

FOREIGN WORKS: ELIGIBILITY AND GATT REGISTRATION

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FOREIGN WORKS: ELIGIBILITY AND GATT REGISTRATION

2001 What This Chapter Covers

This Chapter explains when authors of **foreign works** may apply to register their works with the U.S. Copyright Office. This Chapter applies to **unpublished** works, regardless of when they were created, and to **published** works that were first published on or after January 1, 1978.

This Chapter also discusses Form GATT, which may be used to register a restored work that is eligible for copyright protection under the **Uruguay Round Agreements Act**. Restored works comprise a small subset of foreign works, and **applicants** must use Form GATT to register these types of works with the Office.

- 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 online application or a paper application (other than an application submitted on Form GATT), see **Chapter 600**.
- For guidance on the **filing fee**, see **Chapter 1400**.
- For guidance on submitting the **deposit copy(ies)**, see **Chapter 1500**.
- For guidance on **publication**, see **Chapter 1900**.

2002 Foreign Works

2002.1 What Is a Foreign Work?

For purposes of copyright registration, the term “**foreign works**” generally refers to works created by author(s) who are not U.S. citizens or U.S. nationals and/or works that were first **published** abroad. Generally, the author is the person or persons who actually created the material that the **applicant** intends to register. There is an exception to this rule if the work is a **work made for hire**. For a definition and discussion of works made for hire, see **Chapter 500**, Section 506.

U.S. citizens are people who are citizens in accordance with the U.S. Constitution or federal statutes, including (i) people born in Guam, the U.S. Virgin Islands, and Puerto Rico; and (ii) certain people who are by federal statute nationals, but not citizens of the United States, including people born in the outlying possessions of the United States. All U.S. citizens are also U.S. nationals. Works by U.S. citizens and nationals are not considered foreign works, and generally they are eligible for U.S. copyright protection.

The types of works that may be protected under the Copyright Act include **literary works**; musical works, including any accompanying words; dramatic works, including any accompanying music; **pantomimes** and **choreographic works**; **pictorial, graphic, and sculptural works**; **motion pictures** and other **audiovisual works**; **sound recordings**; and **architectural works**; as well as **derivative works**, **compilations**, and **collective works**. For a definition and discussion of these types of works, see **Chapter 500**, Sections 507 (Derivative Works), 508 (Compilations), and 509 (Collective Works), and **Chapters 700** (Literary Works), **800** (Works of the Performing Arts), and **900** (Visual Art Works).

2002.2 Treatment of Foreign Works

In the vast majority of cases, a **foreign work** may be registered with the U.S. Copyright Office if it satisfies the eligibility requirements discussed in Section **2003**. However, this does not mean that foreign works are treated exactly the same as domestic works. U.S. law applies whenever a **United States work** or a foreign work is involved in a copyright infringement lawsuit in this country. Before the copyright owner can file a lawsuit involving an infringement of a U.S. work, the work must be registered with the Office or the Office must issue a refusal to register that work. In addition, U.S. works must be registered in a timely manner to seek statutory damages and attorney's fees. By contrast, foreign works do not need to be registered (or refused registration) in order to file an infringement lawsuit in the United States, though they must be registered in a timely manner to seek statutory damages and attorney's fees.

2003 Eligibility Requirements: How to Determine if a Foreign Work Is Eligible for Registration with the U.S. Copyright Office

Section 104 of the Copyright Act sets forth the categories of foreign works that are eligible for copyright protection under U.S. law. This Section describes each of these categories.

2003.1 Unpublished Works

All **unpublished** foreign works are eligible for registration with the U.S. Copyright Office. **17 U.S.C. § 104(a)**. For a detailed explanation of when a work is considered **published**, see **Chapter 1900**.

2003.2 Published Works

Works first published in a foreign country are eligible for registration with the U.S. Copyright Office if they satisfy one or more of the conditions described in Sections **2003.2(A)** through **2003.2(F)**.

