

COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES

On June 1, 2017 the U.S. Copyright Office released a revised draft of the *Compendium of U.S. Copyright Office Practices, Third Edition*. This is the first update to the *Compendium* since it was first released on December 22, 2014.

The Office has prepared a complete list of the sections that were added, amended, revised, or removed in this release, available on the Office's website. In addition, the Office has prepared this set of release notes, which provides additional information about significant or substantive changes made to the *Compendium*, organized by section as listed below.

CHAPTER 200

SECTION(S)	REVISION(S)
<p>204.2: Filing Fee</p> <p>If the applicant fails to submit the correct filing fee, a member of the Office's staff will notify the applicant in writing. If the applicant submits the correct filing fee within the specified time frame, the effective date of registration will be changed to reflect the date that the funds were received. If the Office does not receive the correct filing fee within the specified time frame, it will close the file. If the applicant wishes to resubmit the claim, the applicant must file a new application, new deposit copy(ies), and the correct filing fee. The effective date of registration for a new claim will be based on the date that the new submission is received by the Office.</p>	<p>Clarify the consequences of failing to submit the correct filing fee or deposit.</p>
<p>204.3: Deposit Copy(ies)</p> <p>If the applicant fails to submit a complete copy of the work, fails to submit sufficient identifying material, and/or fails to obtain special relief from the deposit requirements, the registration specialist will communicate with the applicant. If the Office does not receive the correct deposit within the specified time frame, the specialist will close the file. If the applicant wishes to resubmit the claim, the applicant must file a new application, new deposit copy(ies), and the correct filing fee. The effective date of registration for a new claim will be based on the date that the new submission is received by the Office.</p>	

205: Privacy

The Office does not request, but sometimes receives, additional PII, such as driver's license, social security, and credit card numbers. This type of information is unnecessary for copyright registration and is referred to in the Office's regulations as "extraneous PII." *See* 37 C.F.R. § 201.2(f).

Applicants should not provide extraneous PII in an application. To protect the privacy of applicants, the Office may remove this type of information from an application during the examination process on its own initiative. If extraneous PII is included within the Office's public records, an author or claimant may request removal of this information in accordance with the Office's regulations. There is no fee for this service. *See id.*

Additionally, applicants should not provide any other type of private or confidential information in the application that is not required for registration, because it may also be included in the Office's online and offline public records.

Modification of the information in the Office's online public record (but not its offline public record) is available where the author or claimant submits a written request to remove or replace non-personally identifiable information for certain types of Requested PII (such as replacing a home address with a P.O. Box number), and pays the appropriate fee for this service.

208: Withdrawing an Application

An applicant may submit a request to withdraw a pending application at any time before the U.S. Copyright Office has issued a certificate of registration or has refused to register the claim. The request should be made in writing and it should explain why the applicant is seeking to withdraw the claim.

The request should be addressed to the "Associate Register of Copyrights and Director of Registration Policy & Practice." The applicant may email the request to the registration specialist who has been assigned to the claim. Alternatively, the applicant may mail the request to the following address.

210: When Does a Registration Expire?

Registrations and renewal registrations issued under the current statute (the 1976 Act) expire when the work enters the public domain in the

Reflects current policies and practices for treatment of personally identifiable information.

Clarifies the procedure to withdraw a pending claim.

Clarifies when registrations issued under the 1909 Act and 1976 will expire.

United States. As discussed in Section 203, a copyrighted work enters the public domain in this country when the copyright term for that work has expired under U.S. law.

Registrations issued under the prior statute (the 1909 Act) expire at the end of the first twenty-eight years of the copyright term, and if the copyright is renewed, the renewal registration expires at the end of the renewal term.

Chapter 300

SECTION

REVISION

313.4(E): Measuring and Computing Device

The U.S. Copyright Office cannot register devices that are designed for computing or measuring or other useful articles in and of themselves. *See* 37 C.F.R. § 202.1(d). Examples of such devices include, without limitation, height and weight charts, tape measures and rulers, calculators, scales, and thermometers.

Although measuring and computing devices are not copyrightable, the Office may register pictorial, graphic, or sculptural features that have been applied to a device, but only if those features are separable from the article. For example, a drawing that appears on the surface of a height and weight chart or a fanciful graphic that appears on the surface of a thermometer may be registered if the pictorial or graphic feature can be perceived as a two-dimensional “work of art separate from the useful article” and would qualify as a protectable pictorial or graphic work “if it were imagined separately from the useful article into which it is incorporated.” *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1007 (2017).

Incorporates citation to
Star Athletica, LLC
v. Varsity Brands, Inc., 137
S. Ct. 1002, 1007 (2017).

Chapter 500

SECTION

REVISION

503.5: Does the Work Contain Unclaimable Material?

Provides importance of disclaiming previously published material.

The U.S. Copyright Office has a longstanding practice of precluding previously published or previously registered material from a claim to copyright, even if the author of the work is the author of the previously published or registered material, and even if the claimant owns all of the rights in that material. *See, e.g.*, U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 108.04 (2d ed. 1984).

As a general rule, applicants should disclaim previously registered material, because the regulations expressly state that “only one copyright registration can be made for the same version of a particular work.” *See* 37 C.F.R. § 202.3(b)(11). **NOTE:** There are three limited exceptions to this rule, which are discussed in Section 510.1 through 510.3 below.

The Office requires applicants to disclaim previously published material for several reasons:

- *Legal remedies.*

Disclaiming previously published material ensures that proper information is provided to the courts for the assessment of statutory damages and the availability of attorney’s fees. A copyright owner may be entitled to claim statutory damages and attorney’s fees in an infringement lawsuit, provided that the work was registered before the infringement began or within three months after the first publication of that work. *See* 17 U.S.C. § 412. Excluding previously published material clarifies that a copyright owner may or may not be entitled to these remedies if that material was published more than three months before the work was registered with the Office. For example, if an applicant intends to register a derivative version of a published computer program, all previously published versions of that program must be excluded from the claim, even if those versions were created by the same author.

- *Legal defenses.*

The applicability of certain exceptions and limitations set forth in Sections 107 through 122 of the Copyright Act may vary depending on whether the work is published or unpublished.

- *Statutory presumptions.*

A certificate of registration constitutes *prima facie* evidence of the validity of the copyright and the facts stated in the certificate, provided that the work is registered with the Office before or within five years after the work was first published. Excluding previously published material clarifies that a copyright owner may or may not be entitled to this presumption if that material was published more than five years before the work was registered with the Office. *See* 17 U.S.C. § 410(c).

- *Satisfying the relevant deposit requirement.*

The deposit requirements for published and unpublished works are different. For example, works published in the United States generally are subject to the “best edition” requirement, but unpublished works are not. Disclaiming previously published material allows an applicant to register a work, even if it contains material that otherwise would be subject to a different deposit requirement.

- *Encouraging early registration and promoting administrative efficiency.*

Allowing applicants to register a work without disclaiming previously published material would encourage applicants to submit large numbers of published works with a single application and a single fee, which would reduce the quality and accuracy of the registration record for those works. In addition, it would encourage applicants to delay registration rather than seeking registration in a timely manner, and it could cause other legal problems mentioned above.

- *Calculating the length of the copyright term.*

The term of copyright often begins on the date that a work is first published. If so, the year of publication may determine the length of the copyright term. That is the case for works published before January 1, 1978. It is the case for works created before January 1, 1978 and first published between January 1, 1978 and December 31, 2002. Likewise, publication may determine the length of the copyright term for a work made for hire, an anonymous work or a pseudonymous work. *See* 17 U.S.C. §§ 302(c), 303(a), 405(a). Obtaining information about the date and nation of first publication may be necessary to determine if a particular work is eligible for copyright protection in the United States. Publication information also may be necessary if the work is subject to the copyright notice

requirement for works published in this country before March 1, 1989.

Excluding previously published material makes it clear that the registration does not extend the copyright in that material. It also makes it clear that a registration does not cover any portion of the work that may have fallen into the public domain due to the expiration of the copyright term or the failure to comply with applicable formalities.

504: The Scope of a Registration for a Work of Original Authorship

The Office does not examine any authorship that is not claimed or any authorship that has been disclaimed in the application, and the Office cannot examine any authorship that does not appear in the deposit copy(ies).

Clarifies that the Office does not examine disclaimed material.

509.1: What Is a Collective Work?

An applicant may register a collective work together with the separate and independent works contained therein (i) if the copyright in the collective work and the component works are owned by the same claimant, and (ii) if the component works have not been previously published, previously registered, and are not in the public domain.

Clarifies the requirements for registering a collective work together with the individual works contained therein.

511: One Work Per Registration

As a general rule, a registration covers one individual work, and an applicant should prepare a separate application, filing fee, and deposit for each work that is submitted for registration. *See* 17 U.S.C. §§ 408(a), 409 (authorizing the U.S. Copyright Office to register a single “work”).

Provides additional statutory authority and includes collective work as exception to one work per application rule.

Although the Office generally allows only one work per application, there are some limited exceptions to this rule. In the following cases, it may be possible to register multiple works with one application, one filing fee, and one set of deposit copy(ies):

- Registering a collective work together with the separate and independent works contained therein (i) if the copyright in the collective work and the component works are owned by the same

claimant, and (ii) if the component works have not been previously published, previously registered, and are not in the public domain. This option is discussed in Section 509.1 and Chapter 600, Sections 610.4, 613.8, 618.7, 620.8, and 621.8(D).

Chapter 600

SECTION	REVISION
<p>602.4(E): Duplicate Claims</p> <p>As a general rule, the U.S. Copyright Office will not knowingly issue multiple registrations for the same claim, because this would confuse the public record.</p> <p>If the Office discovers that an applicant submitted a claim that is an exact duplicate of another claim, the registration specialist may communicate with the applicant or may refuse to register the duplicate claim. The status of the prior claim is irrelevant to this determination. The Office will not knowingly register a duplicate claim, regardless of whether the prior claim is pending or whether it has been registered or refused. Likewise, if the Office refused registration and if the applicant submitted a request for reconsideration, the Office will not knowingly register a duplicate claim, regardless of whether the request is pending or whether the refusal has been upheld on substantive or procedural grounds.</p> <p>NOTE: There are three limited exceptions to this rule, which are discussed in Chapter 500, Sections 510.1 through 510.3.</p>	<p>Clarifies the Office's practices for handling duplicate claims.</p>
<p>602.5: General Practices for Processing Information Provided in a Paper Application</p> <p>To the extent possible, the information provided in a paper application will be scanned and uploaded into the U.S. Copyright Office's electronic registration system. In some cases, it may not be possible or practical to enter all of the information into the registration record. In all cases, the Office will retain a physical copy or an electronic copy of the paper form.</p>	<p>Clarifies Office retention policy of paper applications.</p>
<p>602.9: General Policy Regarding Social Security Numbers, Driver's License Numbers, Credit Card Numbers, and Bank Account Numbers</p> <p>The applicant should not provide any private or confidential information in the application that is not required for registration. The information that is provided in the application may be included in the certificate of registration and the online public record.</p> <p>When submitting an online application through the electronic</p>	<p>Provides current policies and practices for treatment of personally identifiable information.</p>

registration system, the applicant may pay the filing fee by providing a credit card number or bank account number on the Online Payment screen. The applicant should not provide this type of information in any other portion of the application.

If the registration specialist discovers a social security number, driver's license number, credit card number, or bank account number in the application, he or she will remove that information from the record. If the number is not discovered during the examination process and subsequently appears in the certificate of registration or the online public record, the author, the claimant, or their respective representatives may submit a written request to remove this information from the registration record. *See* 37 C.F.R. § 201.2(f).

For information concerning this procedure and a general discussion of privacy issues, see Chapter 200, Section 205.

605.2: Communicating with the U.S. Copyright Office

An applicant may communicate with the U.S. Copyright Office by any of the means described in Sections 605.2(A) through 605.2(C).

When completing an online application, the applicant must ensure that his or her email address or other contact information is entered correctly. When completing a paper application, the applicant must ensure that this information is both correct and legible. In all cases, the applicant must keep this information up-to-date while the claim is pending. If there are any changes, the applicant should notify the Office by contacting the registration specialist assigned to the claim, or by contacting the Public Information Office by phone or by email using the form provided on the Office's website.

If the applicant provides an email address in the application, the Office will use that address as the primary means for his or her communication, even if the applicant also provides a telephone number, fax number, or other contact information. The Office cannot verify email addresses provided by applicants, and registration specialists do not receive an error message when they attempt to send an email to an incorrect or invalid address. Therefore, applicants must ensure that their email address have been entered correctly. If an applicant provides an inaccurate or invalid address, the file may be closed for failure to reply to a communication from the registration specialist. When a file is closed, the filing fee will not be refunded and the deposit copy(ies) will not be returned.

Clarify current practice for email correspondence. Of note: the deadline for responding to emails has changed from 20 days to 45 calendar days.

605.3: Communicating from the U.S. Copyright Office

The registration specialist assigned to the claim will communicate with the applicant if he or she has questions regarding the registration materials.

The specialist may communicate by email, phone, fax, or letter. However, if the applicant provided an email address in the application, the specialist will use that address as the primary means for his or her communication.

In all cases, the specialist will provide the applicant with appropriate contact information for responding to his or her communication.

605.3(F): Written Communications

The registration specialist may communicate with an applicant in writing, particularly if the issue is not appropriate for resolution in a telephone conversation.

Written communications will be sent to the person specified in the Correspondent field/space of the application. A communication may be sent by email, fax, or letter, but if the applicant provided an email address in the application, the specialist will use that address as the primary means for his or her communications.

The specialist will send his or her communication to the email address, fax number, or other address provided in the Correspondent field/space of the application. When completing this portion of the online application, the applicant must enter this information correctly. When completing a paper application, the applicant must ensure that this information is both correct and legible. In all cases, the applicant must keep this information up-to-date while the claim is pending. If there are any changes, the applicant should notify the Office using the procedure specified in Section 605.2.

605.3(A): The U.S. Copyright Office's Email Addresses

When communicating with an applicant by email, the U.S. Copyright Office will use one or more of the email addresses listed below.

Once an application has been filed, the applicant should routinely monitor his or her "in box" for messages sent from these addresses.

When a message arrives in the applicant's in box, it may or may not be accompanied by the label "Copyright Office." The applicant should ensure that the "spam filter" for his or her account does not block messages sent from the email addresses listed below. Likewise, the applicant should monitor his or her "spam," "junk," and/or "trash"

folders for messages sent from these addresses.

605.6(B): Email

As a general rule, the deadline for responding to an email from a registration specialist is forty-five calendar days. This deadline is calculated from the date the email was sent to the person specified in the Correspondent field/space of the application (or other designated party, if any).

605.6(B): Email

605.6(C): Email Requests for Deposit Copy(ies)

605.6(D): Letters

If the specialist does not receive a response to his or her email, the specialist will not follow-up with the applicant unless there is a good reason for doing so.

605.7: File Closed Following a Failure to Respond to Written Communication from the U.S. Copyright Office

When the U.S. Copyright Office communicates with an applicant in writing, the applicant must respond before the deadlines specified in Section 605.6, depending upon the nature of the communication. The Office may consider and grant a reasonable request for an extension of time if the request is received in writing prior to the original deadline.

As a general rule, the registration specialist will not follow-up with the applicant if the applicant fails to respond in a timely manner. And as a general rule, the specialist will close the file as a “no reply” if the Office does not receive a response to an email or other written communication within the time allowed.

If the applicant wishes to proceed with a claim after the file has been closed, the applicant must reapply for registration by submitting a new application, filing fee, and deposit copy(ies). The effective date of registration will be based on the date that the new submission is received by the Office.

When an applicant fails to respond to a written communication, the Office will not inform the applicant that the file has been closed. Likewise, the Office will not refund the filing fee and will not return the deposit copy(ies).

605.8: Procedure for Reopening a Closed Application

If the applicant failed to respond to a written communication from the

Clarify the Office's current policies for files closed following a failure to respond to correspondence.

U.S. Copyright Office in a timely manner, and if the failure was caused by extraordinary circumstances, the Office may, in appropriate cases, grant a request to reopen the file, provided that (i) the request is made in writing and within a reasonable amount of time after the original deadline; (ii) a showing of good cause is made; and (iii) the Office has the deposit copy(ies) in its possession, or replacement deposit copy(ies) are submitted with a written declaration confirming that the replacement is identical to the deposit copy(ies) that were submitted with the application, including the copyright notice (if appropriate).

By way of example, the Office will not reopen a closed file if the applicant provided an incorrect email address or out-of-date contact information in the application. Likewise, the Office will not reopen a closed file if the applicant failed to monitor his or her “in box” or “spam,” “junk,” or “trash” folders for messages from the Office, or failed to ensure that the “spam filter” for his or her account does not block messages sent from the email addresses listed in Section 605.3(A).

A request to reopen should be submitted to the Public Information Office using the form provided on the Office’s website. An appropriate official from the Registration Program will determine whether the Office will reopen the file and will notify the applicant in writing of the Office’s decision. The Office will not consider multiple requests to reopen a claim that was closed for failure to respond in a timely manner.

609.1: Registration Process Overview

When completing an online application, the applicant must provide a “yes” or “no” answer to three questions concerning the work(s) that the applicant intends to register. Based on the responses provided, the electronic registration system will direct the applicant to the Single Application or the Standard Application, which are discussed in more detail below. The questions include:

- Yes or No: Are you registering one work (one song, one poem, one illustration, etc.)? Check “NO” to this question if the work is one of the following: a collection of works (such as: book of poetry, CD of songs and photographs), a collective work, website or database because these works do not qualify for the single form.
- Yes or No: Are you the only author and owner of the work (or the agent of the individual author who is also the only owner)? Check “NO” to this question if the work was created by multiple people, is a “work made for hire,” or if any part of the work was created by or is owned by another person.

Reflects changes made to the user interface for the electronic registration system and clarifies practices regarding the Single Application.

- Yes or No: Does the work you are sending contain material created only by this author? Check “NO” to this question if the copy includes content or contributions by anyone else, even if the claim is limited to only the contribution by this author or the material has been licensed, permissioned or transferred to the claimant.

Each of these questions is discussed in Sections 609.1(A) through 609.1(C) below.

NOTE: The Single Application is merely an administrative classification that is used for purposes of registration, and does not affect the subject matter of copyright or the exclusive rights in a work. The fact that a work may be registered with the Single Application does not necessarily mean that it constitutes a single work for other purposes under the copyright law.

If the applicant attempts to use the Single Application to register a work that does not satisfy the criteria listed in the questions above, the registration specialist will communicate with the applicant, which will delay the examination of the application. If the Office determines that the work is not eligible for the Single Application, the applicant will be required to pay an additional filing fee, and the Office will assign a later effective date of registration to the claim.

609.1(A): Question 1: Are You Registering One Work?

If the applicant intends to register one work, he or she may be eligible to use the Single Application, provided that the work satisfies the other eligibility requirements for this application. If so, the applicant should check the box marked “yes” that appears next to the question, “Are you registering one work?”

Provides new examples and illustrations for answering Question 1 in the electronic registration system.

The following are representative examples of works that may qualify as one work for purposes of the Single Application:

Literary Works:

- One poem.
- One short story.
- One essay.

Visual Art Works:

- One photograph.

- One fabric design.
- One sculpture.
- One piece of jewelry (not a collection or set of multiple jewelry pieces).
- One illustration (not multiple illustrations on the same page).
- One technical drawing of one object.

Dramatic Works, Audiovisual Works, and Motion Pictures

- One stage play.
- One screenplay.
- One song containing music and lyrics.
 - The applicant may submit sheet music to register the music and lyrics of one song if the same individual is the author/owner of both the music and lyrics of the song.
- One sound recording.
 - The applicant may register a sound recording if the same individual is the author/owner of the sound recording, and if that individual is the only performer featured in the recording.
- In limited circumstances, a musical work and a sound recording may both be eligible for registration with the Single Application if the following requirements have been met:
- One song consisting of music, lyrics, and sound recording.
 - The applicant must submit a recording of the song, the same individual must be the author/owner of the music, lyrics, and the sound recording, and that individual must be the only performer featured in the recording.
- One musical arrangement and one sound

recording.

- The applicant must submit a recording of the musical arrangement, the same individual must be the author/owner of both the arrangement and the sound recording, and that individual must be the only performer featured in the recording.

If the applicant intends to register more than one work, the applicant should check the box marked “no.” The following are representative examples of works that do *not* qualify as a one work for purposes of the Single Application:

- Two poems.
- Two articles.
- Two or more illustrations on a single page.
- Two or more drawings on separate pages.
- A portfolio of photographs.
- A collection or set containing multiple pieces of jewelry.
- Two or more songs.
- A song and liner notes.
- Two or more sound recordings.
- Different versions of a sound recording.
- More than one version of a script or treatment.
- A collective work, such as an album, periodical, newspaper, magazine, newsletter, journal, anthology, book of poems or short stories, or any other work that contains a number of separate and independent works.
- Multiple contributions to a collective work.
- An unpublished collection. (For a definition and discussion of unpublished collections, see Chapter 1100, Section 1106.)

- Two or more works physically bundled together by the claimant for distribution to the public as a single, integrated unit and first published in that integrated unit, such as a box of greeting cards, a book published with a CD-ROM, a box set of music CDs, or a board game with printed instructions, playing pieces, and a game board. (For a definition and discussion of the unit of publication option, see Chapter 1100, Section 1107.)
- Two or more works that may be registered using a group registration option. (For a discussion of the procedure for obtaining a group registration, see Chapter 1100.)
- A multi-part work, such as a series of books or photographs.
- A website.

Likewise, the applicant should check the box marked “no” if the applicant intends to register the following type of work:

- An architectural work.
- A choreographic work.
- A database.

609.1(B): Question 2: Are You the Only Author and Owner of the Work?

The applicant may be eligible to use the Single Application if the work was created by one individual, if that individual is the sole owner of the copyright in that work, and if the other eligibility requirements have been met. If so, the applicant should check the box marked “yes” that appears next to the question, “Are you the only author and owner of the work?”

The following are representative examples of works created and owned by one person that may be eligible for the Single Application:

- One essay written and solely owned by Simone Stucker.
- One children’s book containing text and illustrations created and solely owned by Franklin

Provides illustrations for answering Question 2 in the electronic new examples and registration system.

Hooker.

- One photograph taken and solely owned by Douglas Brewer.
- One sound recording containing music written, recorded, and solely owned by Felicia Driver.
 - **NOTE:** Felicia must be the author/owner of both the music and the sound recording, and she must be the only performer featured in the recording.
- One song containing music and lyrics written and solely owned by Edward Boxer.
 - **NOTE:** If the applicant submits a recording of the song, Edward must be the author/owner of both the song and the sound recording, and he must be the only performer featured in the recording.

If the work was created by two or more individuals or if the work was created as a joint work, the applicant should check the box marked “no.” (For a definition and discussion of joint works, see Chapter 500, Section 505.) The following are representative examples of works created by more than one author that are not eligible for the Single Application:

- One comic book containing text written by one individual and illustrations drawn by another individual.
- One screenplay co-written by two individuals.
- One song containing music written by one individual and lyrics written by another individual.
- Any sound recording created by two or more performers or musicians.
- Any motion picture or other audiovisual work that includes directing, editing, writing, or other authorship by more than one person.

Likewise, the applicant should check the “no” box if the work was created by or on behalf of a company, an organization, or any other legal entity or if the work was created as a work made for hire. (For a definition and discussion of works made for hire, see Chapter 500,

Section 506.)

The following are representative examples of works that are not eligible for the Single Application because they do not qualify as a work created by an individual author:

- One piece of jewelry created by Phoebe Snow Designs, Inc.
- One photograph taken by an employee of Sue Saint Marie Studios.
- One song specially ordered or commissioned by Smooth Ride Music, LLC for use as a contribution to a collective work.
- One videogame created by the employees of the Chessie Katz game development company.

The applicant should check the box marked “no” if the copyright or any of the exclusive rights in the work are owned or co-owned by two or more individuals. The applicant should check “no” if the copyright is owned by a company, an organization, or other legal entity. The applicant should check “no” if the author transferred the copyright or any of the exclusive rights to a third party, either by written agreement or by operation of law. Likewise, the applicant should check “no” if the author is deceased. (For a discussion of copyright ownership and transfers, see Sections 619 and 620.)

The following are representative examples of works that are not eligible for the Single Application, because they are owned or co-owned by more than one party, or because the works are not solely owned by the author:

- One stage play co-owned by the composer and the librettist of the work.
- One song containing music written by one individual and lyrics written by another individual.
- One song written by a composer who transferred the copyright to his music publishing company.
- One sound recording containing music written by one individual and performed by another individual.
- One sound recording co-owned by the artists and

musicians who performed the work.

- One article written by a freelance writer who assigned the copyright to her closely held company.
- One photograph taken by a photographer who granted the exclusive right of reproduction to a stock photography service and therefore no longer owns all of the rights in the work.
- One treatment written by a screenwriter who gave a motion picture studio the exclusive right to produce his work as a motion picture and therefore no longer owns all of the rights in the work.

