

## LITERARY WORKS

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## LITERARY WORKS

### 701 What This Chapter Covers

This Chapter discusses the U.S. Copyright Office’s practices and procedures for the examination and registration of **literary works**. For information and instructions on completing an application to register a literary work (or any other type of work), see the following Chapters:

- For a general overview of the registration process, see **Chapter 200**.
- For a discussion of **copyrightable** subject matter, see **Chapter 300**.
- For guidance in determining who may file the application and who may be named as the **copyright claimant**, see **Chapter 400**.
- For guidance in identifying the work that will be submitted for registration, see **Chapter 500**.
- For instructions on completing the application, see **Chapter 600**.
- For guidance on the **filing fee**, see **Chapter 1400**.
- For guidance on submitting the **deposit copy(ies)**, see **Chapter 1500**.

### 702 The Literary Division

The Literary Division (“LIT”) of the U.S. Copyright Office handles applications to register literary works. The **registration specialists** in this division specialize in the examination and registration of these types of works, including **serials**, **databases**, and **computer programs**.

### 703 What Is a Literary Work?

The Copyright Act defines a **literary work** as “works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.” **17 U.S.C. § 101**.

A literary work is a nondramatic work that explains, describes, or narrates a particular subject, theme, or idea through the use of narrative, descriptive, or explanatory text, rather than dialog or dramatic action. Generally, nondramatic literary works are intended to be read; they are not intended to be performed before an audience. Examples of nondramatic literary works include the following types of works:

- Fiction
- Nonfiction
- Poetry
- Directories
- Catalogs
- Textbooks
- Reference works
- Advertising copy
- Compilations of information
- **Computer programs**
- **Databases**

See 37 C.F.R. § 202.3(b)(1)(i); H.R. REP. NO. 94-1476, at 54 (1976), reprinted in 1976 U.S.C.C.A.N. 5659, 5667.

#### 704 Literary Works Distinguished from Works of the Performing Arts

Textual works that are intended to be performed before an audience and textual works that are intended to be used in a **sound recording**, **motion picture**, or other **audiovisual work** are considered **works of the performing arts**, rather than nondramatic literary works. For a definition and discussion of works of the performing arts, see **Chapter 800**.

*Examples:*

- Julia Babcock is the author of a novel titled *The Sisters*. Cynthia Cisneros is the author of a Spanish-language play titled *Las Hermanas*, which is based on Julia's novel. Anne Kennedy wrote an article about the play that was published in a local newspaper. Julia's novel and Anne's article could be registered as nondramatic literary works, while Cynthia's play could be registered as a work of the performing arts.
- Leonard Edgemoor is the author of the novel *Get Lucky*, which was published by the Mystery Press in a print and ebook edition. The Mystery Press also published a recording of an actor reciting the text of the novel. Leonard's novel could be registered as a nondramatic literary work, while the recording of the novel could be registered as either a literary work or a work of the performing arts.
- Mary Bentham was selected as the valedictorian of her graduating class. In honor of this occasion she recited her original poem at the graduation ceremony. Mary's poem could be registered as either a nondramatic literary work or a work of the performing arts.

## 705 Fixation of Literary Works

A literary work may be registered with the U.S. Copyright Office if it has been “fixed in any tangible medium of expression, now known or later developed, from which [it] can be perceived, reproduced, or otherwise communicated.” [17 U.S.C. § 102\(a\)](#). A literary work is considered “fixed in a tangible medium of expression” when it has been embodied “in a copy or phonorecord, by or under the authority of the author” that “is sufficiently permanent or stable to permit [the work] to be perceived, reproduced, or otherwise communicated for a period of more than a transitory duration.” [17 U.S.C. § 101](#) (definition of “fixed”).

There are countless ways that a literary work may be fixed in a tangible medium of expression. Most literary works are fixed by their very nature, such as a poem written on paper, a short story saved in a computer file, an article printed in a periodical, or a novel embodied in an audio recording. However, some copies or phonorecords may not be sufficiently permanent or stable to warrant registration. The [registration specialist](#) may communicate with the [applicant](#) or may refuse registration if the work is fixed in a medium that only exists for a transitory period of time, a medium that is constantly changing, or a medium that does not allow the specific words, numbers, or other verbal or numerical symbols or indicia that constitute the literary work to be perceived, reproduced, or otherwise communicated in a consistent and uniform manner.

## 706 Copyrightable Authorship in Literary Works

A literary work may be registered with the U.S. Copyright Office if it contains a certain minimum amount of literary expression that originated with the author of that work.

When a [registration specialist](#) examines a literary work, he or she determines whether the work contains a sufficient amount of original authorship “expressed in words, numbers, or other verbal or numerical symbols or indicia.” [17 U.S.C. § 101](#) (definition of “literary works”). In making this determination, specialists apply the legal standards set forth in the Copyright Act, the Office’s regulations, the *Compendium*, and the relevant caselaw. However, specialists do not look for any particular style of literary authorship, and they do not judge the “literary merit or qualitative value” of the work. [H.R. REP. NO. 94-1476, at 54 \(1976\)](#), reprinted in 1976 U.S.C.C.A.N. at 5667; [S. REP. NO. 94-473, at 53 \(1975\)](#).

For a general discussion of these legal standards, see [Chapter 300](#), Sections 302 through 308.

## 707 Uncopyrightable Material

The U.S. Copyright Office is charged with administering the provisions of the Copyright Act and with issuing regulations for the administration of the copyright system that are consistent with the statute. The Office has no authority to register [claims](#) to copyright in works that fall outside the scope of federal statutory protection.

[Section 102\(a\)](#) of the Copyright Act states that copyright protection extends only to “original works of authorship.” Works that have not been [fixed](#) in a tangible medium of expression, works that have not been created by a human being, and works that are not eligible for copyright protection in the United States do not satisfy this requirement. Likewise, the copyright law does not protect works that do not constitute [copyrightable](#) subject matter or works that do not contain a sufficient amount of original authorship, such as the following:

- An idea, procedure, process, system, method of operation, concept, principle, or discovery.
- Facts.
- Research.
- Typeface or mere variations of typographic ornamentations.
- Format and layout.
- Book designs.
- Works that contain an insufficient amount of authorship.
- Names, titles, slogans, or other short phrases.
- Numbers.
- Works consisting entirely of information that is common property, such as standard calendars, height and weight charts, schedules of sporting events, and lists or tables taken from public documents or other common sources.
- Measuring and computing devices.
- A mere listing of ingredients or contents.
- Blank forms.
- **Scènes à faire.**
- Familiar symbols and designs.
- Mere variations of coloring.
- **U.S. government works.**
- Government edicts.
- Works that are in the **public domain.**

For a discussion of numbers, research, and book designs, see Sections **707.1** through **707.3** below. For a discussion of other types of works that cannot be registered with the Office, see **Chapter 300**, Section 313.

### **707.1 Numbers**

Individual numbers are not **copyrightable** and cannot be registered with the U.S. Copyright Office. Likewise, the Office cannot register a **claim** to copyright in values expressed in individual numbers, individual letters, or individual words.



Individual numbers are never copyrightable for the same reason that an individual word cannot be protected by copyright. See *Southco, Inc. v. Kanebridge Corp.*, 390 F.3d 276, 286-87 (3d Cir. 2004) (holding that the regulatory bar against registering “short phrases” logically extends to short sequences of numbers). An individual number is a common symbol that is not independently created and does not, in itself, reveal any creativity. See 37 C.F.R. § 202.1(a); see also **Chapter 300**, Section 313.4(J). Nor does it fit within the established categories of copyrightable subject matter set forth in **Section 102(a)** of the statute. See 17 U.S.C. § 102(a). While the Copyright Act states that literary works may be expressed in “numbers” or “numerical symbols,” a critical element in the statutory definition is that there must be a “work” that is expressed in some combination of “words, numbers, or other verbal or numerical symbols or indicia.” See 17 U.S.C. § 101 (definition of “literary works”). In other words, a work that includes numbers may constitute a literary work, but it does not follow that a number contained in the literary work alone contains sufficient expression to constitute a work, or that such an element alone constitutes copyrightable authorship.

A **compilation** of numbers may be registered if there is a sufficient amount of creativity in the author’s selection, coordination, and/or arrangement of data. However, the registration for a compilation does not create a presumption that the individual numbers are copyrightable as independent works or as independent authorship.

The authorship involved in selecting, coordinating, and/or arranging the copyrightable and uncopyrightable elements of a compilation must be perceptible in the **deposit copy(ies)**. See **Chapter 300**, Section 312.2. While the process of deriving a particular number or value may be creative, any such creativity is not perceptible in a number alone. An individual number in and of itself never comprises sufficient authorship to be copyrightable. Copyright protects expression, not ideas or processes, and an individual number itself is not, and does not reveal, any copyrightable expression.

Moreover, the statutory definition of a compilation states that the selection, coordination, and/or arrangement of preexisting material or data must be done “in such a way that the resulting work as a whole constitutes an original work of authorship.” 17 U.S.C. § 101; see also *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 358 (1991). The process of arriving at individual numbers or values may require judgment, prediction, valuation, or expertise, but an individual number does not express any selection, coordination, or arrangement that results in an original work of authorship. Mental processes and methods of operations are unfixed and they are exempt from copyright protection under **Section 102(b)** of the statute.

## 707.2 Research

The U.S. Copyright Office cannot register a **claim** in research, because it suggests that the **applicant** may be asserting a claim in the facts that appear in the work or the effort involved in collecting that information.

The Supreme Court expressly rejected the “sweat of the brow” or “industrious collection” doctrines, which made copyright protection a “reward for the hard work” involved in creating a work. *Feist*, 499 U.S. at 352, 364. The Court concluded that “[p]rotection for the fruits of such research...may in certain circumstances be available under a theory of unfair competition,” but recognized that a claim to copyright “on this basis alone distorts basic copyright principles.” *Id.* at 354.

Although research is not **copyrightable**, the Office may register a work of authorship that describes, explains, or illustrates factual research, provided that the work contains a sufficient amount of original authorship. For example, a research paper, a scientific journal, or a biopic may be registered if the work contains a sufficient amount of literary, pictorial, graphic, or audiovisual expression. However, the registration does not extend to the facts, ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries described in the work. “They may not be copyrighted and are part of the **public domain** available to every person.” *Id.* at 348 (quoting *Miller v. Universal City Studios, Inc.*, 650 F. 2d 1365, 1369 (5th Cir. 1981).

For a further discussion on “research” as an authorship term, see **Chapter 600**, Section 618.8(A)(9).

### 707.3 Book Design

The overall format or layout of a book or other printed publication cannot be registered with the U.S. Copyright Office, regardless of whether the book is **published** in print or electronic form. Book design includes all of the physical or visual attributes of a book or printed publication, such as the choice of style and size of typeface, leading (*i.e.*, the space between lines of type), the placement of the folio (*i.e.*, page numbers), the arrangement of type on the pages, or the placement, spacing, and juxtaposition of textual and illustrative matter in the work.

The copyright law does not protect these elements because they fall within the realm of uncopyrightable ideas. Deciding how and where to place content in a book or printed publication is merely a process or technique, regardless of the number of decisions involved. The fact that “a work is distinctive, unique or pleasing in appearance, and embodies certain ideas of contrast or coloring does not necessarily afford a basis for copyright protection.” **Registration of Claims to Copyright: Notice of Termination of Proposed Rulemaking Regarding Registration of Claims to Copyright in the Graphic Elements Involved in the Design of Books and Other Printed Publications**, 46 Fed. Reg. 30,651, 30,652 (June 10, 1981).

For a further discussion on “design” as an authorship term, see **Chapter 600**, Section 618.8(A)(1).

### 708 Joint Works

A “**joint work**” is a work “prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.” **17 U.S.C. § 101**. A joint work may be registered as a nondramatic literary work if it contains a sufficient amount of literary expression. Examples of works that may satisfy this requirement include essays, articles, textbooks, reference works, children’s books, graphic novels, or any other work that may be jointly prepared by two or more authors.

Ordinarily, each author owns the copyright in the authorship that he or she contributed to the work. In the case of a joint work, all of the authors jointly own the copyright in each other’s contributions and each author owns an undivided interest in the copyright for the work as a whole. See **17 U.S.C. § 201(a)**.

When asserting a **claim** in a joint work, the **applicant** should provide the name of each author who contributed **copyrightable** authorship to the work and should provide specific authorship statements for each author. When completing an online application, the authorship information should be provided in the Author Created field, and if applicable, also in the New Material

Included field. When completing a paper application on **Form TX**, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see **Chapter 600**, Sections 618 and 621. In addition, the applicant should provide the name of the **claimant** who owns the copyright in that material. For guidance on completing this portion of the application, see **Chapter 600**, Section 619.

For a general discussion of joint works, see **Chapter 500**, Section 505.

## 709 Derivative Literary Works

A derivative literary work is a work that is based upon one or more preexisting works, regardless of whether the preexisting work is a literary work, a work of the performing arts, a **sound recording**, a pictorial, graphic, or sculptural work, or any other type of work. Typically, a derivative literary work is a new version of a preexisting work or a work that contains new material combined with material that has been recast, transformed, or adapted from a preexisting work. See **17 U.S.C. § 101** (definition of “**derivative work**”).