2003.2(A) Eligibility Based on Nationality or Domicile

Section 104(b)(1) of the Copyright Act protects foreign works if, upon the work's first **publication**, one or more author(s) of the work (i) is a national or domiciliary of the United States; (ii) is a national, domiciliary, or sovereign authority of a **treaty party**; or (iii) is a stateless person wherever that person is domiciled.

A “sovereign authority” is a governmental agency or subdivision of a foreign nation, such as a ministry of the government of Norway or a province of Canada. A “stateless person” is a person who has no nationality, either as the result of never having acquired nationality in any nation, or as the result of having effectively renounced or having been deprived of his or her former nationality without having, as yet, become a national of another nation.

Chapter 1900 generally discusses the concept of when a work is **published**. The concept of “first publication” is further defined in **Section 104(b)** of the Copyright Act, which explains that “a work that is published in the United States or a treaty party within thirty days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be.”

This means that a foreign work may be eligible for copyright protection in a wide variety of cases. Aside from U.S. nationals and domiciliaries, authors who are nationals or domiciliaries of any treaty party at the time of first publication can obtain U.S. protection for a foreign work. As discussed in **Section 2004**, the United States has entered into treaty relations with all but a handful of countries, meaning that the majority of foreign works will be eligible for protection under **Section 104(b)** of the Copyright Act.

2003.2(B) Eligibility Based on Location of First Publication

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

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

2003.2(C) Eligibility for Sound Recordings

Section 104(b)(3) of the Copyright Act protects **sound recordings** that were first “**fixed**” in a foreign country that is a **treaty party**. Specifically, the law protects sound recordings that are embodied in **phonorecords** that are sufficiently permanent or stable to permit the work to be perceived, reproduced, or otherwise communicated for a period of more than transitory dura-

tion. **17 U.S.C. § 101** (definition of “fixed”). For more information on fixation, see **Chapter 300**, Section 305 and **Chapter 800**, Section 803.4.

2003.2(D) Eligibility Based on Incorporation into Buildings or Other Structures

Section 104(b)(4) of the Copyright Act protects pictorial, graphic, or sculptural works that are incorporated into a building or other structure, and architectural works that are embodied in a building. The Copyright Act, however, only protects pictorial, graphic, sculptural, and architectural works if the building or structure in which they are incorporated or embodied is located in the United States or a **treaty party**.

2003.2(E) Eligibility of Works Published by the United Nations or the Organization of American States

Section 104(b)(5) of the Copyright Act states that works first **published** by the United Nations (or any of its specialized agencies) or by the Organization of American States are eligible for protection under the Copyright Act. This provision is based on first publication by these organizations, regardless of the location of the publication.

2003.2(F) Eligibility Based on Presidential Proclamations

Section 104(b)(6) of the Copyright Act protects works that come within the scope of Presidential proclamations. This means that, in addition to the categories listed in Sections **2003.2(A)** through **2003.2(E)**, a work may be eligible for protection in the United States if the President finds that a particular foreign nation extends copyright protection to works by nationals or domiciliaries of the United States or works that are first **published** in the United States “on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation.” **17 U.S.C. § 104(b)(6)**. In such cases, the President may issue a proclamation that extends copyright protection “to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that [foreign] nation, or which was first published in that nation.” *Id.* The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

2004 Treaties and Presidential Proclamations

U.S. protection of foreign works often is based on the United States’ treaty relationships with other countries. The United States has treaty relationships with all but a handful of countries, as set forth in *International Copyright Relations of the United States (Circular 38a)*. Some of these treaties are multilateral, meaning that there are more than two parties to the treaty, while other treaties are bilateral, meaning that they are between just the United States and one foreign country. It is important to note the date on which a foreign country became a treaty party, because U.S. law will apply only to works either created or first **published** (depending on which type of eligibility is used) on or after the date that the foreign country became a treaty party. Additionally, for a treaty to confer eligibility, it must apply to the work at issue. For example, an author of a **literary work** could not rely on the existence of a copyright treaty that protects only satellite broadcasts but not literary works.