609.1(C): Question 3: Does the Work You Are Sending Contain Material Created Only by This Author?

An applicant may be eligible for the Single Application if the work was created by one individual, if that individual is the sole author of the material that appears in the work, and if the other eligibility requirements have been met. If so, the applicant should check the box marked “yes” that appears next to the question, “Does the work you are sending contain material created only by this author?”

The following are representative examples of works that may be eligible for the Single Application because they were created solely by one individual:

- One travel book containing text, illustrations, and photographs created by Christopher Wren.
- One song containing music and lyrics created by Danielle Running Horse.
 - **NOTE:** If the applicant submits a recording of the song, Danielle must be the author/owner of both the song and the sound recording, and she must be the only performer featured in the recording.
- A musical work and sound recording created by Alicia Fox.
 - **NOTE:** Alicia must be the sole author/owner of both the sound recording

Provides new examples and illustrations for answering Question 3 in the electronic registration system.

and the musical work, and she must be the only performer featured in the recording.

- One “nature video” containing script, direction, cinematography, and narration by Jonathan Bass.
- A translation by a single author of a work that is in the public domain.

If the work contains material created by two or more authors, the applicant should check the box marked “no,” even if the applicant does not intend to name the other authors in the application and does not intend to claim their contributions in the application.

The following are representative examples of works containing material created by two or more authors that are not eligible for the Single Application:

- A novel written by one individual with an introduction and an afterword written by two other individuals.
- A translation of a work by a different author of a work that is not in the public domain.
- An album containing music, lyrics, liner notes, and sound recordings created by three different individuals.
- A sound recording containing a song written by one individual that was performed by a different individual.
- A musical work created by one individual embodied in a sound recording created by a different author.
- A motion picture that includes directing, editing, writing, or other authorship by more than person.

609.2(A): Online Application

When completing an online application the applicant should select the class of work that is most appropriate for the work that the applicant intends to register and the authorship that appears in the work. These classes are listed under a drop down menu marked Type of Work. Once a selection has been made, the system will provide a brief description and representative examples of the types of works that fall within each

Reflects changes made to the user interface in the electronic registration system and clarifies eligibility requirements for registering a serial.

class.

Once the applicant has selected the most appropriate classification for the work that will be submitted, the applicant must check the box that appears next to the following statement: “Click the box to confirm you have read the above description and selected the most appropriate type of work.” If the applicant fails to check this box the application will not be accepted by the electronic registration system.

Once a selection has been made, the Type of Work field cannot be changed. If the applicant makes a selection that is not appropriate for the work that is submitted, the registration specialist may communicate with the applicant, change the type of work field without communicating with the applicant, or refuse to register the work if the application does not state a sufficient basis for registration.

- Select *Literary Work* if the work is a nondramatic literary work, such as fiction, nonfiction, poetry, a textbook, a reference work, a directory, a catalog, advertising copy, a compilation of information, a computer program, a textual work made available online, or a database. This category may be used to register an individual article or other textual contribution to a serial publication, or an entire issue of a serial that has not been published before.
- Select *Sounding Recording* if the work contains sound recording authorship *and* if the applicant intends to register that element of the work (even if the work also contains other types of authorship, such as music or lyrics). Likewise, the applicant should select this option if the applicant intends to register a sound recording and the underlying works embodied in that recording, provided that the claimant owns all of the rights in those works. If the applicant does not intend to register sound recording authorship, the applicant should *not* select this option (even if the work happens to contain one or more sound recordings). Likewise, the applicant should not select this option if the applicant intends to register the sounds accompanying a motion picture or other audiovisual work.
- Select *Single Serial Issue* if the applicant intends to register a single issue of a serial publication. This category may be used to register a published serial, but may not be used to register an unpublished serial. A serial is a work that is issued in successive parts bearing numerical or chronological designations and is intended to be continued indefinitely. Examples include a single issue of a newspaper, magazine, bulletin, newsletter, annual, journal, and other similar works. Examples of works that do not fall within this category include episodes of a television series, a series of online videos, a collection of musical works, a group of manuscripts, an assortment of poetry, or a set of advertising copies.

The online application for a single serial issue may be used to register the issue as a whole. It also may be used to register the individual contributions that were first published within that issue, provided that (i) the claimant owns the copyright in the individual contributions and the issue as a whole, and (ii) if the contributions have not been previously published or previously registered. In no case may the claimant register a contribution that is in the public domain.

To register an article, photograph, or other contribution that is not owned by the claimant for the issue as a whole, or to register a contribution that was previously published in another medium, the applicant should prepare a separate application for each contribution, and should select the appropriate form of authorship for that work. For example, if the contribution is an article, the applicant should select Literary Work; if the contribution is a photograph, the applicant should select Work of the Visual Arts.

NOTE: It is also possible to register a group of serials or a group of contributions to a periodical with one application, one filing fee, and deposit copy(ies). For a discussion of these group registration options, see Chapter 1100, Sections 1109 and 1115.

609.2(B): Paper Applications

Identifying the type of work that will be submitted to the U.S. Copyright Office is the first step in completing a paper application. The Office has prescribed five basic classes of works that may be registered with a paper application, and each of these classes has its own paper form. The applicant should select the form that is most appropriate for the work that the applicant intends to register and the authorship that appears in the work.

- Use *Form TX* if the work is a nondramatic literary work, such as fiction, nonfiction, poetry, a textbook, a reference work, a directory, a catalog, advertising copy, a compilation of information, a computer program, a textual work made available online, or a database. This form may be used to register an individual article or other textual contribution to a serial publication, or an entire issue of a serial that has not been published before.
- Use *Form SE* if the applicant intends to register a single issue of a serial publication (*e.g.*, a magazine, journal, etc.). This form may be used to register a published serial, but may not be used to register an unpublished serial. For a definition of the term “serial” and representative examples of such works, see Section 609.2(A).

Clarifies eligibility requirements for using Form SE.

Form SE may be used to register the issue as a whole. It also may be used to register the individual contributions that were first published within that issue, provided that (i) the claimant owns the copyright in the individual contributions and the issue as a whole, and (ii) if the contributions have not been previously published or previously registered. In no case may the claimant register a contribution that is in the public domain.

To register an article, photograph, or other contribution that is not owned by the claimant for the issue as a whole, or to register a contribution that was previously published in another medium, the applicant should prepare a separate application for each contribution using the appropriate form for that type of work. For example, if the contribution is an article, the applicant should use Form TX; if the contribution is an illustration, the applicant should use Form VA.

613.8: Identifying the Author of a Collective Work or a Contribution to a Collective Work

Clarifies the authorship in a collective work and its contributions.

A contribution to a collective work is a separate and independent work that has been included within a collective work, such as an article that has been included within a periodical or an essay that has been included within an anthology. A collective work contains two different types of authorship:

- The authorship in the collective work as a whole, which involves selecting, coordinating, and/or arranging the various contributions within the collective work as a whole; and
- The authorship in the separate and independent works that have been included in the collective work.

An applicant may register a collective work together with the separate and independent works contained therein if the collective work and the contributions were created by the same author and/or if the copyright in the collective work and the contributions are owned by the copyright claimant.

If the applicant intends to register the copyright in the collective work as a whole, the applicant should identify the individual(s) or entity that selected, coordinated, and/or arranged the contributions and assembled them into a collective whole.

613.10(E): Name of Author Omitted: Works Created by a Single Author

Clarifies current practice for handling omission of the author or claimant in a paper application.

If the work was created by a single author, the applicant should identify the author of that work (unless the applicant has checked the box indicating that the work is an anonymous or pseudonymous work). For guidance in identifying the author of the work and completing the fields for an anonymous or pseudonymous work, see Sections 613.9, 615.1(B), and 615.2(B).

If the applicant fails to identify the author in an online application, the application will not be accepted by the U.S. Copyright Office’s electronic registration system.

If the applicant fails to identify the author in a paper application, the registration specialist will communicate with the applicant.

619.13(T): Name of Claimant Omitted

If the applicant fails to provide the claimant’s name and address in an online application, the application will not be accepted by the U.S. Copyright Office’s electronic registration system.

If the applicant fails to provide the claimant’s name and address in a paper application, the registration specialist will communicate with the applicant.

615.1(B): Completing the Application: Anonymous Works

Clarifies current practice for handling anonymous works.

If the applicant provides the author’s name in the application, the registration specialist will assume that the applicant intended to reveal the author’s identity. Therefore, the specialist will not ask the applicant to check the box marked “Anonymous,” even if the work satisfies the statutory definition for an anonymous work.

Example:

- Joseph Cline is the author of a literary work titled *Prime Color*. Cline’s name did not appear on the first edition of the work. Instead, the first edition stated that the work was written “By Anonymous.” The U.S. Copyright Office will register the first edition as an anonymous work if the applicant identifies the author as “Anonymous” and/or checks the Anonymous box. In the alternative, the Office would accept an

application that names Joseph Cline as the author (regardless of whether the Anonymous box has or has not been checked).

615.2(A): What Is a Pseudonymous Work?

Clarifies current practice for handling pseudonymous works.

If the applicant would like to include the name of a performing group or the name of the author's d.b.a. in the registration record, that name should be provided in the Note to Copyright Office field or in a cover letter. The registration specialist will add the name of the author's performing group to the record as an index term. The specialist will include the name of the author's d.b.a. on the certificate of registration and the online public record, and will add that name as an index term if it is likely that members of the public may use the d.b.a. to search for the author's works.

Example:

- An application is submitted to register a musical work. The authors are named on the application as Jerobi Manor, Brett Chargon, and Alaina Kraft. The pseudonymous box has not been checked. In the Note to Copyright Office field the applicant states: "Jerobi, Brett, and Alaina are doing business under the name Three Times the Charm." The registration specialist will add the name "Three Times the Charm" to the certificate and the online public record with an annotation, such as: "Regarding author information: dba added from Note to C.O." In addition, the specialist may add that name to the record as an index term.

615.2(B): Completing the Application: Pseudonymous Works

If the applicant provides the author's real name in the application, (even though it does not appear anywhere on the deposit copy(ies), the registration specialist will assume that the applicant intended to reveal the author's identity. In this situation, the specialist will not ask the applicant to check the box marked "Pseudonymous," even if the work satisfies the statutory definition for a pseudonymous work.

Examples:

- Steven Kingsley is the author of a literary work titled *Running Woman*, which was published by New American Library. Kingsley's name did not appear on this edition of the work. Instead, the

author was identified as “Rick Buchman.” The applicant names Rick Buchman as the author and claimant, and checks the Pseudonymous box. The Office will register the work as a pseudonymous work. In the alternative, the Office would accept an application that named the author as “Steven Kingsley, whose pseudonym is Rick Buchman” (regardless of whether the Pseudonymous box has or has not been checked).

- An application is submitted for a poster containing artwork and text. The applicant named “Deacon of Chocolate City” as the author of the work and checked the Pseudonymous box. Dennis Rickman is named as the copyright claimant. Because the applicant did not provide a transfer statement, the registration specialist will assume that Dennis Rickman is the author of this work, that he created this work under his pseudonym, and that the applicant intended to reveal the author’s identity in the registration record.

615.3: Privacy Concerns

619.12: Completing the Application: Name of Claimant

622.1: Rights and Permissions Information

Once a certificate of registration has been issued, the Office cannot remove the [author’s/claimant’s] name from the registration record or replace it with a pseudonym. The author, claimant, or their respective representatives may submit a written request to ask the Office to substitute the author’s current legal name for the name shown in the online public record (but not the offline public record). To do so, the requesting party must submit an affidavit together with a court order granting the legal name change, and must pay the appropriate fee for this service. *See* 37 C.F.R. § 201.2(e)(1), (2)(iii), (3).

622.2: Correspondent

622.4: Mailing Address for the Certificate of Registration

The name and address provided in the application will not appear in the online public record, but it will appear on the certificate of registration and the offline registration record. The Office will not remove this information from the offline registration record once a registration has been issued, and may make this information available to the public upon request. *See generally* Removal of Personally Identifiable Information

Provide current policies and practices for treatment of personally identifiable information.

From Registration Records, 82 Fed. Reg. 9004 (Feb. 2, 2017).

622.5: Privacy Concerns – Removed.

618.4(C): Recommended Terminology for Asserting a Claim to Copyright

Clarifies current policies regarding terms used to assert a claim in an application.

This Section provides a definition and discussion of the various terms that may be used to assert a claim to copyright in the Author Created field or the Nature of Authorship space.

- *Editing.* The term editing may be used to describe the authorship in a motion picture or other audiovisual work. Specifically, it may be used to describe the creative contribution to a joint work, a work made for hire, or a derivative work of the individual or entity who selects the takes and shots from a motion picture or other audiovisual work, and splices them into sequences to achieve continuity and a desired dramatic, comedic, and/or thematic effect. For a discussion of the specific practices and procedures for registering motion pictures and other audiovisual works, see Chapter 800, Section 807 and 808.

For information concerning editorial revisions in a literary work, see Chapter 700, Section 709.4. For editing involving a musical work, see Chapter 800, Section 802.6(I). For digital editing in photography, see Chapter 900, Section 909.3.

- *Production.* This term may be used to describe the authorship in a motion picture or other audiovisual work. A motion picture generally embodies the contributions of many persons whose efforts are brought together to make a cinematographic work of authorship. The term production may be used to describe the contribution of an individual or entity that plays a direct, creative role in planning, organizing, and controlling the various stages of the creation of a motion picture. For a discussion of the specific practices and procedures for registering motion pictures and other audiovisual works, see Chapter 800, Sections 807 and 808.
- *2-D artwork, 2-dimensional artwork.* This term may be used to describe the authorship in a pictorial or graphic work. For example, it may be used to describe two-dimensional artwork appearing in paintings, drawings, collages, stencils, patterns, posters, calendars, games, commercial prints, labels, logos, packaging, and greeting cards. It may be used to describe unanimated drawings and graphics that appear on a website or computer screen. (If the drawings or graphics are animated, the applicant should use the term audiovisual work to describe the work.) The term 2-D artwork may be used to

describe two-dimensional drawings or artwork that create the illusion of three-dimensions through the use of shading and perspective. The term 2-D artwork also may be used to describe two-dimensional artwork that has been applied to a useful article, such as designs reproduced on wallpaper, carpeting, floor tile, wrapping paper, clothing, textiles, lace, and other fabrics, or two-dimensional artwork that has been applied to a useful article, such as a chair, car, plate, or vase, provided that the artwork is separable from the useful article. For a discussion of the practices and procedures for registering specific types of pictorial and graphic works, see Chapter 900, Sections 908 through 922. For a discussion of the practices and procedures for registering separable artwork that has been incorporated into a useful article, see Chapter 900, Section 924.

- *Sculpture, 3-dimensional sculpture.* These terms may be used to describe the authorship in a work of fine art. Likewise, they may be used to describe the authorship in toys, dolls, scale models, and other three-dimensional sculptural works. They also may be used to describe three-dimensional artwork that has been incorporated into a useful article, provided that the sculpture can be separated from the useful article. For a discussion of the specific practices and procedures for registering a separable sculpture that has been incorporated into a useful article, see Chapter 900, Section 924.

618.6: Compilations

A compilation may contain several distinct forms of authorship. There may be *selection* authorship involved in choosing the material or data that will be included in the compilation. There may be *coordination* authorship involved in classifying, categorizing, ordering, or grouping the material or data. In addition, there may be *arrangement* authorship involved in determining the placement or arrangement of the material or data within the compilation as a whole. A registration for a compilation may cover each type of authorship if that authorship is sufficiently creative, but it does not cover any preexisting material or data that appears within the compilation unless that material (i) is copyrightable, (ii) is owned by the copyright claimant, and (iii) is specifically claimed in the application. Likewise, it does not cover any preexisting material or data that has been previously published or previously registered, or any material that is in the public domain. 17 U.S.C. § 103(b).

As discussed above, a claim to copyright in a compilation may cover the preexisting material or data that appears in that work, provided it (i) is copyrightable, (ii) is owned by the copyright claimant, (iii) is specifically claimed in the application, and (iv) has not been previously published, previously registered. In no case, may the claimant register

Clarifies requirements for registering a compilation together with its underlying copyrightable material.

material or data that is in the public domain. 17 U.S.C. §103(b).

618.7: Collective Works

A collective work “is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.” 17 U.S.C. § 101.

To register a claim in a collective work and/or a contribution to a collective work, the applicant should identify the authorship that the applicant intends to register. By definition, a collective work contains two types of authorship:

- The compilation authorship in the collective work, which typically involves selecting, coordinating, and/or arranging a number of separate and independent works and assembling them into a collective whole; and
- The authorship in the separate and independent works included within the collective work, such as an article that appears in a periodical issue, a poem that appears in an anthology, or a sound recording that appears on an album.

An applicant may register a collective work together with the separate and independent works contained therein (i) if the copyright in the contributions and the collective work are owned by the same claimant, and (ii) if the component works have not been previously published, previously registered, and are not in the public domain.

618.7(A): Asserting a Claim to Copyright in a Collective Work

As a general rule, if the applicant states “collective work” the registration specialist may register the claim. The specialist may register the claim if the applicant states “compilation,” provided that the selection, coordination, and/or arrangement authorship that the applicant intends to register is clearly evident from the deposit copy(ies). The specialist also may register the claim if the applicant states “compilation of _____” and specifies the type of contributions that appear within the collective work.

618.7(B)(1): Registering a Contribution without Registering the Collective Work as a Whole

Clarify requirements for registering a collective work, as well as its underlying contributions.

NOTE: If the claimant owns the copyright in the individual contribution(s) that appear within a collective work, but does not own the copyright in the collective work as a whole, the applicant generally must submit a separate application for each contribution. In some cases, it may be possible to register multiple contributions using the group option for contributions to periodicals or the group option for published photographs. For information concerning these options, see Chapter 1100, Sections 1115 and 1116.

618.8(B)(2): Registering a Collective Work and a Contribution to a Collective Work

If the claimant owns the copyright in the collective work as a whole, and owns the copyright in one or more of the contributions that appear within that work, the applicant may register those contributions together with the collective work – but only if those contributions have not been previously published or previously registered. In no case may the claimant register a contribution that is

If the author of the collective work created the contributions that appear within the collective work, the applicant may register the contributions together with the collective work by providing the following information in the online application:

- The applicant should provide the title of the collective work as the “Title of work being registered.” For guidance on completing this portion of the Titles screen, see Section 610.2.
- The applicant should assert a claim in the collective work as a whole using the procedure described in Section 618.7(A).
- The applicant should assert a claim in the contribution(s) by checking one or more of the boxes in the Author Created field that accurately describe the contribution(s) that the applicant intends to register. For guidance on completing this portion of the application, see Section 618.4(A).

The applicant may provide the titles of the contributions that were created by the author of the collective work, although this is optional. Specifically, the applicant may provide this information in the Contents Title field. For guidance on completing this portion of the Titles screen, see Section 610.4. Alternatively, the applicant may identify the contributions that were created by the author of the collective work by providing the titles of those works in the New Material Included field and by disclaiming “all other contributions” in the Material Excluded field. Alternatively, the applicant may identify the contributions that are not owned by the claimant (if any) by providing the titles of those works in the Material Excluded field and by stating “all other contributions” in

the New Material Included field. For guidance on completing this portion of the application, see Section 621.8(D).

If the claimant owns the copyright in the collective work and the individual contributions – but is not the author of those contributions – the applicant may register the contributions together with the collective work by providing the following information in the online application:

- The applicant should provide the title of the collective work as the “Title of work being registered.” For guidance on completing the Titles screen, see Section 610.2.
- The applicant should assert a claim in the collective work as a whole using the procedure described in Section 618.7(A).
- On the Authors screen the applicant may provide the name of the individual or entity that created the contribution in the field marked Individual Author or Organization, although this is optional. For guidance on completing this portion of the application, see Section 613.9.
- On the Claimants screen the applicant should provide an appropriate transfer statement in the Transfer field that explains how the claimant obtained the copyright in the contribution, such as “by written agreement with each contributor,” “*by written agreement(s) with individual contributors not named on the application/certificate,*” or the like. For additional guidance on providing a transfer statement, see Section 620.9.
- The applicant may provide the titles of the contributions that have been transferred to the copyright claimant, although this is optional. Specifically, the applicant may provide this information on the Authors screen in the field marked Author Created/Other. Currently, the total amount of text that may be provided in the Author Created/Other field is limited to 100 characters. If more space is required, the applicant may provide additional information in the Note to Copyright Office field. Alternatively, the applicant may identify the contributions that are not owned by the copyright claimant by disclaiming those titles in the Material Excluded field, and by stating “all other contributions” in the New Material Included field. For guidance on completing this portion of the application, see Section 621.8(D).

If the work contains contributions created by other authors, the applicant should repeat the process set forth in the bullets immediately above for each contribution that the applicant intends to register.

To register a collective work and/or a contribution to a collective work with a paper application, the applicant should identify the authorship

that the applicant intends to register in space 2 under the heading Nature of Authorship.

For representative examples that demonstrate how to complete the Author Created field and the Nature of Authorship space in an application to register a contribution to a collective work, see Section 618.7(D).

618.7(C): Asserting a Claim to Copyright in a Serial Publication

Clarifies requirements for registering a serial, as well as its underlying contributions.

This Section discusses the procedure for asserting a claim to copyright in a single issue of a serial publication. A serial publication is a work that is published or intended to be published at regular or stated intervals on an indefinite basis where each issue is numbered or dated consecutively, such as a newspaper, magazine, or other periodical. 37 C.F.R. § 202.3(b)(1)(v).

If the applicant intends to register the issue as a whole, the applicant should check the “compilation” box that appears on the Authors screen in the Author Created field. (When completing a paper application, the applicant should state “compilation” on space 2.)

This term may be used to register the authorship involved in selecting, coordinating, and/or arranging the content that appears within the issue. The registration will cover each type of authorship if it is sufficiently creative. But the registration will not cover the individual contributions that appear within the issue unless those contributions (i) are copyrightable, and (ii) are owned by the copyright claimant. Likewise, the registration will not cover any contributions that have been previously published or previously registered, or any contributions that are in the public domain. 17 U.S.C. § 103(b).

If the claimant owns the copyright in the issue as a whole, and owns the copyright in one or more of the contribution(s) that were first published in that issue, the claimant may register those contributions together with the issue as a whole. To do so, the applicant must check the boxes marked “Compilation” and “Contribution(s) to a collective work (*e.g.*, an article).” (When completing a paper application, the applicant should state “compilation and contributions to a collective work” on space 2.)

For representative examples that demonstrate how to complete the Author Created field and the Nature of Authorship space in an application to register a single serial issue together with the contributions that appear within that issue, see Section 618.7(D).

If the applicant checks the box marked “Contribution(s) to a collective work” in the online application, but fails to check the box marked

“Compilation,” the registration specialist will communicate with the applicant to determine if the claimant owns the copyright in both the contributions and the issue as a whole. (Similarly, the specialist will communicate if the applicant asserts a claim in “text,” “artwork,” “photographs,” or “contributions to a collective work” on Form SE, but fails to assert a claim in the “compilation.”) If the claimant owns the copyright in the individual contribution(s), but does not own the copyright in the issue as a whole, the specialist generally will instruct the applicant to submit a separate application for each contribution.

NOTE: In some cases, it may be possible to register multiple contributions using the group option for contributions to periodicals or published photographs. For information concerning these options, and the group registration options for serials, daily newspapers, daily newsletters, see Chapter 1100, Sections 1109, 1110, 1111, 1115, and 1116.

618.8(A)(9): Research

If the applicant uses the term “research” in the application, and if the applicant appears to be asserting a claim in the facts that appear in the work or the effort involved in collecting those facts, the specialist (i) may communicate with the applicant, (ii) may add an annotation stating that “research” (*i.e.*, the underlying facts, concepts, and ideas) is not copyrightable and identifying the copyrightable material that appears in the work, or (iii) may refuse to register the claim.

Clarifies current
annotation practice for
a claim in “research.”

Examples:

- An application is submitted for a website containing old photographs with text explaining the significance of each image. The applicant states that Betsy Liu “researched photos and wrote explanation” and that Linda Chan “researched photos and provided information.” The registration specialist will communicate with the applicant. Betsy apparently selected the photographs and wrote the text, but it is unclear whether Linda contributed any copyrightable authorship. The specialist will ask the applicant for permission to replace Betsy’s authorship statement with a more appropriate term, such as “text and compilation of photographs.” If Linda contributed only facts or research, the specialist will ask for permission to remove all of Linda’s information from the registration record.

618.8(C): Uncopyrightable Material Claimed in the Author Created Field or the Nature of Authorship Space

The material described in the Author Created field or the Nature of Authorship space must be copyrightable. If the applicant asserts a claim in uncopyrightable material, the U.S. Copyright Office may ask for permission to remove that element from the application, or in appropriate cases, may add an annotation to clarify that the registration does not cover that element. If the claim appears to be limited to the uncopyrightable material, the Office will refuse to register the claim.

