. The group later changed its name to Chappell International Music. *Id.* Since its incorporation, Chappell International Music has gained recognition as a music publishing company with a global market. *Id.* The company was subsequently sold to Warner Communications Inc., allowing Chappell to amass a robust catalogue of music publishers. *Id.*

<sup>43</sup> *Wilson*, 892 F.3d at 116. For works created between 1964 and 1977, authors are encouraged to adhere to an amendment set forth in the Copyright Renewal Act of 1992. NIMMER & NIMMER, *supra* note 4, § 9.05. The Amendment states that even when an application for renewal registration is untimely, the person or entity that possesses the right to renewal can still obtain renewal at any time within the renewed and extended term of sixty-seven years. 17 U.S.C. § 304(a)(3)(A)(ii); U.S. COPYRIGHT OFFICE, CIRCULAR 15A: DURATION OF A COPYRIGHT 2 (2011), <https://www.copyright.gov/circs/circ15a.pdf> [<https://perma.cc/89FL-K9DE>]. Despite these relaxed provisions, in an attempt to encourage prompt filings, Congress issued a ruling that authors who fail to register on a timely basis are at risk of forfeiting certain legal benefits. NIMMER & NIMMER, *supra* note 4, § 9.05. The purpose of this revised renewal registration process is to ensure that any rights conveyed in the original copyright registration are the same as those conveyed upon renewal. *Id.*

<sup>44</sup> *Wilson*, 892 F.3d at 116. Sampling is a device used to enhance a musical composition by incorporating a segment of another sound recording into the composition. Taylor Maddox, *The Art of Sampling*, BULLET MUSIC (Dec. 27, 2017), <http://www.bulletmusic.net/features-1/2017/12/14/the-art-of-sampling> [<https://perma.cc/3Z5Y-DZ7A>]. Sampling has become a fixture of the music industry, with respect to production, as artists look to sample portions of older records in the hopes of re-invigorating them and offering their own creative interpretation on earlier musical works. *Id.* Artists must seek permission from copyright owners of either the sound recording or the song prior to sampling their works. GEOFFREY P. HULL ET AL., *THE MUSIC BUSINESS AND RECORDING INDUSTRY: DELIVERING MUSIC IN THE 21ST CENTURY* 105–06 (Routledge eds., 3d ed. 2011). Although permission is usually granted, it is typically purchased through a sampling license from the owner, which can range anywhere from \$1,000 to over \$25,000, or a percentage stake in the new recording copyrights. *Id.* at 106. The range varies considerably based on the importance of the sample being used and the extent to which it is newly exploited. *Id.* Yet, in spite of these procedural measures, copyright-related disputes involving the infringement of earlier musical works by more contemporary pieces have inundated courts in recent years. Edward Lee, *Fair Use Avoidance in Music Cases*, 59 B.C. L. REV. 1873, 1930 (2018) (attributing this rise in copyright infringement lawsuits to the eradication of laches as a defense to copyright actions). The laches doctrine, a now abolished legal protection, enabled defendants to assert that a litigant’s claim was barred on the grounds that there was unreasonable delay in making the claim. *The Laches Doctrine in Copyright Law*, THRIVE THEMES, <https://inventorbeware.com/2016/01/the-laches-doctrine-in-copyright-law/> [<https://perma.cc/LVJ5-XYSL>]. In *Petrella v. Metro-Goldwyn-Mayer, Inc.*, the Supreme Court held that the laches defense was not applicable to copyright disputes because the congressionally enacted three-year statute of limitations for copyright infringement claims provided litigants with adequate protection. 572 U.S. 663, 681–82, 685 (2014).

“Suit & Tie.”<sup>45</sup> Later that year, platinum-selling recording artist J. Cole also sampled the “Sho’ Nuff” master recording<sup>46</sup> in the release of his popular track “Chaining Day.”<sup>47</sup>

On January 6, 2016, the Band brought suit in the U.S. District Court for the Southern District of New York against every entity that had profited from exploiting the “Sho’ Nuff” recording and composition, including Dynatone, UMG, Unichappell, Perrell d/b/a Perrell Music, BMI, and Anheuser-Busch International, Inc.<sup>48</sup> The Band sought declaratory judgments that it possessed the renewal term copyright for the “Sho’ Nuff” composition and that registration of the composition by defendant Unichappell’s predecessor was unenforceable.<sup>49</sup> The Band also sought compensatory damages for injuries suffered as a result of defendants’ commercial use of the composition.<sup>50</sup> Finally, with respect to the sound recording, the Band sought damages and a declaratory

<sup>45</sup> *Wilson*, 892 F.3d at 116. “Suit & Tie” is an R&B song featured on Justin Timberlake’s third studio album, *The 20/20 Experience. Justin Timberlake Unveils Suit and Tie Single*, BBC NEWS (Jan. 14, 2013), <https://www.bbc.com/news/entertainment-arts-21008776> [<https://perma.cc/73UZ-3SSJ>]. The release of this single culminated the singer’s long-awaited return after a six-year hiatus from the music industry. *Id.* The single sold more than 3,000,000 copies domestically, attained platinum status in several other countries, and accumulated over 92,000,000 YouTube views. *Wilson*, 892 F.3d at 116; see Heather McDonald, *Platinum Album Certification Explained*, BALANCE (June 10, 2019), <https://www.thebalancecareers.com/platinum-album-certification-explained-2460607> [<https://perma.cc/9C44-3TUM>] (explaining that a single achieves platinum status once it has sold two million copies).

<sup>46</sup> Master recordings, or masters, are the original sound recordings of musical works. *What You Need to Know About a Master Recording*, SONGTRADR (Sept. 6, 2016), <https://blog.songtradr.com/what-you-need-to-know-about-a-master-recording/> [<https://perma.cc/4ANS-S86C>].