A derivative literary work may be registered with the U.S. Copyright Office if the author contributed a sufficient amount of new authorship to the work. Making trivial changes or additions to a preexisting work does not satisfy this requirement. See *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 103 (2d Cir. 1951). Examples of nondramatic literary works that may be registered as a derivative work include **translations**, fictionalizations, abridgements, editorial revisions, and a wide range of other works such as:

- A short story based on a preexisting poem.
- A children’s book featuring copyrightable characters from a preexisting children’s book.
- The third edition of a previously published textbook.
- The fourth version of a previously published computer program.
- New content that has been added to a preexisting **website**.
- A computer program that has been translated from C++ into the C# programming language.

When asserting a **claim** in a derivative literary work, the **applicant** should provide the name of each author who created the new material that the applicant intends to register, and the applicant should provide the name of the **claimant** who owns the copyright in that new material. The Literary Division may accept a claim in “text” if the new material contains a sufficient amount of textual expression, or a claim in “artwork” and/or “photograph(s)” if the new material contains a sufficient amount of pictorial or graphic expression. The Literary Division may accept a claim in “revised computer program” if the new material contains sufficient statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result. When completing an online application this information should be provided in the Author Created field and the New Material Included field; when completing a paper application on **Form TX** this information should be provided in spaces 2 and 6(b). For guidance on completing these portions of the application, see **Chapter 600**, Sections 618.4 and 621.8.

For a discussion of translations, fictionalizations, abridgements, and editorial revisions, see Sections 709.1 through 709.4 below. For a discussion of derivative computer programs, see Sections 721.2 and 721.8 below. For a general discussion of the legal standard for determining whether a derivative work contains a sufficient amount of original expression to warrant registration, see [Chapter 300](#), Section 311.2.

## 709.1 Translations

A **translation** is a rendering of a nondramatic literary work from one language into another, such as a work that has been translated from English into Spanish, from German into English, or from Hindi into Malayalam.

Translations are among the nine categories of works that can be specially ordered or commissioned as a **work made for hire**, provided that the parties expressly agree in a signed written instrument that the translation shall be considered a work made for hire. See [17 U.S.C. § 101](#) (definition of “work made for hire,” Section 2). For a detailed discussion of works made for hire, see [Chapter 500](#), Section 506.

A translation may be registered if it contains a sufficient amount of original expression. A translation that is performed by a **computer program** that automatically converts text from one language into another without human intervention cannot be registered because the conversion is merely a mechanical act. For the same reason, a transliteration or other process whereby the letters or sounds from one alphabet are converted into a different alphabet cannot be registered. See *Signo Trading International, Ltd. v. Gordon*, 535 F. Supp. 362, 364 (N.D. Cal. 1981) (holding that a list of words translated from English into Arabic and then transliterated from Arabic into Roman letters “simply does not embody sufficient originality to be copyrightable”).

### Examples:

- A Portuguese translation of a Spanish language newspaper could be registered as a derivative work.
- A Tagalog translation of *The King James Bible* could be registered as a derivative work, even though *The King James Bible* is in the public domain.

When submitting an application to register this type of work, the **claim** should be limited to the text of the translation, the **applicant** should provide the name of the author who translated the preexisting work from one language into another, and the applicant should provide the name of the **claimant** who owns the copyright in the translated text. Applicants should use the term “translation” to describe this type of authorship, rather than “text” or “editing.” When completing an online application, this information should be provided in the Author Created/Other field and the New Material Included/Other field. When completing a paper application, this information should be provided in spaces 2 and 6(b) of [Form TX](#). For guidance on completing these portions of the application, see [Chapter 600](#), Sections 618.4 and 621.8.

## 709.2 Fictionalizations

A fictionalization is a work of fiction that recasts, transforms, or adapts the facts or factual events that are described in one or more preexisting works. A work of fiction that is only loosely based

on the facts or events described in a preexisting work typically would be considered a work of fiction, rather than a fictionalization.

*Examples:*

- A children’s book about the life and times of Kit Carson would be considered a fictionalization.
- A short story based on Stokely Carmichael’s experiences during the Freedom Rides would be considered a fictionalization.
- A romance novel set during the Civil War featuring original characters, situations, and dialog with occasional references to historical persons or events would be considered a work of fiction rather than a fictionalization.

When submitting an application to register this type of work, the **claim** should be limited to the text of the fictionalization, the **applicant** should provide the name of the author of that text, and the applicant should provide the name of the **claimant** who owns the copyright in that text. Applicants should use the term “text” or “fictionalization” to describe this type of authorship, rather than “editing.” When completing an online application, this information should be provided in the Author Created/Other field. When completing a paper application on **Form TX**, this information should be provided in space 2. For guidance on completing these portions of the application, see **Chapter 600**, Section 618.4.

If the fictionalization is based on or incorporates a preexisting work, such as a biography or other work of authorship, the applicant should exclude that preexisting work from the claim using the procedure described in Section 621.8. By contrast, if the fictionalization is based solely on historical facts, persons, or events, or other uncopyrightable material, there is generally no need to complete this portion of the application.

### 709.3 Abridgements

An abridgment is a shortened or condensed version of a preexisting work that retains the general sense and unity of the preexisting work. An abridgment of a nondramatic literary work may be registered if the author contributed a sufficient amount of creative authorship in the form of edits, revisions, or other modifications to the preexisting work, and if the work as a whole is sufficiently creative in adapting the preexisting work such that it constitutes an original work of authorship. See **17 U.S.C. § 101** (definition of “derivative work”). Trivial changes do not satisfy this requirement, such as merely omitting a section from the beginning or end of a preexisting work.

*Examples:*

- An audiobook version of Leo Tolstoy’s *Anna Karenina* that has been abridged and condensed in order to fit into an eight-hour recording could be registered as a derivative work.
- A book that contains abridged and condensed editions of four novels by Joseph Conrad could be registered as a derivative work.

When submitting an application to register an abridgement, the **claim** should be limited to the condensed text that appears in the work, the **applicant** should provide the name of the author who condensed the preexisting work, and the applicant should provide the name of the **claim-**

**ant** who owns the copyright in the condensed text. Applicants should use the term “abridged text” or the like to describe this type of authorship, rather than “text,” “edits,” or “editing.” When completing an online application, this information should be provided in the Author Created/Other field and the New Material Included/Other field. When completing a paper application on **Form TX**, this information should be provided in spaces 2 and 6(b). For guidance on completing these portions of the application, see **Chapter 600**, Sections 618.4 and 621.8.

#### 709.4 Editorial Revisions, Annotations, Elaborations, or Other Modifications

Editorial revisions, annotations, elaborations, or other modifications to a preexisting work or the addenda or errata sheets for a **published** work may be registered as a derivative literary work if the author contributed a sufficient amount of new material to the work, and if the derivative work as a whole sufficiently modifies or transforms the preexisting work such that it constitutes an original work of authorship. See **17 U.S.C. § 101** (definition of “derivative work”). Specifically, the author must contribute new text or revised text to the preexisting work, and the text must possess a sufficient amount of written expression. Merely correcting errors in spelling, punctuation, grammar, or making other minor changes, revisions, or other modifications to a preexisting work do not satisfy this requirement.

*Examples:*

- The Lifetime Consulting Group published a training manual for pension benefit administrators. The following year the company revised the manual to account for recent changes in the tax code and added new chapters on individual retirement accounts and the estate tax. The revised text and the additional text may be registered as a derivative work if they contain a sufficient amount of new and revised material.
- Agatha Thornton is the author of the novel *Bangers and Mash*, which was published in the United Kingdom. Before the work was published in the United States, Agatha revised certain passages that were likely to confuse an American reader. The revisions to the British edition may be registered as a derivative work if they contain a sufficient amount of new and revised material.
- Herman Melville is the author of the novel *Moby-Dick*. Professor Whalen wrote a brief introduction that analyzes the plot, setting, characters, and theme of the novel. Professor Cetacean prepared footnotes, endnotes, and other marginalia that explain the meaning of certain words and phrases that appear in the novel. All of these works were published together in a single volume and the copyright is owned by the Leviathan Press. The introduction, footnotes, and other annotations may be registered as a derivative work, because they clearly contain a sufficient amount of new authorship.

When submitting an application to register this type of work, the **claim** should be limited to the new text or revised text that the author contributed to the work, the **applicant** should provide the name of the author who created the new material, and the applicant should provide the name of the **claimant** who owns the copyright in that new material. Applicants should use the terms “new text” and/or “revised text” to describe this type of authorship, rather than “text” or “editing.” When completing an online application, this information should be provided in the Author Created/Other field and the New Material Included/Other field. When completing a pa-

per application on **Form TX**, this information should be provided in spaces 2 and 6(b). For guidance on completing these portions of the application, see **Chapter 600**, Sections 618.4 and 621.8.

## 710 Compilations

The Copyright Act defines a “**compilation**” as “a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.” **17 U.S.C. § 101**.

Compilations are among the nine categories of works that can be specially ordered or commissioned as a **work made for hire**, provided that the parties expressly agree in a signed written instrument that the compilation shall be considered a work made for hire. See **17 U.S.C. § 101** (definition of “work made for hire,” Section 2). For a detailed discussion of works made for hire, see **Chapter 500**, Section 506.

Typically, the author of a compilation selects the preexisting material or data that will be included in the compilation, the author classifies, categorizes, or groups these elements into particular sequences, and the author decides how these elements should be arranged within the compilation as a whole. A compilation may be registered if the author’s selection, coordination, and/or arrangement of preexisting material or data was independently created, and if the selection, coordination, and/or arrangement contains a sufficient amount of creativity. A registration for a compilation may cover the author’s original selection, coordination, and/or arrangement, but it does not cover any preexisting material or data that is included in the compilation. See **17 U.S.C. § 103(b)** (“Copyright in a compilation . . . does not imply any exclusive right in the preexisting material”).

The compilation must fall within one or more of the categories listed in **Section 102(a)** of the Copyright Act. See **H.R. REP. NO. 94-1476, at 57 (1976)** reprinted in 1976 U.S.C.C.A.N. at 5670; **S. REP. NO. 94-473, at 54-55 (1975)**. In other words, a compilation may be registered if the selection, coordination, and/or arrangement as a whole would be considered a literary work, a musical work, or any other type of work listed in **17 U.S.C. § 102(a)**. If the author’s selection, coordination, and/or arrangement does not fall within one or more of the congressionally established categories of authorship, the **registration specialist** may communicate with the **applicant** or may refuse registration. See **Registration of Claims to Copyright, 77 Fed. Reg. 37,605, 37,606 (June 22, 2012)**.

Examples of nondramatic literary works that may be registered as a compilation include the following:

- Yellow pages directories, street directories, criss-cross directories, membership lists, price lists, catalogs, financial reports, financial ratings, and the like may be registered as a compilation, provided that the author contributed a sufficient amount of selection, coordination, and/or arrangement authorship to the work.
- Charts, tables, graphs, figures, diagrams, and the like may be registered as a compilation, provided that there is a sufficient amount of original authorship in the selection, coordination, and/or arrangement of data or other textual or numerical elements.
- A populated **database** that presents data in an organizational framework for recording information may be registered as a compilation, provided that there is a sufficient amount of original authorship in the selection, coordination, and/or arrangement of data. If the author

subsequently updates the database by inserting new data into the original framework, it may be possible to register the updates as a derivative work, provided that the updates contain a sufficient amount of new data and provided that the author contributed a substantial amount of new **copyrightable** authorship in the selection, coordination, and/or arrangement of new data that appears in each update.

When asserting a **claim** in a compilation, the applicant should provide the name of each author who created the selection, coordination, and/or arrangement that the applicant intends to register, and the applicant should assert a claim to copyright in that material using the procedures described in **Chapter 600**, Sections 618.7, 618.6, and 621.8(D).

For a general discussion of the legal standard for determining whether a compilation contains a sufficient amount of original expression to warrant registration, see **Chapter 300**, Section 312.2.

## 711 Collective Works and Contributions to Collective Works

The Copyright Act defines a “**collective work**” as a work “in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.” **17 U.S.C. § 101**. A contribution to a collective work is a separate and independent work that has been included within a collective work.

Collective works are a subset of **compilations**. Consequently, the author must select, coordinate, and/or arrange the component works in such a way that the resulting work as a whole constitutes an original work of authorship. See **17 U.S.C. § 101** (definition of “compilation” stating that “[t]he term ‘compilation’ includes collective works.”).

Both collective works and contributions to collective works are among the nine categories of works that can be specially ordered or commissioned as a **work made for hire**, provided that the parties expressly agree in a signed written instrument that the work shall be considered a work made for hire. Compare **17 U.S.C. § 101** (definition of “compilation”) (“The term ‘compilation’ includes collective works.”), with *id.* (definition of “work made for hire”) (“a ‘work made for hire’ is...a work specially ordered or commissioned for use as a contribution to a collective work [or]...as a compilation...”). For a detailed discussion of works made for hire, see **Chapter 500**, Section 506.

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.

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 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 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.

When asserting a **claim** in a collective work and/or a contribution to a collective work, 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 using the procedures described in **Chapter 600**, Sections 618.7 and 621.8(E).