Clarify current practice for handling uncopyrightable material claimed in the application.

618.8(C)(3): Claim in Uncopyrightable Material: Deposit Copy(ies) Contain Copyrightable Authorship

If the deposit copy(ies) contain copyrightable material, and if the applicant asserts a claim in material that is uncopyrightable, the registration specialist may register the claim with an annotation indicating that the registration does not cover that material. Alternatively, the specialist may communicate with the applicant, which will delay the examination of the claim.

Examples:

- *Claim in uncopyrightable material under 37 C.F.R. § 202.1.*
An application is submitted for an album titled *The Hottest Hits from Tabasco & Tamale*. The application states that Chuck Tabasco created the “sound recording” and Janet Tamale created the “name of performing group.” A statement on the deposit copy reads, “C. Tabasco: production; J. Tamale: vocals,” which indicates that Chuck and Janet contributed copyrightable authorship to this work. The registration specialist may ask the applicant for permission to remove the claim in the name of the performing group. Alternatively, the specialist may register the claim with an annotation, such as: “Name of performing group not copyrightable. 37 CFR 202.1. Copy states ‘C. Tabasco: production; J. Tamale: vocals.’”

619.13(J): Trust or Estate Named as Claimant

The Office will accept an application that names a trust or estate as the copyright claimant if that entity is a legal or beneficial owner of the copyright.

Clarifies current policies for naming a trust or estate as claimant.

If an individual and a trust or estate are named together in the Name of Claimant field/space, the application may be accepted if it seems likely that the individual is a beneficiary or duly authorized agent of the trust or estate. For example, the registration specialist will accept an application that identifies an individual with one or more of the following terms:

- Administrator
- Administrator on behalf of _____
- Beneficiary
- Executor
- Fiduciary
- Personal Representative
- Trustee

620.5: Joint Works

Likewise, no transfer statement is required if all the joint authors are named as co-authors of the work, and if one or more – but less than all – of those joint authors are named as the claimant.

Example:

- An online application is submitted for a children’s book that appears to be a joint work. Lucinda and Vanessa Perez are named as co-authors of this work. Lucinda is named as the sole copyright claimant, but no transfer statement has been provided. The registration specialist may register the claim without communicating with the applicant.

By contrast, if the applicant names a third party as the claimant for a joint work, the applicant should provide a transfer statement that explains how that party acquired the copyright in that work. If the claimant obtained the copyright from two or more joint authors using a different means for each transfer, the applicant should provide an appropriate transfer statement for each author.

Clarifies when a transfer statement is required.

620.9: Transfer by Written Agreement

Clarifies acceptable transfer statements by removing “by assignment from the United States government.”

621.2: Unclaimable Material That Need Not Be Excluded from the Application

Generally, applicants do not need to disclaim attributions, citations, or direct quotations, because in most cases it is obvious that this material was not created by the author of the work and is not owned by the copyright claimant. This may be indicated by the quotations marks themselves, or by blocks of text that have been indented and set aside from the rest of the text. It also may be indicated by attributions, citations, or other bibliographic references in the text, captions, footnotes, endnotes, bibliography, or the like.

Clarify that attributions, citations, or direct quotations need not be disclaimed in the application.

Examples:

- An application is submitted for a musical work titled *Ask Not What Your Country Can Do For You*. The chorus contains the phrase, “Ask what you can do for your country,” which was taken from President Kennedy’s inaugural address. The New Material Included/Material Excluded fields may be left blank because the copyright law does not protect short phrases or works of the United States Government. *See* 17 U.S.C. § 105; 37 C.F.R. §202.1(a).
- An online application is submitted for an essay. The applicant asserts a claim in “text.” In the Note to Copyright Office field, the applicant explains that he “read many newspapers and books in researching this topic.” The New Material Included / Material Excluded fields may be left blank. The underlying facts, ideas, or concepts derived from the author’s research are not copyrightable, and thus, are automatically excluded from the claim. *See* 17 U.S.C. § 102(b).
- An online application is submitted for a doctoral dissertation that contains extensive quotes and bibliographic references. The applicant asserts a claim in “text,” but the Limitation of Claim screen is blank. The registration specialist may register the claim.

621.8(E): Examples for Identifying Unclaimable Material and the New Material That the Applicant Intends to Register

621.9(D)(5): Claim Clarified by Information Provided in the Deposit Copy(ies)

621.9(D)(5): Claim Clarified by Information Provided in the Deposit Copy(ies)

Clarifies current annotation practices.

If the applicant fails to complete the New Material Included and/or Material Excluded fields in an online application or fails to complete spaces 6(a) and/or 6(b) on a paper application, the application may be accepted if the scope of the claim is clearly defined by the deposit copy(ies). If so, the registration specialist may register the claim without communicating with the applicant, or may add an annotation to clarify the scope of the claim, if appropriate.

621.9(E): Uncopyrightable Material Claimed in the New Material Included Field or Space 6(b)

Clarifies current examination practices for the New Material Included field.

The authorship that is claimed in the New Material Included field or space 6(b) must be copyrightable. If the applicant asserts a claim in uncopyrightable material, the U.S. Copyright Office may ask for permission to remove that element from the application, or in appropriate cases, may add an annotation to clarify that the registration does not cover that element. If the claim appears to be limited to the uncopyrightable material, the Office will refuse to register the claim.

621.9(F): *De Minimis* Material Claimed in the New Material Included Field

The material described in the New Material Included field or in space 6(b) must be copyrightable. If an element claimed in that field/space is *de minimis*, the U.S. Copyright Office may ask for permission to remove that element from the application. If the claim appears to be limited to that element, the Office will refuse to register the claim.

621.9(G): Discrepancies Between the Limitation of Claim Field and the Deposit Copy(ies)

New section clarifies current examination practice for discrepancies between limitation of claim field and deposit(s).

If the applicant completes the Material Excluded field or space 6(b), but the deposit copy(ies) do not appear to contain any unclaimable material, the registration specialist may annotate the record to clarify the content

of the deposit copy(ies).

Example:

- A paper application is submitted for an unpublished work consisting solely of words. In space 6(b) the applicant explains that the author “added words.” In space 6(a) the applicant disclaims “previously published music.” The registration specialist may register the work with an annotation, such as: “Regarding limitation of claim: copy only contains words.”

If the applicant completes the New Material Included field or space 6(a), but the authorship described in that portion of the application does not appear in the deposit copy(ies), the specialist will communicate with the applicant.

Example:

- Walter Bridge submits an online application to register one of his photographs. In the New Material Included and Material Excluded fields he checks the boxes marked “2-D Artwork,” “Photograph,” “Jewelry design,” “Architectural work,” “Sculpture,” “Technical Drawing,” and “Map.” The registration specialist will communicate with the applicant to request permission to limit the claim to “photograph” and to remove the other terms from the registration record.

621.9: Discrepancies Involving the Registration Number or Year of Registration Number in a Paper Application

If the applicant checks the “yes” box on space 5 of a paper application without providing a registration number and/or year of registration, or with a statement such as “unknown” or “I don’t know,” the registration specialist may either communicate with the applicant, or may attempt to locate the previous registration information in the U.S. Copyright Office’s records. In conducting such a search, the specialist will only look for works that have been registered under the exact same author and title as the work described in the application.

If there is no record of a previous registration under the same author and title, the specialist may register the claim with an annotation, such as: “Regarding previous registration: Copyright Office records show no

Clarify current examination practice for handling discrepancies involving registration number or year in paper applications.

previous registration under this title.”

If the work described in the application has been published, and if the specialist finds another work registered under the exact same author and title, he or she may add the previous registration number and year to the registration record. If the previous registration is for an unpublished version of the work described in the application, the specialist may explain that the Office is issuing a new registration for the first published edition of this work by adding an annotation, such as: “Regarding previous registration: registration number added from C.O. records. Registered as first published edition.” If the previous registration is for a previously published version of the work described in the application, the specialist will communicate with the applicant to determine whether there is a basis for issuing a new registration.

621.9: Reference to a Preregistration in the Previous Registration Field / Space

If the applicant provides a preregistration number on a paper application, the specialist will move that information to the correct portion of the record. If the applicant checks the “yes” box that appears in space 5, the specialist will register the work with an annotation, such as: “Regarding previous registration: information refers to preregistration under 17 U.S.C. § 408(f), not full registration under 17 U.S.C. § 408(a).”

623.3: Examination Guidelines: Special Handling

Clarify current practice and procedures for special handling

623.4: Timeline for Special Handling Requests

Once a request for special handling has been received, the U.S. Copyright Office will determine if the applicant paid the correct fee and provided a compelling justification for the request, as discussed in Section 623.2. If the applicant failed to pay the correct fee, failed to provide a compelling justification, or if the Office determines that special handling would be unduly burdensome, the Office will notify the applicant that the request has been denied and that the claim will be examined on a regular basis.

If the request for special handling is granted, the Office will make every attempt to examine the application or the document within five working days thereafter, although the Office cannot guarantee that all applications or all documents will be registered or recorded within that timeframe.

As a general rule, the Office will issue a certificate of registration or a certificate of recordation within five working days after the request for special handling has been granted, if it is clear that the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of U.S. copyright law have been met.

If there are questions or issues that prevent the Office from registering the work or recording the document, the Office generally will notify the party that submitted the application or document within five working days after the request for special handling has been granted. If the applicant responds to this communication, the Office will provide its response to the applicant's communication(s) within a reasonable amount of time.

623.5: Procedure for Requesting Special Handling

If the Office subsequently registers the work, the registration specialist may add an annotation to the certificate of registration and the online public record indicating that the work was registered on an expedited basis. But the specialist will add this annotation only in cases where the request for special handling was submitted after the application, deposit copy(ies), and filing fee were received. For information concerning this procedure, see Section 623.5(D).

By contrast, when the Office records a document on an expedited basis, the recordation specialist will not add an annotation to the certificate or the online public record for that document.

623.5(C): Requests Delivered by Courier or by Mail

Items delivered by private courier should be sent to the Congressional Courier Acceptance Site, which is located at 2nd and D Streets NE, Washington, DC. This location is open Monday through Friday from 8:30 a.m. to 4:30 p.m. Eastern Time (except for federal holidays). Items delivered to this location are typically sent to the Office the next working day.

IMPORTANT NOTE: Packages delivered by private courier can only be delivered to the Congressional Court Acceptance Site. If a package is delivered to one of the mailing addresses listed above by a private courier, it will be rerouted to another location and may not be delivered to the Office for up to three months.

623.6: Special Handling Fee

Checks must be made payable to the [U.S. Copyright Office](#), they must be payable in U.S. dollars, they must be imprinted with an American Banking Association routing number, and they must be redeemable

through a U.S. institution without a service charge or exchange fee. International money orders and foreign postal money orders that are negotiable only at a post office will not be accepted.

625.3(A): Forms of Payment

A filing fee may be paid with a credit card, a debit card, an electronic transfer from a checking or savings account, or with a check, bank draft, or money order made payable to the U.S. [Copyright Office](#). The Office also maintains a system of deposit accounts for parties who frequently conduct business with the Office. Persons or entities that maintain a deposit account may deposit funds into the account and charge fees against that balance instead of sending a separate payment with each application or other request for services. *See* 37 C.F.R. § 201.6(b). For a discussion of deposit accounts, see Chapter 1400, Section 1403.5.

625.2: Minimum Requirements for Acceptable Deposit Copy(ies)

To establish an effective date of registration, the U.S. Copyright Office must receive the appropriate number of deposit copy(ies) containing the entire copyrightable content of the work described in the application.

If it appears that the applicant failed to submit the appropriate number of copies or phonorecords, failed to submit the entire copyrightable content of the work (or appropriate identifying material, where permitted), or if the specialist is unable to access, view, or examine that content, the specialist may communicate with the applicant or may refuse registration.

If the work is approved for registration, the effective date of registration is the date that the Office received the appropriate identifying material or an appropriate number of copies or phonorecords containing the entire copyrightable content of the work in a form that can be accessed, viewed, and examined. As a general rule, the fact that the deposit copy(ies) may not satisfy the “best edition” requirement is irrelevant to this determination. For a discussion of the “best edition” requirements, see Chapter 1500, Section 1504.

Clarifies the consequences of submitting one deposit copy when two copies are required.

625.2(B): Unacceptable File Formats for the Deposit Copy(ies) Accompanying an Online Application

If the applicant uploads the deposit copy(ies) in a file format that is not listed on the U.S. Copyright Office’s website, the registration specialist may communicate with the applicant to request a deposit in an

Clarifies the consequences of submitting a deposit in an unacceptable file format.

acceptable file format or may refuse registration.

If the specialist asks the applicant to resubmit the deposit copy(ies) in an acceptable file format, and if the work is subsequently approved for registration, the effective date of registration will be the date that the Office received a copy or phonorecord of the work in an acceptable file format that can be accessed, viewed, and examined by the specialist. 37 C.F.R. § 202.20(b)(2)(iii)(D).

625.5: Differences Between an Application and a Certificate of Registration

Provides explanation why a registration decision is a prerequisite to filing an infringement lawsuit.

Chapter 700

SECTION

REVISION

711: Collective Works and Contributions to Collective Works

Collective works and contributions to collective works may be registered as nondramatic literary works, provided that they contain a sufficient amount of literary expression. Examples of collective works that may satisfy this requirement include a periodical issue, an anthology, an encyclopedia, or any other work that contains a number of separate and independent works that have been assembled into a collective whole. *See* 17 U.S.C. § 101 (definition of “collective work”). Examples of a contribution to a collective work that may satisfy this requirement include an article that has been included within a periodical issue, an essay that has been included within an anthology, or an entry that has been included within an online encyclopedia.

Clarifies the authorship in contributions to a collective work and the requirements for registering a collective work together with the underlying contributions.

Collective works typically contain two different types of authorship:

- The authorship in the collective work as a whole, which may involve selecting, coordinating, and/or arranging the various contributions to the collective work, and/or editing, annotating a number of separate and independent works and assembling them into a collective work, and/or revising the collective work as a whole.
- The authorship in the separate and independent works that have been included in the collective work, which may contain literary expression and/or artistic expression.

An applicant may register a collective work together with the separate and independent works contained therein (i) if the the copyright in the contributions and the collective work are owned by the same claimant and (ii) if the component works have not been previously published or registered. In no case may the claimant register a contribution that is in the public domain. If the copyright in the collective work and the contributions to the collective work are owned by different parties, separate applications for each work will be required. For additional information concerning collective works, see Chapter 500, Section 509.

712.1: What Is a Serial?

A serial is a work that is issued or intended to be issued in successive parts bearing numerical or chronological designations that are intended to be continued indefinitely. Examples include periodicals, newspapers, magazines, newsletters, journals, bulletins, annuals, the proceedings of

Provides examples of works that do not qualify as serials.

societies, and other similar works. 37 C.F.R. § 202.3(b)(1)(v). Examples of works that do not fall within this category include episodes of a television series, a series of online videos, a collection of musical works, a group of manuscripts, an assortment of poetry, or a set of advertising copies.

712.2: Copyrightable Authorship in Serials

Most serials are collective works, because they typically contain “a number of contributions, constituting separate and independent works in themselves, [that] are assembled into a collective whole.” 17 U.S.C. § 101 (definition of “collective work”). As such, they typically contain two different types of authorship:

- The authorship in the compilation, which may involve selecting, coordinating, and/or arranging a number of separate and independent works within the serial as a whole, and/or editing, annotating, and/or revising the serial as a whole.
- The authorship in the separate and independent works that have been included within the serial, which may contain literary expression and/or artistic expression.

As with any other type of collective work, an applicant may register a serial together with the separate and independent works contained therein, (i) if the claimant owns the copyright in the serial and the contributions, and (ii) if those contributions have not been previously published or registered. In no case may the claimant register a contribution that is in the public domain.

A registration for a single issue of a serial publication covers the particular issue that has been submitted for registration, as well as any contributions that may be included within the claim. The U.S. Copyright Office does not offer “blanket registrations” that cover future issues or future contributions to that publication.

712.3: Application Tips for Registering a Single Issue of a Serial Publication

An applicant may register a single issue of a serial publication with the online application by selecting the option for “Single Serial Issue.” In the alternative, an applicant may submit a paper application using Form SE.

NOTE: These applications may be used to register an issue that has been published, but they may not be used to register an issue that has not

Clarifies the authorship and registration procedures for serials.

Clarifies registration procedures for serials.

been published yet. Likewise, they may not be used to register an individual article, photograph, or other contribution to a serial publication (unless the applicant is registering that contribution together with the issue as a whole).

When completing the application, the applicant should provide the title that appears on the serial, as well as the volume number, issue number, and date that appears on the specific issue that will be submitted for registration, as well as the frequency of publication for that serial (*e.g.*, daily, weekly, monthly, etc.). When completing an online application, an applicant may provide this information in the Title field (*e.g.*, *Home Cooking*, Vol. 2, No. 17, February 2, 2013). When completing Form SE, this information should be provided in space 1. For guidance in completing this portion of the application, see Chapter 600, Section 610.

The applicant should identify the copyrightable authorship that the applicant intends to register, and the applicant should assert a claim to copyright in that material. When completing an online application, this information should be provided in the Author Created field. When completing a paper application, this information should be provided in space 2 of Form SE. For guidance on completing these portions of the application, see Chapter 600, Sections 618.7(C) and 618.7(D).

If the applicant only intends to register the authorship involved in creating the issue as a whole, the applicant should assert a claim in the “compilation.” If the applicant intends to register the authorship involved in creating the issue as a whole, as well as the individual contributions that appear within that issue, the applicant may assert a claim in both the “compilation” and the “contributions to a collective work.” Alternatively, the applicant may assert a claim in both the “compilation” and the specific form of authorship that appears in each contribution, such as “text,” “photographs,” or “artwork.”

An applicant may register an issue together with the articles, photographs, or other contributions contained therein (i) if the claimant owns the copyright in the individual contributions and the issue as a whole, and (ii) if the contributions have not been previously published or previously registered. In no case may the claimant register a contribution that is in the public domain. *See Morris v. Business Concepts, Inc.*, 259 F.3d 65, 71 (2d Cir. 2001), *abrogated on other grounds by Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010).

If the copyright in the individual contributions and the issue as a whole are owned by different parties, or if the contributions were previously published or previously registered, the applicant generally must submit a separate application for each contribution.

If the claimant is not the author of the issue as a whole or is not the author(s) of the individual contributions that appear within that issue, the

applicant should provide a transfer statement explaining how the claimant obtained the copyright in the issue as a whole or a particular contribution as appropriate. For guidance on completing this portion of the application, see Chapter 600, Section 620.9(A).

If the issue contains an appreciable amount of previously published material, previously registered material, public domain material, or material that is not owned by the copyright claimant, the applicant should exclude that material from the claim using the procedure described in Chapter 600, Section 621.8.

713: Book Jackets

If the claim in the book jacket is based solely on the title of the work, the registration specialist will refuse to register the claim. If the claim is based solely on the arrangement, spacing, juxtaposition, and layout of copyrightable or uncopyrightable elements, the registration specialist may communicate with the applicant or may refuse to register the claim if the jacket merely contains a standard arrangement that is not sufficiently creative to support a compilation claim. *See* 37 C.F.R. § 202.1(a); Chapter 300, Section 313.3(E).

A book and a book jacket may be registered with the same application if the works can be physically separated from each other, and if the copyright in both works is owned by the same claimant. For more information concerning this option, see Chapter 1100, § 1107.

Clarifies registration and examination procedures for book jackets.

715.3: Application Tips for Genealogies

Reflects changes made to the user interface in the electronic registration system and clarifies policies for registering a genealogy.

716: Instructional Texts and Instructional Works

Provides
expanded
example.

A registration for a cookbook covers the instructional text that appears in the work, as well as any photographs or illustrations that are owned by the copyright claimant. However, the registration does not cover the list of ingredients that appear in each recipe. Likewise, a registration for a cookbook or other instructional work does not cover the activities described in the work, because procedures, processes, or methods of operation are not subject to copyright protection. *See* 17 U.S.C. § 102(b); 37 C.F.R. § 202.1(a); *see also* Policy Decision on Copyrightability of Digitized Typefaces, 53 Fed. Reg. 38,110, 38,112 (Sept. 29, 1988) (“[T]he explanation and illustration of recipes is copyrightable even though the end result — the food product — is not.”). The registration specialist may add an annotation, may communicate with the applicant, or may refuse registration if the applicant appears to be asserting a claim to copyright in a particular activity or a list of ingredients, if the work merely illustrates the specific hand or body movements for performing a particular activity, or if the instructions, taken as a whole, are *de minimis*.

Examples:

- Martha Custer submits an application to register a set of basic instructions for knitting a sweater. In the Author Created field, she checks the box for “text.” There are dozens of steps in the process, and the instruction for each step is one sentence long. The registration specialist will register the claim, because the instructional text, taken as a whole, contains a sufficient amount of expression to support a registration.
- Jules Kinder submits an application to register a cookbook titled *Pie in the Sky*. In the Author Created field, the applicant asserts a claim in “text, photographs, and compilation of ingredients.” Each recipe contains a list of ingredients, instructions for making a pie, and a photograph of the finished product. The claim in text and photographs is acceptable, but the claim in compilation is not, because the applicant appears to be asserting a claim in a mere listing of ingredients. The registration specialist may add an annotation, such as: “Regarding authorship information: Compilation is mere listing of ingredients or contents; not copyrightable. 37 CFR 202.1.”

717: Legal Materials

717.2: Legal Documents

718: Letters, Email, and Other Written Correspondence

721.9(G): Limiting the Claim to Copyright in a Computer Program

727.3(D): Asserting a Claim in a Database

Clarify when an applicant should complete the Limitation of Claim field.

721.7: Copyrightable Authorship in a Computer Program

As a general rule, the Office does not distinguish between executable code and nonexecuting comments or data that may appear in the source code for a computer program. Either element may support a claim to copyright if the program contains a sufficient amount of original statements or instructions, and both elements may be registered with the same application. *See* Registration of Claims to Copyright Deposit Requirements for Computer Programs Containing Trade Secrets and for Computer Screen Displays, 54 Fed. Reg. 13,173, 13,174 n.2 (Mar. 31, 1989); *see also* Registration Decision: Registration and Deposit of Computer Screen Displays, 53 Fed. Reg. 21,817, 21,819 (June 10, 1988). To register a claim in the executable code, the applicant should state “computer program” in the application. To register a claim in nonexecuting comments, the applicant should state “nonexecutable comments” in the application. In both cases, the applicant should avoid using the term “text,” either alone or in combination with the term “computer program.” For guidance in completing this portion of the application, see Section 721.9(F).

Clarifies procedure for registering “nonexecutable comments.”

721.7: Asserting a Claim to Copyright in a Computer Program

As discussed in Section 721.7, an applicant may assert a claim in executable code as well as the nonexecuting comments or data that appear in the source code for a computer program. Both claims may be registered with the same application. To register a claim in executable code, the applicant should check the box marked “computer program” in the Author Created field. To register a claim in nonexecuting comments, the applicant should state “nonexecutable comments” in the field marked Other.

If the claim is unclear, the registration specialist may communicate with the applicant or may refuse registration. For example, if the applicant merely asserts a claim in “text” or a claim in “text” and “computer program,” the specialist will communicate if it is unclear whether the deposit copy(ies) contain text that is distinguishable from source code, object code, or other statements or instructions that may be used directly or indirectly in a computer in order to bring about a certain result. Likewise, the specialist may communicate if the applicant merely asserts a claim in “computer program” that is not discernable as a written language or a programming language.

721.8: Copyrightable Authorship in a Derivative Computer Program

Examples:

- Shell Games LLC submits two applications for the same computer program, one specifically for the source code and the other for the object code. Because there are no copyrightable differences between the source code and the object code, there is no basis for issuing a separate registration for each representation of the program. Moreover, if the object code was created by a computer program, there would be no human authorship in the object code, and no authorship that is distinct from the source code. The registration specialist will register the claim in the source code, and reject the claim in the object code.

Clarifies examination practices for object code.

721.9(B): Title of the Program

If the applicant does not provide a version number or release number, the registration specialist may add that information to the Title field/space if the number appears on the deposit or elsewhere in the registration materials and if it is clear that the number identifies the specific version that has been submitted for registration. In such cases, the specialists will add an annotation to the record, such as: “Regarding title information: added by C.O. from deposit.” If the title contains multiple version numbers (*e.g., Scale Modeler v. 1.0, 2.0, 3.0, 4.50*), the specialist may communicate with the applicant if he or she is unable to identify the specific version that the applicant intends to register.

Clarifies current practice for examination and annotation.

721.9(J): Unacceptable Terminology for an Application to Register a Computer Program

Removed “firmware” from the list of unacceptable authorship terms.

Clarifies unacceptable authorship terms.

721.10(A): Relationship Between Source Code and Screen Displays

Clarifies policy for registering screen displays.