<sup>47</sup> *Wilson*, 892 F.3d at 116. “Chaining Day” is a hip-hop single featured on J. Cole’s second studio album, *Born Sinner*. Aaron Starkey, *The Lyricism Behind J. Cole’s “Chaining Day,”* LYRIC (Dec. 22, 2013), <https://theartofthelyric.wordpress.com/2013/12/22/the-lyricism-behind-j-coles-chaining-day-by-aaron-starkey/> [<https://perma.cc/PMD6-4RFA>]. This song explores the rapper’s experiences with the rap music industry, specifically discussing his exposure to a new-age form of slavery wherein he expresses his desire to resist becoming a slave to the temptations of fame and materialism. *Id.*

<sup>48</sup> *Wilson*, 892 F.3d at 116–17. Anheuser Busch International, Inc. was established in 1981 as a subsidiary responsible for the company’s international business operations and equity investments. *Anheuser-Busch Companies, Inc.—Company Profile, Information, Business Description, History, Background Information on Anheuser-Busch Companies, Inc.*, REFERENCE FOR BUS., <https://www.referenceforbusiness.com/history2/63/Anheuser-Busch-Companies-Inc.html> [<https://perma.cc/KN47-6CA4>]. In this action, Anheuser Busch International, Inc. was named as a defendant after Timberlake’s “Suit & Tie” was featured in an Anheuser-Busch commercial. Kat Greene, *2nd Circ. Revives Copyright Suit Over Timberlake Sample*, LAW360 (June 6, 2018), <https://www.law360.com/articles/1050944/2nd-circ-revives-copyright-suit-over-timberlake-sample> [<https://perma.cc/9WET-7ZN2>]. Additionally, the construction “d/b/a” means “doing business as.” *D/B/A*, BLACK’S LAW DICTIONARY, *supra* note 6.

<sup>49</sup> *Wilson*, 892 F.3d at 117. Declaratory judgments are binding decisions that establish the rights of litigating parties without issuing or directing enforcement. *Judgment*, BLACK’S LAW DICTIONARY, *supra* note 6.

<sup>50</sup> *Wilson*, 892 F.3d at 117. In calculating these compensatory damages, the Band suggested that the court award them an amount equal to the song’s earnings during the period of exploitation, which ranged from January 6, 2013 to January 6, 2016. *Id.*

judgment establishing that the Band, along with Perrell and UMG, were co-owners of the renewal term copyright.<sup>51</sup>

Defendants Dynatone, UMG, and Unichappell moved to dismiss the Band's allegations for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).<sup>52</sup> The district court granted defendants' motion and found that the Band's claims were time-barred because defendants' copyright registration previously repudiated the Band's claims of ownership that arose during the original copyright terms.<sup>53</sup> Plaintiffs appealed to the Second Circuit on the grounds that their ownership claims to the renewal term copyrights for the "Sho' Nuff" composition and sound recording had not been repudiated by defendants' registrations, arguing that registration alone was insufficient to accrue an ownership claim.<sup>54</sup> In reviewing the inquiry of whether copyright registration places others on adequate notice of adverse ownership claims, the Second Circuit joined the fray of circuit courts that have grappled with this question.<sup>55</sup>

## II. CHRONOLOGY AND DISCUSSION OF THE CIRCUIT SPLIT

The U.S. Court of Appeals for the Second Circuit's 2018 decision in *Wilson v. Dynatone Publishing Co.* establishes a clear rift with the First Circuit as to whether registration alone is sufficient to accrue an ownership claim and place a diligent author on constructive notice of an adverse claim to authorship.<sup>56</sup> Prior to *Wilson*, the Third, Sixth, and Seventh Circuits already held that permitting registration to constitute adequate notice of a copyright ownership

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<sup>51</sup> *Id.*; see 17 U.S.C. § 304(a) (providing that upon termination of a copyright's original term, the copyright shall subsist for a renewed and extended term of sixty-seven years). The Band again argued for compensatory damages to be calculated in a manner identical to those of the commercial exploitation for the "Sho' Nuff" composition. *Wilson*, 892 F.3d at 117.

<sup>52</sup> *Wilson*, 892 F.3d at 117. The Band settled out of court with Perrell, BMI, and Anheuser-Busch International, Inc. for an undisclosed amount. *Id.*

<sup>53</sup> *Id.* at 115. Following the district court's decision, the Second Circuit vacated the district court's grant of defendants' motion under Federal Rules of Civil Procedure 12(b)(6) and remanded for further proceedings. *Id.* at 120. Defendants then petitioned for reconsideration, disputing the Second Circuit's ruling and arguing that the Band's suit was untimely, thereby bringing this matter before the Second Circuit again. *Wilson*, 908 F.3d at 844.

<sup>54</sup> Brief for Plaintiffs-Appellants at 9, *Wilson*, 908 F.3d 843 (No. 17-01549).

<sup>55</sup> See, e.g., *Brownstein*, 742 F.3d at 71–72 (holding that mere registration alone is insufficient to revoke a competing claim of exclusive ownership); *Roger Miller Music*, 477 F.3d at 390 (determining that registration does not trigger accrual of an ownership claim); *Gaiman*, 360 F.3d at 655 (holding that § 205(c) serves to establish priority among competing transfers of title, as opposed to placing authors on notice of adverse claims).

<sup>56</sup> *Compare Wilson v. Dynatone Publ'g Co.*, 908 F.3d 843, 844–45 (2d Cir. 2018) (declining to follow the First Circuit's ruling, and holding that registration alone cannot create a legitimate ownership claim and begin the running of the statute of limitations), with *Saenger Org., Inc. v. Nationwide Ins. Licensing Assocs., Inc.*, 119 F.3d 55, 66 (1st Cir. 1997) (interpreting 17 U.S.C. § 205(c) (2018) to state that registration alone is sufficient to put others on notice, and thus establish an ownership claim time-barring the assertion of competing claims after three years' time).

claim would impose an overly cumbersome obligation upon a reasonably attentive author.<sup>57</sup>

Section A of this Part details the cases leading up to *Wilson* that established the split among the circuits.<sup>58</sup> Section B analyzes the *Wilson* holding itself.<sup>59</sup>

