



Compendium of U.S. Copyright Office Practices, Third Edition

WEBINAR | APRIL 10, 2019

Erik Bertin

Deputy Director

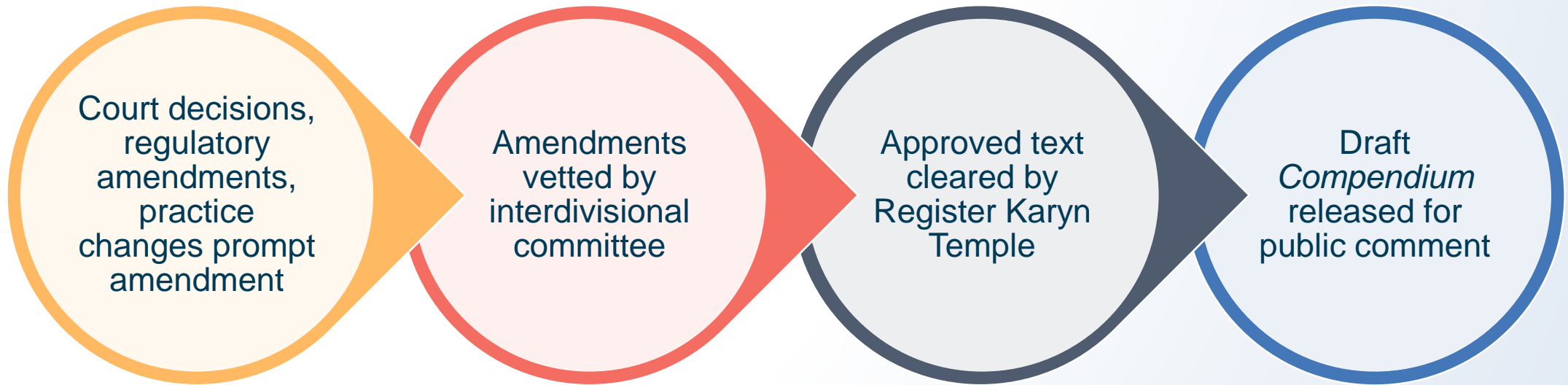
Office of Registration Policy and Practice

Whitney Levandusky

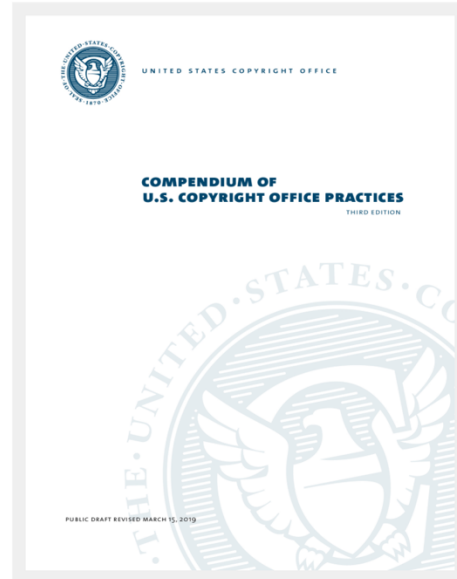
Attorney-Advisor

Office of Public Information and Education

THE PROCESS



ABOUT THE COMPENDIUM PUBLIC DRAFT



Public Draft for the Compendium of U.S. Copyright Office Practices

Acting Register Karyn Temple has released a revised draft of the *Compendium of U.S. Copyright Office Practices, Third Edition*. This [draft](#) proposes changes to the current version of the *Compendium*, which was released on [September 29, 2017](#). This update is the result of a careful review of the Office's practices and procedures, as well as recent changes in the law. [Read more.](#)

The Copyright Office will be holding a webinar to review proposed revisions and hold a Q&A session on **April 10, 2019**, at 2:00 PM. You may register [here](#). Questions may be submitted prior to the webinar to wlev@copyright.gov.

The deadline for submitting public comments on this draft is May 14, 2019. The [September 29, 2017](#), version of the *Compendium* remains in effect until the Office receives and considers public comment and releases the final version of this update.

The Office has prepared a complete [list](#) of the sections that have been added, amended, revised, or removed in this release.