As a general rule, a computer program and the screen displays generated by that program are considered the same work, because the program code contains fixed expression that produces the screen displays. If the copyright in the source code and the screen displays are owned by the same claimant, the program and any related screen displays may be registered with the same application. The U.S. Copyright Office will not knowingly issue a separate registration for a computer program and the screen displays that may be generated by that program. Nor will the Office issue a supplementary registration that purports to add a claim in screen displays to a basic registration for a computer program.

By contrast, if the copyright in the code and the screen displays are owned by different parties, separate applications will be required. The computer program should be registered as a literary work, while the screen displays should be registered as an audiovisual work, a pictorial work, or a graphic work, as appropriate.

If the applicant states “computer program” in the Author Created/New Material Included fields or in spaces 2 and 6(b), the registration will cover the copyrightable expression in the program code and any copyrightable screen displays that may be generated by that code, even if the applicant did not mention the screen displays and even if the deposit copy(ies) do not contain any screen displays. By contrast, if an applicant states “screen displays” in the application, the registration will not cover the computer program unless the applicant also asserts a claim in the “computer program” and submits an appropriate deposit. *See* Registration Decision: Registration and Deposit of Computer Screen Displays, 53 Fed. Reg. 21,817, 21,819-20 (June 10, 1988).

This rule does not apply to the hypertext markup language (“HTML”) for a website, because HTML is not a computer program or source code. If the applicant submits an application to register HTML, the registration may cover the HTML itself, but it does not cover any of the content that may appear on the website unless the applicant submits a copy of the website content and expressly asserts a claim in that material. For a discussion of HTML, see Chapter 1000, Section 1006.1(A).

721.11: User Manuals and Other Documentation for a Computer Program

Clarifies procedures for registering a computer program and user manual.

If the claimant owns the copyright in the program and the user manual or other documentation for that program, and if the claimant physically bundled these items together and distributed them to the public as a single, integrated unit (such as a shrink-wrapped box containing a disk and booklet), it may be possible to register them together with one application and one filing fee. For information concerning this option, see Chapter 1100, Section 1107. By contrast, if the program and the

documentation are distributed online, if they are distributed separately from each other, or if they are owned by different claimants, each element is considered a separate work and a separate application for each element is required.

722: Apps

If the applicant registers the app as a computer program and submits identifying portions of the source code for that program, the registration will cover any copyrightable screen displays generated by that work, provided that the app and the screen displays are owned by the same claimant. If the applicant expressly asserts a claim in the text, artwork, or screen displays generated by an app, the applicant must submit a representative sampling of those screen displays together with the identifying portions of the source code.

Clarifies deposit requirement for screen displays.

Chapter 800

SECTION

REVISION

802.6(B): Permission to Use Under a Section 115 Compulsory License

Section 115 of the Copyright Act establishes a “compulsory license” permitting any person to make and distribute phonorecords of a nondramatic musical work without obtaining permission from the copyright owner of that work, if certain conditions are met. *See* 17 U.S.C. § 115(a)(1)-(2). In particular, the musical work must have been “distributed in the United States under the authority of the copyright owner.” A party using the compulsory license may also make a musical arrangement of the underlying musical work “to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work.” *Id.* § 115(a)(2). Section 115(a)(2) also states that the arrangement “shall not be subject to protection as a derivative work” under the Copyright Act without “the express consent of the copyright owner.” *Id.* This means that the arrangement cannot be registered with the U.S. Copyright Office unless the licensee obtains express consent from the owner of the musical work. This is the case even if the arrangement made pursuant to the compulsory license contains enough original authorship to qualify as a derivative work.

If it seems unlikely that the licensee obtained permission to claim copyright in the new arrangement of the preexisting musical work, the registration specialist may communicate with the applicant or may refuse registration.

802.6(I): Editorial Authorship

Musical editing generally consists of adding markings for the performance of a musical composition, such as additional or altered fingering, accents, dynamics, and the like. Editing also may consist of textual notes on performance practice or historical background for a musical composition. To assert a claim to copyright in this type of authorship, the applicant may use the term “musical editing” in the Other field of the online application or space 2 of the paper application.

A work consisting of editorial revisions, annotations, elaborations, or other modifications which as a whole represent an original work of authorship, is a derivative work. These types of works may be registered only if the underlying authorship has been used lawfully. When asserting a claim to copyright in these types of works, the applicant may use the

Clarifies current policy and practice for derivative work created under a Section 115 compulsory license.

Provides direction for asserting a claim in musical editing.

term “musical editing” or may provide a more specific description of the new material that the author contributed to the work.

802.7: Collective Musical Works

A collective musical work is a work that contains “a number of contributions” that constitute “separate and independent works in themselves” that have been “assembled into a collective whole” “in such a way that the resulting work as a whole constitutes an original work of authorship.” 17 U.S.C. § 101 (definitions of “collective work” and “compilation”). Examples of collective musical works include the following types of works:

- A quarterly journal of contemporary art songs.
- A hymnal comprised of several single contributions from various hymn composers.
- A folio of selected Rodgers and Hammerstein songs.

Collective musical works potentially contain two types of copyrightable authorship: (i) the compilation authorship involved in selecting, coordinating, and/or arranging a number of separate and independent musical works and assembling them into the collective whole; and (ii) the authorship involved in creating the music and/or lyrics for the individual musical works.

A collective work may be registered together with the individual musical works contained therein, provided that the collective work and the individual works are owned by the same party, and provided that the individual works have not been previously published or previously registered. In no case may the claimant register a musical work that is in the public domain. If the owner of the individual musical works does not own the copyright in the collective work as a whole, then each musical work must be registered separately as an individual contribution to a collective work.

For general information on collective works, see Chapter 500, Section 509.

Provides definition for collective musical works and clarifies registration requirements for registering a collective musical work.

802.9(E)(7): Sound Effects

The term “sound effects” should not be used to describe the authorship in a musical work, because this term is unclear. Instead, the applicant should describe the authorship as “music.” If it appears that the applicant is asserting a claim in uncopyrightable material or unclaimable material, the registration specialist will communicate with the applicant.

Provides direction for asserting a claim in a musical work.

803.3: Elements of Sound Recordings

There are two types of sound recording authorship:

- Authorship in the performance(s); and
- Authorship in the production of the sound recording.

Clarifies the nature of authorship in a sound recording.

Both the performer and the producer of a sound recording of a musical performance or spoken word performance may contribute copyrightable authorship to the sound recording. Generally, the performance and production are considered a single, integrated work. In some cases, however, the main or sole contribution may be production authorship (as in a recording of bird songs, where there is no human performance) or the main contribution may be performance authorship (as in a recorded performance where the only production involved is to push the “record” button).

803.7: Registrable Compilations

A re-issue containing previously released or registered sound recordings cannot be registered as a compilation unless the author contributed a sufficient amount of original authorship in selecting or arranging the preexisting sound recordings. For instance, taking all the works by a particular artist and arranging them in chronological order would not be registrable, because there is no creativity in selecting all the artist’s works and putting them in date order.

Clarifies procedure for registering a compilation of sound recordings.

803.8(F)(4): Bonus Track Added to a Previously Published Album

Where a previously published album is rereleased with a bonus track, the album and the bonus track must be registered separately because the dates of first publication are different. To register the previously published album the applicant should submit the album in the appropriate format described in Chapter 1500, Section 1509.2(B) and

Clarifies deposit requirement for bonus tracks.

should provide the date of first publication for that work. To register the bonus track the applicant should submit the rereleased album in the appropriate format described in Chapter 1500, Section 1509.2(B), provide the date of first publication for that album, and exclude the previously published recordings from the claim.

803.9(D)(1): Instrument Names / Vocals

803.9(D)(2): Narration / Spoken Words

803.9(D)(3): Rap

803.9(D)(4): Beats / Music Track

804.9(C): The Author Created Field and the Nature of Authorship Space

Provide instructions for adding appropriate authorship terms in the Other field.

803.9(F): Unclear Authorship Terms for Derivative Sound Recordings

The terms “equalization,” “remastering,” “reverberation,” “reprocessing,” and “re-engineering” may refer to contributions that are mechanical in nature or too minimal to be copyrightable, or in some cases may involve sufficient creative authorship. If the applicant uses one or more of these terms on the application as the sole basis for the claim, the registration specialist will request a more detailed explanation or clarification.

Clarifies unclear authorship terms for derivative sound recordings.

To avoid correspondence and to facilitate examination, an applicant should provide a brief statement in the Note to Copyright Office field or the New Material Included/Other field that describes the authorship involved in recasting, transforming, or adapting the preexisting sound recording(s).

804.3(B): Characters

A character is a person, animal, or even an inanimate object that is used to portray the content of a dramatic work is portrayed. The copyright law does not protect the name or the general idea for a character. *See, e.g., Klinger v. Conan Doyle Estate, Ltd.*, 755 F.3d 496, 502-03 (7th Cir. 2014). However, the Office may issue a registration based on the authorship describing, depicting, or embodying a character.

Clarifies that the Office registers sufficiently creative authorship, but not the name or idea for a “character.”

804.8(C): Redacted Screenplay for a Motion Picture in Production

Provides current requirements for registering a redacted screenplay for a motion picture in production.

The Office may accept a redacted version of a screenplay for a motion picture (including screenplays for feature films, television programs, or other works of a similar nature), if the applicant requests special relief from the deposit requirements and confirms that the following conditions have been met:

- The motion picture must be in production (*e.g.*, filming has commenced).
- Infringement must be anticipated.
- The applicant must file an online application and upload the redacted screenplay in Portable Document Format (PDF) or other electronic format approved by the Office.
- The applicant must specify the anticipated date of release for the motion picture.

For information concerning the procedure for requesting special relief, see Chapter 1500, Section 1508.8.

The redacted copy of the work must reveal at least half the work, and the redaction must be done in a manner that will allow the Office to compare and authenticate the redacted copy with an unredacted copy of the same work. If the work is approved for registration, the registration specialist will add an annotation to the record, such as: “Regarding deposit: special relief granted under 37 C.F.R. 202.20(d).”

In all cases, the applicant must submit a complete unredacted copy of exactly the same screenplay within ten business days after the release of the motion picture. In addition, the applicant must pay the appropriate fee for locating and retrieving the redacted copy from the Office’s files. This fee is set forth in the Office’s fee schedule under the heading “Retrieval of digital records (per hour, half hour minimum, quarter hour increments).”

The Office will compare the redacted and unredacted copies to confirm that they match each other. The Office has the authority to cancel the registration for the screenplay if (i) the complete unredacted copy of the screenplay is not received in a timely manner, (ii) the applicant fails to pay the fee for locating and retrieving the redacted copy, or (iii) the redacted and unredacted copies do not match. For information concerning this procedure, see Chapter 1800, Section 1806.4(D).

805.2(B): Compositional Arrangement

A choreographic work “represents a related series of dance movements and patterns” organized into an integrated, coherent, and expressive compositional whole. *Horgan*, 789 F.2d at 161 (quoting COMPENDIUM (SECOND) § 450.03(a)).

Clarify works
that constitute
choreography
and pantomime.

As discussed in Section 805.5(B)(3), non-expressive physical movements, such as ordinary motor activities, functional physical activities, competitive maneuvers, and the like are not registerable as choreographic works. Likewise, *de minimis* dance steps and movements are not protectable, because they do not contain a sufficient amount of choreographic authorship. *See* Section 805.5(A).

805.5(B): Social Dances, Simple Routines, and Other Uncopyrightable Movements

Thus, the U.S. Copyright Office cannot register a claim to copyright in social dances or simple routines, because they do not constitute copyrightable subject matter. Likewise, the Office cannot register a claim to copyright in ordinary motor activities, functional physical movements, competitive maneuvers, feats of physical skill or dexterity, or the like, because such movements lack the necessary creative expression to constitute a work of original authorship. Congress gave federal courts the flexibility to interpret the scope of the existing subject matter categories, but only Congress has the authority to create entirely new categories of authorship. “If the federal courts do not have the authority to establish new categories of subject matter, it necessarily follows that the Office also has no such authority in the absence of any clear delegation of authority to the Register of Copyrights.” *Registration of Claims to Copyright*, 77 Fed. Reg. at 37,607.

805.5(B)(3): Ordinary Motor Activities, Non-Expressive Physical Activities, Competitive Maneuvers, Feats of Physical Skill or Dexterity, and Other Uncopyrightable Movements

Non-expressive physical movements, such as “ordinary motor activities” or “functional physical movements” — in and of themselves — do not represent the type of authorship that Congress intended to protect as choreography. *Registration of Claims to Copyright*, 77 Fed. Reg. at 37,607. The U.S. Copyright Office cannot register a claim to copyright in such non-expressive activities. *See Bikram’s Yoga College of India, L.P. v. Evolution Yoga, LLC*, 2015 U.S. App. LEXIS 17615 (9th Cir. Oct. 8, 2015) (declining to extend copyright protection in a book describing yoga poses to the yoga poses themselves). Examples of non-expressive physical movements that cannot be registered with the Office include exercise routines, aerobic dances, yoga positions, and the like.

The Office cannot register claims to copyright in athletic activities or

competitive maneuvers as such, because they do not constitute copyrightable subject matter under Section 102(a)(4) of the Copyright Act. *See NBA v. Motorola*, 105 F.3d 841, 846-47 (2d Cir. 1997); Registration of Claims to Copyright, 77 Fed. Reg. at 37,607; *but see* H.R. REP. NO. 94-1476 at 52 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5665 (explaining that Congress intended to protect the telecast of “sports, news coverage, live performances of music, etc.,” provided the telecast is simultaneously recorded).

Examples:

- Football plays.
- Slam dunking maneuvers.
- Gymnastic programs.
- Competitive ice skating routines.
- Skateboarding or snowboarding.
- Synchronized swimming.
- Videogame play.

These types of activities are typically performed by skilled players for the enjoyment of an audience and in some cases they may be accompanied by music or narrative text provided by a play-by-play announcer. However, competitive activities are comprised of athletic maneuvers rather than dance steps, and such maneuvers are non-expressive. Competitive activities lack the capacity for uniform performance because each contest usually involves a different set of maneuvers, and any dramatic content involves the “drama” of the competition rather than a story that is told or a theme that is evoked by the players’ movements. *See NBA*, 105 F.3d at 846 (“[B]asketball games do not fall within the subject matter of federal copyright protection because they do not constitute ‘original works of authorship’ under 17 U.S.C. § 102(a)” although “recorded broadcasts of NBA games – as opposed to the games themselves – are . . . entitled to copyright protection.”).

For similar reasons, the Office cannot register feats of physical skill or dexterity or other choreographed productions that do not involve the rhythmic movement of a dancer’s body.

Examples:

- Parades.

- Marching band routines.
- Runway modeling.
- Magic acts.
- Circus acts.
- Juggling.
- Wrestling matches.
- Fight sequences or martial arts routines.

806.5(B): Ordinary Motor Activities, Non-Expressive Physical Activities, Competitive Maneuvers, Feats of Physical Skill or Dexterity, and Other Uncopyrightable Movements

Choreography and pantomime are the only types of works comprised exclusively of bodily movements that are eligible for copyright protection under Section 102(a)(4) of the Copyright Act. Non-expressive physical movements, such “ordinary motor activities” or “functional physical activities” — in and of themselves — do not represent the type of authorship that Congress intended to protect as choreography or pantomime. Registration of Claims to Copyright, 77 Fed. Reg. at 37,607.

The U.S. Copyright Office cannot register a claim to copyright in such non-expressive activities. *See Bikram’s Yoga College of India, L.P. v. Evolution Yoga, LLC*, 2015 U.S. App. LEXIS 17615 (9th Cir. Oct. 8, 2015) (declining to extend copyright protection in a book describing yoga poses to the yoga poses themselves). Examples of non-expressive physical movements that cannot be registered with the Office include exercise routines, aerobic dances, yoga positions, and the like.

The Office cannot register claims to copyright in athletic activities or competitive maneuvers as such, because they do not constitute copyrightable subject matter under Section 102(a)(4) of the Copyright Act. *See NBA v. Motorola*, 105 F.3d 841, 846-47 (2d Cir. 1997) (“[B]asketball games do not fall within the subject matter of federal copyright protection because they do not constitute ‘original works of authorship’ under 17 U.S.C. § 102(a)” although recorded broadcasts of NBA games – as opposed to the games themselves – are . . . entitled to copyright protection).

Examples:

- Golf swings.

- Track and field events.
- Wrestling or weight lifting.
- Fencing or martial arts.
- Videogame play.

These types of activities are typically performed for the enjoyment of an audience. However, competitive activities are comprised of athletic maneuvers rather than artistic movements, gestures, or facial expressions, and therefore lack sufficient creative expression. Competitive activities lack the capacity for uniform performance because each contest usually involves a different set of maneuvers, they lack compositional arrangement because athletic movements are rarely organized into a coherent compositional whole, and any dramatic content involves the “drama” of the competition rather than a story that is told or a theme that is evoked by the players’ movements. *See NBA*, 105 F.3d at 846-47 (noting that “[s]ports events are not ‘authored’ in any common sense of the word”).

For similar reasons, the Office cannot register feats of physical skill or dexterity that do not involve the physical movement of a performer’s body in an integrated, coherent, and expressive compositional whole, such as magic acts, circus acts, juggling, wrestling matches, fight sequences, or the like.

807.7(A)(2): Videogames Distinguished from Computer Programs

Generally, a videogame contains two major components: the audiovisual material and the computer program that runs the game. If the copyright in the audiovisual material and the computer program are both owned by the same entity, they should be registered together on one application. By contrast, if the copyright in the program and the audiovisual material are owned by different parties, separate applications will be required.

Clarifies that separate applications are required if the computer program and audiovisual material are owned by different parties.

808.2(C): Motion Pictures Distinguished from Underlying Works

Occasionally, an applicant submits a copy of a motion picture in order to register the “underlying work” that is recorded in the motion picture, such as the script, a musical work, choreography, pantomime, or artwork. In such cases, the motion picture is simply the medium used to “fix” the underlying work. The copyright owner of the underlying work may or

Clarifies that separate applications are required if the motion picture and the underlying work

may not be the copyright owner of the motion picture.

are owned by
different parties.

If the copyright owner of the motion picture owns the rights in the underlying work, and if the entire motion picture is being registered for the first time, the applicant should register the motion picture and the underlying work(s) with one application. To do so, the applicant should state “entire motion picture” in the application, instead of providing a separate description of the underlying work(s) embodied in the motion picture.

If the copyright in the underlying work and the copyright in the motion picture are owned by different parties, then the underlying work and the motion picture cannot be registered with the same application. Instead, the applicant should submit a separate application for the motion picture, and should identify any preexisting or separately owned material in the Material Excluded field, and should state “all other cinematographic material” in the New Material Included field.

808.8: Derivative Motion Pictures

Provides
guidance for
asserting a claim
in a derivative
motion picture.

When completing an application for a derivative motion picture, the applicant should identify and exclude the preexisting material from the claim, and should describe the new material that the author contributed to the new motion picture. Likewise, if the derivative motion picture contains material created by others, the applicant should exclude that preexisting material if it is not part of the claim. For guidance on these procedures, see Chapter 600, Section 621.

808.8(A): Editing

Clarify
authorship in
editing and
captioning.

The term “editing” refers to the authorship involved in selecting the takes and shots from a motion picture, and splicing them into sequences to achieve continuity and the desired dramatic, comedic, or thematic effect. This term also may be used to describe the authorship involved in revising a preexisting motion picture, such as deleting scenes, reworking footage or the soundtrack, or adding new footage, artwork, sounds, or narration.

For example, reworking a preexisting film for rerelease by making various cuts, adding outtakes, and adding new soundtrack material is a derivative work of the original film. Likewise, adding additional archival footage and photographs to a preexisting documentary is a derivative work of the original documentary.

808.8(C): Closed and Open Captioning

If the captioning is a verbatim transcription of the spoken words, the claim is not copyrightable and will not be registered. *See* Chapter 300, Section 313.4(A). Likewise, the Office cannot register a claim in captioning if the work is mechanically created or if the author did not contribute a sufficient amount of original expression in editing the text.

808.11(C): The Author Created Field and the Nature of Authorship Space

Clarifies authorship terms for claiming the entire motion picture.

When completing an online application, the applicant should describe the authorship that will be submitted for registration, either by checking one or more of the box(es) in the Author Created field or by providing an appropriate statement in the box marked “Other.” When completing a paper application, the applicant should provide this information in the Nature of Authorship space.

To register the entire work using the online application, the applicant may select the box marked “entire motion picture.” This term covers all of the authorship involved in creating a motion picture, including the screenplay, production, direction, cinematography, and editing. To assert a claim in a specific element of a motion picture, the applicant may select one or more of the following boxes:

- Production
- Directing
- Cinematography
- Editing
- Script/Screenplay

Chapter 900

SECTION

REVISION

903.1: Pictorial, Graphic, and Sculptural Works

The most common types of visual art works are pictorial, graphic, and sculptural works. These types of works include:

- Works of artistic craftsmanship (e.g., textiles, jewelry, wall plaques, toys, dolls, and stuffed toy animals).
- The separable artistic features of two-dimensional and three-dimensional useful articles.

As discussed in Section 924, “an artistic feature of the design of a useful article” “is eligible for copyright protection only if the feature (1) can be perceived as a two-dimensional or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work – either on its own or fixed in some other tangible medium of expression – if it were imagined separately from the useful article into which it is incorporated.” *Star Athletica, LLC, v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1007 (2017).

906.8: Functional and Useful Elements

The copyright law does not protect “useful articles” as such, or the “mechanical or useful aspects” of works of artistic craftsmanship.” 17 U.S.C. § 101 (definition of Pictorial, graphic, and sculptural works). However, copyright does protect the creative form of a work of artistic craftsmanship, such as a creatively-shaped necklace or decorative vase. Copyright also protects two- or three-dimensional artistic features incorporated into the design of a useful article, if those features are separable from the useful article.

For example, a lamp is a considered a useful article, because it has an intrinsic utilitarian function, namely, to provide lighting. By contrast, a three-dimensional floral design affixed to the base of a lamp or a two-dimensional garden design painted on a lamp shade does not have an intrinsic utilitarian function. Therefore, the U.S. Copyright Office may register those design features if they are separable from the functional aspects of the lamp and if they are sufficiently original and creative. *See Star Athletica*, 137 S. Ct. at 1007, 1011-12.

924: Registration Requirements for the Design of a Useful Article

The Copyright Act “establishes a special rule for copyrighting a pictorial, graphic, or sculptural work incorporated into a ‘useful article,’ which is

Provide standards for registration of a useful article.

defined as ‘an article having an intrinsic function that is not merely to portray the appearance of the article or to convey information.’ *Star Athletica*, 137 S. Ct. at 1008 (quoting 17 U.S.C. § 101 (definition of “useful article”)). “The statute does not protect useful articles as such. Rather ‘the design of a useful article’ is ‘considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.’ *Id.* (quoting 17 U.S.C. § 101 (definition of “pictorial, graphic, and sculptural works”)).

The Supreme Court has held “that a feature incorporated into the design of a useful article is eligible for copyright protection only if the feature (1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work – either on its own or fixed in some other tangible medium of expression – if it were imaged separately from the useful article into which it is incorporated.” *Id.* at 1007.

The U.S. Copyright Office is developing updated guidance on the registration of pictorial, graphic, and sculptural features incorporated into the design of useful articles. The *Compendium* will be updated once this guidance is finalized.

906.4: Typeface, Typefont, Lettering, Calligraphy, and Typographic Ornamentation

Clarifies the analysis of typeface.

As a general rule, typeface, typefont, lettering, calligraphy, and typographic ornamentation are not registrable. 37 C.F.R. § 202.1(a), (e). These elements are mere variations of uncopyrightable letters or words, which in turn are the building blocks of expression. *See id.* The Office typically refuses claims based on individual alphabetic or numbering characters, sets or fonts of related characters, fanciful lettering and calligraphy, or other forms of typeface. This is true regardless of how novel and creative the shape and form of the typeface characters may be.

Examples:

- Felicia Frost creates a font called “Pioneer Living” that evokes historical “Wanted: Dead or Alive” posters. The registration specialist will refuse to register this font because it is a building block of writing.

There are some very limited cases where the Office may register some types of typeface, typefont, lettering, or calligraphy, such as the

following:

- Pictorial or graphic elements that are incorporated into uncopyrightable characters or used to represent an entire letter or number may be registrable. Examples include original pictorial art that forms the entire body or shape of the typeface characters, such as a representation of an oak tree, a rose, or a giraffe that is depicted in the shape of a particular letter. In these cases, the representational art may be registered.

908.1: What Is Jewelry?

For purposes of copyright registration, jewelry designs are considered “works of artistic craftsmanship,” which are protected “insofar as their form but not their mechanical or utilitarian aspects are concerned.” 17 U.S.C. § 101 (definition of “pictorial, graphic, and sculptural works”).

Clarifies that jewelry designs are classified as works of artistic craftsmanship.