For guidance on the deposit requirements for a contribution to a collective work, see **Chapter 1500**, Section 1505.5.

## 712 Monographs and Serials

This Section discusses the U.S. Copyright Office’s practices and procedures for registering literary monographs. It also discusses the Office’s practices and procedures for registering serial publications, such as a newspaper, magazine, newsletter, or journal.

**NOTE:** The Office has established a procedure that allows copyright owners to register a group of **serials**, a group of newspapers, or a group of newsletters with one application and one **filing fee**. The requirements for these **group registration** options are discussed in **Chapter 1100**, Sections 1109 through 1111.

### 712.1 What Is a Literary Monograph?

A literary monograph is a literary work that is “published in one volume or a finite number of volumes.” **37 C.F.R. § 202.19(b)(5)**. Examples of works that may qualify as a monograph include fiction, nonfiction, poetry, short stories, memoirs, textbooks, and other types of nondramatic literary works.

Most monographs are published in a single volume, rather than a series of successive issues or parts. Some monographs are published in separate volumes with each bearing the same title and successive numerical designations (as in the case of a multi-volume encyclopedia). But typically the entire work is published in a limited number of volumes that, taken together, constitute the work as a whole. See **Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions**, **82 Fed. Reg. 38,859, 38,860 (Aug. 16, 2017)**.

**NOTE:** Serials and legal publications are not considered monographs for purposes of registration. For information concerning the registration requirements for these types of works, see Sections **712.2** and **717.1**.

### 712.1(A) Copyrightable Authorship in Literary Monographs

When registering a literary monograph, the applicant may assert a claim in new and original text, artwork, and/or photographs appearing in the work. The **applicant** should provide the name(s) of the author or co-authors who created that material, and the name of the **claimant** who owns the copyright in that material. The Literary Division may accept a claim in “text” if the work contains a sufficient amount of written expression, and/or a claim in “artwork” and/or “photograph(s)” if the work contains a sufficient amount of pictorial or graphic expression.

A literary monograph may be considered a collective work if it contains “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”). Collective works typically contain the following 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 monograph as a whole, and/or revising the monograph as a whole.
- The authorship in the separate and independent works that have been included within the monograph, which may contain literary expression and/or artistic expression.

As with any other type of collective work, an **applicant** may register a monograph together with the separate and independent works contained therein, (i) if the claimant owns the copyright in the monograph 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.

### 712.1(B) Application Tips for Registering a Literary Monograph

When completing an online application, the applicant should describe the work being registered in the Author Created field, and if applicable, in the New Material Included field. When completing a paper application on **Form TX**, this information should be provided in space 2, and if applicable, in space 6(b). For guidance on completing these portions of the application, see **Chapter 600**, Sections 618.4 and 621.8.

For guidance concerning the deposit requirements for **literary monographs**, see **Chapter 1500**, Section 1509.1(A).

### 712.2 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. **37 C.F.R. § 202.3(b)(1)(v)**. Examples include periodicals (including newspapers); annuals; and the journals and proceedings of societies, 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.

“Periodicals” are considered “collective works” for purposes of registration, because they contain “a number of contributions, constituting separate and independent works in themselves, [that]

are assembled into a collective whole.” 37 C.F.R. §202.4(b)(3); 17 U.S.C. § 101 (definition of “collective work”).

Most serials are – but do not *have* to be – collective works to qualify for registration. For example, a newsletter that contains a single article and a single photograph would not be considered a collective work, because it does not contain sufficient contributions. Nevertheless, it could still be registered as a “serial” if the requirements set forth in Section 712.2(B) have been met.

### 712.2(A) 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 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.

### 712.2(B) 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.” Alternatively, an applicant may submit a paper application using **Form SE**. An applicant may also register a serial by selecting the option for “Literary Work” or by submitting a paper application using Form TX. If the claim is approved, the U.S. Copyright Office will issue a certificate of registration beginning with the prefix “TX,” regardless of whether the claim is submitted as a “Literary Work” or a “Single Serial Issue.”

Form SE and the application for a “Single Serial Issue” may only be used to register an issue that has been published. These applications may only be used to register a serial that qualifies as a collective work. They also may be used to register an individual article, photograph, or other contribution to a serial publication, but only if the applicant is registering that contribution together with the issue as a whole. If the registration specialist determines that the issue does not satisfy these requirements, he or she will refuse to register the claim.

In all cases, the applicant should provide the title that appears on the serial, as well as the volume number, issue number, and date (if any) that appears on the specific issue that will be submitted for registration, as well as the frequency of publication for that serial, such as 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 a paper application, 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. For guidance on completing Form SE or the online application for a “Single Serial Issue,” see [Chapter 600](#), Sections 618.7(C) and 618.7(D). For Form TX or the online application for a “Literary Work,” see [Chapter 600](#), Sections 618.4(A), 618.4(B), 618.7(A), and 618.7(B)(2).

If the applicant intends to register the authorship involved in creating the issue as a whole, the applicant should assert a claim in the “collective work authorship.” 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 should assert a claim in the “collective work authorship and component work(s) authored or fully owned by the Collective Work Author.”

As mentioned above, 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. 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). In no case may the claimant register a contribution that is in the public domain.

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.

For guidance concerning the deposit requirements for **serials**, see [Chapter 1500](#), Section 1509.1(B).

### 712.3 ISBN and ISSN Numbers

If an International Standard Book Number (“ISBN”) or International Standard Serial Number (“ISSN”) has been assigned to a monograph or serial, the **applicant** is strongly encouraged to

include that information in the online application. For guidance on completing this portion of the application, see **Chapter 600**, Section 612.6(C). When completing **Form SE** or **Form TX** the applicant may include the ISSN number in the space marked Previous or Alternative Titles.

If the applicant provides an ISBN or ISSN, the number will appear on the **certificate of registration** and the **online public record**. Providing this information is useful, because the number may be used to search and retrieve the registration records for a particular monograph or serial. However, providing an ISBN or ISSN is optional and an application will be accepted even if this portion of the application is left blank.

The U.S. Copyright Office does not assign ISBNs or ISSNs. In the United States, ISBNs are administered by R.R. Bowker ([www.bowker.com](http://www.bowker.com)). For information concerning the procedure for obtaining an ISSN, applicants should write to the Serials Record Division of the Library of Congress at the following address:

Library of Congress  
ISSN Publisher Liaison Section  
101 Independence Avenue SE  
Washington, DC 20540-4284

Additional information, including the ISSN application form, is available on the ISSN Publisher Liaison Section's **webpage**.

### 713 Book Jackets

Book jackets often contain several types of authorship that is separate from the book itself, such as text, illustrations, and photographs. If text is the predominant form of authorship in the jacket, the work may be registered as a nondramatic literary work. If the predominant form of authorship consists of artwork, illustrations, or photographs, the jacket may be registered as a work of the visual arts. See **37 C.F.R. § 202.3(b)(1)(i), (iii)**.

When asserting a **claim** in a book jacket, the **applicant** should clearly indicate that the claim extends to the **copyrightable** material that appears on the jacket. Specifically, the claim should be limited to the text, artwork, and/or photographs that appear on the jacket, the applicant should provide the name of the author who created that material, and the applicant should provide the name of the **claimant** who owns the copyright in that material. The Literary Division may accept a claim in “text” if the jacket contains a sufficient amount of written expression, or a claim in “artwork” and/or “photograph(s)” if the jacket contains a sufficient amount of pictorial or graphic expression. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on **Form TX**, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see **Chapter 600**, Sections 618.4 and 621.8.

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.

In the alternative, the applicant may submit separate applications for the book and the jacket. If the applicant submits a separate application for a jacket that has been **published**, the Office will retain the jacket “for the longest period considered practicable and desirable by the Register of Copyrights and the Librarian of Congress.” 17 U.S.C. § 704(d). If the applicant submits an application to register a book that has been published but does not assert a separate claim in the jacket, the Library of Congress may add the book to its collection, but the jacket will be discarded. For a discussion of the deposit requirements for book jackets, see Chapter 1500, Section 1509.1(D).

## 714 Games

A game may be registered as a literary work if the predominant form of authorship in the work consists of text. Examples of works that may satisfy this requirement include word games, card games, party games, riddles, brain teasers, and similar diversions, including the instructions or directions for playing a particular game. A game may be registered as a work of the visual arts if the predominant form of authorship consists of pictorial or sculptural authorship. Examples of works that may satisfy this requirement include board games, playing cards, playing pieces, and the like. See 37 C.F.R. §§ 202.3(b)(1)(i), (iii).

When submitting an application to register a game, the **claim** should be limited to the text, artwork, and/or photographs that appear in the work (as applicable), the **applicant** should provide the name of the author who created that material, and the applicant should provide the name of the **claimant** who owns the copyright in that material. The Literary Division may accept a claim in “text” if the game contains a sufficient amount of written expression, or a claim in “artwork” and/or “photograph(s)” if the work contains a sufficient amount of pictorial or graphic expression. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on **Form TX**, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

A registration for a game covers all of the **copyrightable** elements that appear in the work, regardless of whether the game has been registered as a literary work or a work of the visual arts. However, copyright does not protect the idea for a game, the name or title of a game, or the procedure, process, or method of operation for playing a game. Nor does copyright protect any idea, system, method, or device involved in developing or marketing a game. Once a game has been made available to the public, the copyright law cannot be used to prevent others from developing another game based on similar principles. Copyright protects only the particular expression that appears in the literary or artistic elements that the work may contain. See 17 U.S.C. § 102(b); 37 C.F.R. § 202.1.

If the game consists of separately fixed elements and works that were physically bundled together by the claimant for distribution to the public in the same, integrated unit, it may be possible to register them with one application and one **filing fee** if all the works were first published in that integrated unit and if the claimant owns the copyright in those works. For information concerning the **unit of publication** option, see Chapter 1100, Section 1103.

For a discussion of the practices and procedures for registering videogames, see [Chapter 800](#), Section 807.7(A). For a discussion of the practices and procedures for registering board games, see [Chapter 900](#), Section 910.

## 715 Genealogies

### 715.1 What Is a Genealogy?

A genealogy is a work that contains information about the history of a particular family. These types of works typically contain a substantial amount of factual information, such as the names of family members, dates of birth, marriage, death, and other significant events, as well as family trees illustrating the relationships between family members. Frequently, this information is obtained from various sources, such as letters, diaries, scrapbooks, photo albums, birth certificates, marriage licenses, church records, census records, wills and probate records, gravestones, and the like. Much of this material may be in the [public domain](#), it may be previously published, it may be previously registered with the U.S. Copyright Office, or it may be separately owned by another copyright owner.

### 715.2 Copyrightable Authorship in Genealogies

Although facts are not [copyrightable](#), a genealogy may be registered as a literary work if it contains a sufficient amount of written expression. The application should be limited to the text, artwork, and/or photographs that the author contributed to the work (as applicable), the [applicant](#) should provide the name of the author who created that material, and the applicant should provide the name of the [claimant](#) who owns the copyright in that material. The Literary Division may accept a [claim](#) in “text” if the work contains a sufficient amount of written expression, and may accept a claim in “artwork” and/or “photograph(s)” if the work contains a sufficient amount of pictorial or graphic expression. Likewise, the Literary Division may accept a claim in “[compilation](#)” if the author exercised a sufficient amount of creativity in selecting, coordinating, and/or arranging the information that appears in the genealogy.

### 715.3 Application Tips for Genealogies

Submitting an online application is the preferred way to register a genealogy. When completing the application, the [applicant](#) should provide the name of the author who created the genealogy on the Author screen. In the field marked Author Created, the applicant should check one or more of the boxes that accurately describe the material that the author created.

*Examples:*

- The applicant should check the box marked “text” if the author wrote the captions, footnotes, comments, biographies, or other textual expression that appears in the genealogy.
- If the author created any of the artwork or took any of the photographs that appear in the genealogy, the applicant should check the boxes marked “artwork” or “photograph(s),” as applicable.

- If the author selected, coordinated, and/or arranged the names, dates, records, photographs, or other material that appears in the genealogy, the applicant should provide a brief statement to that effect in the field marked Other. For example, the Literary Division will accept a brief statement, such as: “selection, coordination, and arrangement of family photographs, newspaper clippings, census records, and other source material,” “selection and arrangement of information obtained from family records, court records, church records, and gravestones,” “selection of family photos, coordination of family names and relationships, and arrangement of facts and historical information,” or the like.

For additional guidance on completing this portion of the application, see [Chapter 600](#), Section 618.4.

The applicant should provide the exact same information on the Limitation of Claim screen in the field marked New Material Included. In other words, if the applicant checked the box for “text” in the Author Created field, the applicant also should check the box for “text” on the Limitation of Claim screen in the New Material Included field. If the applicant stated “selection and arrangement of church records” on the Author Created screen in the field marked Other, the applicant should state “selection and arrangement of church records” on the Limitation of Claim screen in the field marked Other. For additional guidance on completing these portions of the application, see [Chapter 600](#), Section 621.8.