[Download Full Text of the Public Draft \(1212 pages\)](#)

[Comment Submission](#)

[Access Current Edition](#)

Chapters

Introduction:

[Intro to the Compendium Draft](#)
[Intro to the Compendium Redline](#)

Chapter 100:

[U.S. Copyright Office and the Copyright Law: General Background Draft](#)
[U.S. Copyright Office and the Copyright Law: General Background Redline](#)

Chapter 800:

[Works of the Performing Arts Draft](#)
[Works of the Performing Arts Redline](#)

Chapter 900:

[Visual Art Works Draft](#)
[Visual Art Works Redline](#)

Chapter 1000:

[Websites and Website Content Draft](#)

Chapter 1700:

[No changes proposed in this update](#)

Chapter 1800:

[Post-Registration Procedures Draft](#)
[Post-Registration Procedures Redline](#)

Chapter 1900:

[Publication Draft](#)
[Publication Redline](#)

www.copyright.gov/comp3/draft/comment-submission

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You are commenting on:

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For related information, [Open Docket Folder](#)

1 Your Information **2 Your Preview** **3 Your Receipt**

Information entered will be viewable on Regulations.gov

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[View Commenter's Checklist \(PDF\)](#) | [Alternate Ways to Comment](#)

Comment (Required)

5000 characters remaining

Upload file(s) (Optional)

Choose files Drop files here

First Name (Required) **Last Name (Required)**

I want to provide my contact information

Covering today:

1. Updates in light of *Star Athletica v. Varsity Brands*.

2. Practice changes to reduce correspondence and processing times.

3. Updates for recent rulemakings.

4. New examples of publication.





Star Athletica





Through the years, courts and scholars have proposed or used the following approaches to conceptual separability.

1. The Copyright Office's Approach
2. The Primary-Subsidiary Approach
3. The Objectively-Necessary Approach
4. The Ordinary-Observer Approach
5. The Design-Process Approach
6. The Stand-Alone Approach
7. The Likelihood-of-Marketability Approach
8. Patry's Approach
9. The Subjective-Objective Approach

STAR ATHLETICA





To determine whether the design of a useful article may be eligible for copyright protection, the U.S. Copyright Office applies a two-step test.

1

Are there any features that

- Can be perceived as a two- or three dimensional work of art
- Separate from the useful article.

This is known as the “Separate-identification” requirement.

2

Can the feature

- Qualify as a protectable pictorial, graphic, or sculptural work
- Either on its own or fixed in some other tangible medium of expression
- If imagined separately from the useful article

This is known as the “independent-existence” requirement.

EXAMPLES OF RECENTLY CONSIDERED USEFUL ARTICLES



MAZER v. STEIN

CLIP THIS COUPON
MAIL OR PHONE ORDERS FILLED PROMPTLY
California Modern
TABLE LAMPS
as long as they last!
\$18.95
2 for \$35.00

Waring Post,
Male & Female
Two sets were
made at about
the same time.

Customize colors. Fed. A. Gray—
gray & black—chatterbox. A. Black.
Full 45" high. Beautiful as shown.
Convenient Terms—Nothing Down

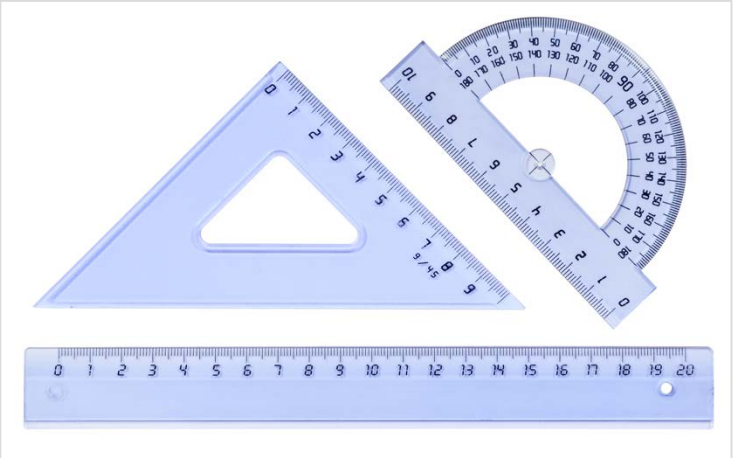
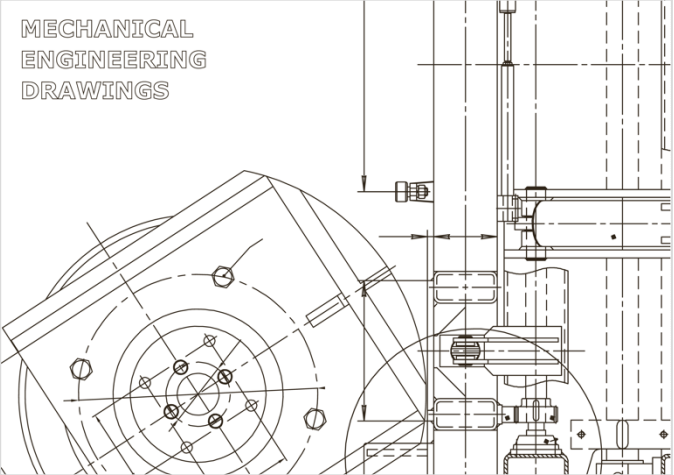
HIGHLAND FURNITURE CO.
417-19-21 S. HIGHLAND AVE. EA. 1047
on HIGHLAND at EASTERN AVE. EA. 1067
Open Thursday, Friday & Saturday Til 9 P.M.