### A. Pre-Wilson Chronology: Setting the Stage for the Circuit Split

The existing circuit split among the First, Third, Sixth, and Seventh Circuits centers on the issue of whether the act of registration is enough to commence accrual of an ownership claim, thereby tolling the statute of limitations for those potentially seeking to allege adverse ownership claims.<sup>60</sup> In the First Circuit's 1997 decision in *Saenger Organization v. Nationwide Insurance Licensing Associates, Inc.*, the Saenger Organization, Inc. (Saenger) filed a copyright infringement claim seeking to enjoin Lawrence R. Durkin, Nationwide Insurance Licensing Associates, Inc., and Commonwealth Licensing Group (collectively, Defendants) from the publication and distribution of insurance materials produced by Defendants.<sup>61</sup> Durkin alleged that he had entered into a verbal partnership agreement with Saenger to produce insurance licensing supplements for the corporation in return for co-authorship rights over the copyrights in these materials.<sup>62</sup> At the time of registration, however, Saenger drafted

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<sup>57</sup> See *Brownstein v. Lindsay*, 742 F.3d 55, 71–72 (3d Cir. 2014) (holding that registration alone is not enough to repudiate an adverse claim for sole ownership because authors are not obligated to constantly monitor the Copyright Office record for competing claims); *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC*, 477 F.3d 383, 390 (6th Cir. 2007) (ruling that claims for ownership do not accrue upon registration and, instead, amass when an author plainly and expressly repudiates an adverse claim for sole authorship); *Gaiman v. McFarlane*, 360 F.3d 644, 654–55 (7th Cir. 2004) (holding that the copyright registration system was intended to serve functions other than notice, such as the promotion of creativity, and therefore does not start the running of the statute of limitations).

<sup>58</sup> See *infra* notes 60–77 and accompanying text.

<sup>59</sup> See *infra* notes 78–85 and accompanying text.

<sup>60</sup> See *Brownstein*, 742 F.3d at 71–72 (ruling that the act of registration is not sufficient to place an attentive author on notice of an adverse claim of authorship); *Roger Miller Music*, 477 F.3d at 390 (holding that registration does not disavow a competing ownership claim because such action does not constitute an express repudiation to trigger accrual of an ownership claim); *Gaiman*, 360 F.3d at 654–55 (ruling that the legislative function of notice and registration for copyright law is not to commence the tolling of the statute of limitations); *Saenger*, 119 F.3d at 66–67 (determining that copyright ownership claims accrue upon registration of the copyright because such action is sufficient to place others on notice of any adverse claims of authorship).

<sup>61</sup> 119 F.3d at 56, 58–59. Durkin acted as an officer and vice president of the Saenger Organization, a corporation in the business of producing insurance licensing materials. *Id.* at 57.

<sup>62</sup> *Id.* at 55, 57. It is undisputed that the parties did not enter into a signed, written agreement providing that the work developed by Durkin for Saenger would be regarded as work made for hire. *Id.* at 60. Accordingly, the First Circuit engaged in a thorough analysis to determine whether Durkin had created the insurance materials within the scope of his employment. See *id.* at 60–63 (holding that the materials fell within the statutory meaning of “works made for hire” because Durkin was employed by Saenger and had developed the insurance materials within the scope of his employment); see also 17 U.S.C. § 101 (defining the statutory standard for “works made for hire”).

a copyright application identifying the Saenger Organization as the sole owner of the copyright.<sup>63</sup> Although Durkin denied seeing the application, he admitted to being present when Saenger prepared the copyright application that omitted his co-authorship.<sup>64</sup>

The U.S. District Court for the District of Massachusetts ultimately ruled in favor of Saenger, finding that Durkin's subsequent productions infringed upon Saenger's copyright, and the First Circuit later affirmed this decision.<sup>65</sup> In relevant part, the First Circuit held that Durkin's claims were barred by the statute of limitations because Saenger had sufficiently placed Durkin on notice of Saenger's claim of authorship.<sup>66</sup> Although the First Circuit explicitly held that Saenger's copyright registration had placed Durkin on constructive notice of Saenger's exclusive ownership claim, the court also observed that Durkin had actual notice because he knew or should have known that the application, which was prepared in his presence, had omitted his name.<sup>67</sup> Given the presence of both actual and constructive notice in the unique facts of this case, it is unclear to what extent the First Circuit relied upon its position that registration is sufficient to repudiate another's claim of ownership.<sup>68</sup>

Following the decision in *Saenger*, several other circuits undertook review of § 205(c) and the function of copyright registration, subsequently bringing the First Circuit's holding under heavy scrutiny.<sup>69</sup> In 2004, the Third Circuit in *Gaiman v. McFarlane* outright questioned the decision in *Saenger* and held that the First Circuit's interpretation of § 205(c) was misguided.<sup>70</sup> The *Gaiman* court reasoned that the statute's express purpose is to ascertain priori-

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<sup>63</sup> *Saenger*, 119 F.3d at 65. Durkin asserted that Saenger breached its verbal agreement by listing itself as the exclusive owner in its copyright registration with the Copyright Office. *Id.* Despite discovering that he had not been named as a co-author for the copyright, Durkin proceeded to ignore the registration and continue publishing texts for his employer. *Id.* at 58.

<sup>64</sup> *Id.* at 65.

<sup>65</sup> *Id.* at 64; see *Saenger Org., Inc. v. Nationwide Ins. Licensing Assocs., Inc.*, 864 F. Supp. 246, 248–49 (D. Mass. 1994) (granting injunctive relief to Saenger upon finding sufficient evidence that Durkin plagiarized the copyrighted works of Saenger, which he previously created for Saenger while in its employment). Injunctive relief is a type of remedy, wherein courts require a party to do or cease from doing a certain act. *Injunction*, BLACK'S LAW DICTIONARY, *supra* note 6.

<sup>66</sup> *Saenger*, 119 F.3d at 66; see *Catrone v. Thoroughbred Racing Ass'n N. Am.*, 929 F.2d 881, 885 (1st Cir. 1991) (stating that Massachusetts' discovery rule requires that the running of the statute of limitations be stalled while the facts of a claim "remain inherently unknowable" to the injured individual).

<sup>67</sup> *Saenger*, 119 F.3d at 66.

<sup>68</sup> See *id.* (holding that Durkin's claims were time-barred because Durkin had constructive as well as actual notice of Saenger's adverse claim of sole copyright ownership). By equating the Copyright Act's protections to those afforded by federal patent law, the First Circuit reasoned that Saenger's registration effectively had placed the public on notice of its sole ownership over the copyright and facts stated in its copyright certificate. *Id.*

<sup>69</sup> See *infra* notes 70–76 and accompanying text.

