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# TESLAW

## THE STATE BAR OF TEXAS ENTERTAINMENT & SPORTS LAW SECTION

March 9, 2019

### TESLAW Tidbits:

*A Little Taste of TESLAW*

March 2019

[Issue No. 31](#)

Happy New Year TESLAW Members!

We are starting 2019 off right with our annual networking mixer from 4 p.m. – 6 p.m, Thursday, March 14 at The Iron Cactus in Austin. If you'll be in town for the SXSW Festival, I invite you to attend and network with fellow entertainment attorneys and other industry professionals.

Another way to start 2019 off right: Get published in our eNewsletter! We are looking for authors for a Case Note, Practice Document or Attorney Spotlight. This provides great exposure for your practice! Please send submissions to our Editor in Chief, Erin Rodgers at [erin@roddersselvera.com](mailto:erin@roddersselvera.com).

Thank you for being part of our Texas Community of Entertainment Attorneys. Enjoy this edition of our quarterly Newsletter!

Sincerely,  
Victoria Helling, Chair  
[Entertainment and Sports Law Section](#)

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### Events Calendar

**9th Annual TESLAW Spring Mixer**  
**Thursday, March 14, 2019**  
**4 -6 p.m.**  
**The Iron Cactus**  
**Austin (6th & Trinity streets)**

TESLAW welcomes all members and prospective members to join us in the mezzanine area for free appetizers and drinks. This will be an excellent opportunity to network with fellow entertainment attorneys, the creative community, and other entertainment business professionals during spring festival season in Austin. As an added bonus, TESLAW's "Rock Star Attorney" and "Because Everyone's a Screenwriter" merchandise will be available for sale.

We hope that you will join us and help us meet our goal of keeping Texas lawyers at the

forefront of the entertainment industry!

Here is also info on a CLE program that might be of interest to you: <https://www.sxsw.com/conference/cle/>

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### Spotlight on Stephanie K. Hay



"Created to serve and living by purpose"

Attorney Stephanie Hay is on a mission to educate and empower creative entrepreneurs while providing them with exceptional legal services. She is the owner and principal attorney of The Hay Law Group, P.L.L.C., where she has the pleasure of representing entertainers, independent records labels, music publishers and film production studios, as well as social media influencers and small businesses. As a part of her mission to educate creatives in the world of entertainment, she started #QuickQuestionFriday, a weekly Instagram segment answering common entertainment law questions. Stephanie has also been featured on the Music Business Dreams Podcast and Houston's Amazing 102.5FM Breaking Texas radio show to discuss issues related to independent music creators.

In addition to her full-time entertainment law practice, attorney Hay is an adjunct professor in the Music Business department at Houston Community College. There, she aims to have a positive impact on the minds of future industry entertainers and professionals. Through classes like Survey of the Music Business, Legal Aspects of the Entertainment Industry and Music Publishing, Stephanie is helping students build a solid business foundation from which they can launch successful careers. As chair of the Music Business Advisory Board, she collaborates with the top most influential music business professionals in Houston to bring about professional growth and opportunities to the Houston Community College students, with the goal of keeping and moving the entertainment industry forward in Houston.

On top of her professional work, Stephanie's focus on community collaboration has led to several volunteer opportunities and community leadership roles. She serves as a

volunteer attorney with Texas Accountants and Lawyers for the Arts and as a board member of LueWish, a nonprofit aimed at helping women who have been diagnosed with life altering illnesses.

Stephanie earned her J.D., *Cum Laude*, in 2012 from Thurgood Marshall School of Law at Texas Southern University in Houston, and her B.A. in Communication in 2009 from Howard University in Washington, D.C. She is barred to practice in both Texas and Georgia. Her greatest influencers and role models are her grandparents and parents who instilled in her strong ethical and morals values and the importance of family. They taught her that with persistence, determination and hard work she can achieve great things. She stays motivated by a quote of her grandmother who said “Don’t look back, don’t look down, always hold your head up and keep moving forward.” In her free time, she likes to travel, spend time with friends and spoil her god-children, Kyle and Jackson. Stephanie credits her success first to her God and then to the tremendous support of her family.

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## **U.S. Supreme Court Ruling Affects Copyright Registration and Litigation Strategy** **By Adam Mandell and Christian Andreacchi**

### **Registration is NOT required for federal copyright protection, but . . .**

On March 4, 2019, The U.S. Supreme Court decided that registration is necessary before suing for copyright infringement. This is a departure from prior rulings in certain lower courts that allowed lawsuits to be filed with only a filed application. While there is an exception to the new registration rule through which an infringement suit may be filed prior to registration, such treatment is reserved for “limited circumstances” in which a copyright owner will distribute a type of work that is vulnerable to predistribution infringement (e.g. movies and musical compositions).

### **Why is this significant for copyright owners?**

In most cases, there is little doubt that works are subject to registration, like a computer program, song, picture or book. Nevertheless, copyright applications can take anywhere between seven (7) to ten (10) months to register. Waiting for this long may not be an option, since infringements hurt businesses now and lawsuits must be filed in a timely manner to maximize remedies and comply with statutes of limitation and the like.

Applicants can pay for expedited processing at a cost of \$800 on top of the application fee. If your copyrightable works are being infringed and you do not have a registration, it may be best to apply for special handling to more quickly register the works at issue. A request for special handling can be made either contemporaneously with the filing of the application, or after the application is filed.

### **File copyright applications early and often!**

The sooner you file, the sooner you register. Earlier applications also increase the likelihood that you will be able to recover statutory damages and attorney’s fees.

Worried about the cost of copyright applications? In some cases, you may be able to include multiple works in one application. For example, the Copyright Office offers “group registration” for photographs. Even if group registration is not an option, you can develop a copyright registration program to cost-effectively protect your valuable

intellectual property.

### **What will courts do now that registration is required?**

If you have already filed your lawsuit without a registration, you face a difficult decision: Do you withdraw the case and re-file after obtaining registration? Do you request special handling of your pending application? The best action to take may depend what the lower courts will do in the wake of the recent Supreme Court decision. Some possibilities include:

- 1) Dismiss cases filed without registrations;
- 2) Grandfather in cases that still have merely pending applications; or
- 3) Give more time for copyright owners to acquire registrations.

In previous cases where the court has ruled that registration is required, dismissal without prejudice to file again has been the most common outcome. This requires copyright owners to re-file their cases and start over.

*Adam Mandell is a director with the law firm of Millen, White, Zelano & Branigan, P.C.. If you have any questions about this, please contact him at 703-465-5358.*

*Christian Andreacchi is a 3L at The George Washington University Law School, and a Law Clerk at Millen, White, Zelano & Branigan, P.C.*

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### **Practice Document**

The practice document is a sample [Certificate of Formation](#) for an arts nonprofit organization, which is provided by Erin Rodgers. This can be used in lieu of the default online form for the creation of a nonprofit organization, and includes all necessary language required by the IRS.

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*Send questions, comments, and submissions for TESLAW Tidbits*

*to Erin Rodgers at [erin@roddersselvera.com](mailto:erin@roddersselvera.com).*

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