A registration for a genealogy does not cover any of the factual information that may be included in the work. Nor does it cover material that is in the **public domain**, material that has been previously published, material that has been previously registered, or material that is owned by another person or legal entity. If the genealogy contains this type of material the applicant should exclude it from the application by checking the appropriate boxes that appear on the Limitation of Claim screen in the field marked Material Excluded.

*Examples:*

- The applicant should check the box marked “text” if the genealogy contains an appreciable amount of text that is in the public domain, text that has been previously published, text that has been previously registered, or text owned by a third party.
- The applicant should check the box marked “photograph(s),” if the genealogy contains an appreciable number of photos that are in the public domain, photos that have been previously published, photos that have been previously registered, or photos owned by a third party.
- The applicant should check the box marked “artwork” if the genealogy contains an appreciable amount of artwork that is in the public domain, artwork that has been previously published, artwork that has been previously registered, or artwork owned by a third party.

If the genealogy contains an appreciable amount of material that has been registered with the U.S. Copyright Office, the applicant should provide the registration number and the year that the registration was issued in the field marked Previous Registration. For additional guidance on completing this portion of the application, see [Chapter 600](#), Sections 621.8(F).



If the genealogy appears to contain an appreciable amount of public domain material, previously published material, previously registered material, or material that is owned by another party, and if the applicant failed to exclude that material from the claim, the **registration specialist** may add an **annotation** to the registration record, such as “Regarding authorship information and limitation of claim: registration does not extend to previously registered, previously published, public domain, or separately owned material, or to facts.”

If it is unclear whether the author contributed text, artwork, photographs, or compilation authorship to the genealogy, the registration specialist will communicate with the applicant. If the genealogy does not contain a sufficient amount of original authorship to warrant registration, the specialist may refuse to register the claim.

*Examples:*

- Jane Springer created a genealogy titled *The Springers of Springfield, Massachusetts*. She gathered information from local courthouses, churches, cemeteries, and other sources; she assembled this information into a book; and wrote a brief introduction for the work. Jane may register the introduction by checking the box for “text” in the Author Created and New Material Included fields. She may register the compilation of information by stating “selection and arrangement of family records” on the Author Created and Limitation of Claim screens in the fields marked Other.
- Jennifer Smith submits an application to register a genealogy titled *The Smith Family of Hamilton County, Virginia*. Jennifer wrote the introduction for this work, the captions for each photograph, and a short biography for each member of the family. The genealogy also contains text and photographs created by other family members. On the Author Created screen Jennifer checks the boxes for “text” and states “selection, coordination, and arrangement of family records” in the field marked Other. Jennifer should have provided this exact same information on the Limitation of Claim screen in the New Material Included field. In addition, she should have checked the boxes for “text” and “photograph(s)” in the Material Excluded field because the genealogy contains text or photos created and owned by other parties. The registration specialist will register the claim with an annotation, such as: “Regarding authorship information: registration does not extend to previously registered, previously published, public domain, or separately owned material, or to facts.”
- Thomas Henry submits an application to register a genealogy titled *The Henrys in Spokane County*. On the Author Created screen he checks the box for “text” and states “compilation of public records” in the field marked Other. In the Note to Copyright Office field, Thomas explains that he wrote the introduction for this work and he prepared a list of all the members of the Henry family who were born in Spokane County. The names are listed in chronological order based on the individual’s date of birth. The registration specialist will communicate with the applicant. Although the introduction may be registered as “text,” the Office cannot register the claim in “compilation,” because preparing a list of all of the family members from a particular county and organizing the names in chronological order does not contain a sufficient amount of compilation authorship to warrant registration.

## 716 Instructional Texts and Instructional Works

Textbooks and other instructional texts may be registered if the work contains a sufficient amount of original authorship. The statute defines an “instructional text” as “a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.” See [17 U.S.C. § 101](#) (definition of “work made for hire”). As the legislative history explains, this category includes “textbook material,” regardless of whether the work is **published** “in book form or prepared in the form of text matter.” [H.R. REP. NO. 94-1476, at 121 \(1976\)](#) *reprinted in* 1976 U.S.C.C.A.N. at 5737; [S. REP. NO. 94-473, at 105 \(1975\)](#). The “basic characteristic” of an instructional text is that the work must be prepared for “use in systematic instructional activities,” rather than a work “prepared for use by a general readership.” [H.R. REP. NO. 94-1476, at 121 \(1976\)](#) *reprinted in* 1976 U.S.C.C.A.N. at 5737; [S. REP. NO. 94-473, at 105 \(1975\)](#). Instructional texts are among the nine categories of works that can be specially ordered or commissioned as a work made for hire, provided that the parties expressly agree in a signed written instrument that the work shall be considered a work made for hire. For a discussion of works made for hire, see [Chapter 500](#), Section 506.

Other types of instructional works may be registered with the U.S. Copyright Office, provided that the work, taken as a whole, contains a sufficient amount of original authorship. Examples of works that may satisfy this requirement include cookbooks, instructions for knitting, crocheting, or needlework, instructions for operating a machine, appliance, or other device, and similar types of works.

If text is the predominant form of authorship, an instructional text or other instructional work may be registered as a nondramatic literary work. If the predominant form of authorship consists of artwork, illustrations, or photographs, the work may be registered as a work of the visual arts. See [37 C.F.R. § 202.3\(b\)\(1\)\(i\), \(iii\)](#). For information concerning the registration requirements for stencils, patterns, and how-to books, see [Chapter 900](#), Section 920.

The Literary Division may register an instructional work that explains how to perform a particular activity, provided that the work contains a sufficient amount of text, photographs, artwork, or other **copyrightable** expression. Likewise, the Literary Division may register an instructional work that illustrates or describes the end result for a particular activity or technique, such as a drawing of a crochet pattern or a photograph of a product that has been fully assembled.

When asserting a **claim** in an instructional text or an instructional work, the claim should be limited to the text, artwork, and/or photographs that appear in the work, the **applicant** should provide the name of the author who created that material, and the applicant should provide the name of the **claimant** who owns the copyright in that material. The Literary Division may accept a claim in “text” if the work contains a sufficient amount of written or editorial expression, or a claim in “artwork” and/or “photograph(s)” if the work contains a sufficient amount of pictorial or graphic expression. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on [Form TX](#), this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see [Chapter 600](#), Sections 618.4 and 621.8.

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.”
- The Abigail Adams Co. submits an application to register a set of basic instructions for crocheting a scarf. In the Author Created field, the applicant asserts a claim in “text, photographs, and artwork.” The work contains illustrations, photographs, patterns, and other artwork, but the instructional text is extremely basic, abbreviated, and formulaic, such as “knit 1, purl 2.” The registration specialist will communicate with the applicant. The claim in “artwork” and “photographs” is acceptable, but the claim in “text” is not, because the instructional text, taken as a whole, is *de minimis*.
- Paulina Neumann submits an application to register a recipe for a caesar salad. In the Author Created field, the applicant asserts a claim in “text.” The work contains a list of eleven ingredients together with the following instructions: “(1) puree anchovies, garlic, dijon, egg yolks, (2) drizzle oil in gradually to emulsify; (3) add lemon, parmesan cheese, salt, pepper, worcestershire and tobasco sauce.” The registration specialist will refuse to register the claim, because the list of ingredients is not copyrightable and the instructional text is *de minimis*.

For a discussion of the deposit requirements for an instructional work, see [Chapter 1500](#), Section 1509.1(I).

## 717 Legal Materials

Certain types of legal materials may be registered with the U.S. Copyright Office if they contain a sufficient amount of original expression. Examples of legal materials that may satisfy this requirement are discussed in Sections 717.1 through 717.3 below.

When submitting an application to register these types of works, the **claim** should be limited to the new material that appears in the work, the **applicant** should provide the name of the author who created that material, and the applicant should provide the name of the **claimant** who owns the copyright in that material. The Literary Division may accept a claim in “text” if the work contains a sufficient amount of written expression, or a claim in “artwork” and/or “photograph(s)” if the work contains a sufficient amount of pictorial or graphic expression. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on **Form TX**, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see **Chapter 600**, Sections 618.4 and 621.8.

Certain types of legal materials may be registered as a **compilation** if the author exercised a sufficient amount of creativity in selecting, coordinating, and/or arranging the preexisting materials that appear within the deposit. When asserting a claim in a compilation, the applicant should provide the name of the author who created the selection, coordination, and/or arrangement that the applicant intends to register, and the applicant should assert a claim to copyright in that material using the procedures described in **Chapter 600**, Section 618.6.

As discussed in Sections 717.1 and 717.2, legal materials often contain an appreciable amount of content that is not eligible for copyright protection. They also may contain an appreciable amount of content that is in the **public domain**, content that has been previously published, content that has been previously registered, or content that is owned by a third party. If so, the applicant should exclude this content from the application using the procedure described in **Chapter 600**, Section 621.8(F).

If the applicant asserts a claim in both the **copyrightable** and uncopyrightable elements of the work, the **registration specialist** may annotate the application to indicate that the registration does not extend to the uncopyrightable elements. If the applicant asserts a claim to copyright in an element that is uncopyrightable, the registration specialist may communicate with the applicant or may refuse registration if the claim appears to be based solely on that element.

### 717.1 Legal Publications

A legal publication that contains, analyzes, annotates, summarizes, or comments upon legislative enactments, judicial decisions, executive orders, administrative regulations, or other edicts of government may be registered as a nondramatic literary work, provided that the publication contains a sufficient amount of literary expression. Examples of legal publications that may satisfy this requirement are listed below, but in no case does the registration cover any government edict that may be included in the work. See 17 U.S.C. § 105; see also **Chapter 300**, Section 313.6(C)(2).

*Examples:*

- Annotated codes that summarize or comment upon legal materials issued by a federal, state, local, or foreign government.
- A compilation of legislative enactments or judicial decisions, provided that the author exercised a sufficient amount of creativity in selecting, coordinating, and/or arranging the material that appears in the compilation.
- Treatises that analyze or review legal subjects.
- Dictionaries, anthologies, and encyclopedias that define or describe legal subjects.
- Legal periodicals that cover specific areas of the law, such as law reviews, legal journals, legal newspapers, legal newsletters, and the like.
- Casebooks containing a selection of legislative enactments and judicial decisions that have been abridged and/or annotated with comments and questions for use in systematic instructional activities.
- Test materials that are used to determine eligibility for membership in a bar association or other professional organization, as well as study materials used to prepare for such tests.

The Office will consider an application to register a citator containing specialized indexes for tracing the prior and subsequent history of a judicial decision; for identifying decisions that have followed, explained, distinguished, criticized, or overruled a previous judicial decision; or for researching a specific area of the law. This type of work may be registered if it contains a sufficient amount of new text, such as an introduction or a brief summary of the issues discussed in each case. Likewise, a citator may be registered as a compilation, provided that the author exercised a sufficient amount of creativity in selecting, coordinating, and/or arranging the categories that appear within the work. However, the **registration specialist** may communicate with the **applicant** or may refuse registration if the **claim** appears to be based solely on the selection of judicial decisions, because citators typically list all of the subsequent decisions that cite the same case. The specialist also may communicate or refuse registration if the claim appears to be based solely on a system for conducting legal research or on any “idea, procedure, process, system, method of operation, concept, principle, or discovery” that may be reflected or implemented in the work. **17 U.S.C. § 102(b)**.

## 717.2 Legal Documents

Contracts, insurance policies, or other legal documents may be registered if they contain a sufficient amount of expression that is original to the author. The U.S. Copyright Office may register briefs, motions, prepared testimony, expert reports, or other legal pleadings, provided that they contain a sufficient amount of expression that originated with the author (regardless of whether the pleading has or has not been filed with a judicial or administrative body). Likewise, the Office may register books that contain sample forms used in preparing contracts, pleadings, or other legal documents.

Legal documents typically contain an appreciable amount of language that may have been obtained from other sources, such as standard form contracts, prior pleadings, form books, and the like. Much of this language may have been previously published, it may be owned by other parties, or it may be in the **public domain**. Often the language used in a legal document may be determined by the requirements of the relevant statutory, regulatory, or decisional law. In some cases, the author may be required to use specific legal terminology or a specific sentence structure, such as the boilerplate language found in a lease, bailment, chattel mortgage, security interest, or similar transactions.

The Office may register a legal document that contains an appreciable amount of unclaimable material, provided that the **claim** is limited to the new material that the author contributed to the work and provided that the unclaimable material has been excluded from the claim. For purposes of registration, unclaimable material includes previously published material, previously registered material, public domain material, or **copyrightable** material that is owned by another party.

When completing the application, the **applicant** should provide a brief statement that describes the new material that the author contributed to the work, such as “new text,” and a brief statement that describes the unclaimable material that should be excluded from the claim, such as “standard legal language.” In the case of an online application, this information should be provided in the Author Created, New Material Included, and Material Excluded fields. In the case of a paper application submitted on **Form TX**, it should be provided in spaces 2, 6(a), and 6(b). For guidance on completing these portions of the application, see **Chapter 600**, Sections 618.4 and 621.8.