921: Graphs, Charts, Tables, and Figures

The copyright law does not protect blank graphs, charts, and tables that are designed for recording information and do not in themselves convey information. These types of works are not copyrightable, because they rarely contain more than a *de minimis* amount of authorship other than that necessary to implement the underlying method, technique, or idea. For the same reasons, the ideas for graphs, charts, tables, and figures or the overall design of a graphing, charting, or tabling method or template are not copyrightable. *See* 37 C.F.R. § 202.1(c).

Clarifies grounds for refusal of graphs, charts, tables, and figures.

919.1: Copyrightable Authorship in Models

A model of a useful article or a model of an architectural work generally is protectable if it includes a sufficient amount of original authorship and if it contains some original differences from the object depicted.

Clarifies the minimum degree of copyrightable authorship in models.

Chapter 1000

SECTION	REVISION
1006.1(A): Hypertext Markup Language (HTML)	Clarifies guidance for registering human authored HTML.
010.1: Deposit Requirements for Registration The fixed copy(ies) or phonorecord(s) should be submitted in a format that allows the registration specialist to perceive the actual content and context where the work appears on a given website or webpage. In other words, the deposit should show how the content would be perceived when a user accesses that content in the online environment. The specialist may communicate with the applicant or may refuse registration if the applicant submits separate files or folders containing unassembled content or content that has been disassociated from the website or webpage where it originally appeared.	Clarifies examination practices when deposit constitutes unassembled or disassociated content.

Chapter 1100

SECTION

REVISION

1101: What This Chapter Covers

As a general rule, a registration covers an individual work, and an applicant should prepare a separate application, filing fee, and deposit for each work that is submitted for registration. However, there are several exceptions to this rule, including:

- Registering a collective work together with the separate and independent works contained therein. This option is discussed in Chapter 500, Section 509.1 and Chapter 600, Sections 610.4, 613.8, 618.7, 620.8, and 621.8(D).
- Registering a sound recording together with the musical work, dramatic work, or literary work contained in that recording. This option is discussed in Chapter 500, Section 511.

Clarifies works that can be registered using one application.

1102: Registration as a Single Work: The Unpublished Collection Option

The U.S. Copyright Office has established an administrative procedure that allows an applicant to register a number of unpublished works with one application, one filing fee, and one set of deposit copies. This is known as the “unpublished collection” option.

As a general rule, a registration issued under this option covers each work that is submitted for registration. If the applicant does not assert a claim in the selection, coordination, or arrangement of those works, the Office considers each work to be registered individually. *See* 37 C.F.R. § 202.3(b)(4)(i)(B).

If the applicant expressly asserts a claim in the compilation authorship involved in selecting the works and assembling them into a collective whole, the Office will register the works as an unpublished collective work, rather than an unpublished collection. A registration for an unpublished collective work will cover the individual works (i) if the claimant owns the copyright in each of those works and the collective work as a whole, and (ii) if the individual works have not been previously published or previously registered. In no case may a claimant register a work that is in the public domain.

For additional information concerning the difference between an unpublished collection and an unpublished collective work, see Sections 1104.5 and 1106. For additional information concerning collective

Provide distinction between a registration for an unpublished collection and a registration for an unpublished collective work.

works, see Chapter 500, Section 509.1 and Chapter 600, Sections 610.4, 613.8, 618.7, 620.8, and 621.8(D).

1104.5: Group Registrations Distinguished from Registrations for Unpublished Collections

In determining whether to register multiple works with one application the applicant should consider the potential impact on the copyright owner's ability to seek damages in the event that a third party infringes those works.

If an applicant submits a number of unpublished works – but does not expressly assert a claim in the selection, coordination, and/or arrangement of those works – the U.S. Copyright Office will presume that the claim is limited to the individual works and will register them as an unpublished collection.

By contrast, if the applicant asserts a claim in the selection, coordination, and/or arrangement of the collection as a whole, the Office will register the works as an unpublished collective work, rather than an unpublished collection. This may have significant consequences in a copyright infringement action.

When a compilation claim has been asserted, and the Office has registered the works as an unpublished collective work, the copyright owner may be entitled to claim only one award of statutory damages in an infringement action, even if the defendant infringed all of the component works covered by the registration. *See* 17 U.S.C. § 101 (“The term ‘compilation’ includes collective works.”); 17 U.S.C. § 504(c)(1) (stating that a copyright owner may be entitled to recover “an award of statutory damages for all infringements involved in the action, with respect to any one work” and “[f]or the purposes of this subsection, all the parts of a compilation or derivative work constitute one work”). By contrast, when no compilation claim has been asserted and a number of works are registered as an unpublished collection, the registration will extend to each individual work that is copyrightable, and Section 504(c)(1) of the Copyright Act would not bar the copyright owner from seeking a separate award of statutory damages for each work.

Copyright owners who use a group registration option may be entitled to claim a separate award of statutory damages for each work – or each issue in the case of serials, newspapers, or newsletters – that is covered by the registration, because a group registration covers each work or each issue that is submitted for registration (rather than the group as a whole). However, there is an exception to this rule. As discussed in Section 1117, a group registration for a database covers the updates or revisions that were added to the database during the period specified in the registration. Copyright owners that use this option are entitled to claim only one award of statutory damages in a copyright infringement action, because

the updates or revisions to a database are derivative compilations, and as noted above, the statute expressly states that “all the parts of a compilation or derivative work constitute one work” when calculating statutory damages. *See id.*

1103: Registration as a Single Work: The Unit of Publication Option

Clarify eligibility requirements for the unit of publication option.

The U.S. Copyright Office has established an administrative procedure that allows an applicant to register a number of works that were physically packaged or bundled together as a single unit by the claimant and first published on the same date. This is known as the “unit of publication” option.

A registration issued under this option covers each work in the unit that is owned by the copyright claimant.

A unit of publication is different from an unpublished collection in that the works in the unit cannot be aggregated simply for the purpose of registration, but rather must have been first distributed to the public in the packaged unit. A unit of publication is also different from a collective work in that the unit is not a compilation of works, but rather a package of separate and distinct copies or phonorecords that are physically bundled together and distributed to the public as a unit, such as a board game containing instructions, a game board, and sculpted playing pieces.

However, a unit may contain a compilation or collective work, such as a CD containing sound recordings packaged together with cover art and liner notes.

For additional information concerning the unit of publication option, see Section 1107. For additional information concerning the unpublished collection option, see Section 1106. For additional information concerning collective works, see Chapter 500, Section 509.1 and Chapter 600, Sections 610.4, 613.8, 618.7, 620.8, and 621.8(D).

1107: The Unit of Publication Option

This Section discusses the U.S. Copyright Office’s current practices and procedures for registering a number of works that were physically packaged or bundled together and first published as a single unit on the same date.

1107.4(D): Publication / Completion

When registering a number of works with the unit of publication option, all of the works submitted for registration must be physically packaged

or bundled together in a single unit and first distributed to the public as a unit. *See* Section 1107.2

1107: What Is a Unit of Publication?

A unit of publication is a package of separately fixed [component](#) works that are physically bundled together for distribution to the public as a single, integrated unit, and all of the works are first published in that integrated unit. *See* 37 C.F.R. § 202.3(b)(4)(i)(A)

The following are representative examples of works that may be distributed to the public in a single, integrated unit that may qualify as a unit of publication:

- A package of greeting cards.
- A CD packaged with cover art and a leaflet containing lyrics.
- A board game with playing pieces, game board, and instructions.
- A book published with a CD-ROM.
- A multimedia kit containing a book, a compact disc, and a poster.
- A multi-DVD package with multiple disks containing a motion picture, trailers, and deleted scenes from the motion picture.
- A box set of music CDs.
- A videogame stored on a disc packaged together with an instruction booklet and a pamphlet
- A computer program stored on a disc packaged together with a booklet containing a user's manual.
- In all cases, the works must be packaged together and distributed to the public in a physical form. Works that are combined and distributed to the public in digital form are not eligible for this option.

The unit must contain an actual copy or phonorecord of the self-contained works. A unit that merely contains a representation of the works does not satisfy this requirement. For example, a box of jewelry containing an actual necklace and an actual set of earrings that are packaged together and sold to the public as a single, integrated unit would be considered a unit of publication. By contrast, a catalog that merely contains photographs of necklaces and earrings that are offered for sale would not be considered a unit of publication, even if members of the public may order these items from the catalog either on an individual basis or as a set. The catalog could be used to register a claim

in the selection, coordination, and/or arrangement of the photographs, but not the actual items depicted in those images.

Moreover, the self-contained works must be distributed to the public as an integral part of the unit. A unit that merely offers works to the public without distributing actual copies or phonorecords does not satisfy this requirement. Likewise, works that have been physically packaged or bundled for distribution or sale to wholesalers, distributors, retailers, or other intermediaries for the purpose of further distribution, public performance, or display do not satisfy this requirement. For instance, when a record company bundles a compilation of tracks together with cover art and liner notes, and distributes them to the public on a physical album, the album would qualify as a unit of publication. By contrast, when a record company distributes tracks to the public on an individual basis or licenses its entire catalog to a streaming website to facilitate the public performance of those tracks, neither the tracks nor the catalog would qualify as a unit of publication. The following are representative examples of works that cannot be registered as a unit publication:

- Works first published online.
- Works that were first published on different dates.
- Works first published on the same date either separately or in different units.
- Works first published as separate and discrete works that were subsequently distributed together in the same unit.
- Works that are initially offered to the general public both individually and as a set.
- Works created as part of the same collection, series, or set that have not been distributed together as a single, integrated unit.
- Works that share the same characters, the same theme, or other similarities that have not been distributed together as a single, integrated unit.
- Works offered to the public as a unit, but never distributed to the public.
- Multiple photographs taken at the same photo shoot.

A catalog with photographs of copyrightable works offered for sale, either individually or as a unit

1107.2: Eligibility Requirements

An applicant may register a group of separately fixed works with one application, one filing fee, and the appropriate deposit copies, provided that the following conditions have been met:

- All of the copyrightable elements must be recognizable as self-contained works.
- All of the works claimed in the application must be first published as a single unit on the same date.
- The copyright claimant for all of the works claimed in the unit must be the same.

See 37 C.F.R. § 202.3(b)(4)(i)(A). For additional guidance concerning the deposit requirements for a unit of publication, see Chapter 1500.

In addition, the claimant in the unit of publication must be the person or entity that physically bundled or caused the bundling of the works and elements together into the integrated unit.

A unit of publication may contain one or more collective works. But the unit of publication option is not an appropriate means for registering a collective work or the component works contained therein unless the collective work has been bundled together with other separately fixed component works and has been distributed to the public as a single, integrated unit on the same date. For example, a book of photographs and the images contained therein may be registered as a collective work if (i) the claimant owns the copyright in both the images and the authorship involved in creating the book as a whole, and (ii) if the images have not been previously published or previously registered and if they are not in the public domain. In such cases, the applicant should not use the unit of publication option. For guidance on registering a collective work, see Chapter 500, Section 509.1 and Chapter 600, Sections 610.4, 613.8, 618.7, 620.8, and 621.8(D).

1104.4: The Scope of a Group Registration

A registration for a group of published photographs or a group of contributions to periodicals covers the copyrightable authorship in each work that is submitted for registration. A registration for a group of serials, newspapers, or newsletters covers the copyrightable authorship in each issue in the group.

Clarifies the scope of registration for the group registration options.

1106.35: Completing the Application

This Section provides guidance for completing an application to register multiple works with the unpublished collection option.

Applicants should inform the U.S. Copyright Office that the applicant is seeking to register a number of works as an unpublished collection. When completing the online application, the applicant should provide this information in the Note to Copyright Office. When completing a paper application, the applicant should provide this information in a cover letter.

If the registration specialist determines that the component works are eligible for registration as an unpublished collection, the specialist will add an annotation to the certificate of registration and the online public record for the claim, such as: “Basis for registration: Unpublished collection.”

Clarifies examination practices for registrations for unpublished collections.

1107.4: Completing the Application

This Section provides guidance for completing an application to register multiple works with the unit of publication option.

Applicants should inform the U.S. Copyright Office that they are seeking to register a number of self-contained works under the unit of publication option. When completing the online application, the applicant should provide this information in the Note to Copyright Office. When completing a paper application, the applicant should provide this information in a cover letter.

If the registration specialist determines that the component works are eligible for registration under the unit of publication option, the specialist will add an annotation, such as: “Basis for registration: Unit of publication.” This statement will appear on the certificate of registration and the online public record for the claim.

If the specialist determines that the component works are not eligible for registration under this option, he or she may communicate with the applicant to clarify the scope of the claim, ask the applicant to submit a separate application for each work, or refuse registration.

Clarifies examination practices for unit of publication.

1107.4(F): Manufacturer, Publisher, Producer, Packager, or Creator of the Unit of Publication

Clarify bundling requirement for unit of publication.

As discussed in Section 1107.2, a unit of publication cannot be created merely for the purpose of registration. Instead, the works must have been packaged and distributed to the public as a single, integrated unit. An applicant may register the component works contained within a unit of publication, provided that the claimant manufactured, produced, published, packaged, or otherwise created the single, integrated unit. In other words, the unit of publication option may be used only if the claimant packaged or bundled the unit as a whole, or caused the unit to be packaged or bundled together.

When completing the online application, the applicant should provide a brief statement in the Note to Copyright Office field indicating that the claimant is the manufacturer, producer, publisher, packager, or other creator of the unit as a whole. When completing a paper application, the applicant may provide this information in a cover letter.

1107.4(I): Limitation of Claim

A claimant may use the unit of publication option only if that party packaged or bundled the unit as a whole, or if that party caused the unit to be packaged or bundled together. Moreover, the unit of publication option cannot be used to register any of the works in the unit that have been previously published or any works that are not owned by the copyright claimant (although such works may be registered separately). If the unit contains previously published material or third party material, the applicant should exclude that material from the claim using the procedure described in Chapter 600, Section 621.8(B). The excluded works must be registered separately as individual works.

1107.4(G): Author Created / Nature of Authorship

Clarifies physical unit requirement for unit of publication.

If the same author created all the component works within the unit, the applicant should check one or more of the boxes in the Author Created field that accurately describe those self-contained works. For example, if the unit of publication consists of a shrink-wrapped package with a CD-ROM containing a computer program, a booklet containing a user's manual, and cover artwork, the applicant should check the boxes marked "computer program," "text," and "artwork." If the unit of publication consists of a physical album containing music, lyrics, sound recording, artwork, and liner notes, the applicant should check the box marked "sound recording" and in the box marked Other the applicant should state "music," "lyrics," "artwork," and "text of liner notes."

1117.2: The Scope of a Group Registration for a Database

Clarify
examination
practices for
registration of
databases.

The legislative history for the Copyright Act states that “computer data bases” may be protected by copyright “to the extent that they incorporate authorship in the programmer’s expression of original ideas, as distinguished from the ideas themselves.” H.R. REP. NO. 94-1476, at 54 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5667.

When examining a database, the principle question that the U.S. Copyright Office must consider is whether the selection, coordination, and/or arrangement of data or other component elements within the database is sufficiently creative to warrant registration. A database and/or the updates or revisions to that database typically contain the following forms of authorship:

- The selection authorship involved in choosing the material or data that is included in the database.
- The coordination authorship involved in classifying, categorizing, ordering, or grouping the material or data.
- The arrangement authorship involved in determining the placement or arrangement of the material or data within the database as a whole.

Each form of authorship may provide a basis for registering a database, provided that the selection, coordination, and/or arrangement is sufficiently creative.

If the work is registerable as a database, the registration may cover the component elements that appear within the database, such as photographs, sound recordings, or videos, provided that (i) the claimant owns the copyright in those elements, (ii) there is a sufficient amount of creative expression in those elements, and (iii) those elements have not been previously published or previously registered. (In no case may a claimant register elements that are in the public domain.) However, the copyrightable component elements are not sufficient – in and of themselves – to support a database registration unless the selection, coordination, and/or arrangement of those elements with the database is also sufficiently creative.

A group of updates or revisions should be submitted for group registration only if the updates or revisions meet the statutory standard for an original work of authorship. If they do not “satisfy the original work of authorship standard for copyright protection, then no new registration is necessary or warranted.” *Registration of Claims to Copyright, Registration and Deposit of Databases*, 54 Fed. Reg. 13,177, 13,179 (Mar. 31, 1989). “Where the Office determines that only a few minor revisions have been made in the representative deposit, registration will be subject to question, and absent more justification, will

be denied.” *Id.*

In all cases, the author’s selection, coordination, and/or arrangement must be evident in the deposit material. If the identifying material or the descriptive statement do not demonstrate that the updates or revisions constitute an original work of authorship, the Office may communicate with the applicant or may refuse to register the claim.

1117.7(B): Space 2: Name of Author / Nature of Authorship

NOTE: The applicant should also submit a separate descriptive statement that describes the selection, coordination, and/or arrangement that the author contributed to the database. For information concerning this requirement, see Section 1117.6(C).

The authorship that the applicant intends to register should be clearly identified in the application and the descriptive statement, and the claim to copyright in that authorship should be clearly stated. If the claim is unclear, the registration specialist may communicate with the applicant or may refuse registration.

Chapter 1400

SECTION

REVISION

1402.3: Registration Type Governs Which Application to Use

An application for a *basic registration* covers a work of authorship created or first published on or after January 1, 1978. This type of registration may be obtained with one of the following types of applications:

Clarifies registration options for standard applications.

- *Standard Applications*. This type of application may be used to register the following types of works:
 - One work.
 - A collective work. The statute defines a collective work as “a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.” 17 U.S.C. § 101
 - Multiple unpublished works, provided that (i) the elements are assembled in an orderly form, (ii) the combined elements bear a single title identifying the collection as a whole, (iii) the copyright claimant in all the elements and in the collection as a whole is the same, and (iv) all the elements are by the same author or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element. For guidance in completing an application to register an unpublished collection, see Chapter 1100, Section 1106.3.
 - Multiple published works, provided that (i) they are owned by the same person or organization, and (ii) they are physically bundled together for distribution to the public as a single, integrated unit, and they are first published in that integrated unit. This is known as the “unit of publication” option. For a definition of a “unit of publication” and a detailed discussion of this option, see Chapter 1100, Section 1107.4.
- *Single Application*. This type of application may be used to register an individual work (*e.g.*, one poem, one song, one photograph) created by one person, provided that the copyright in the work is solely owned by the author of that work and provided that the work is not a work made for hire.

1403.4: Acceptable Forms of Payment

Applicants submitting paper applications may pay fees from a deposit account or by using checks, money orders, or bank drafts payable to the U.S. Copyright Office.

Reflects regulatory change for making payments to the Office.

1403.6: Refunds

The U.S. Copyright Office will not refund fees submitted for applications for basic, supplementary, or renewal registration, including mask works and vessel designs, if the Office refuses to register the claim because the material deposited does not constitute copyrightable subject matter or because the claim is invalid for any other reason. The Office will refund payments made by mistake or in excess of the fee, depending upon the timing of the request or other factors, but amounts of \$50 or less will not be refunded unless specifically requested. *See* 37 C.F.R. § 201.6(c)(1). For example, the Office may refund the filing fee for a duplicate submission if the applicant filed an online application, and then immediately submitted another application to register the same work because her computer crashed before she received an email acknowledging her first submission. By contrast, if an applicant submitted an application for a preregistration, a supplementary registration, or a renewal registration, the Office will not refund the filing fee, even if the applicant actually intended to file an application for a basic registration.

Clarifies refund policy.

Chapter 1500

SECTION

REVISION

1501: What This Chapter Covers

This Chapter discusses the deposit requirements for a variety of creative works. The term “deposit” is frequently misunderstood. It refers to the copy or copies of a work that are submitted to the U.S. Copyright Office. It does not refer to the filing fee that must be paid in order to register a work with the Office.

Clarifies that the term “deposit” does not refer to the filing fee.

1503.1: Overview of the Deposit Requirement

For works first published in the United States on or after January 1, 1978, the applicant generally should submit two complete copies or phonorecords of the best edition of the work. *See id.* § 202.20(c)(1)(iii). Specifically, the applicant should submit two complete copies or phonorecords of the “best” edition that exists at the time the claim is filed. However, there are several exceptions to this rule, which are discussed in Sections 1509.1 through 1509.3. *See id.* § 202.20(c)(2).

Clarifies best edition requirement and effect of deposit issues on the effective date of registration.

IMPORTANT NOTE: The Office cannot assign an effective date of registration for a work published in the United States until it receives the appropriate number of copies of that work or an appropriate amount of identifying material. If the applicant submits one copy when two copies are required, the Office will request a second copy of that work and will not assign an effective date of registration until the second copy is received.

1503.1: Refusal to Register

If the U.S. Copyright Office determines that the applicant failed to comply with the deposit requirements for a particular work, the registration specialist may communicate with the applicant or may refuse to register the claim. 17 U.S.C. § 410(b). The following are examples of situations where the Office may refuse to register a claim for failure to comply with the deposit requirement:

Provides grounds for refusal when an applicant fails to comply with the deposit requirement.

- The applicant failed to submit a copy or phonorecord of the work. 17 U.S.C. § 408(a).
- The applicant failed to submit a complete copy or phonorecord of the

work. *Id.* § 408(b), 37 C.F.R. § 202.20(c)(1)(i)-(iv).

- The applicant failed to submit two copies or phonorecords of the best edition of a work published in the United States. 17 U.S.C. § 408(b)(2).
- The applicant failed to submit a *bona fide* copy of the work.
- The applicant failed to submit the required identifying material that is sufficient to show the authorship claimed in the application. 37 C.F.R. § 202.20(c)(2)(iv), (vii)-(xiv).
- The applicant failed to submit the work in an acceptable format.
- The applicant submitted the work in a form that cannot be examined by the Office.

The applicant must submit a *bona fide* copy of the work, regardless of whether the deposit consists of a complete copy, a complete phonorecord, or identifying material. For purposes of registration, a *bona fide* copy is a copy or phonorecord (i) that is virtually identical to the original copy or phonorecord of the work, and (ii) that is made from or by directly referring to the original copy or phonorecord. *Torres-Negron v. J&N Records, LLC*, 504 F.3d 151, 157 (1st Cir. 2007), *abrogated on other grounds by Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010); *Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1211-12 (9th Cir. 1998).

1504: What Is the Best Edition of the Work?

Clarify best edition requirements.

The Copyright Act states that the “material deposited for registration [of a published work] shall include . . . two complete copies or phonorecords of the *best edition*.” 17 U.S.C. § 408(b)(2) (emphasis added).

The “best edition” of a work is defined as “the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.” 17 U.S.C. § 101; 37 C.F.R. §§ 202.19(b)(1), 202.20(b)(1).

The criteria used to determine the best edition for a particular work are listed in the “Best Edition Statement,” which is set forth in Appendix B to Part 202 of the Office’s regulations. It is also posted on the Office’s website in *Best Edition of Published Copyrighted Works for the Collections of the Library of Congress* (Circular 7b).

NOTE: If a work was published in both a hard copy format (*i.e.*, in a physically tangible format) and an electronic format, the requirements set forth in the Best Edition Statement for the hard copy format apply. 37

C.F.R. § 202.20(b)(1). It is the applicant's responsibility to submit the correct deposit.

1504.1: Works Exempt from the Best Edition Requirement

For purposes of registration, the following types of works are exempt from the best edition requirement:

- Unpublished works (including works that were published after the claim was submitted to the U.S. Copyright Office).
- Works published solely in a foreign country.

See 37 C.F.R. § 202.20(c)(1)(i), (c)(1)(iv).

If the work is unpublished, the applicant may upload an electronic copy of the work in an acceptable file format. The list of acceptable file formats is set forth in Section 1507 below.

Likewise, the applicant may upload an electronic copy if the work was unpublished when the claim was submitted. There is no need to submit additional copy(ies) or phonorecord(s) if the work is subsequently published while the work is being examined or after the claim has been registered or refused.

If the work was published solely in a foreign country, the applicant may submit one copy of the first published edition of that work.

1504.2: Works Subject to the Best Edition Requirement

As discussed in Section 1503.1, the applicant generally should submit two complete copies or phonorecords of the best edition of the work if the work was first published in the United States on or after January 1, 1978. *See* 37 C.F.R. § 202.20(c)(1)(iii). If the work was first published in a foreign country and then subsequently published in the United States, the applicant may submit one complete copy of the foreign edition, or alternatively, the applicant may submit one complete copy of the best edition published in this country. *See id.* § 202.20(c)(1)(iv). If a work was published in both a physical format and an electronic format, the applicant should submit the best edition of the work in the physical format. *See id.* § 202.20(b)(1).

To identify the “best” edition of the work, applicants should focus solely on the edition(s) or format(s) that actually exist as of the date that the claim is filed. For example, if a novel was published in paperback form on the date the claim was filed, the applicant should submit the work in that format, even if the work is subsequently published in another format that the Library may prefer.