2004.1 Multilateral Treaties

The United States is a party to a number of multilateral copyright treaties, including the following:

- **BUENOS AIRES CONVENTION OF 1910:** This was an early treaty that provided certain copyright protections for artistic and literary works and was deposited with the government of Argentina on May 1, 1911, and proclaimed by President Woodrow Wilson on July 13, 1914.
- **BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS (“BERNE CONVENTION”):** This treaty provides protection for certain literary and artistic works and has been signed by most countries. The effective date for U.S. adherence to the Berne Convention is March 1, 1989.
- **CONVENTION FOR THE PROTECTION OF PRODUCERS OF PHONOGRAMS AGAINST UNAUTHORIZED DUPLICATION OF THEIR PHONOGRAMS, GENEVA, 1971:** The effective date for the United States is March 10, 1974. Note that only **sound recordings** are eligible for U.S. copyright protection based on this treaty. **17 U.S.C. § 104(d)**.
- **UNIVERSAL COPYRIGHT CONVENTION, GENEVA, 1952:** This treaty protected certain literary, artistic, and scientific works. The effective date for the United States is September 16, 1955, the date the treaty entered into force. This treaty was revised, and the United States is a party to the version as revised at Paris in 1971 as of July 10, 1974.
- **WORLD INTELLECTUAL PROPERTY ORGANIZATION (“WIPO”) COPYRIGHT TREATY (“WCT”):** The WCT is a special agreement under the Berne Convention that protects Berne Convention-covered works and includes specific language protecting **computer programs** and **compilations** of data or other material. The effective date for the United States is March 6, 2002, the date the treaty entered into force.
- **WIPO PERFORMANCES AND PHONOGRAMS TREATY, GENEVA, 1996 (“WPPT”):** The WPPT covers certain rights for performers and producers of phonograms. The effective date for the United States is May 20, 2002, the date the treaty entered into force. Note that only sound recordings are eligible for U.S. copyright protection based on this treaty. **17 U.S.C. § 104(d)**.
- **THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (“TRIPS”)** was entered into as part of the World Trade Organization (“WTO”), established pursuant to the Marrakesh Agreement of April 15, 1994, which implemented the Uruguay Round Agreements. TRIPS incorporated the Berne Convention in most part, covered copyright and other intellectual property rights, and included provisions relating to enforcement of intellectual property rights. The effective date of United States membership in the WTO is January 1, 1995.

For information concerning the other countries that are parties to these treaties and the date upon which a country became a treaty party, see *International Copyright Relations of the United States (Circular 38a)*.

2004.2 Bilateral Copyright Treaties and Presidential Proclamations

The United States has entered into bilateral treaties with some foreign countries. These treaties often are in addition to multilateral treaties and try to provide a further layer of protection. For

a list of specific U.S. bilateral treaties, see *International Copyright Relations of the United States (Circular 38a)*.

Additionally, there have been numerous Presidential proclamations throughout the years specifying countries to which the United States has extended copyright law protection. Presidential proclamations were especially common prior to the United States's adherence to the **Berne Convention**, which allowed the United States to provide protection to foreign works more easily. These proclamations are included as part of the “bilateral” agreements listed in **Circular 38a**.

2005 Registration Issues

This Section discusses frequent registration issues that arise in connection with foreign works.

2005.1 Multiple Authors of a Foreign Work

If the **foreign work** was created by multiple authors and if eligibility is based on the domicile or nationality of those authors, the work will be eligible for registration as long as any one of the authors' nationalities or domiciles is sufficient. For example, if the work was created by three authors, two of whom are from Iran (a country that has no copyright treaties with the United States) and one of whom is from France (a country that does have copyright relations with the United States), the work would be eligible for registration.