### **717.3 Patents, Patent Applications, and Non-Patent Literature**

The U.S. Copyright Office may register a **claim** to copyright in the written description for an invention or the drawings or photographs set forth in a patent or a patent application, provided that the work contains a sufficient amount of original authorship. Likewise, the Office may register a claim to copyright in articles, publications, or other non-patent literature that may be submitted with a patent application. However, the copyright in a patent, a patent application, or non-patent literature does not extend to any “idea, procedure, process, system, method of operation, concept, principle, or discovery” that may be disclosed in these works. **17 U.S.C. § 102(b)**.

Under U.S. patent law, a patent application must be filed within one year after the invention has been described in any printed publication. *See* 35 U.S.C. § 102(a)(1), (b)(1). Filing a patent application or non-patent literature with the U.S. Patent and Trademark Office or the U.S. Copyright Office is not considered publication within the meaning of the copyright law. The U.S. Copyright Office takes no position on whether filing an application to register the text and illustrations in a patent application or in non-patent literature would be considered a publication within the meaning of the patent law.

### **718 Letters, Email, and Other Written Correspondence**

Letters, emails, journals, diaries, and other forms of written correspondence may be registered if they contain a sufficient amount of **copyrightable** expression and if the **claimant** owns the copyright in that material.

When submitting an application to register these types of works, the **applicant** should limit the **claim** to the text, artwork, and/or photographs that appear in the work, the applicant should provide the name of the author who created that material, and the applicant should provide the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in “text” if the work contains a sufficient amount of written expression, or a claim in “artwork” and/or “photograph(s)” if the work contains a sufficient amount of pictorial or graphic expression. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on **Form TX**, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see **Chapter 600**, Sections 618.4 and 621.8.

As a general rule, the author of the correspondence—not the recipient—should be named as the copyright claimant. The fact that a person owns or possesses the original copy of a letter, a journal, diary, or other material object does not give that person the right to claim copyright in that work, even if the material object was purchased or found. Ownership of the copyright in a work, or of any of the **exclusive rights** under a copyright, is distinct from the ownership of any material object in which the work has been **fixed**. A **transfer** of ownership involving a material object does not convey any rights in the copyrighted work, nor does the transfer of ownership of a copyright convey any property rights in any material object (absent a written agreement to that effect). **17 U.S.C. § 202**.

A party that has obtained all of the rights under copyright that initially belonged to the author may be named as the copyright claimant for a letter, email, journal, diary, or other written correspondence. When completing the application, the applicant should provide a brief **transfer statement** explaining how the claimant obtained the copyright in the work. For example, the **registration specialist** may accept an application if the applicant states that the claimant obtained the copyright “by inheritance” or “by written agreement,” but the specialist will question an application if the applicant simply states “I found this diary in the attic,” “my mother gave me this journal,” “my boyfriend sent me these love letters,” or the like. These types of statements suggest that the claimant may own a material object (*i.e.*, a journal, a diary, a letter), but it is unclear whether the claimant owns the copyright in the work that is embodied in those objects. For guidance on identifying the copyright claimant, see **Chapter 600**, Section 619. For guidance on providing a transfer statement, see **Chapter 600**, Section 620.

In some cases, journals, diaries, letters, or other written correspondence may be **published** with new material that introduces, illustrates, or explains the work, such as forewords, afterwords, footnotes, annotations, or the like. As discussed in Section **709.4**, this type of material may be registered as a **derivative work** if it contains a sufficient amount of original authorship. See **17 U.S.C. § 101** (definition of “derivative work”). The applicant should limit the claim to the new text that the author contributed to the work, the applicant should provide the name of the author who created the new text, together with the name of the claimant who owns the copyright in the new text. Applicants should use the terms “new text,” “text of introduction,” or the like to describe this type of authorship, rather than “text” or “editing.” If the new material contains an appreciable amount of pictorial or graphic expression, applicants should use the term “artwork” and/or “photograph(s)” to describe this type of authorship. In all cases, the journal, diary, letters, or other written correspondence should be excluded from the claim if that material has been previously published, previously registered, if it is in the **public domain**, or if the copyright in that material is owned by another party. For a discussion of the procedure for excluding this type of material from a claim, see **Chapter 600**, Section 621.8.

## 719 Interviews

An interview is a written or recorded account of a conversation between two or more individuals. Typically, the interviewer poses a series of questions that elicit a response from the interviewee(s). An interview may be registered if the conversation has been **fixed** in a tangible medium of expression and if it contains a sufficient amount of creative expression in the form of questions and responses. Specifically, an interview may be registered as a literary work if it has been fixed in a written transcript, an audio recording, a video recording, or other medium of expression. An interview may be registered as a work of the performing arts if the interview was performed or is intended to be performed before an audience, such as a television interview, radio interview, or onstage interview.

In all cases, the **applicant** should provide the name of the author who created the questions and/or the author who created the responses that appear in the interview, and the applicant should provide the name of the **claimant** who owns the copyright in that material. The Literary Division may accept a **claim** in “text” if the interview contains a sufficient amount of written expression, or may accept a claim in “text by interviewer” or “text by interviewee” if the claim is limited to the interviewer’s questions or the interviewee’s responses. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on **Form TX**, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see **Chapter 600**, Sections 618.4 and 621.8.

The U.S. Copyright Office will assume that the interviewer and the interviewee own the copyright in their respective questions and responses unless (i) the work is claimed as a **joint work**, (ii) the applicant provides a **transfer statement** indicating that the interviewer or the interviewee transferred his or her rights to the copyright claimant, or (iii) the applicant indicates that the interview was created or commissioned as a **work made for hire**. If the applicant fails to provide a transfer statement or fails to answer the work made for hire question, the **registration specialist** may communicate with the applicant if it appears that the interviewee or the interviewer is attempting to register the entire interview instead of registering a claim in his or her contribution to the work. For guidance on providing a transfer statement, see **Chapter 600**, Section 620. For guidance on answering the work made for hire question, see **Chapter 600**, Section 614. For guidance on joint works, see **Chapter 500**, Section 505.

### *Examples:*

- Michael Scorch submits an application to register his interview with Major William Smith. The application names Michael and William as authors of “text of interview questions” and “text of responses to interview questions,” respectively. Michael is named as the sole copyright claimant and the transfer statement indicates that he obtained the copyright in William’s contribution “by written agreement.” The registration specialist will register the claim.
- Beth McBride submits an application to register her interview with Franklin Murphy. Beth is named as author of “text by interviewer” and Franklin is named as author of “text by interviewee.” Beth is named as the sole copyright claimant, but a transfer statement has not been provided and the work made for hire question has not been answered. The registration specialist will communicate with the applicant to determine if Franklin transferred his copyright to Beth or if the interview was created or commissioned as a work made for



hire. If Beth does not own the copyright in Franklin’s contribution, the specialist will ask her to limit the claim to the “text by interviewer.”

## 720 [Reserved]

## 721 Computer Programs

This Section discusses the U.S. Copyright Office’s practices and procedures for the examination of **computer programs**.

For a discussion of **databases**, see Section 727. For a discussion of websites and website content, see **Chapter 1000**. For a discussion of videogames, see Section 726 and **Chapter 800**, Section 807.7(A).

### 721.1 What Is a Computer Program?

The Copyright Act defines a “**computer program**” as “a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.” **17 U.S.C. § 101**. Congress added this definition to the statute “to make it explicit that computer programs, to the extent that they embody an author’s original creation, are proper subject matter of copyright.” NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS (“CONTU”), FINAL REPORT 1 (1979) (CONTU REPORT); *see also* 126 CONG. REC. 29,895 (1980) (statement of Rep. Kastenmeier) (explaining that the legislation “eliminates confusion about the legal status of computer software by enacting the recommendations of [CONTU] clarifying the law of computer software”).

A **claim** to copyright in a computer program may be based on the authorship “expressed in words, numbers, or other verbal or numerical symbols or indicia,” regardless of whether that expression has been fixed in tapes, disks, cards, or any other tangible medium of expression. **17 U.S.C. § 101** (definition of “literary works”). However, the fixed program must be used directly or indirectly in a computer. For purposes of copyright registration, a “computer” is defined as a programmable electronic device that can store, retrieve, and process data that is input by a user through a user interface, and is capable of providing output through a display screen or other external output device, such as a printer. “Computers” include mainframes, desktops, laptops, tablets, and smart phones.

### 721.2 What Is a Derivative Computer Program?

A derivative computer program is a program that is “based upon one or more preexisting works.” **17 U.S.C. § 101** (definition of “derivative work”). Typically, a derivative computer program is a new version of a preexisting program, or a program that contains material from a preexisting work that has been revised, augmented, abridged, or otherwise modified such that the modifications as a whole represent an original work of authorship.

*Example:*

- Telamon Software submits an application to register a computer program titled *Ajax 4.0*. The program corrects certain problems found in previous versions of the same program. For instance, it increases the number of file for-

mats that can be processed by the program, it doubles the speed for decoding graphics, and it allows the program to work with other types of graphics cards and semiconductor chips. *Ajax 4.0* would be considered a derivative computer program. See *Montgomery v. Noga*, 168 F.3d 1282, 1290-91 (11th Cir. 1999).

### 721.3 What Is Source Code?

**Source code** is a set of statements and instructions written by a human being using a particular programming language, such as C, C++, FORTRAN, COBOL, PERL, Java, Basic, PASCAL, LISP, LOGO, or other programming languages. These statements or instructions are comprehensible to a person who is familiar with the relevant programming language, but in most cases a computer or other electronic device cannot execute these statements or instructions unless they have been converted into **object code**. This conversion is performed by a separate program within the computer, which is known as an interpreter, assembler, or compiler. See *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1243 (3d Cir. 1983); *Williams Electronics, Inc. v. Artic International, Inc.*, 685 F.2d 870, 876 n.7 (3d Cir. 1982) (quoting the CONTU REPORT at 21 n. 9, 28).

### 721.4 What Is Object Code?

**Object code** is the representation of a computer program in a machine language. It typically consists of the numbers zero and one (*i.e.*, binary coding), the numbers zero through seven (*i.e.*, octal coding), or a combination of letters and numbers (*i.e.*, ASCII or hexadecimal coding). Object code is comprehensible to a computer or other electronic device, but it is not intended to be read by human beings, and as a general rule, it is not directly comprehensible to human beings. See *Apple Computer*, 714 F.2d at 1243.

### 721.5 Relationship Between Source Code and Object Code

The U.S. Copyright Office views **source code** and **object code** as two representations of the same work. See *GCA Corp. v. Chance*, 217 U.S.P.Q. 718, 719-20 (N.D. Cal. 1982) ([b]ecause the object code is the encryption of the copyrighted source code, the two are to be treated as one work...”).

As a general rule, the Office will not issue separate registrations for the source code and object code versions of the same program. If a program was registered in **unpublished** form based on a submission of object code, the Office may register the first **published** version of the same program based on a submission of source code (or vice versa), even if the published version “is substantially the same as the unpublished version.” **17 U.S.C. § 408(e); 37 C.F.R. § 202.3(b)(11)(i).**

For details concerning the deposit requirements for registering a computer program with a submission of object code, see **Chapter 1500**, Section 1509.1(F)(4)(b).

### 721.6 Relationship Between a Computer Program and a Work Created with a Computer or a Computer Program

The ownership of the copyright in a work of authorship, or of any of the **exclusive rights** under a copyright, is distinct from the ownership of any material object in which the work has been **fixed**. A **transfer** of ownership of a material object does not convey any rights in the work, nor does

the transfer of ownership of a copyright convey property rights in any material object (absent a written agreement to that effect). [17 U.S.C. § 202](#).

Likewise, ownership of the copyright in a work is distinct from ownership of any material object that may be used to create that work. The fact that the author used a computer to write an article, short story, or other nondramatic literary work does not mean that the work is a computer program. The fact that the author saved his or her work onto a hard drive, flash drive, thumb drive, CD-ROM, or other electronic storage device does not mean that the work is a computer program. A work only qualifies as a computer program if it contains “a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.” [17 U.S.C. § 101](#) (definition of “computer program”). Moreover, when a work is created with a computer program, any elements of the work that are generated solely by the program are not registerable, such as formatting codes that are inserted by a word processing program.

### 721.7 Copyrightable Authorship in a Computer Program

A computer program may be registered with the U.S. Copyright Office if it contains a sufficient amount of original authorship in the form of statements or instructions to a computer.

**Section 102(b)** of the Copyright Act “make[s] clear that the expression adopted by the programmer is the copyrightable element in a computer program, and that the actual processes or methods embodied in the program are not within the scope of the copyright law.” [H.R. REP. 94-1476, at 57 \(1976\)](#), *reprinted in* 1976 U.S.C.C.A.N. at 5670; [S. REP. NO. 94-473, at 54 \(1975\)](#).

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 check the box marked “computer program” in the Author Created field. To register a claim in nonexecuting comments, the applicant may check the box marked “computer program,” or may also check this box and state “nonexecuting comments” in the field marked “Other.” 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\(F\)](#).

The copyright in a computer program does not extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in the program. [17 U.S.C. § 102\(b\)](#). As such, the Office will not register the functional aspects of a computer program, such as the program’s algorithm, formatting, functions, logic, system design, or the like. Likewise, the Office will communicate with the applicant and may refuse registration if the applicant asserts a claim in uncopyrightable elements that may be generated by a computer program, such as menu screens, layout and format, or the like.