<sup>70</sup> *Gaiman*, 360 F.3d at 655.

ty when disputes arise among competing claims of ownership.<sup>71</sup> The Third Circuit went on to determine that the claimant's assertion of co-ownership was timely.<sup>72</sup> In so doing, the *Gaiman* court concluded that the statute of limitations began tolling after the defendant denied that the claimant had copyrights over the work, and not at the time of defendant's publication.<sup>73</sup>

Similarly, in 2007, the Sixth Circuit in *Roger Miller Music, Inc. v. Sony/ATV Publishing, LLC* held that the plaintiffs' ownership claims were not time-barred.<sup>74</sup> The Sixth Circuit determined that although the defendant had filed an application for the renewal copyrights, such action did not meet the demand of a clear and express repudiation of plaintiffs' ownership.<sup>75</sup> Finally, in 2014 in *Brownstein v. Lindsay*, the Seventh Circuit followed the Third Circuit's ruling in *Gaiman*, and held that mere copyright registration did not amount to repudiation of co-authorship because co-authors are not required to constantly monitor the registry for adverse ownership claims.<sup>76</sup> The emerging majority among the circuit courts cast further doubt upon the First Circuit's decision and, in so doing, provided the Second Circuit with ample support to reach its ultimate determination in *Wilson*.<sup>77</sup>

### B. The Wilson Ruling

The Second Circuit's decision in *Wilson* further highlighted the split among the circuits by joining the approach of the Third, Sixth, and Seventh

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 656.

<sup>73</sup> *Id.* The Third Circuit ruled that a proper reading of § 205(c) instructs that recordation of a document with the Copyright Office merely puts others on constructive notice of the facts stated in the document identifying a registered work, and therefore does not impute upon co-authors an obligation to consult the register for adverse ownership claims. 17 U.S.C. § 205(c); *Gaiman*, 360 F.3d at 655.

<sup>74</sup> *Roger Miller Music*, 477 F.3d at 390.

<sup>75</sup> *Id.* The Sixth Circuit reached its decision by comparing the facts of the case to those of *Ritchie v. Williams*, 395 F.3d 283, 288 (6th Cir. 2005). *Roger Miller Music*, 477 F.3d at 390. In *Roger Miller Music*, the Sixth Circuit determined that although an audit letter was sent by plaintiff to defendant, it did not contain any clear assertions of ownership over the renewal copyrights, and consequently did not evidence a plain and explicit repudiation of ownership. 477 F.3d at 390. In *Ritchie*, however, because the letter sent by Kid Rock to defendants included his claims of sole ownership over songs he had written, the Sixth Circuit held that the letter amounted to a clear and explicit repudiation of defendants' ownership claim and commenced the running of the statute of limitations. 395 F.3d at 288.

<sup>76</sup> See *Brownstein*, 742 F.3d at 71. The Seventh Circuit noted the serious dangers in holding that registration alone is sufficient to place others on notice of an ownership claim. *Id.* at 72. The court reasoned that an opposing decision would fail to protect legitimate copyright owners and encourage individuals, challenging the authorship of others, to furtively register copyrights to start the statute of limitations tolling and then, if the author learned of the registration after three years' time, the author's claim of ownership would be void. *Id.*

<sup>77</sup> See *Wilson*, 908 F.3d at 844 (noting that several other circuit courts have deliberated on whether registration triggers accrual of a copyright ownership claim, with the majority reaching determinations that are inapposite to the First Circuit's holding in *Saenger*).

Circuits.<sup>78</sup> The Second Circuit adopted the holding that registration alone does not give rise to a copyright ownership claim.<sup>79</sup> Consistent with the circuit majority, the Second Circuit explicitly declined to follow the approach of the First Circuit in *Saenger*.<sup>80</sup>

The court determined that the First Circuit erroneously interpreted § 205(c) of the Copyright Act of 1976.<sup>81</sup> The Second Circuit reasoned that the First Circuit misinterpreted § 205(c) as a definitive rule, rather than reading the provision in light of its intended purpose—to establish priority among competing ownership claims and resolve potential disputes in the context of transfers of title.<sup>82</sup> The Second Circuit also focused its analysis on the plain meaning of § 205(c), holding that the statute’s language provided no support for the First Circuit’s determination that an ownership claim accrues upon registration alone.<sup>83</sup> The Second Circuit, moreover, ruled that the First Circuit’s reliance on

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<sup>78</sup> See 908 F.3d at 844 (joining the majority of circuits in holding that registration is not sufficient to place a reasonably attentive author on notice of an adverse claim of ownership); *Brownstein*, 742 F.3d at 71–72 (holding that ownership claims do not accrue upon mere registration); *Roger Miller Music*, 477 F.3d at 390 (holding that registration alone is not enough to repudiate an adverse claim of exclusive ownership); *Gaiman*, 360 F.3d at 654–55 (holding that registration was intended by the legislature to serve a notice function for authors).

<sup>79</sup> *Wilson*, 908 F.3d at 844.

<sup>80</sup> See *id.* (noting that the First Circuit’s decision in *Saenger* to hold defendant’s ownership claim as time-barred considered the fact that Defendant had both actual and constructive notice of plaintiff’s exclusive authorship claim, and was not exclusively reliant upon the fact that defendant had constructive notice as a result of Plaintiff’s registration).

<sup>81</sup> *Id.* at 845.

<sup>82</sup> *Id.* According to § 205(d), in the event that two conflicting transfers of title occur, the one first executed will succeed, under the condition that it is adequately recorded to provide constructive notice under subsection (c). 17 U.S.C. § 205(d); see *Gaiman*, 360 F.3d at 655 (determining that the intended function of § 205(c) is to serve as a means for establishing priority in case potential disputes arise over the rights of creditors); see also *Broad. Music, Inc. v. Hirsch*, 104 F.3d 1163, 1165–66 (9th Cir. 1997) (reasoning that § 205(c) should be utilized as a method for determining priority for security interests in the event of ownership transfers). Transfers of title allow copyright holders to convey their ownership rights in copyrighted works to third parties. U.S. COPYRIGHT OFFICE, *supra* note 19, at 3. Furthermore, the *Gaiman* court criticized the First Circuit’s finding that under § 205(c), registration alone establishes constructive notice, thereby clarifying that recordation with the Copyright Office only provides constructive notice of the specific facts contained within the recorded document. 17 U.S.C. § 205(c); *Gaiman*, 360 F.3d at 655.