SAVE

FOR MONDAY ONLY



WORKS THAT ARE NOT USEFUL ARTICLES





- An artistic design may make a useful article more useful, but it will still be protected.
- Copyright does not protect the overall shape of a useful article, even if aesthetically pleasing.
- All of the artistic features of a useful article are considered one work.
- If the exact same feature appears on multiple useful articles, applicants may pick one representative item for registration
- If different artistic features appear on multiple useful articles, applicants would need to submit a separate application for each item.

Also in the draft:

- Guidance on how to assert a claim in the separable features of a useful article
- Appropriate deposits
- Certificate annotations

MAZER v. STEIN

CLIP THIS COUPON
MAIL OR PHONE ORDERS FILLED PROMPTLY
California Modern
TABLE LAMPS
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Warming Palm
Shade & Frame
The base was
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Customize colors. Fed. A. Gray—
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Reducing Correspondence and Processing Times



CURRENT PROCESSING TIMES

Claims that DO NOT Require Correspondence

 **Web Claims** (approximately 73 percent of all applications)

average 4 months
*but claims can range
from 1 to 7 months*

4 months

1 – 7 months


 **Mail Claims** (approximately 2 percent of all applications)

average 7 months
*but claims can range
from 1 to 18 months*

7 months

1 – 18 months


Claims WITH Correspondence

 **Web Claims** (approximately 22 percent of all applications)

average 7 months
*but claims can range
from 1 to 15 months*

7 months

1 – 15 months

 **Mail Claims** (approximately 2 percent of all applications)

average 14 months
*but claims can range
from 1 to 28 months*

14 months

1 – 28 months



Current Practice

- Immaterial variances: disregard and proceed with registration
- Material variances:
 1. Disregard
 2. Add a note to online public record
 3. Annotate
 4. Communicate

Proposed Practice

- Immaterial variances: no change
- Material variances:
 - Numerous:
 1. Return claim to applicant
 2. Refuse
 - Choose annotation:
 1. When claimant information is missing, but found elsewhere on application
 2. When authorship claim is inaccurate, but deposit clarifies
 3. When there are title discrepancies



**Registration
will be refused if an
applicant submits an
unacceptable file type**



Copyright.gov Registration Portal FAQs Tutorials Contact Us Online Registration Login

Home / Registration Portal / eCO Acceptable File Types

eCO Acceptable File Types

Help: List of Acceptable File Types

Please review this list before uploading a copy of your work as an electronic file or sending a hard copy via mail. If the type of file you plan to upload or mail is not included in this list, you should convert the file to an acceptable file type.

If you submit a file type that is not listed, registration may be refused and you may be required to submit an acceptable file type that can be opened by the Copyright Office. Your effective date of registration will not be established until the Copyright Office receives an acceptable file type that can be opened and examined by the Office.

FILE TYPE	EXTENSION
Data	.db (Database File) .mdb (Microsoft Access Database) .xls (Microsoft Excel Spreadsheet) .mid, .midi, .rmi (Musical Digital Interface)
Image	.bmp (Bitmap Image) .dwg (AutoCAD Drawing) .dxf (Autodesk Design) .gif, .giff (Graphics Interchange Format) .jpg, .jpeg, .jiff (Joint Photographic Experts Group) .pdf (Portable Document Format) .pic, .pict (Picture File) .png (Portable Network Graphic) .psd (Photoshop Document) .pub (Microsoft Publisher) .tga (Targa Graphic) .tif, .tiff (Tagged Image File Format) .wmf (Windows Metafile)
Audio	.aif, .aiff (Audio Interchange File Format)



Registration will be refused if:

- Applicant files a Single Application where Standard is required.
- Applicant uses a Standard Application to submit a group of
 - Newspapers
 - Newsletters
 - Serials
 - Photographs
 - Contributions to periodicals
 - Unpublished works



Rulemakings





- Deposit Requirements for Certain Literary Works and Musical Compositions
 - Group Registration of Photographs
 - Group Registration of Newspapers
 - Group Registration of Newsletters and Serials
 - Group Registration of Unpublished Works
- **Regulation on Copyright Notice:** non-substantive technical change to the regulations governing the affixation and position of copyright notice





Literary Monographs: a literary work published in one volume or a finite number of volumes.