## 721.8 Copyrightable Authorship in a Derivative Computer Program

A derivative computer program may be registered if it contains new material that is sufficiently different from the preexisting work such that the program qualifies as an original work of authorship. See 17 U.S.C. § 101 (definition of “derivative work”). The new material must be original and it must contain a sufficient amount of **copyrightable** authorship. Making only a few minor changes or revisions to a preexisting work, or making changes or revisions of a rote nature that are predetermined by the functional considerations of the hardware does not satisfy this requirement. In no case does the copyright for a derivative computer program extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in the program. 17 U.S.C. § 102(b).

### Examples:

- Decrypt Corp. created a computer program titled *Skeleton Key version 5.0*. The program contains a substantial amount of new code that did not appear in prior versions of the same program. The additions and revisions that appear in the source code for version 5.0 may be registered as a derivative work.
- Pentathlon Games released a videogame titled *World of Warcraft*, which is designed to run on the Sony PlayStation. A month later, the company released another version of the game that is designed to run on the Microsoft Xbox. The source code for each version is substantially different, and not simply the result of interoperability or hardware compatibility, although the sounds and images that appear in the videogame are exactly the same. The source code for the Xbox version may be registered as a derivative work.
- Derrick Maxwell created a word processing program titled *Linux Write*, which is designed to run on the Linux operating system. He subsequently created another program titled *Android Write*, which is designed to run on the Android operating system. Derrick submits an application to register *Android Write* and in the Author Created/Other field he states that he “adapted this program to run on a different operating system.” The registration specialist will communicate with the applicant, because it is unclear whether the author contributed a sufficient amount of copyrightable authorship to this work.
- 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.

Each version of a computer program that contains new, copyrightable authorship is considered a separate work. See 17 U.S.C. § 101 (definition of “created;” stating that “where the work has been prepared in different versions, each version constitutes a separate work”). A registration for a specific version of a computer program covers the new material that the author contributed to that version, including any changes, revisions, additions, or other modifications that the author made to that version. See H.R. REP. NO. 94-1476, at 57 (1976), reprinted in 1976 U.S.C.C.A.N. at

5670; **S. REP. NO. 94-473, at 55 (1975)** (explaining that “copyright in a ‘new version’ covers only the material added by the later author, and has no effect one way or the other on the copyright or **public domain** status of the preexisting material.”). However, a registration for a specific version of a computer program does not cover any **unclaimable material** that may appear in that version. For purposes of registration, unclaimable material includes:

- Previously published material.
- Material that has been previously registered with the U.S. Copyright Office.
- Material that is in the public domain.
- Copyrightable material that is owned by a third party (*i.e.*, an individual or legal entity other than the claimant who is named in the application).

If the program contains an appreciable amount of unclaimable material, the applicant should identify that material in the application and should exclude it from the **claim** using the procedure described in Section **721.9(G)** below. *See 17 U.S.C. § 409(9)* (stating that “[t]he application for copyright registration... shall include... in the case of a compilation or derivative work, an identification of any preexisting work or works that it is based upon or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered...”).

*Examples:*

- *Excluding previously published material.* Softwear, Inc. submits an application to register a program titled *Clothing Maker version 3.0*. Version 3.0 contains an appreciable amount of code that appeared in versions 1.0 and 2.0 of the same program. Softwear distributed copies of versions 1.0 and 2.0 to the public before it filed its application for registration of version 3.0. Versions 1.0 and 2.0 would be considered previously published works, even if the copies only contained the object code for those versions and even if the source code for those versions was never disclosed. Therefore, the application should be limited to the new material that appears in version 3.0, and any source code that appeared in versions 1.0 or 2.0 should be excluded from the claim using the procedure described in Section **721.9(G)**.
- *Excluding previously registered material.* Jesper Nielsen submits an application to register a program titled *Ink Blot version 5.0*. This version contains an appreciable amount of source code that appeared in versions 1.0 through 4.0 of the same program. The prior versions have not been distributed to the public, but version 2.2.1 was previously registered with the Office as an unpublished work. The registration for version 5.0 will cover the new material that appears in that version, as well as any unpublished or unregistered source code from versions 1.0 through 4.0 that appear in version 5.0. However, the source code that appeared in version 2.2.1 should be excluded from the claim using the procedure described in Section **721.9(G)**.
- *Excluding third party material.* Vivek & Associates created an operating system titled *Architexture v. 9.0* using a software development tool titled *Picture This v. 2.50*. The source code for *Architexture v. 9.0* contains an appreciable number of modules, subroutines, and macros that were used with permission from the company that produced *Picture This*. Vivek & Associates should exclude those

modules, subroutines, and macros from its application to register *Architexture v. 9.0* using the procedure described in Section 721.9(G), because the copyright in that material is owned by a third party.

- *No disclaimer required.* CodeBuster LLC submits an application to register a program titled *Hackleberry Finn version 3.0*. Version 3.0 contains an appreciable amount of code that appeared in versions 1.1.1 and 2.2.2 of the same program. CodeBuster never registered versions 1.1.1 and 2.2.2 and never distributed those versions to the public. Therefore, the prior versions of the program need not be disclaimed in the application to register version 3.0. The registration for version 3.0 will cover all of the copyrightable content that appears in that version, including any unpublished or unregistered source code from versions 1.1.1 or 2.2.2 that have been incorporated into version 3.0.

The registration specialist may communicate with the applicant if the program appears to contain an appreciable amount of unclaimable material and if the applicant does not exclude that material from the claim. Examples of factors that may prompt a specialist to inquire whether a computer program contains unclaimable material include the following:

- Multiple **copyright notices**.
- A copyright notice containing an earlier date than either the completion year or the **publication** date specified in the application.
- A copyright notice containing multiple dates.
- A copyright notice containing a different name than the author or copyright claimant named in the application.
- Multiple version numbers or multiple release numbers (if it appears that the previous versions may have been published or registered or if they may be owned by a party other than the copyright claimant).
- A revision history in the deposit indicating that changes were made to the program after the year of completion or date of publication specified in the application.
- An indication that the author created the work using another computer program as an authoring tool.

If the deposit contains multiple dates or multiple version/release numbers, the applicant should notify the registration specialist if those dates or numbers refer to the development history of the program or if they refer to previous versions of the program that have not been published or registered before. When submitting an online application, this information may be provided in the Note to Copyright Office field; when completing a paper application this information may be provided in a cover letter.

If the program contains only a minimal amount of unclaimable material or if the program contains material that is uncopyrightable, there is no need to exclude that material from the application. Unclaimable material should be excluded only if that material is copyrightable and represents an appreciable portion of the work.

*Example:*

- Professor Barrakat submits an application for a computer program titled *BearCat 5.0*. The program contains 5,000 lines of entirely new source code and 50 lines that appeared in a previously published version of the same program. There is no need to exclude these 50 lines of code from the application, because they do not represent an appreciable portion of the program code for *BearCat 5.0*.

## 721.9 Application Tips for Computer Programs

This Section discusses the practices and procedures for completing an application to register a computer program. For guidance concerning the deposit requirements for computer programs, see [Chapter 1500](#), Section 1509.1(F). For guidance concerning the [filing fee](#), see [Chapter 1400](#), Section 1413.

### 721.9(A) Identifying the Type of Work

Submitting an online application through the U.S. Copyright Office’s electronic registration system is the preferred way to register a computer program. The first step in completing the online application is to select the type of work that the [applicant](#) intends to register. In the case of a computer program, the applicant should select Literary Work from the drop down menu marked Type of Work.

When submitting a paper application, [Form TX](#) should be used to register a [claim](#) to copyright in a computer program.

### 721.9(B) Title of the Program

The application must provide the title of the computer program. [17 U.S.C. § 409\(6\)](#). The title should include the version number or release number (if any) for the specific version of the program that the applicant intends to register. The version number or release number may be provided in the application as follows:

- *Advantage Works v. 1.0*
- *Advantage Works (v. 2.0)*
- *Advantage Works version 3.5.1*
- *Advantage Works (release 4.1.1)*

When completing an online application, the [applicant](#) should provide the title of the program on the Title screen. When completing a paper application, the applicant should provide the title on space 1 of [Form TX](#). For guidance on completing this portion of the application, see [Chapter 600](#), Section 610.

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.

### 721.9(C) Name of Author / Name of Claimant

The **applicant** should provide the name of the author(s) who created the specific version of the program that the applicant intends to register. Specifically, the applicant should provide the name(s) of the person(s) or organization(s) who created the **source code** for the version that will be submitted for registration. In addition, the applicant should provide the name of the **claimant** who owns the copyright in that version. When completing an online application the applicant should provide this information on the Author and Claimant screens; when completing a paper application the applicant should provide this information in spaces 2 and 4 of **Form TX**.

For guidance on completing this portion of the application, see **Chapter 600**, Sections 613 and 619. For guidance on identifying the author of a **work made for hire**, see **Chapter 600**, Section 614.

### 721.9(D) Year of Completion

The **applicant** should identify the year that the author completed the specific version of the program that the applicant intends to register. As a general rule, the applicant should provide a year of completion only for the specific version of the program that will be submitted for registration. The applicant should not provide a year of completion for the first version of the program or any other version of the program that is not included in the application.

For the purpose of copyright registration, each version of a computer program is considered a separate work. Each version of a program is considered complete when that version has been **fixed** in a tangible medium of expression for the first time. When a program is prepared over a period of time, the portion that has been fixed at any particular time constitutes the version that has been completed as of that date. See **17 U.S.C. § 101** (definition of “created”); see also **37 C.F.R. § 202.3(b)(4)(ii)** (explaining that the year of completion means “the latest year in which the creation of any copyrightable element was completed”).

When completing an online application, the applicant should provide the year of completion on the Publication/Creation screen; when completing a paper application the applicant should provide this information in space 3(a) of **Form TX**. For guidance on completing this portion of the application, see **Chapter 600**, Section 611.

If the year specified in the application does not match the year that is specified in the **copyright notice** for the program (if any) or if the copyright notice contains multiple dates (*e.g.*, © Lionel Software 2010, 2011, 2012), the **registration specialist** may communicate with the applicant if he or she is unable to identify the specific version that the applicant intends to register.



**721.9(E) Date of Publication**

If the version that the **applicant** intends to register has been **published** as of the date that the application is filed with the U.S. Copyright Office, the applicant should provide the month, day, and year that the version being registered was published for the first time. As a general rule, the applicant should provide a date of first publication only for the specific version that will be submitted for registration. The applicant should not provide a date of publication for the first version of the program or any other version of the program that is not included in the application.

A computer program is considered published when copies of the program are distributed “to the public by sale or other transfer of ownership, or by rental, lease, or lending” or when copies of the program are offered “to a group of persons for purposes of further distribution, public performance, or public display.” **17 U.S.C. § 101** (definition of “publication”). As a general rule, a program is considered published if there has been a general distribution of the program code, regardless of whether the copies are distributed by purchase or **license** and regardless of whether the copies are distributed on a CD-ROM, DVD, or downloaded online. Likewise, a program is considered published even if the copies contained **object code** rather than **source code** and even if the source code has not been disclosed to the public. See *Midway Manufacturing Co. v. Strohon*, 564 F. Supp. 741, 751 (N.D. Ill. 1983) (“the object code is nothing other than a direct transformation of a computer program, composed... in source code”).

When completing an online application, the applicant should provide the date of first publication on the Publication/Completion screen. When completing a paper application the applicant should provide this information on space 3(b) of **Form TX**. For guidance on completing this portion of the application, see **Chapter 600**, Section 612.

For a general discussion of publication and for specific guidance on determining whether a particular work has been published, see **Chapter 1900**.

**721.9(F) Asserting a Claim to Copyright in a Computer Program**

The **applicant** should identify the **copyrightable** authorship that the applicant intends to register and should assert a **claim** to copyright in that authorship. The information provided in the application defines the claim that is being registered, rather than the information given in the **deposit copy(ies)** or elsewhere in the registration materials.

When completing an online application, the applicant should provide this information on the Author screen in the field marked Author Created. When completing a paper application, the applicant should provide this information on space 2 of the application under the heading Nature of Authorship. For guidance on completing this portion of the application, see **Chapter 600**, Section 618.4.

“Computer program” is the most appropriate term for registering a claim in this type of work. If this term does not fully describe the copyrightable material that the applicant intends to register, the applicant should provide a more specific description in the Author Created/Other field using the procedure described in **Chapter 600**, Section 618.4(A). For a representative list of other terms that may be acceptable, see Section **721.9(H)**.

“Revised computer program” is the most appropriate term for registering a claim in a derivative computer program. If this term does not fully describe the copyrightable material that the ap-

plicant intends to register, the applicant should provide a more specific description using the procedures described in [Chapter 600](#), Section 621.8(C)(1) and 621.8(C)(2). For a representative list of other terms that may be acceptable, see Section [721.9\(H\)](#).

As discussed in Section [721.7](#), an applicant may assert a claim in executable code as well as the nonexecuting comments 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 may check the box marked “computer program” in the Author Created field. To register a claim in nonexecuting comments, the applicant may check the box marked “computer program,” or may also check this box and state “nonexecuting comments” in the field marked Other. In both cases, the applicant should avoid using the term “text,” either alone or in combination with the term “computer program.”