To be clear, applicants do not need to create a new edition of a work in order to satisfy the best edition requirement. For example, if a motion picture was published solely on DVD as of the date that the claim was filed, the applicant may submit the work in that format; there is no need to produce another edition solely for the purpose of seeking a registration.

If the applicant is unable to submit a complete copy or phonorecord of the best edition, the applicant may ask for special relief from the deposit requirements. For information concerning this procedure, see Section 1508.8.

1504.3: Applicant Makes the Determination

As a general rule, the applicant – not the U.S. Copyright Office – should determine whether the work is subject to the best edition requirement for purposes of registration. This determination should be based on the facts that exist at the time when the claim is filed with the Office.

The registration specialist will not ordinarily conduct independent research to determine whether a particular work is subject to the best edition requirement, whether the applicant submitted the best edition of that work, or whether a different edition may be required. In most cases, the specialist will accept the applicant’s determination, unless it is contradicted by information provided in the deposit itself or elsewhere in the registration materials. The Office leaves it to a court to determine whether a failure to comply with the best edition requirement was a knowing misrepresentation.

If the work was published solely in a format that is not listed in the Best Edition Statement, the applicant may seek further guidance concerning the deposit requirements for registration by submitting a written request to the Office of Registration Policy & Practice. The Office will provide the applicant with general information about the provisions of the Copyright Act, including the statutory definition of “best edition,” and will explain the regulatory requirements for registering that type of work.

1508.1: Electronic Deposit Copy(ies)

In all cases, the work should be submitted in a form that allows it to be perceived as a complete work of authorship. The registration specialist must be able to perceive the entire content of the work, including the context where each element appears within the work as a whole. The specialist may communicate with the applicant or may refuse registration if the applicant submits separate files or folders containing unassembled content or elements that have been disassociated from the context where

Clarifies requirements for submitting electronic deposits.

they originally appeared within the work as a whole.

There is a maximum size restriction for each file that is uploaded to the electronic registration system. Specifically, the system will not accept any file that is more than 500 MB in size. Before uploading a file to the system, the applicant should confirm that the file does not exceed this size limit.

The system also has a sixty minute “time out” feature that automatically terminates the upload process if it takes more than one hour to complete. Depending on the connection speed of the applicant’s computer, it may be necessary to split the deposit into separate files to ensure that the upload can be completed in sixty minutes or less.

If the applicant intends to upload a large number of files, the Office encourages the applicant to submit the deposit in one or more compressed ZIP files. But in all cases, the files within the ZIP file must be submitted in an acceptable file format. If the ZIP file contains any files that do not appear on the list of acceptable file formats, the registration specialist may communicate with the applicant or refuse to register the claim.

Before uploading a ZIP file, the applicant should confirm that the file does not exceed the 500 MB size limit mentioned above. If the applicant intends to upload a very large file, the Office encourages the applicant to compress the deposit or to separate the deposit into two or more smaller files. Alternatively, the applicant may upload the deposit during two or more upload sessions; information concerning this procedure is available on the Office’s website.

1509.1(C): Computer Programs

To register a computer program, the applicant should submit “one copy of identifying portions” for the specific version of the program that the applicant intends to register. *See* 37 C.F.R. § 202.20(c)(2)(vii). Specifically, the applicant should submit an identifying portion of the source code for the particular version of the program that the applicant intends to register, regardless of whether the program is published or unpublished, and regardless of whether the program is fixed in a CD-ROM, semiconductor chip, a magnetic tape or disk, or any other storage media. These issues are discussed in Sections 1509.1(C)(1) through 1509.1(C)(5) below.

Clarify deposit requirements for computer programs.

As discussed below, the U.S. Copyright Office considers source code to be the best representation of the copyrightable authorship in a computer program. The Office generally discourages applicants from submitting object code, because it cannot be examined for copyrightable authorship.

That said, the Office will accept a deposit consisting solely of object code if certain requirements have been met. For information concerning this option, see Section 1509.1(C)(4)(b).

In some cases, the applicant may be required to submit additional material depending on the following factors:

- Whether the program is fixed in a CD-ROM.
- Whether the applicant expressly asserted a claim in the screen displays generated by the program.
- Whether the applicant intends to register the user manual or other documentation for the program.

These topics are discussed in Sections 1509.1(C)(6) through 1509.1(C)(7) below.

1509.1(C)(2): Derivative Computer Programs

If the computer program contains an appreciable amount of unclaimable material, the program should be registered as a derivative work.

A registration for a derivative computer program covers the new material or revised material that the author contributed to that work, but it does not cover any of the unclaimable material that may appear in the program. *See* Chapter 700, Section 721.8. This may be critical if the program contains previously published material and if that portion of the program has been infringed. Because a registration for a derivative computer program does not cover any portion of the work that has been previously published, the copyright owner may not be able to claim statutory damages and attorney's fees unless that material has been separately registered with the U.S. Copyright Office

1509.1(C)(4)(d): Appropriate Method for Blocking Out Source Code That Contains Trade Secret Material

As discussed in Sections 1509.1(C)(4)(b) and 1509.1(C)(4)(c), an applicant may block out the portions of the source code that contain trade secret material. The applicant may not block out any portions of the source code that do not contain trade secret material.

The U.S. Copyright Office will not accept blocked out pages that conceal virtually all of the copyrightable expression in the work. The unblocked portions of the deposit must contain enough computer code to enable the Registration Program to determine whether the deposit contains a sufficient amount of copyrightable expression to warrant registration under Sections 102(a) and 410 of the Copyright Act. The Office has not attempted to quantify the amount of source code that must remain

visible, because the determination of copyrightable expression can never be based on an arbitrary formula. Instead, the regulation requires “[a]n appreciable amount of original computer code,” meaning sufficient original computer code to constitute recognizable copyrightable expression. *Id.* Whether a particular deposit meets this standard will be determined on a case-by-case basis. In most cases, the presence of copyrightable authorship is readily apparent. However, if all of the copyrightable expression has been blocked out and only uncopyrightable material remains visible, a member of the Registration Program will ask the applicant to submit an acceptable printout of source code and will change the effective date of registration to the date that an acceptable deposit is received. If the applicant is unable or unwilling to submit a deposit with copyrightable authorship that is visible to the Registration Program, registration may be refused, even if the unblocked portions represent more than fifty percent of the source code shown in the identifying material.

1509.1(C)(5): Computer Programs Fixed in a CD-ROM

“[A] CD-ROM package, whenever available, is the preferred form of deposit for the works embodied therein, both for registration and mandatory deposit.” Registration of Claims to Copyright: Deposit of CD-ROM Format, 56 Fed. Reg. 47,402 (Sept. 19, 1991).

If a computer program has been fixed in a CD-ROM, the applicant must submit “one complete copy of the entire CD-ROM package, including a complete copy of any accompanying operating software and instructional manual” for the program. 37 C.F.R. § 202.20(c)(2)(xix)(A). In addition, the applicant should submit a portion of the source code for the specific version of the program that the applicant intends to register, using the options discussed in Section 1509.1(C)(1) through 1509.1(C)(4).

CD-ROMs typically contain a copy of the source code for the computer program that has been converted or compiled into object code. If the applicant fails to submit identifying material a member of the Registration Program will ask the applicant to submit a file or print out containing an appropriate portion of the code. *Id.* § 202.20(c)(2)(xix)(B). The requirements for the submission of source code are discussed in Sections 1509.1(C)(1) through 1509.1(C)(4) above.

1509.1(C)(7): User Manuals and Other Documentation for a Computer Program

If the claimant owns the copyright in the program and the user manual or other documentation for that program, and if the claimant physically packaged these items together and distributed them to the public as a single, integrated unit (such as a shrink-wrapped box containing a disk and booklet), it may be possible to register them together with one application and one filing fee. Specifically, the applicant may be able to

register the works with the unit of publication option. *See* 37 C.F.R. § 202.3(b)(4)(i)(A). By contrast, if the program and the documentation are distributed online, if they are distributed separately from each other, or if they are owned by different claimants, each element is considered a separate work and a separate application for each element is required.

To register a computer program and the documentation for that program as a unit of publication, the applicant should submit one complete copy of the unit, together with identifying portions of the program code. (The deposit requirements for computer programs are discussed in Sections 1509.1(C)(1) through 1509.1(C)(5) above.)

1509.1(D)(3): Databases That Predominantly Consist of Photographs

In addition, the applicant must submit identifying portions of the database using one of the methods described in Section 1509.1(D)(2). The identifying material must be sufficient to show the authorship involved in selecting, coordinating, and/or arranging the photographs that appear within the database. If the compilation authorship is not perceptible in the deposit, or if the compilation authorship shown in the deposit is not sufficiently creative, the registration specialist will refuse to register the claim, irrespective of the creativity in the individual photographs.

Clarifies deposit requirements for databases.

1509.1(D)(3): Literary Works Fixed in a CD-ROM

If a member of the Registration Program is unable to view the CD-ROM using standard Office equipment, the Office may accept identifying material or alternative deposit materials under a grant of special relief (in addition to the complete CD-ROM package).

Clarifies deposit requirements for literary works fixed in a CD-ROM.

1509.1(I): Foreign Literary Works

If the work was first published in a foreign country and then subsequently published in the United States, the applicant may submit one complete copy or phonorecord of the work as first published in the foreign country. Alternatively, the applicant may submit one complete copy or phonorecord of the best edition that was published in the United States, provided that the content of the U.S. edition is identical to the content of the foreign edition. *See id.*

Clarifies deposit requirements for foreign literary works.

1509.2: Works of the Performing Arts

To register a work that was first published in the United States on or after January 1, 1978, the applicant generally should submit one or two complete copy(ies) or phonorecord(s) of the best edition of that work. *See id.* § 202.20(c)(1)(iii).

Clarifies the general deposit requirements for performing arts works.

As discussed in Section 1504.2, the criteria used to identify the best edition of a work are listed in the Best Edition Statement, which is set forth in Appendix B to Part 202 of the Office’s regulations. It is also posted on the Office’s website in *Best Edition of Published Copyrighted Works for the Collections of the Library of Congress* (Circular 7b).

To register a work published in both electronic and hard copy formats, the applicant should submit one or two complete copy(ies) or phonorecord(s) of the work in the hard copy format. If the work was published solely in electronic format, the applicant may submit digital file(s) containing one or two complete copy(ies) or phonorecord(s) of the work, provided that the requirements set forth in Section 1507.2 have been met.

There are exceptions to these rules for certain types of performing art works. The deposit requirements for these types of works are discussed in Sections 1509.2(A) through 1509.2(E). The deposit requirements for performing arts works published in a foreign country are discussed in Sections 1509.2(F) and 1509.2(G).

1509.2(A): Musical Works

This Section discusses the deposit requirement for musical works. This requirement varies depending on whether the work is published or unpublished, and whether it was published in copies or phonorecords.

Clarify deposit requirements for musical works.

Phonorecords are “material objects” in which sounds have been fixed “and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” 17 U.S.C. § 101. Examples of physical phonorecords include compact discs, LPs, and cassette tapes. Examples of electronic phonorecords include digital audio files (such as .mp3 or .wav) stored on a computer, a flash drive, or other electronic device.

Copies are “material objects” (other than phonorecords) in which the work has been fixed “and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” *Id.* Examples of physical copies include printed formats (such as sheet music, a score, or a manuscript), as well as audiovisual formats (such as the soundtrack for a motion picture).

Examples of electronic copies include digital files (such as .PDF, .DOC, .avi, or .mpeg) stored on a computer, a flash drive, or other electronic device.

1509.2(A)(1): Unpublished Musical Works

To register an unpublished musical work, the applicant should submit one complete copy or phonorecord of the work that contains all the authorship claimed on the application. This requirement may be satisfied by uploading an electronic file to the electronic registration system, provided that it is submitted in one of the acceptable file formats listed in Section 1508.1.

1509.2(A)(2): Published Musical Works

The deposit requirement for published musical works varies depending on whether the work was first published in the United States or in a foreign country. It also varies depending on whether the work was published in copies, phonorecords, both copies and phonorecords, or solely in a motion picture. These requirements are discussed below in Sections 1509.2(A)(2)(a) through 1509.2(A)(2)(d).

1509.2(A)(2)(b): Musical Works Published in the United States in Copies

If the musical work was published in the United States solely in copies, the applicant should submit two complete copies of the best edition of that work.

Likewise, if the work was published both in copies and phonorecords that were distributed in the United States, the applicant should submit two complete copies of the best edition of that work. In other words, if the work was published on physical and electronic phonorecords (such as a compact disc or a digital audio file), and in physical or electronic copies (such as sheet music or PDF files), the applicant should submit two complete copies of the best edition, rather than submitting a phonorecord.

The criteria used to determine the best edition for a musical work are listed in section VI of the “Best Edition Statement,” which is set forth in Appendix B to Part 202 of the Office’s regulations. The Best Edition Statement is also posted on the Office’s website in *Best Edition of Published Copyrighted Works for the Collections of the Library of Congress* (Circular 7b).

Specifically, if the musical work was published in a printed edition, the applicant should submit two complete copies of the work as published in that edition. If the work was published in multiple printed editions, the applicant should review the Best Edition Statement and should submit

the edition that is listed highest on the list.

NOTE: There are two limited exceptions to this rule for works published in the following formats:

- If the musical work was published solely in copies (or published in both copies and phonorecords), and if the copies were published solely by rental, lease, or lending, the applicant should submit one complete copy of the best edition. 37 C.F.R. § 202.20(c)(2)(i)(E). If the work was published as a full score and parts, the full score is considered the complete copy. *Id.* § 202.20(b)(2)(vi)(A). If it was published as a conductor's score and parts, the conductor's score is considered the complete copy. *Id.* § 202.20(b)(2)(vi)(B).
- If the musical work was published as a contribution to a collective work (such as a hymn published in a hymnal), the applicant may submit one complete copy of the collective work, or a photocopy of the work as it was published in the collective work. 37 C.F.R. § 202.20(b)(2)(iv), (c)(2)(xv).

1509.2(A)(2)(a): Musical Works First Published in a Foreign Country

1509.2(A)(2)(d): Musical Works Published Solely in Motion Pictures

If the musical work was published in the United States or a foreign country solely in a motion picture, the applicant may submit identifying material instead of submitting a copy of the actual motion picture. Specifically, the applicant may submit the following:

- A transcription of the entire musical work; or
- A reproduction of the entire musical work on a phonorecord, and photographs or other reproductions from the motion picture showing the title of the motion picture, the credits for the soundtrack, and the copyright notice for the soundtrack (if any).

1509.2(B)(2): Published Sound Recordings

To register a sound recording published in the United States, the applicant should submit two complete phonorecords containing the best edition of the work.

The criteria used to determine the best edition for a sound recording are listed in section V of the "Best Edition Statement," which is set forth in Appendix B to Part 202 of the Office's regulations. The Best Edition Statement is also posted on the Office's website in *Best Edition of*

Clarifies the deposit requirements for published sound recordings.

Published Copyrighted Works for the Collections of the Library of Congress (Circular 7b).

The deposit for a claim in a sound recording is considered complete when it “includes the phonorecord, together with any printed or other visually perceptible material” that was published with the sound recording, such as cover art, liner notes, or the sound recording container. 37 C.F.R. §§ 202.19(b)(2); 202.20(b)(2)(v). For example, the Office will not accept a CD in a plain jewel case as the deposit copy for a claim in a published sound recording if the sound recording was marketed with cover art and liner notes.

1509.2(C)(2): Published Dramatic Works

To register a dramatic work published in the United States in visually perceptible copies, the applicant generally should submit two complete copies of the best edition of the work. If the dramatic work was published solely in electronic form, the applicant may submit a digital file containing one complete copy of the work. *See* Section 1507.2.

To register a dramatic work published on phonorecords in the United States, the applicant should submit one complete phonorecord containing the best edition of the work. As discussed in Section 1504, the criteria used to determine the best edition for a particular work are listed in the “Best Edition Statement,” which is set forth in Appendix B to Part 202 of the Office’s regulations. The Best Edition Statement is also posted on the Office’s website in *Best Edition of Published Copyrighted Works for the Collections of the Library of Congress (Circular 7b)*.

If the dramatic work was published in a motion picture in the United States and if the dramatic work and the motion picture are authored and/or owned by the same party, the applicant may satisfy the deposit requirements for both works by submitting one complete copy of the motion picture together with the separate written description described in Section 1509.2(F)(1). A separate copy of the screenplay is not required.

Clarifies the deposit requirements for published dramatic works.

1509.2(D): Choreographic Works and Pantomimes

Choreographic works and pantomimes generally are fixed in visually perceptible copies, because these types of works are based on the physical movements of a person’s body. The forms of fixation for choreography and pantomime typically include dance notation, motion pictures, textual descriptions, as well as drawings, illustrations, and/or photographs constituting the best edition of the work. *See* Chapter 800, Sections 805.3(D) and 806.3(D).

Clarify the deposit requirements for choreographic works and

pantomimes.

1509.2(D)(2): Published Choreographic Works and Pantomimes

To register a choreographic work or pantomime published in a motion picture, the applicant should submit one complete copy of the best edition of the motion picture. 37 C.F.R. § 202.20(c)(2)(i)(I).

If the work was published in the United States in printed copies, the applicant generally should submit two complete copies of the best edition of the printed work. If the work was published solely in electronic form, the applicant may submit a digital file containing one complete copy of the work. *See* Section 1507.2.

The criteria used to determine the best edition for a work published in printed copies are listed in section I of the “Best Edition Statement,” and the criteria for determining the best edition of a motion picture are listed in section III of the Statement. As discussed in Section 1504, the Best Edition Statement is set forth in Appendix B to Part 202 of the Office’s regulations. It is also posted on the Office’s website in *Best Edition of Published Copyrighted Works for the Collections of the Library of Congress* (Circular 7b).

1509.2(F): Motion Pictures

This Section discusses the deposit requirements for motion pictures created or published after January 1, 1978. For information concerning motion pictures published before that date, see Chapter 2100. For information concerning a musical work that was published solely in a motion picture, see Section 1509.2(A)(2)(d).

Clarify the deposit requirements for motion pictures.

To register an unpublished or published motion picture, the applicant should submit one complete copy of the work. 37 C.F.R. § 202.20(c)(2)(ii). In addition, the applicant should submit a separate written description of the nature and general content of the work, such as a continuity, pressbook, or synopsis. *Id.*

A copy of a motion picture is complete when “the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.” 37 C.F.R. § 202.20(b)(2)(vii).

1509.2(F)(2): Published Motion Pictures

To register a published motion picture, the applicant should submit one complete copy of the work as published, together with a separate written description of the work. *See* 37 C.F.R. § 202.20(c)(2)(ii).

The specific nature of the copy that should be submitted varies depending on whether the work was published in the United States or in a foreign country. These requirements are discussed below in Sections 1509.2(F)(2)(a) and 1509.2(F)(2)(b).

1509.2(F)(2)(a): Motion Pictures Published in the United States on or After January 1, 1978

If the motion picture was published in the United States on or after January 1, 1978, the applicant should submit one complete copy of the best edition of that work.

The criteria used to determine the best edition for a motion picture are listed in Section III of the “Best Edition Statement,” which is set forth in Appendix B to Part 202 of the Office’s regulations. The Best Edition Statement is also posted on the Office’s website in *Best Edition of Published Copyrighted Works for the Collections of the Library of Congress* (Circular 7b).

Specifically, if the motion picture was published in one of the formats listed immediately below the applicant should submit one complete copy of the work in the format that appears on this list. If the work was published in two or more of the formats listed immediately below, the applicant should submit the work in the format that is listed first. If the work was published in an electronic format and in one or more of the hard copy formats listed immediately below, the applicant should submit one complete copy of the hard copy format. *See* 37 C.F.R. § 202.20(b)(1).

- *Film Formats:*
 1. Preprint material (by special arrangement)
 2. 70 mm positive print (if original production negative is greater than 35 mm)
 3. 35 mm positive prints

4. 16 mm positive prints
- *Video Formats:*
 1. Betacam SP
 2. Digital Beta (Digibeta)
 3. DVD
 4. VHS Cassette

See 37 C.F.R. Part 202, Appendix B, Section III.

The following examples illustrate the appropriate method for identifying the “best edition” in cases where a motion picture was published in one or more of the formats listed immediately above.

- An animated film was published solely on a commercial DVD. The applicant should submit one complete copy of the commercial DVD.
- A major motion picture was published in 35mm film, a commercial DVD, and a VHS cassette. The applicant should submit one complete copy of the 35mm film, because film formats are preferred over video formats, such as DVD and VHS.
- A documentary was published on DVD and VHS cassette. The applicant should submit one complete copy of the DVD, because DVD formats are preferred over VHS.
- A comedy routine was published on a commercial DVD and published online as a digital download. DVDs are included on the list of preferred formats, but digital downloads are not. Therefore, applicant should submit one complete copy of the DVD.

In all cases, applicants should focus solely on the editions or formats that actually exist as of the date that the claim is filed. There is no need to create a new edition of the work solely for purposes of registration. For instance, if the motion picture was published solely as a digital cinema package (DCP), there is no need to create a new edition on 35 mm film, digibeta, or any of the other formats listed on the Best Edition Statement.

If the motion picture was published in any other format that is not listed on the Best Edition Statement, the applicant may request further guidance by submitting a written request to the Office of Registration Policy & Practice. If the motion picture was published solely in a DCP format, the applicant may upload the work in any of the acceptable file formats listed in Section 1508.1, provided that the file does not exceed

500 megabytes. Alternatively, the applicant may submit one complete copy of the work on a DVD-R.

1509.2(F)(2)(b): Motion Pictures Published in a Foreign Country on or After January 1, 1978

If the motion picture was published solely in a foreign country on or after January 1, 1978, and if the work was published in only one format, the applicant should submit one complete copy of the work as published in that format.

If the motion picture was published solely in a foreign country, and if the work was published in more than one edition, the applicant should submit one complete copy of the first published edition. *See* 37 C.F.R. § 202.20(c)(1)(iv).

If the motion picture was first published in a foreign country, and then subsequently published in the United States, the applicant may submit one complete copy of the edition that was first published in the foreign country. Alternatively, the applicant may submit one complete copy of the “best edition” that was published in the United States, provided that the content of the U.S. edition is identical to the content of the foreign edition. *See id.* For information concerning the best edition requirement, see Section 1509.2(F)(2)(a).

1509.2(F)(3): Motion Pictures Contained in Formats That Cannot Be Viewed by the U.S. Copyright Office

The U.S. Copyright Office may not have equipment needed to examine a motion pictures for copyrightable authorship. If so, the registration specialist may ask the applicant to resubmit the work in a different format.

Alternatively, the specialist may proceed with his or her examination without requesting a viewable copy of the motion picture, provided that (i) the applicant submitted a separate written description of the work, such as a continuity, press book, synopsis, or the final shooting script, and (ii) the written description sufficiently identifies the copyrightable material in the work, and includes the following information:

- The continuing title of the work and the episode title (if any);
- The nature and general content of the program and its dialog or narration (if any);
- The running time; and

- All credits appearing on the work, including the copyright notice (if any).

37 C.F.R. § 202.21(h).

1509.2(G): Foreign Works of the Performing Arts

To register an unpublished work of the performing arts that was created by a citizen or national of a foreign country, the applicant should submit one complete copy or phonorecord of the work that contains all the authorship claimed on the application.

To register a work of the performing arts that was published solely in a foreign country, the applicant should submit one complete copy or phonorecord of the work as first published in that country. 37 C.F.R. § 202.20(c)(1)(iv).

If the work was published in a foreign country and then subsequently published in the United States, the applicant may submit one complete copy or phonorecord of the work as first published in the foreign country. Alternatively, the applicant may submit one complete copy or phonorecord of the best edition that was published in the United States, provided that the content of the U.S. edition is identical to the content of the foreign edition. *See id.*

1509.3(E)(1): Two-Dimensional Works

To register an unpublished, two-dimensional visual arts work that was created by a citizen or national of a foreign country, the applicant may submit identifying material instead of submitting an actual copy of the work. *See* 37 C.F.R. § 202.20(c)(2)(iv). For information concerning the requirements for identifying material, see Section 1509.3(C).

To register a visual arts work that was published solely in a foreign country, the applicant should submit one complete copy of the work as first published in that country. 37 C.F.R. § 202.20(c)(1)(iv).

If the work was published in a foreign country and then subsequently published in the United States, the applicant may submit one complete copy or phonorecord of the work as first published in the foreign country. Alternatively, the applicant may submit one complete copy of the best edition that was published in the United States, provided that the content of the U.S. edition is identical to the content of the foreign edition. *See id.*

Clarify the deposit requirements for registering foreign work of the performing arts and visual arts.

1509.3: Visual Arts Works

To register a work that was first published in the United States on or after January 1, 1978, the applicant generally should submit one or two complete copies of the best edition of that work.

As discussed in Section 1504.2, the criteria used to identify the best edition for a visual arts work are listed in the Best Edition Statement, which is set forth in Appendix B to Part 202 of the Office's regulations. It is also posted on the Office's website in *Best Edition of Published Copyrighted Works for the Collections of the Library of Congress* (Circular 7b).