- This category does not include serials, nor does it include legal publications that are published in one volume or a finite number of volumes that contain legislative enactments, judicial decisions, or other edicts of government.
- One complete copy of the best edition.
- The Office reserves the right to demand a second copy under the mandatory deposit provision.



Format Musical Composition Published in the United States	Deposit Requirement
Print copies only	One complete copy of the best edition of the printed work
Digital copies only	One complete copy of the digital work
Physical and digital sheet music	One complete copy of the best edition of the physical format
Physical recording only	One complete phonorecord
Digital recording only	One complete phonorecord
Both print copies and recordings	One complete copy of the best edition of the printed work
Both digital copies and recordings	One complete copy of the best edition of the digital work



Group Registration of Published Photographs (GRPPH)

Group Registration of Unpublished Photographs (GRUPH)

- Applications must be submitted through the Office's electronic registration system.
- All the works in the group must be photos.
- All photos must be either published or unpublished.
- All the photos must have been created by the same author; Copyright claimant for each photo must be the same person/ organization.
- Include up to 750 photographs.
- "Unpublished Collection" option and "Pilot Program" eliminated.



Basic Requirements

- Applications must be submitted through the Office's electronic registration system.
- Each newspaper issue must be a new collective work and a work made for hire.
- The author and copyright claimant for each issue must be the same person or organization.

Scope of Protection

- Group registration covers:
 1. each issue in the group, and
 2. articles, photographs, illustrations, or other contributions first published within each issue, if fully owned by the copyright claimant.



Requirements:

- Online application
- Upload digital copy
- Separate mandatory deposit

Eliminated Newsletter Requirements:

- Work made for hire
- Three month deadline

Clarified Serial Requirements:

- At least two issues per application
- One week or longer publication interval
- Publication dates in the application and issue dates on deposit do not need to match
- Each issue is “all new” collective work

The Office will accept paper applications and deposits for serials until December 30, 2019.



- Effective March 15, 2019
- Benefits: more detailed public record
 - Each work is listed on application
 - Each work considered separately during examination
- Requirements
 - Online application
 - Digital upload
 - \$55 filing fee
- Notable eligibility changes:
 - Ten works (for sound recordings: ten + underlying works if all owned by same author/claimant)
 - Author/claimant is the same for each work
 - Each work is registered in the same category