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.

If the applicant asserts a claim in both the copyrightable and uncopyrightable features of the program, the specialist may communicate with the applicant or may annotate the application to indicate that the registration does not extend to the uncopyrightable features. For representative examples that illustrate this practice, see [Chapter 600](#), Section 618.8(C). If the claim appears to be based solely on the functional aspects or other features that are not eligible for copyright protection, registration will be refused.

For a representative list of unclear terms that may be questioned, see Section [721.9\(I\)](#). For a representative list of terms that will not be accepted, see Section [721.9\(J\)](#).

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

If the computer program contains an appreciable amount of unclaimable material, the [applicant](#) should exclude that material from the [claim](#). As discussed in Section [721.8](#), this category includes previously [published](#) material, previously registered material, [public domain](#) material, or [copyrightable](#) material that is owned by a party other than the [copyright claimant](#).

When completing an online application, the applicant should provide a brief statement that identifies the unclaimable material that appears in the program. Specifically, the applicant should provide this information on the Limitation of Claim screen by checking one or more of the boxes that appear in the Material Excluded field that accurately describe the unclaimable material. When completing a paper application, the applicant should provide this information on space 6(a) of [Form TX](#). For guidance on completing this portion of the application, see [Chapter 600](#), Section 621.8(B).

In addition, the applicant should provide a brief statement that identifies the new material that the applicant intends to register. When completing an online application, the applicant should provide this information on the Limitation of Claim screen by checking one or more of the boxes that appear in the New Material Included field that accurately describe the new material

that the author created. When completing a paper application, the applicant should provide this information on space 6(b) of Form TX. For guidance on completing this portion of the application, see **Chapter 600**, Section 621.8(C).

The statement that the applicant provides in the New Material Included field should be identical to the statement that the applicant provided in the Author Created field. Likewise, the statement that the applicant provides in space 6(b) of the paper application should be identical to the statement that the applicant provides in space 2. Together, these statements define the claim in a derivative computer program.

If the program contains an appreciable amount of material that has been previously registered with the U.S. Copyright Office, the applicant should identify the registration number for that material and the year that the registration was issued. When completing an online application, the applicant should provide this information on the Limitation of Claim screen in the field marked Previous Registration. When completing a paper application, the applicant should provide this information on space 5 of Form TX. For guidance on completing this portion of the application, see **Chapter 600**, Section 621.8(F).

#### **721.9(H) Acceptable Terminology for an Application to Register a Computer Program**

This Section provides guidance for completing the Author Created/Other field and the New Material Included/Other field of the online application, as well as guidance for completing spaces 2 and 6(b) of paper application **Form TX**.

The **applicant** should provide a brief statement in this portion of the application that describes the **copyrightable** material that the applicant intends to register. The applicant should not describe any uncopyrightable elements or *de minimis* elements that appear in the program. Likewise, the applicant should not describe the material object in which the program has been **fixed**.

The U.S. Copyright Office may accept the term “computer program” or any of the terms listed below, provided that they accurately describe the copyrightable authorship that appears in the **deposit copy(ies)**. In most cases, the Office will accept combinations or variant forms of these terms, unless they are contradicted by information provided in the deposit copy(ies) or elsewhere in the registration materials.

- Computer program
- Computer code
- Computer software
- New computer program
- New computer code
- New computer software
- Program code
- Program instructions
- Revised computer program
- Revised computer code

- Revised computer software
- Revision of [specify nature of revision, e.g., revision of software subroutines, revision of program code, etc.]
- Software code
- Software modifications
- Software module(s)
- Software program
- Software routine(s)
- Software subroutine(s)
- Software update(s)
- Source code

### 721.9(l) Unclear Terminology for an Application to Register a Computer Program

The authorship that the **applicant** intends to register should be clearly identified in the application, and the **claim** to copyright in that authorship should be clearly stated. If the claim to copyright is unclear, the **registration specialist** may communicate with the applicant or may refuse registration. Examples of unclear terms include the following or any combination of the following:

- Adaptation (if it appears that the program was merely adapted to run on different hardware)
- Automation
- Cells
- Commands
- Compilation
- Computerized
- Debugging
- Editing
- Enhancements
- Entire program code
- Entire text
- Entire work
- Error corrections
- Features
- Macro(s)
- New programming text
- Patching

- Program text
- Programmer
- Programming text
- Search engine
- Text
- Text of computer program
- Text of computer game

If the applicant combines an acceptable authorship term with the term “text,” such as “computer program and text” or “text and program code,” the **registration specialist** will examine the **deposit copy(ies)** to determine if the work contains **copyrightable** text that is not part of the computer program. If the work does not appear to contain copyrightable text apart from the text of the computer program, the specialist may communicate with the applicant or may refuse to register that aspect of the claim.

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

If the **applicant** asserts a **claim** in both the **copyrightable** and uncopyrightable features of the program, the specialist may annotate the application to indicate that the registration does not extend to the uncopyrightable features. If the applicant asserts a claim to copyright in any storage medium or any feature of the program that is uncopyrightable, the **registration specialist** may communicate with the applicant or may refuse registration if the claim appears to be based solely on those features. Examples of unacceptable terms include the following or any combination of the following:

- Algorithm
- Analysis
- Cassette
- Chip
- Computation
- Computer language(s)
- Computerized
- Data
- Designed program
- Disk
- Drive
- Encrypting
- EPROM
- Flash drive
- Format

- Formatting
- Formula(s)
- Functions
- Hard drive
- Interface
- Language
- Layout
- Logic
- Menu screens
- Mnemonics
- Models
- Object
- Object code
- Object listing
- Organization
- Peripheral(s)
- Printout
- PROM
- RAM (Random Access Memory)
- ROM
- Protocol
- Software methodology
- System
- System design(er)
- Template
- Text of algorithm
- Thumbdrive
- Typeface
- Typefont

## 721.10 Screen Displays

### 721.10(A) Relationship Between Source Code and 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)**.

### 721.10(B) Copyrightable Authorship in Screen Displays

When asserting a **claim** in screen displays, the claim should be limited to the new material that appears in the screen displays, the **applicant** should provide the name of the author who created that material, and the applicant should provide the name of the **claimant** who owns the copyright in that material. The Literary Division may accept a claim in “text” if the screen displays contain a sufficient amount of textual expression that is not a part of the code, or a claim in “artwork” and/or “photograph(s)” if the screen displays contain a sufficient amount of artwork or photos that are not generated by the computer program. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on **Form TX**, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see **Chapter 600, Sections 618.4 and 621.8**.

A registration for a computer program covers the **copyrightable** expression that appears in any screen that may be generated by the program, even if the applicant does not submit **identifying material** depicting the screen displays or merely submits a representative sampling of those displays. If the screen displays as a whole do not contain copyrightable authorship, the **registration specialist** may communicate with the applicant or may refuse registration. For example, if the claim is based solely on the layout or format of a screen or if the **deposit copy(ies)** consist solely of blank forms, *de minimis* menu screens, or other elements that are purely functional, registration will be refused. See **Registration Decision: Registration and Deposit of Computer Screen Displays**, 53 Fed. Reg. 21,817, 21,819 (June 10, 1988).

### 721.10(C) Deposit Requirements for Screen Displays

For a discussion of the deposit requirements for computer screen displays, see **Chapter 1500**, Section 1509.1(F)(6).

### 721.11 User Manuals and Other Documentation for a Computer Program

User manuals, instructional booklets, flowcharts, and other documentation that explain the development or operation of a computer program may be registered with the U.S. Copyright Office, provided that they contain a sufficient amount of original authorship. If text is the predominant form of authorship, the work may be registered as a nondramatic literary work. If the predominant form of authorship consists of artwork, illustrations, or photographs, the work may be registered as a work of the visual arts. If the predominant form of authorship consists of audiovisual material, the work may be registered as a work of the performing arts. See **37 C.F.R. § 202.3(b)(1)(i)-(iii)**.

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 in the same, 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 1103. 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.

When asserting a **claim** in a user manual or other documentation, the claim should be limited to the new material that appears in the work, the **applicant** should provide the name of the author who created that material, and the applicant should provide the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in “text” if the work contains a sufficient amount of written expression, or a claim in “artwork” and/or “photograph(s)” if the work contains a sufficient amount of pictorial or graphic expression. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on **Form TX**, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see **Chapter 600**, Sections 618.4 and 621.8.

For a discussion of the deposit requirements for user manuals and other documentation, see **Chapter 1500**, Section 1509.1(F)(7).



## 722 Apps

An “app” is a **computer program** that is used directly or indirectly in a computer or handheld electronic device. An app may be registered if it contains a sufficient amount of original authorship in the form of statements or instructions that bring about a certain result in the computer or device.

When asserting a **claim** in an app, the **applicant** should provide the name of the author who created the work. Specifically, the applicant should provide the name(s) of the person(s) or organization(s) who created the **source code** for the specific version of the app that the applicant intends to register. In addition, the applicant should provide the name of the **claimant** who owns the copyright in that version.

“Computer program” is the most appropriate term for registering a claim in an app. As discussed in Section 721.9(F), this term should be provided in the Author Created field, and if applicable, also in the New Material Included field of the online application. When completing a paper application on **Form TX**, this information should be provided in space 2, and if applicable, also in space 6(b).

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.

For guidance in completing the application, see Section 721.9. For a discussion of the deposit requirements for computer programs and screen displays, see **Chapter 1500**, Sections 1509.1(F)(1) through 1509.1(F)(6).

## 723 Computer Programs That Generate Typeface, Typefont, or Barcodes

Typeface and mere variations of typographic ornamentation or lettering are not **copyrightable**. 37 C.F.R. § 202.1(a), (e).

A **computer program** that generates bar codes or a particular typeface, typefont, or letterform may be registered if the program contains a sufficient amount of original authorship in the form of statements or instructions to a computer. For example, creating a scalable font output program that produces harmonious fonts consisting of hundreds of characters may require numerous decisions in drafting the instructions that drive a printer or other output device. If this expression contains a sufficient amount of original authorship, the work may be registered as a computer program. However, the registration would not cover any bar codes, typeface, typefont, letterform, or mere variations of typographic ornamentation or lettering that may be generated by the program. See **Registrability of Computer Programs that Generate Typefaces**, 57 Fed. Reg. 6201, 6202 (Feb. 21, 1992).

When asserting a **claim** in a computer program that generates typeface, typefont, letterform, or barcodes, the **applicant** should identify the author(s) that created the work. Specifically, the applicant should provide the name of the person(s) or organization(s) that created the **source code** for the program. The **registration specialist** may communicate with the applicant if it

appears that the author merely assigned coordinates to a particular letterform and then used a third party program to render typeface or typefont from those coordinates (but did not create any of the source code for that program).

“Computer program” is the most appropriate term for registering a claim in this type of work. As discussed in Section 721.9(F), this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on **Form TX**, this information should be provided in space 2, and if applicable, also in space 6(b). The U.S. Copyright Office will not accept an application that asserts a claim in the “entire work,” “entire computer program,” “entire text,” or the like, because these statements suggest that the applicant may be asserting a claim in both the copyrightable and uncopyrightable elements of the program. See 57 Fed. Reg. at 6202.

To register a computer program that generates typeface, typefont, letterform, or barcodes, the applicant must submit a portion of the source code for that program. If the applicant merely submits a representation of the characters generated by the program without providing any code, the registration specialist will communicate with the applicant. For a discussion of the deposit requirements for computer programs, see **Chapter 1500**, Section 1509.1(F).

## 724 Diagrams, Models, Outlines, Pseudocode, and Other Types of Works That Illustrate or Describe a Computer Program

Diagrams, models, outlines, pseudocode, or other types of works that illustrate or describe the structure or order of operation for a **computer program** may be registered with the U.S. Copyright Office, provided that they contain a sufficient amount of original authorship. However, such illustrations or descriptions may not be claimed as computer programs.

The Literary Division may accept a **claim** in “text” if the work contains a sufficient amount of written expression, or a claim in “artwork,” “photograph(s),” “technical drawing,” or “graphic work” if the work contains a sufficient amount of pictorial or graphic expression. When completing an online application this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on **Form TX**, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see Sections 721.9(F) and 721.9(G). When asserting a claim in these types of works, the **applicant** should provide the name of the author who created the work and the name of the **claimant** who owns the copyright in that work.

A registration for this type of work covers the **copyrightable** expression that appears in the **deposit copy(ies)**. However, it does not cover the computer program that may be described in the deposit copy(ies) unless the applicant expressly asserts a claim in the program and submits an appropriate selection of **source code**.

As a general rule, these types of works do not contain “statements or instructions” that may be used “directly or indirectly in a computer in order to bring about a certain result,” nor do they contain any executable program code. 17 U.S.C. § 101 (definition of “computer program”). In some cases, they may represent nothing more than an “idea, procedure, process, system, method of operation, concept, principle, or discovery.” 17 U.S.C. § 102(b). Therefore, if an applicant attempts to register a diagram, model, outline, or other type of work as a computer program, the **registration specialist** may communicate with the applicant or may refuse to register the claim.