<sup>83</sup> *Wilson*, 908 F.3d at 845 (holding that the language of § 205(c) does not expressly state that ownership claims are untimely if they are filed more than three years after a competing registration). In determining when accrual of an infringement claim arises, federal courts have adopted two opposing interpretations. Stefan Mentzer & Carmen Lo, *Second Circuit Adopts Plaintiff-Friendly “Discovery Rule” for Copyright Infringement Claims*, WHITE & CASE (May 20, 2014), <https://www.whitecase.com/publications/article/second-circuit-adopts-plaintiff-friendly-discovery-rule-copyright-infringement> [https://perma.cc/MCH8-QMEK]. The majority of courts apply the “discovery rule,” which states that a copyright infringement claim accrues when the copyright holder learns of the infringement, or should have learned of the infringement through due diligence. *Psihoyos v. John Wiley & Sons, Inc.*, 748 F.3d 120, 124–25 (2d Cir. 2014). A minority of courts employ the “injury rule,” which instructs that an infringement claim accrues once the infringement began. *Mentzer & Lo, supra*. This practice consequently obligates the copyright holder to file an infringement claim no later than three years

actual notice raised uncertainty as to whether the First Circuit would have reached the same conclusion had the defendant possessed only constructive notice.<sup>84</sup> Nevertheless, the Second Circuit concluded that even if the First Circuit's holding was firmly grounded in the position that registration alone qualifies as adequate constructive notice, such a holding misinterpreted the purpose of § 205 and was at odds with the statute's broader legislative intent of determining priority for transfers of title and security interests.<sup>85</sup>

### III. THE SECOND CIRCUIT'S PRACTICAL HOLDING

As innovation and intellectual property-based industries expand, so too does the need for concrete protections that secure authors' ownership rights in their creative works.<sup>86</sup> The U.S. Court of Appeals for the Second Circuit's 2018 decision in *Wilson v. Dynatone Publishing Co.* seeks to protect authors from unknowingly forfeiting their ownership rights to others filing illegitimate registrations.<sup>87</sup> The Second Circuit's ruling in *Wilson* rejects the argument that an ownership claim accrues upon registration of a copyright, triggering the tolling of the statute of limitations.<sup>88</sup> Section A of this Part details the manner in which the *Wilson* court's interpretation of the constructive notice provision of § 205(c) of the Copyright Act of 1976 adheres to legislative intent.<sup>89</sup> Section B explains why the First Circuit's opposing holding in *Saenger Organization v. Nationwide Insurance Licensing Associates, Inc.* should be cabined to its unique facts and not viewed as representative of a true circuit split with respect to the proper interpretation of § 205(c).<sup>90</sup> Section C discusses why the interpretation of § 205(c), as promoted by the *Wilson* decision, will prevent the discouragement of registered copyrights, and will protect authors from losing their ownership rights to illegitimate claims.<sup>91</sup>

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after the infringement commenced, irrespective of when the owner discovered the infringement. *Id.* In 2014, the Second Circuit ruled in *Psyhoyos* that the "discovery rule" was the appropriate method for tolling the statute of limitations in copyright infringement claims. 748 F.3d at 124–25. In so holding, the Second Circuit joined with three of the four other circuits that had considered this question. *See Mentzer & Lo, supra* (noting that eight other circuits, in addition to the Second Circuit, have since implemented the discovery rule).

<sup>84</sup> *Wilson*, 908 F.3d at 844–45.

<sup>85</sup> *Id.* at 845 & n.1.

<sup>86</sup> *See Copyright/Authors' Right: Frequently Asked Questions*, COPYRIGHTLINK, <https://www.copyrightlink.org/why-copyrights-matter.html> [<https://perma.cc/9D8Y-PWEE>] (stating that the purpose of copyrights is to secure the property rights of authors in their creative works, a concept that is more crucial now in the digital age than ever before).

<sup>87</sup> 908 F.3d 843, 845 (2d Cir. 2018) (reasoning that by allowing copyright ownership claims to accrue upon registration, authors would be responsible for constantly checking the records of the Copyright Office to ensure that there were no adverse claims of ownership against their works).

<sup>88</sup> *Id.*

<sup>89</sup> *See infra* notes 92–99 and accompanying text.

<sup>90</sup> 119 F.3d 55, 66 (1st Cir. 1997); *see infra* notes 100–105 and accompanying text.

<sup>91</sup> *See infra* notes 106–113 and accompanying text.

### A. The Second Circuit's Interpretation Promotes Legislative Intent

Use of the “plain meaning rule” in statutory construction is widely accepted as controlling among both state and federal courts.<sup>92</sup> The technique entails interpreting a statute in accordance with the ordinary, probable meaning of the language therein, unless such interpretation would result in a perverse outcome or one that cuts against legislative intent.<sup>93</sup> Section 205(c) provides that constructive notice attaches only when a registered document precisely identifies the work of authorship and its contents, such that others could discover the document through a reasonable title search.<sup>94</sup> Accordingly, this language reveals the congressional intent to mandate that, *prior* to the attachment of constructive notice, the public knows or should have known of the copyright through a reasonable title search of the Copyright Registry.<sup>95</sup> As a result of the legislature’s emphasis on the significance of knowledge in the context of copyright registration, many courts have found the “discovery rule” to be a rational method for determining when a claim of copyright ownership has accrued.<sup>96</sup>

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<sup>92</sup> See *United States v. Ron Pair Enters.*, 489 U.S. 235, 242 (1989) (citing *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)) (noting that in cases where the statute’s plain meaning is found to be unreasonable, the intent of the drafters will control); *Cherry v. State*, 959 So. 2d 702, 713 (Fla. 2007) (holding that application of the plain meaning rule is proper for interpreting statutes in state court); see also Steven Wisotsky, *How to Interpret Statutes—Or Not: Plain Meaning and Other Phantoms*, 10 J. APP. PRAC. & PROCESS 321, 325 (2009) (arguing that the plain meaning rule is just one of many methods used by advocates when interpreting a statute in a way that is both most useful to a client’s position and most aligned with the statute’s intention).