To register a work published in both electronic and hard copy formats, the applicant generally should submit complete two copies of the work in the hard copy format. If the work was published solely in electronic format, the applicant may submit digital file(s) containing complete copy(ies) of the work, provided that the requirements set forth in Section 1507.2 have been met.

There are exceptions to these rules for certain types of visual arts works. The deposit requirements for these types of works are discussed in Sections 1509.3(A) through 1509.3(D). The deposit requirements for foreign visual arts works are discussed in Section 1509.3(E). Section 1509.3(F) contains a series of charts that summarize the deposit requirements for these types of works. For detailed information on the copyrightability and registration of visual arts works, see Chapter 900.

1509.3(A)(2): Published Works

To register a pictorial or graphic work published in the United States, the applicant generally should submit two complete copies of the best edition of that work.

NOTE: There are several exceptions to this rule, that are discussed in Sections 1509.3(A)(3) through 1509.3(A)(12).

1509.3(D): Architectural Works

The applicant may submit the deposit in hard copy format or may upload the deposit in electronic format through the online registration system, provided that the requirements set forth in Section 1507.2 have been met and provided that the copy may be opened and viewed without the use of any special software or viewer. Applicants should not submit an electronic copy that requires the use of licensed, proprietary software, such as AutoCad.

Clarify the deposit requirements for a visual art work.

Clarifies that a deposit for an architectural work must be submitted in an acceptable file format.

1511: Mandatory Deposit

Submitting a published work for the use or disposition of the Library is not a condition of copyright protection. However, the Register of Copyrights may facilitate, demand, negotiate, or exempt the provision of copies or phonorecords for the Library of Congress at any time after a work has been published in the United States. If the Office issues a written demand and if required copies or phonorecords are not received within three months of receipt of the demand, the copyright owner or owner of the exclusive right of publication in that work may be subject to fines or other monetary liability. 17 U.S.C. § 407(d).

If the applicant registered a published work with identifying material instead of submitting the best edition, the Library of Congress may demand an appropriate number of copies of the best edition under certain circumstances

Clarifies the Office's ability to demand a work subject to mandatory deposit.

Chapter 1600

SECTION

REVISION

1604.1: Preregistration Is a Temporary “Placeholder” for an Actual Registration

A preregistration is merely a placeholder for or a prelude to an actual registration. Specifically, a preregistration allows a copyright owner to pursue an infringement action and to seek statutory damages and attorney’s fees before the work has been completed and released to the public. However, to secure the benefits of this procedure, a copyright owner must register the claim within three months after the first publication of the work or within one month after the copyright owner discovered the infringement (whichever is earlier). *See* 17 U.S.C. §§ 408(f)(3), 411(a), 412.

Clarifies timing of seeking registration after preregistration.

Chapter 1700

SECTION

REVISION

1702: Registration Refused After Examination

The U.S. Copyright Office does not register all claims to copyright. The Office may refuse to register claims that do not meet the statutory requirements for copyright registration, including on the following grounds:

- The work does not meet the eligibility requirements for a particular registration option.
- The work unlawfully employs preexisting material that is under copyright protection. *See* 17 U.S.C. § 103(a); *see also* Chapter 300, Section 313.6(B).
- The applicant failed to submit a *bona fide* copy of the work. *See* Chapter 1500, Section 1503.2.

Clarifies grounds for refusing registration.

1703.1: Filing the Request

The request and the filing fee must be postmarked or dispatched by a commercial carrier, courier, or messenger within three months of the date set forth in the refusal. *See* Sections 1708.1 and 1708.3.

Reflect the adoption of the “mailbox rule.”

1704.1: Filing the Second Request for Reconsideration

The second request and the filing fee must be postmarked or dispatched by a commercial carrier, courier, or messenger within three months of the date set forth in the Office’s response to the first request for reconsideration. *See* Sections 1708.1 and 1708.3.

1708.3: Deadline for Submitting a Request for Reconsideration

A first request for reconsideration must be postmarked or dispatched by a commercial carrier, courier, or messenger no later than three months from the date that appears in the written notice from the Office of its decision to refuse registration. 37 C.F.R. § 202.5(b)(3).

A second request for reconsideration must be postmarked or dispatched by a commercial carrier, courier, or messenger no later than three months from the date that appears in the written notice from the Office of its decision to uphold the refusal to register following the applicant’s first request for reconsideration. 37 C.F.R. § 202.5(c)(3).

1708.6: No Amendments

When evaluating a first or second request for reconsideration, the Office will focus solely on the type of authorship claimed in the application, such as “2-D artwork” or “text.” The Office will not consider any type of authorship that was not expressly claimed in the application when the claim was refused.

Example:

- An application is submitted for a children’s book titled *The Empty Piñata*. The work contains artwork and a *de minimis* amount of text, but the applicant only asserted a claim in “text.” The registration specialist refuses registration. On appeal, the applicant admits that the words are uncopyrightable, but contends that the Office should amend the application to include a claim in “2-d artwork.” The Office will uphold the refusal to register without expressing an opinion on whether the artwork is copyrightable. If the applicant wishes to assert a claim in the artwork, a separate application will be required.

Provides that an applicant may not amend the claim in a registration during the reconsideration process.

Chapter 1800

SECTION

REVISION

1802.4: Records That Cannot Be Corrected or Amplified with a Supplementary Registration

The online public record: The Office will not issue a supplementary registration to correct an error that appears only in the online public record for a particular registration. If there is an error in the online public record that does not appear in the certificate of registration, the author, the claimant, or one of the other parties listed in Section 1802.1 should contact the Office in writing using the form posted on the Office’s website, instead of filing an application for supplementary registration. This is known as an error correction request. If the Office receives an application for a supplementary registration to correct a cataloging error that only appears in the online public record, the Office will attempt to correct the error and will refund the filing fee without issuing a supplementary registration.

Clarify when the Office will correct an error in the public record.

1802.9(A): Errors Caused by the U.S. Copyright Office

If the Office discovers an error in a basic registration, and determines that the error was caused by its own action or mistake, the Office will take appropriate measures to correct the registration record. This procedure is known as a “referral.” In this situation, the Office will refund the filing fee without issuing a supplementary registration. *See* 37 C.F.R. § 201.5(a)(2), (b)(2)(i).

1804: Referrals

If the U.S. Copyright Office discovers an error or omission in a registration record that was caused by its own action or mistake, the Office will correct the record on its own initiative. 37 C.F.R. § 201.5(a)(2). This procedure is known as a “referral.” If appropriate, the Office will issue a new certificate of registration containing the correct or missing information, update the online public record for the claim, and cancel any erroneous registrations that should not have been issued.

By contrast, if the applicant asks the Office to correct an error or omission that was caused by the applicant’s action or mistake, the Office will not correct the record through the referral procedure – even if the registration specialist should have recognized that error or omission when he or she examined the claim. Instead, the author, the claimant, or one of the other parties listed in Section 1802.1 must submit an application for a supplementary registration, or a new basic registration

(if appropriate), together with the requisite filing fee.

There is a limited exception to this rule. If a social security number, driver's license number, credit card number, or bank account number appears in the certificate of registration or the online public record, the author, the claimant, or one of the other parties listed in Section 1802.1 should contact the Office using the form posted on the U.S. Copyright Office's website (www.copyright.gov/help/general-form.html), instead of filing an application for supplementary registration. The Office will remove a social security number, driver's license number, credit card number, or bank account number from the certificate of registration and online public record upon written request. *See* 37 C.F.R. § 201.2(f). Likewise, if the Office discovers this type of information entirely on its own, it will remove that information from the registration record without communicating with the applicant. *See* Removal of Personally Identifiable Information From Registration Records, 82 Fed. Reg. 9004, 9005 (Feb. 2, 2017).

1802.4: Records That Cannot Be Corrected or Amplified with a Supplementary Registration

Basic registrations for multiple works. When the Office registers multiple works under a registration accommodation, it will not accept an application that seeks to reclassify the works under a different accommodation. For example, a supplementary registration cannot be used to change a registration for a group of published photographs into a registration for a compilation, a collective work, or a photographic database (or vice versa). Nor can it be used to transform a registration for an unpublished collection into a registration for a single published work. These types of changes would alter the fundamental nature of the claim, and would undermine the legal presumptions afforded to the initial examination of the works. And it would be inconsistent with the statutory and regulatory provisions stating that a supplementary registration augments – but does not supersede – the basic registration. 17 U.S.C. § 408(d); 37 C.F.R. § 201.5(d)(2).

Clarifies that the Office will not accept a supplementary registration to change registration categories.

1802.9(F): Adverse Claims / Actual or Prospective Litigation

If the U.S. Copyright Office is aware that there is actual or prospective litigation or an adverse claim involving a basic registration, the Office may decline to issue a supplementary registration until the applicant has confirmed in writing that the dispute has been resolved. For example, the Office may decline to issue a supplementary registration if it seems likely that the proposed change would be directly at issue in the litigation or the adverse claim. Similarly, the Office may decline to issue a

Clarifies the Office's practices for handling adverse claims / claims involved in active or

supplementary registration if it seems likely that the proposed change, correction, or amplification may confuse or complicate the pending dispute .

prospective
litigation.

Example:

- Michelle Peck registered an online video, naming herself as the author and copyright claimant. Mark Ferrell subsequently registered the same video, naming himself as the author and copyright claimant. Michelle submits an application for a supplementary registration stating that Mark’s name should be added to her registration as a co-author and co-claimant. In a cover letter, Michelle explains that the parties are involved in a lawsuit concerning the ownership of the copyright. The authorship and ownership of the work appear to be directly at issue in the litigation, and if the Office added Mark’s name to the registration record for Michelle’s registration it could upset the balance between the competing registrations. As a result, the Office may decline to issue a supplementary registration until the dispute has been resolved.

If the Office is aware that there is litigation or an adverse claim involving a basic registration, the Office may issue a supplementary registration if the applicant intends to make a minor change to that registration. Similarly, the Office may issue a supplementary registration if the proposed change does not appear to be directly at issue in the dispute. Examples of minor changes or changes that are not likely to be at issue in a legal dispute include spelling mistakes, clerical errors, or changes to the title of the work.

Example:

- Olga Jensen registered a song titled “My Daddy Hated Those Crutches,” naming herself as the author and copyright claimant. Olga submits an application for supplementary registration stating that the title of the work should be changed to “My Daddy Never Needed Those Crutches.” In the cover letter Olga explains that she intends to sue a radio station for playing this song without permission. Although there is prospective litigation involving this song, the registration specialist may issue the supplementary registration because it appears that the title of the work has changed since the registration was made.

1802.4: Records That Cannot Be Corrected or Amplified with a Supplementary Registration

Basic registrations in the wrong class or series: The Office will not issue a supplementary registration for a work that was registered in the wrong class or series. Instead, this issue must be addressed with a procedure known as a “cancellation and substitution,” which is discussed in Section 1807.4(A).

Clarify Office practice for handling cancellation/substitutions.

1807.4(A): Registrations Issued in the Wrong Class or Series

If the U.S. Copyright Office determines that the work was registered in the wrong class or series, it may cancel the initial registration and issue a new registration in the correct class. *See* 37 C.F.R. § 201.7(c)(3). This procedure is known as a “cancellation and substitution” or “can-sub.” In most cases the Office will conduct this procedure on its own initiative and without providing advance notice to the claimant or the correspondent named in the registration.

When selecting the appropriate class for the new registration, the Office will consider the predominant type of authorship that appears in the work. The applicant’s preferences will not be considered.

When the Office issues a cancellation and substitution, it will cancel the initial registration and will add a note to the public record to reflect this change. Then it will create a public record for the new registration and will send a new certificate of registration to the mailing address that the applicant provided in the application for the initial registration. The effective date of registration for the new registration will be the same as the effective date of registration for the initial registration.

1805: Removal of Personally Identifiable Information

The U.S. Copyright Office may collect certain personally identifiable information (PII) as part of the copyright registration application, including home addresses, personal telephone and fax numbers, and personal email addresses. This information may be included in the online public record maintained by the Office.

In general, an author, claimant of record, or the authorized representative of the author or claimant of record may submit a request to remove or replace certain information in the online public record. This procedure only applies to PII that is requested by the Office as part of the registration process. For information about the Office’s policy for handling extraneous PII, such as driver’s license numbers, social security numbers, banking information, or credit card information, see Section

Provide the procedure for removing personally identifiable information from the online record.

1804.

A properly submitted request will be reviewed by the Associate Register of Copyrights and Director of the Office of Public Information and Education to determine whether the request should be granted or denied. The Office's decision to grant or deny the request will be made in writing and will be sent to the address indicated in the request.

If the request is granted, the Office will remove the information from the online public record. Where substitute information is required and has been provided, the Office will add that information to the online public record. In addition, the Office will add a note indicating that the online record has been modified, and will issue a new certificate of registration that reflects the modified information. The Office will maintain a copy of the original registration record in its offline records.

If a request to remove PII is denied, the requesting party may request reconsideration using the procedure described in Section 1805.4.

1805.1: Form of Request

A request to remove PII must be made in writing. It should be clearly labeled as a "Request to Remove PII," and it must include the following information:

- The copyright registration number(s) associated with the record(s).
- The name of the author and/or claimant of record on whose behalf the request is made.
- A statement identifying the specific PII that is to be removed or replaced.

NOTE: If the request involves the name of the author or claimant or the claimant's address, see Sections 1805.1(A) and 1805.1(B) for additional guidance.

- Verifiable substitute non-personally-identifiable information that should replace the PII to be removed, where applicable.
- A statement providing the reasons supporting the request.

NOTE: If the request does not include verifiable substitute non-personally-identifiable information, see Section 1805.1(C) for additional guidance.

- The statement "I declare under penalty of perjury that the foregoing is true and correct."

- If the request is submitted by an authorized representative of the author or claimant of record, an additional statement that “I am authorized to make this request on behalf of [name of author or claimant of record].”
- A telephone number.
- An email address (if available).
- A physical mailing address to which the Office’s response may be sent (if no email address is provided).

The request must be signed and dated by the author, claimant of record, or the duly authorized agent of the author or claimant of record. It must be accompanied by the filing fee described in Section 1805.2, and these items must be sent to the address specified in Section 1805.3.

See generally 37 C.F.R. § 201.2(e)(3).

1805.1(A): Name Change Requests

Requests to substitute the name of an author or claimant with that person’s current legal name must be accompanied by a copy of the official documentation of the legal name change. 37 C.F.R. § 201.2(e)(2)(iii).

In no case will the U.S. Copyright Office remove the name of an author or claimant from the online public record. Similarly, the Office will not replace the name of an author or claimant with a pseudonym. *Id.*

Under the Copyright Act, works by anonymous and pseudonymous authors have different terms of copyright protection than works by authors whose real name is revealed in the Office’s records. The term for works by anonymous and pseudonymous authors is 95 years following the year of first publication, or 120 years following the year of creation, whichever term expires first. The term for works by authors whose legal names are revealed in the Office’s records is the life of the author plus 70 years. 17 U.S.C. §§ 302(a), 302(c). In addition, the Act specifically contemplates that if the real name of the author of an anonymous or pseudonymous work is identified in the Office’s records during the term of protection, that work will receive a term of life plus 70 years. *Id.* § 302(c). If the Office removed the author or claimant’s real name from the online public record, or replaced that name with a pseudonym, it would be contrary to the statutory scheme established by Congress and would likely create confusion regarding the term of copyright protection for the work. *See Removal of Personally Identifiable Information From Registration Records*, 81 Fed. Reg. 63,440, 63441-42 (Sept. 15, 2016).

1805.1(B): Claimant Address Change Requests

Requests to remove the address of a copyright claimant must be accompanied by a verifiable substitute address. 37 C.F.R.

§ 201.2(e)(2)(ii). Removing the claimant's address from the online public record would impede the public's ability to contact a copyright owner to obtain permission to use the work. Therefore, the U.S. Copyright Office will not remove this information unless a verifiable substitute address is provided. *Id.*; see also Removal of Personally Identifiable Information From Registration Records, 81 Fed. Reg. 63,440, 63441 (Sept. 15, 2016).

1805.1(C): Requests Submitted without Verifiable Substitute Information

In general, the U.S. Copyright Office will grant a request to remove PII when the requesting party provides verifiable, non-personally-identifiable substitute information, unless the Office determines that the need to maintain the original information in the public record substantially outweighs the safety, privacy, or other concern stated in the request.

When a requesting party does not provide verifiable substitute information, the Office may grant the request only if the safety, privacy, or other stated concern substantially outweighs the need for the information to remain in the public record. In such cases, the requesting party must explain in detail why the presence of PII in the online public catalog presents a specific threat to the individual's personal safety or personal security, or presents other circumstances that support the request. 37 C.F.R. § 201.2(e)(3)(vi).

1805.2: Filing Fees

The requesting party must submit the appropriate filing fee together with the request to remove PII or a request for reconsideration. 37 C.F.R.

§ 201.2(e)(3). The current filing fees are set forth in the U.S. Copyright Office's fee schedule in the field marked "Removal of PII from Registration Records."

The requesting party must pay a separate fee for each registration record specified in the request. See 37 C.F.R. § 201.3(c)(19). In the case of a request for reconsideration the requesting party may pay a flat fee, regardless of the number of registration records involved.

Fees may be paid by check, money order, or bank draft payable to the U.S. Copyright Office, or they may be charged to a deposit account. For more information regarding acceptable forms of payment, see Chapter 1400, Section 1403.4.

1805.3: Address for Delivery

A requesting to remove PII may be delivered to the U.S. Copyright Office by mail. The request should be addressed on the outside of the envelope as follows:

Associate Register of Copyrights and Director of the Office of
Public Information and Education
U.S. Copyright Office
P.O. Box 70400
Washington, DC 20024-0400

1805.4: Requests for Reconsideration

If the request for removal of PII is denied, the requesting party may submit a request reconsideration of that decision. However, the U.S. Copyright Office will consider only one request for reconsideration for each denial.

The request must be made in writing and it must specifically address the reasons for denying the request for removal. The request must be made within thirty days from the date set forth in the denial letter, and it should be clearly labeled as a “Request for Reconsideration of a Denial of a Request to Remove PII.” The request must be accompanied by the non-refundable filing fee described in Section 1805.2, and these items must be sent to the address specified in Section 1805.3.

1805.5: No Expedited Review

Special handling is a procedure for expediting the examination of an application to register a claim to copyright or the recordation of a transfer or other document pertaining to copyright. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate. However, the Office will not grant a request for special handling in connection with a request to remove PII or a reconsideration of such a request.

1807.4(E): Voluntary Cancellation

The Office does not invite, and generally will not entertain, requests to cancel a registration by any party other than the claimant named in the certificate of registration. If the Office receives a request to cancel a registration from a third party, the Office will notify the claimant that the request was received and will provide the claimant with a copy of that request. However, the Office will not take any other action unless the

Clarifies the Office's procedures for handling requests to cancel a third party's registration.

claimant subsequently submits a request for voluntary cancellation.

1808: Adverse Claims

If the Office discovers that two or more parties are seeking to register the exact same work, the Office will examine each application to determine if the statutory and regulatory requirements have been met. The sequence that each application is received in the Office is irrelevant to this determination, and the Office will not conduct opposition or interference proceedings to determine whether one application should be given priority over the other. *See* Cancellation of Completed Registrations, 50 Fed. Reg. 40,833, 40,835 (Oct. 7, 1985) (noting the Office does not resolve factual disputes or conduct adversarial proceedings). The Office will inform each party of the other party's claim. In addition, the Office may ask each party to notify the registration specialist if that party does not wish to proceed with his or her application. If so, that party should submit a request to withdraw his or her application using the procedure described in Chapter 200, Section 208. If a party does not respond to the Office's inquiry, the Office will proceed with the examination of that party's application.

Clarifies the Office's practice for handling adverse claims.

Chapter 1900

SECTION

REVISION

1905.1: Distribution to the Public

If a work exists only in one copy – such as a painting embodied solely in a canvas – the work may be considered published if that copy is distributed to the public with the authorization of the copyright owner.

Examples:

- Selling the original copy of a painting at an auction.

1906.1: Offering to Distribute Copies or Phonorecords to a Group of Persons

If a work exists only in one copy, the work may be considered published if that copy is offered to a group of persons with the authorization of the copyright owner.

Examples:

Publication occurs when the original copy of a statue is offered to a group of museums for the purpose of publicly displaying the work.

Clarify that the distribution of one copy or phonorecord – or offering one copy or phonorecord to a group of persons – may constitute publication.

Chapter 2000

SECTION

REVISION

2003.2(B): Eligibility Based on Location of First Publication

Section 104(b)(2) of the Copyright Act affords protection to all works that are first published in (i) the United States, or (ii) a foreign nation that, on the date of the first publication, is a treaty party. In other words, regardless of the nationality or domicile of the author(s), a work may be eligible for protection under the Copyright Act if it is first published in the United States or in any nation that has a relevant treaty with the United States at the time of the first publication. For more information on which countries are treaty partners, see Section 2004.

Clarifies the rule for works published in a foreign country that has not entered into a treaty with the United States.

NOTE: There is an exception to this rule. A work that was first published in a foreign nation that has not entered into a treaty with the United States may be eligible for protection in this country if the work was published within thirty days thereafter in the United States or in a foreign nation that is a treaty party. This exception was added to the Copyright Act effective October 28, 1998, and it applies to any work that was first published on or after September 28, 1998. *See* Digital Millennium Copyright Act, Section 102, 112 Stat. 2860, 2862 (1998) (codified at 17 U.S.C. § 104(b))

2007.2: Registration Requirements for Restored Works

The Copyright Act protects restored works regardless of whether they are registered with the U.S. Copyright Office, although registration does provide various benefits, which are described in Chapter 200, Section 202. This Section provides general information for copyright owners that wish to register their restored works with the Office.

Clarify the one work per registration rule for GATT registrations.

A GATT registration for a restored work (which is known as a “GATT registration”) covers an individual work, and an applicant should prepare a separate application, filing fee, and deposit for each work that is submitted for registration to the Office. *See* Fees, 71 Fed. Reg. 15,368, 15,369 (Mar. 28, 2006).

2007.2(A)(1): Author of a Restored Work

When identifying the author of a restored work on Form GATT applicants should be aware of the following issues:

- *Timing matters:* The applicant must determine whether, *at the time the work was created*, the author was a national or domiciliary of a

country that is *now eligible for protection in the United States*.

- *Anonymous works*: To register an anonymous work, the applicant may provide the author's legal name or the author's pseudonym, as long as the pseudonym consists of a name (rather than a number or symbol).

2007.2(A)(2): Publication of a Restored Work

To qualify for a GATT registration, a published work (i) must have at least one author or rightholder who was a national or domiciliary of an eligible country when the work was created, (ii) it must have been first published in an eligible country, and (iii) it must not have been published in the United States within thirty days after first publication in that country.

Clarifies
eligibility for a
GATT
registration.

Chapter 2100

SECTION

REVISION

2115.2(C)(1): Year Date Is Post-Dated by One Year

When the renewal claim is based on an original registration record that cites a post-dated year date in the notice, the Office will notify the applicant about the citation in the original registration record. In addition, the Office will add an annotation to the certificate of renewal registration and a note in the renewal registration record regarding the post-dated year date. When a work is being registered for the first time during the renewal term the Office will inquire about the facts of publication. If the applicant confirms the publication facts, the certificate of renewal registration and renewal registration record should cite the post-dated year date.

Clarify Office policy for renewal registrations and rule of doubt.

2118.3: Effect of Simultaneous Publication in the United States

Generally, when a book is otherwise eligible for renewal registration as a U.C.C. work, simultaneous publication in the United States will not prevent renewal registration. For an explanation of what constitutes simultaneous publication, see Section 2116.3(B).

2121.4(A): Notice Requirements

The copyright notice must be permanently affixed to the photograph itself and the required elements should appear together. For the required elements of the notice, see Section 2121.1. Also, the notice may consist of the symbol © accompanied by the initials, monogram, mark, or symbol of the copyright proprietor. The notice may be located on any accessible part of a single-page work or on a margin or permanent mounting, provided that it is visible and not concealed. For more information about notice requirements, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), available at <http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf>.

Exception: When eligibility for renewal registration is based solely on the U.C.C. exemption, the copy must bear the U.C.C. notice as specified in Section 9(c) in the Copyright Act of 1909 (as amended). However, if the notice satisfies the notice requirement of Section 19, but not 9(c), renewal registration may still be possible. In this case, the U.S. Copyright Office will add an annotation to the certificate of renewal registration and a note in the registration record citing this Section of the *Compendium of U.S. Copyright Office Practices, Third Edition*.

NOTE: Renewal registration may be possible when a photograph was first published in a book with a copyright notice that is acceptable for photographs but does not meet the statutory requirements for books. In such cases, renewal registration must be limited to the photograph.