## 725 Spreadsheets, Reports, and Other Documents Generated by a Computer Program

Spreadsheets, reports, or other documents generated by a **computer program** may be registered with the U.S. Copyright Office if they contain a sufficient amount of original authorship. When asserting a **claim** in this type of work, the **applicant** should limit the claim to the **copyrightable** material that appears in the **deposit copy(ies)**, the applicant should provide the name of the author who created that material, and the name of the **claimant** who owns the copyright in that material. The Literary Division may accept a claim in “text” if the deposit copy(ies) contain a sufficient amount of written expression, or a claim in “artwork” if the deposit copy(ies) contain a sufficient amount of pictorial or graphic expression.

A computer program that may be used to generate spreadsheets or to perform calculations or other functions within a spreadsheet, report, or other document may be registered, provided that the applicant expressly asserts a claim in the “computer program” and submits an appropriate selection of **source code**. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on **Form TX**, this information should be provided in space 2, and also in space 6(b) if applicable. For guidance on completing these portions of the application, see Sections **721.9(F)** and **721.9(G)**.

A claim in “text” or “artwork” covers the copyrightable expression that appears in the deposit copy(ies), but it does not cover the computer program that may be used to perform calculations or other functions within a spreadsheet, report, or other document. While these types of documents may contain statements or instructions that may be used directly or indirectly in a computer in order to bring about a certain result, in most cases the code that performs those functions was created by the author of the authoring tool, rather than the author of the document itself. Therefore, if an applicant attempts to register a spreadsheet, report, or other document as a computer program but fails to submit an appropriate selection of source code, the **registration specialist** may communicate with the applicant or may refuse to register the claim.

A spreadsheet, report, or other document may be registered as a **compilation** if the author exercised a sufficient amount of creativity in selecting, coordinating, and/or arranging the information that appears within the deposit copy(ies). When asserting a claim in a compilation, the applicant should provide the name of the author who created the selection, coordination, and/or arrangement that the applicant intends to register, and the applicant should assert a claim to copyright in that material by using the procedure described in **Chapter 600**, Section 618.6.

As discussed in Section **710** a registration for a compilation covers the author’s selection, coordination, and/or arrangement of information, but it does not cover any of the information that appears in the deposit copy(ies). See **17 U.S.C. § 103(b)**. It does not cover the authoring tool that was used to create the work, nor does it cover any “idea, procedure, process, system, method of operation, concept, principle, or discovery” that is reflected or implemented in the work. **17 U.S.C. § 102(b)**. In some cases, it may be unclear whether the applicant intends to register a spreadsheet, report, or other document as a compilation or simply intends to register the information that appears in the document itself. The fact that the deposit copy(ies) contain fictitious data may indicate that the applicant is asserting a claim in selection, coordination, and/or arrangement authorship, rather than a claim in any copyrightable material in the deposit copy(ies). By contrast, if the deposit copy(ies) contain data that has been entered by an actual user, it may be unclear whether the applicant is asserting a claim in a compilation or a claim in any copyrightable text or artwork that may appear in the **deposit**.

In all cases, the authorship that the applicant intends to register should be clearly identified in the application, and the claim to copyright in that authorship should be clearly stated. Examples of unclear terms that will prompt the registration specialist to annotate the application or to communicate with the applicant include “template” and “data.”

*Examples:*

- The Office receives an application to register a report titled *2013 Annual Report of Tanley Corporation*. In the Author Created field the applicant asserts a claim in “text,” “artwork,” and “coordination and arrangement of financial data.” The registration specialist will register the claim. The application is clearly limited to the text, artwork, and compilation that appears in the report itself, but does not extend to the authoring tool used to create that report.
- The Concordia Company submits an application to register a spreadsheet that contains various graphs and tables of information. In the Author Created and New Material Included fields the applicant asserts a claim in “text.” The applicant excludes the authoring tool from the application by checking the box for “computer program” in the Material Excluded field. The registration specialist will register the claim.
- Olympian Human Resources submits an application to register a report containing dozens of columns and rows. In the Author Created field the applicant asserts a claim in “text.” In the Note to Copyright Office field, the applicant explains that the report was “created using Microsoft Access.” The registration specialist may add this information to the Material Excluded field and register the claim with an **annotation**, such as: “Regarding material excluded: information added from Note to C.O.”
- AutoCrat LLC submits an application to register a spreadsheet that contains graphs, tables of information, explanatory text, as well as various formulas, such as “SUM (b12, c12, d12)/d13.” In the Author Created and New Material Included fields the applicant asserts a claim in “text.” In the Material Excluded/Other field the applicant explains that the spreadsheet “uses Excel 5.2.” The registration specialist will conclude that AutoCrat created the spreadsheet using Excel 5.2 as an authoring tool. The claim will be registered.
- DentalSoft submits an application for a work titled *PatientCare*. In the Author Created field the applicant asserts a claim in “Report and data to help dentists manage their practices.” The deposit is a spreadsheet that appears to contain fictitious data; no source code has been submitted. The registration specialist will communicate with the applicant. It is unclear whether the applicant intends to register a computer program that generates these types of reports or intends to register the selection, coordination, and/or arrangement of data that is reflected in the deposit.

## 726 Videogames

The U.S. Copyright Office may issue separate registrations for the audiovisual material in a videogame and the **computer program** that generates that material. For a discussion of the practices and procedures for registering a videogame, see **Chapter 800**, Section 807.7(A).

## 727 Databases

This Section discusses the practices and procedures for obtaining a registration for a specific version of a single-file or multi-file **database**. In the case of an **unpublished** database, an **applicant** may register all of the **copyrightable** material that appeared in the database as of the date that the registration materials are received in the U.S. Copyright Office. In the case of a **published** database, an applicant may register all of the copyrightable material that was first published on the date specified in the application.

A registration for a specific version of a database does not cover any previously published or previously registered content that may be included in the database. Likewise, a registration for a specific version of a database does not cover any subsequent updates or revisions that may be made to the database (regardless of whether the database is published or unpublished). Instead, the Office has established a special procedure that allows applicants to register a database together with the subsequent updates or revisions that were made to that database within a period of three months or less. The requirements for this **group registration** option are discussed in **Chapter 1100**, Section 1112.4.

### 727.1 What Is a Database?

For purposes of copyright registration, a “**database**” is defined as a compilation of digital information comprised of data, information, abstracts, images, maps, music, sound recordings, video, other digitized material, or references to a particular subject or subjects. In all cases, the content of a database must be arranged in a systematic manner, and it must be accessed solely by means of an integrated information retrieval program or system with the following characteristics:

- A query function must be used to access the content.
- The information retrieval program or system must yield a subset of the content, or it must organize the content based on the parameters specified in each query.

A single-file database is a database comprised of one data file that contains a group of data records pertaining to a common subject, regardless of the size or amount of the data that the records contain. A multi-file database is a database comprised of separate and distinct groups of data records covering multiple subjects. A data record contains all of the information related to a particular unit of information within a database. A “data file” is defined as a group of data records pertaining to a common subject matter, regardless of the size of the records or the amount of data they contain. **37 C.F.R. § 202.20(c)(2)(vii)(D)(2)**.

As a general rule, databases are considered machine-readable works, because they are **fixed** or **published** in optical discs, magnetic tapes, or similar storage media, and as a result they cannot be perceived without the aid of a machine or device.

Websites may contain databases, but they are not considered databases for the purpose of copyright registration. As discussed above, users retrieve sets of data or other content from a database by using a query function that fetches content that matches the criteria specified by the user. By contrast, users retrieve content from a website by using a browser function that allows the user to locate and link to the specific pages of the website where information or content is stored.

## 727.2 Copyrightable Authorship in Databases

The legislative history for the Copyright Act states that “computer databases” 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. at 5667. Single-file or multi-file databases 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.
- The authorship involved in creating the material or data that appears within the database.

Each form of authorship may be registered with the Office, provided that the database contains a sufficient amount of original expression and provided that the **claimant** owns the copyright in that material.

## 727.3 Application Tips for Databases

A single-file or multi-file database may be registered as a literary work if the predominant form of authorship in the work consists of text. A database may be registered as a work of the visual arts if the predominant form of authorship consists of photographs or other forms of pictorial authorship.

As a general rule, an **applicant** may register a specific version of a database by submitting an online application. However, if the applicant intends to register a database that predominantly consists of photographs, the applicant must contact the Visual Arts Division at (202) 707-8202 to coordinate the filing and to obtain proper guidance concerning the information that should be included in the online application and the proper method for submitting the **deposit copies**. Applicants will be permitted to file an online application for a photographic database only if they obtain authorization from the Visual Arts Division and follow the instructions from the Division. *See* 37 C.F.R. §§ 202.3(b)(5)(ii)(A), 202.20(c)(2)(vii)(D)(8); *see also* **Registration of Claims to Copyright**, 76 Fed. Reg. 4072, 4075 (Jan. 24, 2011); **Group Registration of Photographs**, 81 Fed. Reg. 86,643, 86,652 (Dec. 1, 2016).

In the alternative, an applicant may register a specific version of a database with a paper application. The applicant should use the form that is most appropriate for the subject matter of the works that appear in the database. *See* 76 Fed. Reg. at 4074. For example, if the works in the database consist primarily of words, numbers, or other verbal or numerical symbols or indicia, the applicant should use **Form TX**. If the works consist predominantly of photographs, the applicant should use **Form VA**. *Id.*

**NOTE:** The online application may be used to register a group of updates or revisions for a database that predominantly consists of photographs, but it cannot be used for updates or revisions

for any other type of database. For a discussion of the application requirements for this **group registration** option, see **Chapter 1100**, Section 1112.5.

#### **727.3(A) Name of Author / Name of Claimant**

The **applicant** should provide the name of the author(s) who created the specific version of the database that the applicant intends to register. In addition, the applicant should provide the name of the **claimant** who owns the copyright in that version. When completing an online application the applicant should provide this information on the Author and Claimant screens; when completing a paper application the applicant should provide this information on spaces 2 and 4.

For guidance on completing these portions of the application, see **Chapter 600**, Sections 613 and 619. For guidance on identifying the author of a **work made for hire**, see **Chapter 600**, Section 614.

#### **727.3(B) Year of Completion**

The **applicant** should identify the year that the author completed the specific version of the database that is submitted for registration (even if other versions exist and even if the author intends to update or revise the database in the future).

For guidance on completing this portion of the application, see **Chapter 600**, Section 611.

#### **727.3(C) Date of Publication / Nation of Publication / Author's Citizenship or Domicile**

If the version that the **applicant** intends to register has been **published** as of the date that the application is filed with the U.S. Copyright Office, the applicant should provide the month, day, and year that the version being registered was published for the first time. As a general rule, the applicant should provide a date of first publication only for the specific version that is being submitted for registration. The applicant should not provide a date of publication for the first version of the database or any other version of the database that is not included with the application.

In addition, the applicant should identify the nation where the database was first published and the author's country of citizenship or domicile. The Office will use this information to determine whether the database is eligible for copyright protection in the United States. For a definition and discussion of the nation of first publication, see **Chapter 600**, Section 612.5. For a definition and discussion of the author's citizenship and domicile, see **Chapter 600**, Section 617.

#### **727.3(D) Asserting a Claim to Copyright in a Database**

In all cases, 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 on the Author Created screen in the field marked Other. When completing a paper application, this information should be provided in space 2 under the heading marked Nature of Authorship. For guidance on completing this portion of the application, see **Chapter 600**, Sections 618.4.

To register the authorship involved in selecting, coordinating, and/or arranging the material that appears in the database, the applicant may use any of the terms listed below, provided that they accurately describe the copyrightable authorship that appears in the **deposit copy(ies)**. In most cases, the Office will accept combinations or variant forms of these terms, unless they are contradicted by information provided in the deposit copy(ies) or elsewhere in the registration materials.

- Compilation of data
- Compilation of database information
- Compilation of photographs
- Compilation of artwork
- Compilation and text
- Revised and updated compilation

The authorship that the applicant intends to register should be clearly identified in the application, and the claim to copyright in that authorship should be clearly stated. If the claim to copyright is unclear, the **registration specialist** may communicate with the applicant or may refuse registration. Examples of unclear terms include the following or any combination of the following:

- Data dictionary
- Data analysis
- Data insertion
- Data layout or format
- Data manipulation
- Database features

If the applicant asserts a claim in both the copyrightable and uncopyrightable features of the database, the registration specialist may annotate the application to indicate that the registration does not extend to the uncopyrightable features. If the applicant asserts a claim to copyright in any storage medium or any feature of the database that is uncopyrightable, the specialist may communicate with the applicant or may refuse registration if the claim appears to be based solely on those features. Examples of unacceptable terms include the following or any combination of the following:

- Database design
- Database interface



- Database structure
- Data system

If the applicant intends to register other copyrightable material that appears in the database, the applicant should describe the specific form of authorship that the author contributed to that material, such as “text,” “photographs,” “artwork,” or the like.

If the database 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 by using the procedure described in **Chapter 600**, Section 621.8.

#### **727.4 Deposit Requirements**

For a discussion of the deposit requirements for registering a specific version of a single-file or multi-file database, see **Chapter 1500**, Section 1509.1(G).

For a discussion of the deposit requirements for registering a group of updates or revisions for a database, see **Chapter 1100**, Section 1112.6.