<sup>93</sup> Peter Jeremy Smith, *Commas, Constitutional Grammar, and the Straight-Face Test: What if Conan the Grammarian Were a Strict Textualist?*, 16 CONST. COMMENT. 7, 21, 22 n.38 (1999).

<sup>94</sup> 17 U.S.C. § 205(c) (2018). The U.S. Copyright Office provides a database of copyright records that allows individuals to search through registered copyrights for information concerning ownership, transfers of title, derivative works, and publication. Richard Stim, *Searching the Copyright Office and Library of Congress Records*, STAN. U. LIBRS., <https://fairuse.stanford.edu/overview/copyright-research/searching-records/> [<https://perma.cc/JY9Z-4VLL>]. Typically, users only need to have basic information, such as an author, title, or publisher, to conduct a sweeping search of the Copyright Office’s records. *Id.*

<sup>95</sup> See ROBERT BRAUNEIS, ABRAHAM L. KAMINSTEIN SCHOLAR IN RESIDENCE, U.S. COPYRIGHT OFFICE, *TRANSFORMING DOCUMENT RECORDATION AT THE UNITED STATES COPYRIGHT OFFICE* 7, 24, 51, 102, 106 (2014) (describing the legislative intent that codifies the importance of having knowledge of the work).

<sup>96</sup> See John E. Theuman, Annotation, *Construction and Application of 17 U.S.C.A. § 507(b), Requiring That Civil Copyright Action Be Commenced Within 3 Years After Claim Accrued*, 140 A.L.R. Fed. 641, at \*1–2 (2019) (examining federal court decisions that have applied § 507(b), which sets forth a limitations period of three years for civil copyright claims, and noting numerous instances in which courts followed the discovery rule). In contrast to the injury rule, the discovery rule highlights the importance of knowledge in the context of copyright registration and, in doing so, best exemplifies the drafter’s intent to use registration as a method for establishing priority among competing claims of ownership, instead of a notice function that commences the running of the statute of limitations. See *Chi. Bldg. Design, P.C. v. Mongolian House, Inc.*, 770 F.3d 610, 615–16 (7th Cir. 2014) (noting that the discovery rule is a judicial gloss). The concept of judicial gloss, in which a judge provides an official interpretation of a statute or other form of legislation, thus plays a significant role in establishing the legitimacy of the discovery rule. *Gloss*, BLACK’S LAW DICTIONARY, *supra* note 6.

The discovery rule instructs that copyright ownership claims can accrue only when the aggrieved party becomes aware or should have been aware of the injury that establishes the grounds for the claim.<sup>97</sup> The First Circuit's holding in *Saenger*, that registration alone was sufficient to trigger accrual, therefore runs afoul of congressional intent which requires sole reliance upon plaintiff's knowledge of the copyright injury.<sup>98</sup> Conversely, the Second Circuit's ruling in *Wilson* does align with the legislative intent of § 205(c)'s constructive notice provision by endorsing the discovery rule and rejecting the rationale that the statute of limitations starts to toll upon registration.<sup>99</sup>

### B. The Ruling of *Saenger* Should Be Cabined to Its Facts

At first glance, the First Circuit's holding in *Saenger* appears to stand in contrast to the decisions of its sister circuits, and subsequently *Wilson*, by asserting that copyright registration alone is sufficient to commence accrual of a registrant's ownership claim.<sup>100</sup> This presumption, however, is misconceived because the *Saenger* ruling should be cabined to its facts.<sup>101</sup> Although the First Circuit applied § 205(c) in a similar manner, the court concluded that the plaintiff's registration for sole ownership of co-authored copyrights had effectively placed the

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Moreover, the discovery rule is particularly relevant in circumstances similar to *Wilson*, wherein a copyright owner lacks knowledge of the third-party infringement and is then prevented from recovering despite having a viable claim due to time constraints. Lisa M. Bieniek, *Federal Statute of Limitations on Copyright Infringement*, CHRON, <https://smallbusiness.chron.com/federal-statute-limitations-copyright-infringement-64917.html> [<https://perma.cc/T5AE-GV65>].

<sup>97</sup> Theuman, *supra* note 96, at \*3a, \*6b.

<sup>98</sup> See *Saenger Org., Inc. v. Nationwide Ins. Licensing Assocs., Inc.*, 119 F.3d 55, 66 (1st Cir. 1997) (reasoning that § 205(c) is properly interpreted as providing that registration of a copyright places the entirety of society on constructive notice of exclusive ownership, irrespective of the putative claimant's individual knowledge of the copyright, and subsequently triggers the running of the statute of limitations for all adverse claims).

<sup>99</sup> See *Wilson*, 908 F.3d at 845 (holding that plaintiffs' copyright claims were not time-barred because defendants' registration of the copyrights in the musical composition and sound recording had not triggered the accrual of Plaintiffs' claims for exclusive ownership and started the tolling of the statute of limitations).

<sup>100</sup> Compare *Saenger*, 119 F.3d at 66 (holding that defendant's ownership claim was time-barred because his co-author previously registered as the sole owner of the work more than three years prior), with *Wilson*, 908 F.3d at 845 (determining that plaintiffs' suit was not untimely, despite occurring more than three years after defendants filed for ownership of the renewal term copyrights, because plaintiffs' adverse ownership claims had not accrued automatically upon defendants' registration with the Copyright Office); see also *Brownstein v. Lindsay*, 742 F.3d 55, 71–72 (3d Cir. 2014) (holding that if registration alone was enough to place authors on notice of adverse claims for ownership, then claimants would be incentivized to register spurious copyrights and potentially claim ownership over the works of others if such authors did not discover the registrations in time); *Gaiman v. McFarlane*, 360 F.3d 644, 654–55 (7th Cir. 2004) (noting that the legislative purpose of registration in the context of copyright law is not to serve as an automatic trigger for the running of the statute of limitations).