2005.2 Authors with Multiple Nationalities

If a work's eligibility is based on the author's nationality and the author has more than one nationality (for example, if the author has dual citizenship), the work will be eligible for registration if either of the author's nationalities satisfy the Copyright Act's eligibility requirements.

2005.3 Domicile or First Publication in the Territorial Areas of the United States

Domicile or first **publication** in any of the territorial areas under the jurisdiction of the U.S. government—other than the several states, the District of Columbia, and the Commonwealth of Puerto Rico, and the organized territories—does not confer eligibility for registration. Such areas include the unorganized territories, the trust territories, and other possessions of the United States. However, works by domiciliaries of, or works first published in, these areas may be eligible on the basis of the nationality of the author. Since U.S. nationals include persons born in the outlying possessions of the United States, eligibility in such cases may be conferred on that basis.

2005.4 Stateless Persons

A work by a stateless author is eligible for registration with the U.S. Copyright Office regardless of the author's former or prospective nationality or domicile, and regardless of the place of first publication of the work. **17 U.S.C. § 104(b)(1)**.

2005.5 Works Made for Hire

In the case of a **work made for hire**, it is the nationality or domicile of the employer or other person for whom the work was prepared, rather than the nationality or domicile of the employee, which serves as the basis for determining eligibility for registration.

2005.5(A) Nationality and Domicile of Corporations and Similar Organizations

In the case of a work made for hire, where the employer or other person for whom the work was prepared is not a natural person, but is an artificial person or legal entity such as a corporation or similar organization, the nationality and domicile of that organization is usually considered to be the nation under the laws of which the organization was created for purposes of copyright registration. For example, the nationality and domicile of a corporation generally should be stated as the United States if it was incorporated under the law of one of the several States, under federal law, or under the law of the District of Columbia, the Commonwealth of Puerto Rico, or those organized territories under the jurisdiction of the United States that have the power to create corporations.

2005.5(B) Members

A corporation or similar organization is ordinarily considered by law to be separate and distinct from the persons who are its members or shareholders. As a result, the nationality or domicile of the organization may be different from that of its members or shareholders.

2005.5(C) Doing Business

A corporation may do business in a particular nation without being a national or domiciliary of that nation.

2005.6 Anonymous and Pseudonymous Works

Where eligibility depends on the nationality or domicile of the author, the **applicant** must provide that information in the application, even if the work is **anonymous** or **pseudonymous**. The applicant does not, however, have to identify the author's name in such cases.

For a definition and general discussion of anonymous and pseudonymous works, see **Chapter 600**, Sections 615.1 and 615.2.

2005.7 Compilations and Derivative Works

The nationality or domicile of the author of a **compilation** or **derivative work** is used in determining eligibility for registration, rather than the nationality or domicile of the author(s) of the preexisting material used in that work.

2005.8 When Is Eligibility Determined?

If eligibility must be based on the author's nationality or domicile, the author's nationality or domicile and the status of the author's country must be assessed as of the date of first **publication**.

2005.8(A) Works Initially Registered as Unpublished, but Ineligible for Registration as Published Works

Even though a work may have been registered as **unpublished**, it must be eligible at the time of first publication to be registrable as a published work. For example, if the author is a national and domiciliary of Iraq (a nation with which the United States has no copyright relations), the U.S. Copyright Office will register the work if it is unpublished. If the work is later published in another country with which the United States does not have copyright treaty relations, and the author's citizenship and domicile remain unchanged, the Office will refuse to register the **claim** in the published version.

2005.8(B) Change in Nationality or Domicile after Publication

If a work was eligible for registration at the time of first publication on the basis of the author's nationality or domicile, changes in nationality or domicile occurring after that time will not impact the work's eligibility.

2005.9 Eligibility Unclear

Sometimes the status of copyright relations between the United States and a particular nation is unclear. In cases where eligibility depends on the existence of copyright relations with that country, but the relationship is unclear, the U.S. Copyright Office will refuse registration.