2122.6(B): Notice Requirements

The copyright notice for a motion picture or other audiovisual work may consist of any acceptable form of the word “copyright” or the copyright symbol, along with the name of the copyright proprietor and the year date of first publication. Generally, it should be embodied in the motion picture or filmstrip, preferably in the title frames or near them, or embodied in or after the closing credits, and should be clearly visible when projected or broadcast. For more information about copyright notice requirements, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* <http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf>.

NOTE: Renewal registration may be possible when a motion picture was first published before 1978 with a copyright notice that lacks a year date, provided that the other required elements are included within the notice. By contrast, registration may be refused if the notice is illegible or otherwise fails to clearly meet the notice requirements.

2124.1: Classes of Works Subject to the Manufacturing Clause

NOTE: A book or periodical in a foreign language by a U.S. author had to be manufactured in the United States. If manufactured abroad, it could not be registered for full-term or *ad interim* copyright during the original term, and is not eligible for renewal registration.

Exceptions: A work by a foreign author who was domiciled in the United States at the time of manufacture and first publication abroad is not considered to be a work of foreign origin. If the work is partly in English and partly in a foreign language and it qualifies as a U.C.C. work, renewal registration may be possible. For situations when renewal registration may be possible for foreign works even when they were subject to the manufacturing clause at the time of publication, but failed to comply, see Section 2115.2(F).

2124.2: Effect of the Manufacturing Clause on Copyright Term

If such works did not comply fully with the manufacturing clause at the time of first publication, copyright was lost upon publication unless, in the case of an English language nondramatic literary work (including periodicals), *ad interim* copyright was secured. For such works, if *ad interim* copyright was secured and a U.S. edition was published and

registered before *ad interim* copyright expired, copyright was extended to the full original term of twenty-eight years. If a U.S. edition was not published before *ad interim* copyright expired, copyright was lost at the expiration of *ad interim* copyright. In such cases renewal registration is not possible.

Exception: If a work was manufactured and published in the United States with the statutory copyright notice prior to the expiration of *ad interim* copyright, but the U.S. edition was not registered for the original term before *ad interim* copyright expired, renewal registration may be possible for both editions.

Glossary (General)

Rule of Doubt. In certain circumstances, the U.S. Copyright Office may register a claim under the Rule of Doubt if the registration specialist is unable to examine the deposit copy(ies) to determine if the work contains copyrightable authorship. In exceptional cases, the Office may apply the Rule of Doubt if it has not taken a position on a legal issue that is directly relevant to whether the work constitutes copyrightable subject matter or whether the other legal and formal requirements of the statute have been met. The Office will not register a claim under the Rule of Doubt simply because there is some uncertainty as to how a particular issue may be decided by a particular court.

2115.(E)(2): Published Work Not Registered for Original Term

Exception to exception: For works subject to the manufacturing clause, the renewal claim must name the proprietor identified in the copyright notice, unless the work was published with the U.C.C. notice.

Clarifies renewal registration requirement for works subject to the manufacturing clause.

2115.2(F): *Ad Interim* Copyright Information

A renewal claim based on an *ad interim* registration record must provide information about the registration for the subsequent U.S. edition. Otherwise, renewal registration generally will be refused.

Exceptions:

- If *ad interim* copyright was subsisting when the country of the author's nationality joined the U.C.C., the work did not have to be

Clarifies Office policy for renewal claims based on an *ad interim* registration.

manufactured and published in the United States to secure the full original term of copyright.¹⁰ Copyright Act of 1909, *amended by* Pub. L. No. 83-743, § 9(c), 68 Stat. 1030, 1031 (1954).

- Likewise, when *ad interim* copyright subsisted, or was capable of being secured on December 31, 1977 (*i.e.*, works first published between July 1 and December 31, 1977, inclusive) copyright was extended to the full original term of copyright under the transitional provisions of the Copyright Act of 1976.
- Finally, even when the two exceptions listed above do not apply, renewal registration may still be possible if the work was manufactured and published in the United States while *ad interim* copyright subsisted, but no registration was made for the U.S. edition. In this last situation a renewal registration for the U.S. edition must be made before a renewal registration can be made for the foreign edition that secured *ad interim* copyright. This requirement ensures that the full original term of copyright was secured through compliance with the manufacturing clause.

“For this purpose, *ad interim* copyright was subsisting...if a claim to *ad interim* copyright had actually been registered on or before the effective date. It was not subsisting if the work was published more than six months before the effective date or was published within six months before the effective date but without the U.C.C. notice. Where a work was published within six months before the effective date and bore a U.C.C. notice, the case will be treated as though an *ad interim* copyright was subsisting in the work on the effective date....” COMPENDIUM (FIRST) § 8.4.6.III.b.

NOTE: A renewal claim in the U.S. edition of a work subject to the manufacturing clause for which *ad interim* copyright was not secured, or in a U.S. edition that was manufactured and published after *ad interim* copyright expired must be limited to revisions or additions in the U.S. edition. If the editions are identical, renewal registration for the U.S. edition is not possible. For more information about registration requirements for works subject to the manufacturing clause, see Section 2124.

2115.5(B): Determining the Party in Whom the Renewal Copyright Vested

Certain parties are entitled to claim the renewal copyright. Generally, the U.S. Copyright Office will not question the identity of the vested owner or the statutory basis of a renewal claim when this information is consistent with the author facts in the original registration record or in

Clarifies Office policy for reviewing the identity of the vested owner.

the deposit copy, or with other facts available at the time of renewal registration. When the vested owner is not identified, the statutory basis is not given, or this information is unclear, the Office will request written verification from the applicant to clarify the party in whom the renewal copyright vested and the statutory basis. When the statutory basis is inconsistent with the author facts in the original registration or the deposit copy, see Section 2134. If the identity of the vested owner or the statutory basis of the renewal claim is in dispute, see Section 2137.

The Office does not generally search its records to verify whether the party named as the vested owner was alive or in existence when the renewal copyright vested. However, if the Office is aware that a renewal claim fails to identify a valid owner, or provide a valid statutory basis for claiming the renewal copyright, the renewal claim will be refused. For example, the Office will refuse to register a renewal claim that identifies an author as a vested owner, when the author's year of death precedes the vesting date.

2122.2: Dramatic Works

This class of works was registered for the original term under class D, as both published and unpublished works and, since 1978, in class PA. For renewal registration purposes, these works are generally considered to be unitary works; therefore a renewal claim should generally name all of the authors who contributed to the work as a whole.

Exception: In certain cases (specifically with regard to cantatas that were registered for the original term as published musical works), when the applicant asserts that the renewal copyright in a song or musical work within a dramatic work vested separately in different parties, the U.S. Copyright Office may register separate renewal claims.

2126: Published Collections

To be registered for the renewal term on the statutory basis of being a composite work, a published collection must be a literary work having separate, distinct contributions by a number of authors on a variety of subjects. For example, a proprietor may claim the renewal copyright in a periodical or encyclopedia having separate, distinct contributions by various authors, or in an anthology of poetry by a number of authors on a variety of subjects on the basis that the work is a composite work. By contrast, a proprietor may not claim the renewal copyright in a work such as a collection of short stories or poems by only a few authors on the basis that the work is a composite work.

Clarifies Office policy towards renewal registration of cantatas registered for the original term as published musical works, and renewal registration of composite works.

Chapter 2300

SECTION

REVISION

2309.11: The Filing Fee Requirement

To record a transfer or other document pertaining to copyright, the remitter must submit the correct filing fee. The current fee is set forth in the U.S. Copyright Office’s fee schedule. 37 C.F.R. § 201.3.

Clarify current practices for recordation filing fees.

Specifically, the remitter must pay a basic recording fee for each document that is submitted for recordation. The basic recording fee is listed in the Office’s fee schedule under the heading “Recordation of Documents: Recordation of a document, including a notice of intention to enforce (containing no more than 1 title)” (www.copyright.gov/docs/fees.html).

2309.11(B)(1): Identifying the Titles Listed in the Document

To calculate the additional filing fee for documents that contain two or more titles, the remitter should count each title listed in the document.

The remitter should not count the number of parties listed in the document. Likewise, the remitter should not count the titles for any patents, trademarks, domain names, trade secrets, or other forms of uncopyrightable subject matter that may be listed in the document.

Examples:

- The first paragraph of the document states “Serendipity Productions hereby transfers to Sumner Studios all right, title, and interest in the works listed in the attached schedule.” Three works are listed in the schedule, including a screenplay titled “Help Me,” a motion picture titled “Help Me,” and a sound recording titled “Help Me.” The remitter should submit the basic recording fee for the title of the screenplay, plus an additional filing fee to cover the title of the motion picture and the sound recording.
- The first paragraph of the document states “Kolkata Films hereby transfers all right, title, and interest in the assets listed in the attached schedule to Desi Studios, Udaipur Productions, and Shami Ghazal Films.” The schedule lists the titles of six motions pictures, thirty musical compositions, two trademarks, and twelve domain names. The remitter should submit the basic recording fee for the title of the first motion picture listed in the schedule. The

remitter also should submit the additional filing fee for the five other motion pictures and the thirty musical compositions. The amount of this fee would be four times the amount listed in the fee schedule under the heading “Recordation of Documents: Additional titles (per group of 10 or fewer titles).”

2309.11(B)(4): Single Titles Distinguished from Multiple Titles

As a general rule, when the title of a particular work is repeated multiple times throughout the same document, it should be counted as a single title.

There is a limited exception to this rule. When the same title is repeated multiple times throughout the same document followed by different registration numbers, issue numbers, volumes numbers, chapter numbers, installment numbers, or the like, each entry should be counted as a separate title when calculating the additional filing fee.

Examples of multiple titles:

- *Help Is On The Way* (TX 2-536-224)
Help Is On The Way (PA 3-718-116)
Help Is On The Way (SR 3-290-390)
- *Fan Club News*, vol. 1, no. 3 (June 2011)
Fan Club News, vol. 1, no. 4 (July 2011)
Fan Club News, vol. 1, no. 5 (Aug. 2011)
- “Trapped in the Snack Bar,” Installment I
“Trapped in the Snack Bar,” Installment II

2310.3(B): Who May Terminate a Grant Under Section 203?

A grant made by the author of a work may be terminated by that individual.

If the author is deceased, and if that individual did not exercise his or her right to terminate under Section 203, the grant may be terminated by the heirs holding a majority share of the author's termination interest. The heirs may include the author's widow or widower, the author's children, and/or the children of any child who predeceased the author. *See* 17 U.S.C. § 203(a)(2)(A)-(C). The Copyright Act defines a "widow" or "widower" as "the author's surviving spouse under the law of the author's domicile at the time of his or her death, whether or not the spouse has later remarried." 17 U.S.C. § 101. The author's "children" are defined as "that person's immediate offspring, whether legitimate or not, and any children legally adopted by that person." *Id.*

If all of the author's heirs are deceased, and if the author never exercised his or her right to terminate under Section 203, the grant may be terminated by the author's executor, administrator, personal representative, or trustee, and that party "shall own the author's entire termination interest." *See* 17 U.S.C. § 203(a)(2)(D).

If the grant was executed by two or more authors of a joint work, the grant may be terminated by "a majority of the authors who executed" the grant. *See* 17 U.S.C. § 203(a)(1). If a joint author is deceased, that person's termination interest may be exercised by the heirs holding a majority share of that interest. In this situation, the grant may be terminated by a majority of the joint authors and/or the heirs holding the majority share of the authors' termination interests.

By contrast, if the joint authors executed separate grants, then each grant may be terminated by the individual who executed that grant, or if that individual is deceased, by the heirs holding a majority share of his or her termination interest.

2310.4(B): Who May Terminate a Grant Under Section 304(c)?

If an author or co-author is deceased and if that individual never exercised his or her right to terminate, the grant may be terminated under Section 304(c)(1)-(2) by the heirs holding a majority of the author's termination interest. The heirs may include the author's widow or widower, the author's children, and/or the children of any child who predeceased the author.

2310.3(C): When May a Grant Be Terminated Under Section 203?

A grant may be terminated under Section 203 during a five-year "termination period." The beginning and ending of this period varies depending on whether the grant conveyed the right to publish the work for the first time.

- If the grant conveyed the right to publish the work for the first time, the

Clarify who may terminate a grant when there are multiple authors or heirs.

Provide method for analyzing a grant that conveyed the right of first publication.

termination period begins either thirty-five years after the date that the work was first published under the grant, or forty years after the date that the grant was executed (whichever is earlier).

- If the grant did not convey the right to publish the work for the first time, the termination period begins thirty-five years after the date that the grant was executed.

2310.3(C)(1): Terminating a Grant That Conveyed the Right of First Publication

The Copyright Act defines publication as “the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.” 17 U.S.C. § 101. Offering to distribute copies or phonorecords to a group of persons for the purpose of further distribution, public performance, or public display also constitutes publication under the law. *Id.*

The Second Circuit has held that “the publication of a work is a one-time event” for purposes of § 203(a)(3). *Baldwin v. EMI Feist Catalog*, 805 F.3d 18, 33 (2d Cir. 2015). In other words, publication occurs when copies or phonorecords of the work are *first* distributed to the public by sale or other transfer of ownership or by rental, lease or lending. Likewise, publication occurs when copies or phonorecords of a work are *first* offered to a group of persons for the purpose of further distribution, public performance, or public display.

If the author conveyed the right to publish his or her work for the first time, then the beginning and ending of the termination period may be based on the month, day, and year that the grant was executed, or in the alternative, it may be based on the month, day, and year that the work was first published. *See* 17 U.S.C. § 203(a)(3). Specifically, the termination period for a grant that conveyed the right of first publication begins either thirty-five years after the date that the work was first published under the grant, or forty years after the date that the grant was executed (whichever is earlier). *See id.*

“This alternative method of computation is intended to cover cases where years elapse between the signing of a publication contract and the eventual publication of the work.” H.R. REP. NO. 94-1476, at 126 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5742; S. REP. NO. 94-473, at 110 (1975). For example, if the work was first published within five years after the author executed the grant, then the beginning of the termination period is based on the date of first publication. By contrast, if the work was first published more than five years after the author executed the grant or if the work was never published under the grant, then the beginning of the termination period is based on the date of execution.

Example:

- On March 10, 1980, the author sent his publisher an outline for an unpublished novel titled, *The Revered and the*

Revised. On April 10, 1980 the author and the publisher executed a book publication contract. The author completed the novel several years later, and the publisher eventually published the work on August 23, 1987.

For purposes of § 203(a)(3), the contract conveyed the right of publication, because the novel was first published when the publisher distributed copies of this work to the public on August 23, 1987. Because the novel was first published more than five years after the author executed the contract, the beginning of the termination period is based on the date of execution, rather than the date of publication.

Specifically, the five-year termination period begins on April 10, 2020 (forty years from the execution of the contract), rather than April 10, 2015 (thirty-five years from the execution of the contract) or August 23, 2022 (thirty-five years from the date that the work was first published). The termination period ends on April 10, 2025. If the author decides to make the termination effective on January 1, 2024, the notice may be served as early as January 1, 2014, and it must be served no later than January 1, 2022. The notice must be recorded with the U.S. Copyright Office, and the date of recordation assigned to the notice must be no later than December 31, 2023. *See* S. REP. NO. 94-473, at 110 (1975). (For information concerning the requirements for establishing a date of recordation, see Section 2310.10.)

If the grant conveyed the right of first publication, the following chart may be useful in determining whether the beginning of the termination period should be based on the date that the grant was executed or the date that the work was first published:

1.	Identify the month, day, and year that the grant was executed.
2.	Identify the month, day, and year that the work was first published under the grant.
3.	Add forty years to the date of execution identified in line 1.
4.	Add thirty-five years to the date of first publication identified in line 2.

Is the date identified in line 3 earlier than the date identified in line 4? If so, the beginning and ending of the termination period should be calculated using the date that the grant was executed.

Is the date identified in line 4 earlier than the date identified in line 3? If so, the

beginning and ending of the termination period should be calculated using the date that the work was first published under the grant.

The Office has developed a set of tables that may be useful in identifying the beginning and ending of the termination period for a grant that conveyed the right of first publication. These tables also may be useful in selecting an effective date of termination and for calculating the relevant deadlines for serving a notice of termination on the grantee and for recording the notice with the Office.

- Use this table if the grant conveyed the right of first publication and if the termination period is based on the date that the grant was executed.
- Use this table if the grant conveyed the right of first publication and if the termination period is based on the date that the work was first published under the grant.

NOTE: The beginning and the end of the termination period are not based on the beginning or end of the calendar year, unless the date of execution or the date of first publication happens to fall on January 1st or December 31st.

2310.3(C)(2): Terminating a Grant That Did Not Convey the Right of First Publication

If the grant did not convey the right to publish the work for the first time, then the beginning and ending of the termination period is based on the month, day, and year that the grant was executed. Specifically, the termination period begins thirty-five years after the date that the grant was executed, and it ends forty years after the date of execution. 17 U.S.C. § 203(a)(3).

Examples:

- A novel titled *The Saddest Boy in the World* was first published in hardback form on December 1, 1986. On September 2, 1987 the author executed a contract to publish the novel in audiobook form. The publisher eventually published the audiobook on January 3, 1993.

For purposes of § 203(a)(3), the audiobook contract did not convey the right of publication, because the novel was first published when the work was distributed in hardback form. Therefore, the five-year termination period begins on September 2, 2022 (thirty-five years from the execution of the audiobook contract), rather than December 1, 2021 (thirty-five years from the date that the work was published in hardback form), September 2, 2027 (forty years from the execution of the audiobook contract), or January 3, 2028 (thirty-five years from the date that the audiobook was

published). The termination period ends on September 2, 2027.

If the author decides to make the termination effective on September 2, 2022 (which is the earliest possible date), the notice may be served as early as September 2, 2012 and it must be served no later than September 2, 2020. The notice must be recorded with the U.S. Copyright Office, and the date of recordation assigned to the notice must be no later than September 1, 2022. *See* S. REP. NO. 94-473, at 110 (1975).

- On September 2, 1987 the author executed a contract to perform a work on a theatrical stage. For purposes of § 203(a)(3), the contract did not convey the right of publication. The author authorized the theatre to perform the work, but did not authorize the theatre to distribute copies or phonorecords of the work to the public. Therefore, the five-year termination period begins on September 2, 2022 (thirty-five years from the date of execution). The termination period ends on September 2, 2027. If the author decides to make the termination effective on September 2, 2022 (which is the earliest possible date that the grant may be terminated), the notice may be served as early as September 2, 2012, and it must be served no later than September 2, 2020. The notice must be recorded with the U.S. Copyright Office, and the date of recordation assigned to the notice must be no later than September 1, 2022. *See* S. REP. NO. 94-473, at 110 (1975).

(For information concerning the requirements for establishing a date of recordation, see Section 2310.10.)

The Office has posted a table on its website that may be useful in identifying the beginning and ending of the termination period for a grant that did not convey the right of publication. This table may also be useful in selecting an effective date of termination and for calculating the relevant deadlines for serving a notice of termination on the grantee and for recording the notice with the Office.

NOTE: The beginning and the end of the termination period are not based on the beginning or end of the calendar year, unless the date of execution happens to fall on January 1st or December 31st.

2310.3(D)(1): Content Requirements

To terminate a grant under Section 203, the notice of termination must include a clear identification of the following:

- If the grant conveyed the right to publish the work for the first time, the date of

publication of the work under the grant.

2310.3(D)(1)(a): The Date of Execution and Date of Publication

If the grant did not convey the right to publish the work for the first time, then as discussed in Section 2310.3(C)(2), the beginning and the ending of the termination period are based on the date the grant was executed. If the grant conveyed the right of first publication, then as discussed in Section 2310.3(C)(1), the beginning and ending of this period may be based on the date of execution or the date of first publication.

For these reasons, the notice must specify the date the grant was executed. (If the termination involves a gap grant, then as discussed in Section 2310.3(C)(3), the notice may be recorded if it states that the date of execution is the date that the work was created.) If the grant conveyed the right to publish the work for the first time, the notice must specify the date that the work was first published under the grant.

2310.8: Contesting or Withdrawing a Notice of Termination

When a party serves a notice of termination on a grantee and records the notice with the U.S. Copyright Office, the grantee may respond by sending a letter or other written response that challenges the sufficiency of the notice. The Office refers to this type of document as a “counter notice.”

On occasion, the party that served a notice of termination subsequently enters into a written agreement with the grantee whereby the terminating party expressly agrees to withdraw the notice of termination. The Office refers to this type of document as a “withdrawal.”

A counter notice or a withdrawal may be recorded under Section 205(a) of the Copyright Act as a document pertaining to copyright, provided that the following requirements have been met:

- The document is legible.
- The document is complete.
- The document bears the actual signature or an acceptable reproduction of the actual signature of the person or persons who executed it.
- The document is submitted together with the correct filing fee.

See 17 U.S.C. § 205(a); 37 C.F.R. § 201.4(c).

The legibility, completeness, signature, and filing fee requirements are discussed in more detail in Sections 2309.8 through 2309.11. If a document does not comply with these requirements, the recordation specialist may communicate with the

Provides practices for recording counter notices of termination.

remitter or may refuse to record the document.

The remitter should submit a signed copy of the document to the following address together with the appropriate filing fee:

U.S. Copyright Office
Notices of Termination
P.O. Box 71537
Washington, DC 20024-1537

For information concerning the procedure for calculating the filing fee, see Section 2310.7(D).

When preparing a counter notice or a withdrawal, parties are strongly encouraged to include the title(s) and registration number(s) (if any) of the works that are subject to the notice of termination. In addition, parties are encouraged to attach a copy of the notice of termination to the document, and if the notice has been recorded with the Office, to include the identifying number that the Office assigned to that notice (if any). In such cases, the recordation specialist will include the title(s), registration number(s), and identifying number for the notice in the online public record for the counter notice or the withdrawal. In addition, the specialist may add a note to the record, such as: “[Counter notice to / withdrawal of] notice of termination filed under [identifying number], recorded on [date].”

2310.12: Harmless Errors in a Notice of Termination

Harmless errors in a notice of termination do not render the notice invalid. As a general rule, an error may be considered harmless if it “do[es] not materially affect the adequacy of the information required” under sections 203, 304(c), or 304(d) of the statute. 37 C.F.R. §201.10(e)(1).

If it turns out that the date of execution specified in the notice of termination is not the actual date of execution of the grant, the error may be considered harmless if it is as accurate as the terminating party is able to ascertain, and if the date is provided in good faith and without any intention to deceive, mislead, or conceal relevant information. *See id.* Providing an erroneous date of execution, however, may not be considered harmless if the grant would have properly been subject to termination under section 203, rather than section 304 (or *vice versa*). *See* § 37 C.F.R. § 201.10(e)(1) (requiring that the error not “materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. [§§] 203, 304(c), or 304(d), whichever applies”).

Clarifies when an error in the date of execution may be considered harmless.

2312: Designation of Agents to Receive Notifications of Alleged Infringement Under Section 512(c) of the Copyright Act

The Digital Millennium Copyright Act (“DMCA”) provides safe harbors from copyright infringement liability for online service providers. In order to qualify for safe harbor protection, certain kinds of service providers – for example, those that

Provides procedure for designating an agent with the Office.

allow users to post or store material on their systems, and search engines, directories, and other information location tools – must designate an agent to receive notifications of claimed copyright infringement.

To designate an agent, a service provider must do two things: (1) make certain contact information for the agent available to the public on its website; and (2) provide the same information to the U.S. Copyright Office, which maintains a centralized online directory of designated agent contact information for public use. The service provider must also ensure that this information is up to date.

In 2016, the Office introduced an online registration system and electronically generated directory to replace its prior paper-based system and directory. As of December 1, 2016, the Office no longer accepts paper designations. To designate an agent, a service provider must register with and use the Office's online system. Use of the online system is governed by 37 C.F.R. § 201.38, which also sets forth what is required of service providers to remain compliant with section 512(c)(2).

More information is available on the Office's website. From there, one can access the Office's directory, create or login to a registration account to designate an agent, review regulations, watch video tutorials demonstrating how to use the system, read answers to frequently asked questions about the system, or contact the Office with any questions.

Chapter 2400

SECTION

REVISION

2407.1(B)(3): Pending Applications

Records related to pending applications for registration may be inspected or copied by the claimant named in the application or an authorized representative of the claimant. This includes the application and any written communications between the applicant and the Office concerning the claim. It also includes any request for reconsideration that is currently pending before the Office.

Clarify when the claimant or an authorized representative may access records related to a pending application.

2407.1(B)(4): Deposits for Pending Applications

The deposit copy(ies) or identifying material for a pending application may be inspected by the claimant named in the application or an authorized representative of the claimant.

2407.2(B)(2): Pending Recordations

Documents that have been submitted for recordation may be inspected or copied by one of the persons who executed the document or an authorized representative of the aforementioned persons. The aforementioned persons also may inspect or obtain copies of any written communications between the remitter and the Office concerning a pending document, including the document cover sheet (if any).