<sup>101</sup> See *infra* notes 102–105 and accompanying text.

defendant on constructive notice of the plaintiff's claim.<sup>102</sup> In reaching this decision, however, the *Saenger* court relied upon the fact that the defendant had actual notice of plaintiff's exclusive ownership claim due to his physical presence when plaintiff was preparing the copyright application, in addition to receiving constructive notice through plaintiff's registration of the copyrights.<sup>103</sup> Given the presence of both actual and constructive notice, it is not clear that the First Circuit would have reached a similar determination had the defendant possessed only constructive notice of plaintiff's copyright registration.<sup>104</sup> As a result, the import of the *Saenger* ruling should be limited to its unique facts and should not be perceived as evidence of a genuine split among the circuits with respect to the interpretation of § 205(c) and the legal effects of registering a copyright.<sup>105</sup>

### C. The Second Circuit's Interpretation of § 205(c) in *Wilson* Will Likely Encourage Copyright Registration and Protect Authors from Theft

The Second Circuit's ruling in *Wilson* evidences a promising step by preserving authors' ownership rights and may, in turn, prompt increased participation in U.S. copyright registration.<sup>106</sup> The *Wilson* decision delineates an interpretation of § 205(c) that aligns with the overarching goals of the Copyright Act of 1976 and its registration system, namely the encouragement of copyright registration and a softening of the 1909 Copyright Act's rigid compliance with copyright formalities.<sup>107</sup> Upon determining that registration alone does

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<sup>102</sup> *Saenger*, 119 F.3d at 66 (holding that registration of copyright ownership places the general public, including the putative author, on constructive notice of the registrant's adverse claim of sole authorship).

<sup>103</sup> *See id.* at 65–66 (noting that defendant had actual notice of plaintiff's claim for sole authorship of the copyrights because defendant had witnessed plaintiff prepare the registration and had also used materials that visibly credited plaintiff with exclusive ownership). Although it is unclear the extent to which the presence of actual notice, as compared to constructive notice, played a role in the First Circuit's decision, it is nevertheless noteworthy because the court considered both facts in reaching its decision. *Id.*; *see Wilson*, 908 F.3d at 846 (noting that the First Circuit considered facts that indicated that defendant had both actual and constructive notice of plaintiff's claim for exclusive ownership).

<sup>104</sup> *Wilson*, 908 F.3d at 845; *see Horror Inc. v. Miller*, 335 F. Supp. 3d 273, 321 n.24 (D. Conn. 2018) (noting that the First Circuit, in *Saenger*, is the only circuit to hold that registration of copyright ownership amounts to sufficient constructive notice to a putative author, and further qualifying the First Circuit's ruling by highlighting the fact that the author in *Saenger* received both actual and constructive notice of the copyright registration).

<sup>105</sup> *See Wilson*, 908 F.3d at 845 (reasoning that the decision in *Saenger* was likely induced by the presence of actual notice, thereby raising uncertainty as to whether the First Circuit would have come to the same conclusion had there been no actual notice present); *see also Gaiman*, 360 F.3d at 655 (noting the presence of both actual and constructive notice in *Saenger*).

<sup>106</sup> *See infra* notes 107–113 and accompanying text.

<sup>107</sup> *See Erin Hogan, Approval Versus Application: How to Interpret the Registration Requirement Under the Copyright Act of 1976*, 83 DENV. U. L. REV. 843, 846 (2006) (discussing how the revisions of the Copyright Act of 1976 restructured copyright law by eradicating copyright formalities and replacing them with incentive-based initiatives). The Copyright Act of 1976 dismantled several statutory formalities that functioned as preconditions to establishing copyrights and recognizing authors'

not trigger accrual of an ownership claim, thereby tolling the statute of limitations, the *Wilson* ruling avoids burdening authors with the duty of constantly investigating the Copyright Registry for adverse claims of ownership.<sup>108</sup> A holding to the contrary would likely further dissuade authors from utilizing the voluntary registration system altogether, and ultimately could lead them to unintentionally forfeit their legal rights.<sup>109</sup> Additionally, judicial opinions that equate mere registration with notice may make it easier for copyright thieves to fraudulently acquire the works of authors who might inadvertently forfeit ownership by failing to check the Copyright Registry on a regular basis.<sup>110</sup> Fi-

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rights. Compare Copyright Act of 1976, 17 U.S.C. §§ 101–1401 (lacking rigid formalities), with Act of Mar. 4, 1909, 35 Stat. 1075, 1078 (repealed by the Copyright Act of 1976) (containing copyright formalities, such as the requirement of a deposit of copies of a work upon publication and the mandate that failure or exclusion of notice might forfeit the copyright). Additionally, the 1976 Act created a completely voluntary, centralized system for federal copyright registration. Hogan, *supra*, at 846. Among the copyright formalities eliminated by these revisions was the removal of the requirement that authors register their works with the U.S. Copyright Office. Christopher Sprigman, *Reform(aliz)ing Copyright*, 57 STAN. L. REV. 485, 488 (2004). Thus, to maintain the prominence and strength of the public record, Congress created numerous registration incentives, such as requiring registration prior to filing suit for copyright infringement in a federal court, which were aimed at encouraging authors to register their works. John B. Koegel, *Bamboozlement: The Repeal of Copyright Registration Incentives*, 13 CARDOZO ARTS & ENT. L.J. 529, 533–34 (1995).

<sup>108</sup> See *Wilson*, 908 F.3d at 845 (rejecting the argument that registration is enough for an ownership claim to accrue and thus subjects authors to legitimate adverse claims for sole authorship).