2006 Application Tips for Foreign Works

In most cases, eligible foreign works may be registered just like any other work. In other words, an **applicant** generally may submit an application using the electronic registration system and selecting the type of work at issue (*e.g.*, literary work, work of the performing arts, work of the visual arts, sound recording, or single serial issue) or by using a paper application (*e.g.*, **Form TX, PA, VA, SR, SE**, etc.). For specific guidance on how to complete these applications, see **Chapter 600** (Examination Practices). There are, however, some foreign works that must be registered with a paper application submitted on Form GATT. These works typically were created or **published** before 1996 and are known as "restored works," which are discussed in Section **2007** below.

In all cases, the applicant should provide the name of the nation of which the author is a national or domiciliary, and in the case of a published work, the name of the nation of first publication of the work. For guidance in identifying the author's nationality or domicile, see **Chapter 600**, Section 617. For guidance in identifying the nation of first publication, see **Chapter 600**, Section 612.

Generally, the U.S. Copyright Office will not accept an application that lists a territory or other political subdivision, rather than the name of the nation itself.

Examples of acceptable statements:

- Great Britain
- England
- Wales
- France
- French
- Switzerland
- Swiss

Examples of unacceptable statements:

- British Protected Person
- Commonwealth Citizen
- Worldwide
- Internet

2007 Restored Works**2007.1 What Is a Restored Work?**

Previously, U.S. federal copyright law did not protect original works of authorship immediately upon their fixation in a tangible medium of expression. Instead, authors needed to take certain steps, such as publishing the work with a specific copyright **notice** and renewing the copyrights at particular times in order to obtain federal copyright protection. These types of requirements are called “formalities” and they applied to both U.S. and foreign works.

In 1978, the current Copyright Act went into effect, which eliminated some of these requirements. In 1989, the United States became a member of the **Berne Convention**, and in 1994 it enacted the **Uruguay Round Agreements Act**, Pub. L. No. 103–465, 108 Stat. 4809 (codified in scattered sections of the U.S.C.) (1994) (“URAA”), which implemented the United States’ obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights. This further relaxed some of the Copyright Act’s more restrictive provisions.

Specifically, the URAA “restored” the copyright in foreign works that entered the public domain because of a failure to comply with certain formalities, and thus provided retroactive copyright protection for many works that were ineligible for protection under the prior law. In 2012, the U.S. Supreme Court held that the URAA does not violate Article I, Section 8 or the First Amendment of the Constitution. *Golan v. Holder*, 565 U.S. 302 (2012).

Section 104A(h)(6) of the Copyright Act specifies the requirements that must be met in order to qualify as a “restored work.”

- *Not in the public domain in the source country:* The work must not be in the **public domain** in its **source country** through the expiration of the term of protection. **17 U.S.C. § 104A(h)(6)(B)**. As discussed in **Chapter 100**, Section 102.2(A), the term of protection is the length of

time during which a work is protected by copyright law. As discussed in [Chapter 300](#), Section 313.6(D), the term “public domain” means that the work is not protected by copyright law. Thus, a restored work must be copyright-protected and still within its term of protection in the foreign country.

- *Fell into the public domain in the United States:* The work must be in the public domain in the United States (i) because the work did not comply with certain formalities (such as failing to place a proper **notice** on the work, failing to renew the copyright in a timely manner, or failing to comply with manufacturing requirements under prior law); (ii) because the work is a **sound recording** that was **fixed** before February 15, 1972, and as such, was not protected by U.S. federal copyright law; or (iii) because of a lack of national eligibility (as discussed above generally). [17 U.S.C. § 104A\(h\)\(6\)\(C\)](#).
- *Eligibility at time of creation or publication:* At least one author or rightholder of the work must have been (i) a national or domiciliary of an **eligible country** at the time of the work’s creation, and (ii) if the work is **published**, it must have been first published in an eligible country and not published in the United States within thirty days after the date of first publication. [17 U.S.C. § 104A\(h\)\(6\)\(D\)](#).
- *Sound recordings:* If the source country for the work is an eligible country solely by virtue of its adherence to the WPPT, the restored work must be a sound recording. [17 U.S.C. § 104A\(h\)\(6\)\(E\)](#).