Publication and Making Available



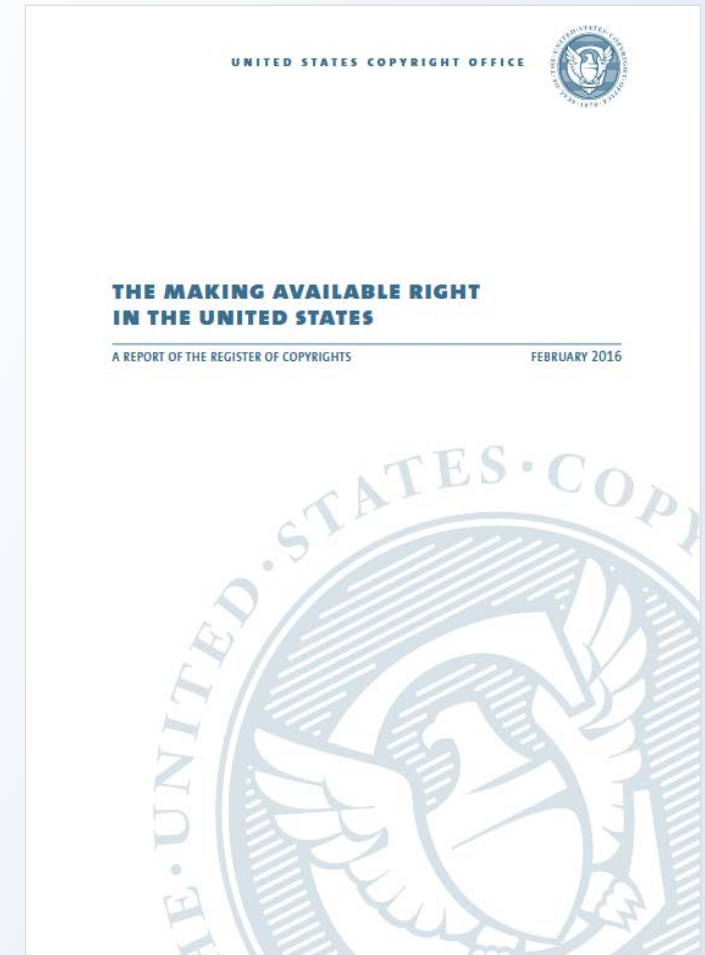


WIPO Internet Treaties

Affirmed author's ability to authorize the "making available to the public of works in such a way that members of the public may access those works from a time and a place individually chosen by them."

Copyright Making Available Study

Focus: how exclusive rights of distribution, public performance, and public display collectively meet and adequately provides for making available right.





Offering a work directly to the public constitutes publication where offeror has completed **all steps necessary** for distribution.

Not publication:

Online advertisement offering to sell an ebook, but ad does not make ebook available for download

Publication:

Copyright owner offers an app on a public website for purchase and direct download

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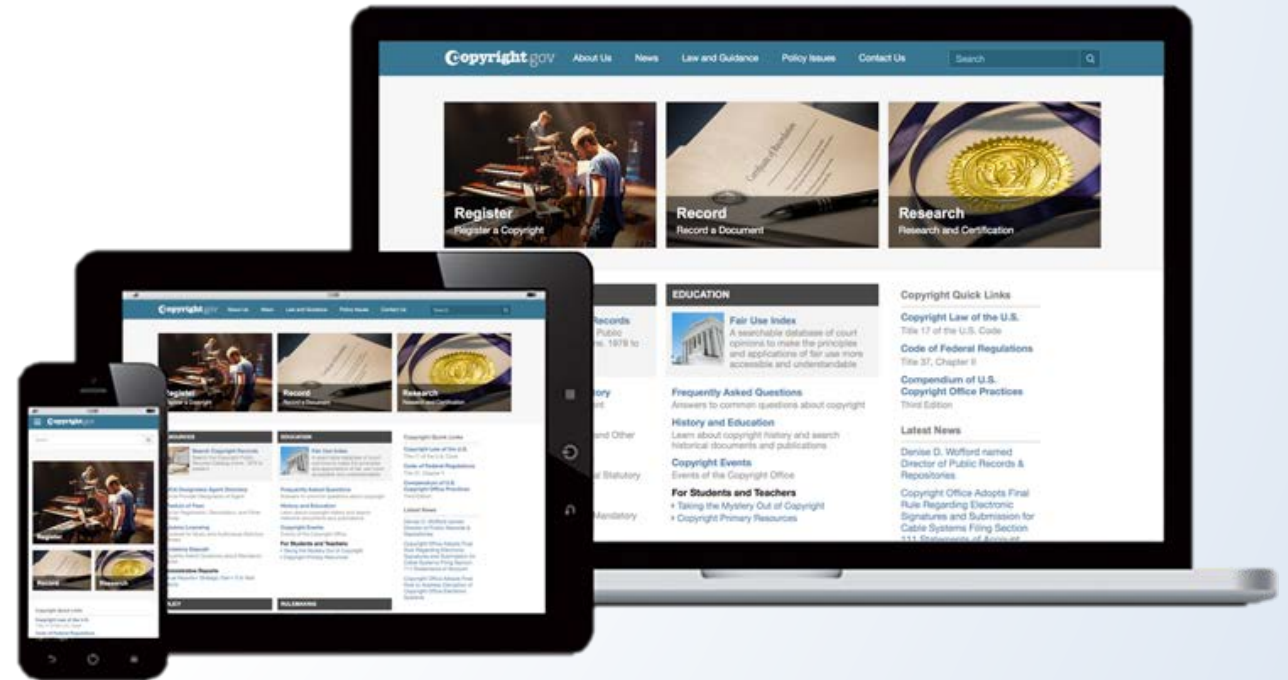
MORE INFORMATION!

Guidance from the Copyright Office

Our **Public Information Office**
is here for you!
(202) 707-3000
copyinfo@copyright.gov

Copyright.gov has:

- Numerous Circulars (pamphlets on specific topics)
- Policy studies
- Rulemakings
- Briefs and legal opinions





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