<sup>109</sup> See *id.* (reasoning that an inapposite interpretation of § 205(c) would burden authors by requiring them to continuously monitor the Copyright Registry—an impossible and impractical obligation—as well as expose them to having their rights stolen by others filing surreptitious registrations). The 1976 Copyright Act’s abandonment of copyright formalities stemmed from a historical understanding that strict adherence to registration was an insurmountable hardship for authors. Dev S. Gangjee, *Copyright Formalities: A Return to Registration?*, in WHAT IF WE COULD REIMAGINE COPYRIGHT? 213, 228 (Rebecca Giblin & Kimberlee Weatherall eds., 2017); see Joshua O. Mausner, *Copyright Orphan Works: A Multi-Pronged Solution to Solve a Harmful Market Inefficiency*, 55 J. COPYRIGHT SOC’Y U.S.A. 517, 536–37 (2008) (noting that mandatory registration has drawbacks, namely disincentivizing authors to license their intellectual property). Today, the Library of Congress maintains a public record of registered copyrights, which helps to arm authors with proof of the existence of their works and dates of creation, while also publicizing information to dissuade potential infringers. Koegel, *supra* note 107, at 534, 539. In spite of these benefits, the U.S. Copyright Office is fraught with ongoing problems, including understaffing and outdated technology, and the registry itself is substantially expensive and oftentimes riddled with incomplete information. Maria A. Pallante, *Meyer Lecture: The Next Generation Copyright Office: What It Means and Why It Matters*, 61 J. COPYRIGHT SOC’Y U.S.A. 213, 218–19, 223 (2014). Coupled with the 1976 Act’s introduction of voluntary registration, these additional hindrances make it careless for courts to interpret § 205(c) in a manner that requires constant monitoring of the Copyright Registry. See *Wilson*, 908 F.3d at 845 (refusing to impose upon authors the obligation to constantly investigate the Copyright Registry).

<sup>110</sup> See *Wilson*, 908 F.3d at 845 (reasoning that if mere registration were to trigger accrual of copyright ownership claims, authors would be more vulnerable to theft because potentially false claims would be automatically validated if legitimate authors failed to discover them). Copyright owners are advised to be vigilant in monitoring infringement to avoid unintentionally forfeiting their ownership rights or missing an opportunity to bring forth legal action. Mallory King, *Copyright Statute of Limitations: Don’t Sleep on Your Rights*, TRAVERSE LEGAL (Mar. 31, 2017), <https://www.traverselegal.com/blog/copyright-statute-of-limitations-dont-sleep-on-your-rights/> [<https://perma.cc/>

nally, the *Wilson* holding aligns with the central principles of the Copyright Act of 1976, emphasizing that noncompliance with copyright formalities such as failing to check the Copyright Registry, should come only at the cost of recovering statutory damages, never at the loss of an author's rights.<sup>111</sup> The *Wilson* ruling, in accordance with the majority of the Second Circuit's sister circuits, furthers the fundamental goals of copyright law.<sup>112</sup> By endorsing greater protections for authors and their works and encouraging use of the copyright registration system, *Wilson* allows for greater dissemination of artistic and creative works amongst the public.<sup>113</sup>

## CONCLUSION

The United States Court of Appeals for the Second Circuit held in *Wilson v. Dynatone Publishing Co.* that copyright registration alone does not provide sufficient notice of an adverse claim to the reasonably diligent author. The *Wilson* court correctly interpreted the constructive notice provision of § 205(c) of the Copyright Act, noting the omission of any statutory language related to accrual of ownership claims upon registration. Additionally, the Second Circuit

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B36W-6E5H]. In an effort to prevent such theft, particularly in the context of works of co-authorship, courts have held that a policy of plain and express repudiation of ownership is an appropriate standard for determining the time at which ownership accrues, as opposed to registration. *See Brownstein*, 742 F.3d at 71–72 (holding that registration alone is not sufficient to repudiate an adverse claim of exclusive ownership); *Roger Miller Music v. Sony/ATV Publ'g, LLC*, 477 F.3d 383, 390 (6th Cir. 2007) (holding that ownership claims accrue upon plain and express repudiation of competing ownership claim).

<sup>111</sup> *See Wilson*, 908 F.3d at 844 (holding that plaintiffs' suit is not time-barred because § 205(c) does not instruct that registration alone commences accrual of a copyright ownership claim, for such an interpretation would unreasonably deny plaintiffs' their right to bring suit); Mausner, *supra* note 109, at 536–37 (criticizing former mandatory registration requirements that resulted in loss of copyright protection for mere failure to comply with formalities); *see also* SUBCOMM. ON PATENTS, TRADEMARKS, & COPYRIGHTS OF THE S. COMM. ON THE JUDICIARY, 86TH CONG., STUDIES 17–19: COPYRIGHT LAW REVISION 79 (Comm. Print. 1960) (detailing studies submitted to the U.S. Copyright Office, including one copyright expert's view that even authors who never register their works should not be at risk of losing their copyrights). In accordance with international changes in copyright law, the United States removed all statutory formalities that potentially could infringe upon authors' copyright interests, thereby departing from previous doctrine that adhering to procedural formalities was a prerequisite to the rights and benefits possessed by the copyright owner. Hogan, *supra* note 107, at 847; *see* Robert A. Gorman, *An Overview of the Copyright Act of 1976*, 126 U. PA. L. REV. 856, 869–71 (1978) (discussing the transition from the 1909 Act's dictate that noncompliance with formalities deprived authors of their copyright protections, to the 1976 Act's position that such noncompliance was not incurable).

<sup>112</sup> *See Hogan*, *supra* note 107, at 846 (describing the revisions and policies underlying the 1976 Copyright Act as strategies for encouraging copyright registration, including the guarantee of legal rights and the establishment of less stringent procedural hurdles).

<sup>113</sup> *See* Bart A. Starr, *Fixing Copyright's Three-Year Limitations Clock: The Accrual of an Infringement Claim Under 17 U.S.C. § 507(b)*, 78 WASH. U. L.Q. 623, 627–28 (2000) (noting that copyright protections aim to nurture the creative endeavors of authors while striking a balance with the larger societal benefits derived from a public record of creative works of authorship).

rightly adhered to the statute's legislative purpose of establishing priority among competing claims of sole authorship. Additionally, the First Circuit's inapposite holding in *Saenger Organization v. Nationwide Insurance Licensing Associates, Inc.* should be confined to its unique factual circumstances because the putative author in *Saenger* had both actual and constructive notice that his co-author had registered a copyright claiming exclusive ownership. Lastly, burdening authors with the responsibility of constantly investigating the Copyright Office registry will discourage authors from utilizing the registration system, and subsequently will lead them to unknowingly deny themselves of the critical legal protections that accompany registration. The Second Circuit's holding in *Wilson* strengthens the ability of authors to protect themselves from baseless claims of adverse ownership and furthers the intentions of the Copyright Act of 1976 by validating that failure to comply with copyright formalities may require authors to forfeit statutory damages, but will not require them to lose their rights.

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