January 1, 1996 is the effective date of restoration of copyright for foreign works from countries that were members of the WTO or the Berne Convention on that date. Most restored works were restored on January 1, 1996, because many countries became members of the WTO or Berne Convention prior to that date. In all other cases, the effective date of restoration is the date a newly eligible country accedes to the WTO or the Berne Convention or the date of a Presidential proclamation restoring U.S. copyright protection to works of that country.

NOTE: Restored works are subject to a variety of other legal requirements regarding enforcement and remedies, which are not covered in this *Compendium*. For more information on restored works, see *International Copyright Relations of the United States (Circular 38b)*.

2007.2 Registration Requirements for Restored Works

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

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

2007.2(A) Form GATT

To register a restored work, an **applicant** must file a paper application using **Form GATT**. Applicants cannot use the Office’s electronic registration system to register restored works. Form

GATT is designed to request information needed to determine whether a work qualifies as a restored work and complies with U.S. legal requirements.

While many parts of Form GATT are similar to the Office's other applications, Form GATT requires information that may be different than the information required by other forms because of the differences in how the Copyright Act treats restored works. These issues are discussed in Sections [2007.2\(A\)\(1\)](#) through [2007.2\(A\)\(4\)](#).

2007.2(A)(1) Who May File Form GATT?

Form GATT may be filed by any of the following parties:

- An author of the work.
- The owner of all U.S. rights in the work.
- A duly authorized agent of one of the foregoing parties.

See [Restoration of Certain Berne and WTO Works, 60 Fed. Reg. 50,414, 50,418 \(Sept. 29, 1995\)](#).

2007.2(A)(2) Author of a Restored Work

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

- *Timing matters:* The applicant must determine whether, *at the time the work was created*, the author was a national or domiciliary of a country that is *now eligible for protection* in the United States. See [17 U.S.C. § 104A\(h\)\(6\)\(D\)](#).
- *Anonymous works:* To register an **anonymous** work, the applicant may provide the author's legal name or the author's pseudonym, as long as the pseudonym consists of a name (rather than a number or symbol). See [Chapter 600](#), Section 615.1(B).

2007.2(A)(3) Publication of a Restored Work

To qualify for a **GATT registration**, a published work (i) must have at least one author or right-holder who was a national or domiciliary of an **eligible country** when the work was created, (ii) it must have been first **published** in an eligible country, and (iii) it must not have been published in the United States within thirty days after first publication in that country. See [17 U.S.C. § 104A\(h\)\(6\)\(D\)](#).

2007.2(A)(4) Owners of U.S. Copyright in a Restored Work

A **claim** in a restored work may be registered only in the name of the current owner of all U.S. rights in that work. See [Restoration of Certain Berne and WTO Works, 60 Fed. Reg. 50,414, 50,418 \(Sept. 29, 1995\)](#).

2007.2(B) Filing Fees

The **applicant** must submit the correct **filing fee** to register a restored work. See **37 C.F.R. § 202.3(c)(2)**. The current fee is set forth in the U.S. Copyright Office’s **fee schedule** under the heading “Form GATT.”

For information concerning the methods for paying the filing fee, see **Chapter 1400**, Sections 1412.3 through 1412.5.

2007.2(C) Deposit Requirements

For specific deposit requirements for different types of restored works, see **Chapter 1500**, Sections 1509.1(J) (Literary Works), 1509.2(H) (Works of the Performing Arts), and 1509.3(E)(3) (Visual Art Works).