RECORDATION

Contents

2301 What This Chapter Covers *1*

2302 The Recordation Section *2*

2303 Recordation Distinguished from Registration *2*

2304 What Types of Documents May or Must Be Recorded with the U.S. Copyright Office? *3*

2304.1 Documents That Must Be Recorded *3*

2304.1(A) Notices of Termination *3*

2304.1(B) Security Interests in Registered Works *3*

2304.1(C) Designation of Agent to Receive Notifications of Alleged Infringement Under Section 512(c) of the Copyright Act *4*

2304.2 Documents That May Be Recorded *4*

2305 Overview of the Recordation Process *4*

2306 Indexing *6*

2306.1 The Online Public Record *6*

2306.2 Indexing Guidelines *7*

2306.3 Titles Listed in the Recorded Document *7*

2306.4 Registration Numbers Listed in the Recorded Document *7*

2306.5 Parties Named in the Recorded Document *9*

2306.6 Date of Execution *10*

2306.7 Effective Date *10*

2307 Special Handling *10*

2308 Correcting Errors or Omissions in a Recordation *10*

2308.1 Errors or Omissions in a Recorded Document *10*

2308.2 Errors or Omissions in the Online Public Record for a Recorded Document *11*

2309 Recordation of Transfers of Ownership and Other Documents Pertaining to Copyright *11*

2309.1 What Is a Transfer of Ownership? *12*

2309.2 What Is a Document Pertaining to Copyright? *12*

2309.3 Benefits of Recording Transfers and Other Documents Pertaining to Copyright *13*

2309.3(A) Constructive Notice *13*

2309.3(B) Establishing Priority Between Conflicting Transfers *13*

2309.3(C) Establishing Priority Between a Conflicting Transfer and a Nonexclusive License *14*

2309.3(D) Limiting the Innocent Infringer Defense *14*

2309.3(E) Perfection of Security Interests *14*

2309.4 Who May Record a Transfer or Other Document Pertaining to Copyright? *15*

2309.5 When May a Transfer or Other Document Pertaining to Copyright Be Recorded? *15*

2309.6 How to Record a Transfer or Other Document Pertaining to Copyright *15*

2309.7 Recordation Requirements for Transfers and Other Documents Pertaining to Copyright *15*

2309.8 The Legibility Requirement *16*

2309.9 The Completeness Requirement *16*

2309.9(A) Document Submitted without Attachments *17*

2309.9(B) Self-Contained Parts of a Larger Document *17*

2309.9(C) Incorporation by Reference *18*

2309.9(D) Failure to Identify the Work *18*

2309.9(E) Redacted Documents *18*

2309.10 Signature Requirements *19*

2309.10(A) Actual Signatures *19*

2309.10(B) Date of Execution *20*

2309.10(C) Photocopies or Other Reproductions of a Signed Document *20*

2309.10(C)(1) What Is a Sworn Certification? *20*

2309.10(C)(2) Requirements for a Sworn Certification *21*

2309.10(C)(3) What Is an Official Certification? *21*

2309.10(C)(4) Requirements for an Official Certification *22*

2309.10(D) Notarization and Certificate of Acknowledgement *22*

2309.10(E) Unsigned Documents *22*

2309.11 The Filing Fee Requirement *22*

2309.11(A) [Reserved] *23*

2309.11(B) The Fee for Additional Titles *23*

2309.11(B)(1) Identifying the Titles Listed in the Document *23*

2309.11(B)(2) Subtitles and Alternative Titles *24*

2309.11(B)(3) Translated Titles *24*

2309.11(B)(4) Single Titles Distinguished from Multiple Titles *24*

2309.11(B)(5) Descriptive Statements Indicating Multiple Works or Multiple Versions of the Same Work *25*

2309.11(C) Refunds *25*

2309.12 Form DCS *25*

2309.12(A) Benefits of Using Form DCS *25*

2309.12(B) Form DCS Distinguished from an Instrument or Conveyance That Transfers the Copyright from One Party to Another *27*

2309.12(C) Completing Form DCS *27*

2309.12(C)(1) Spaces 1 and 2: First Party Name Given in the Document / First Title Given in the Document *27*

2309.12(C)(2) Space 3: Total Number of Titles in the Document *27*

2309.12(C)(3) Space 4: Return Receipt Requested *28*

2309.12(C)(4) Space 5: Electronic Title List Enclosed *28*

2309.12(C)(5) Spaces 6 and 7: Amount of Fee Calculated / Fee Enclosed *28*

2309.12(C)(6) Space 8: Completeness of Document *28*

2309.12(C)(7) Space 9: Certification of Photocopied Documents *29*

2309.12(C)(8) Space 10: Mailing Address and Contact Information *29*

2309.12(D) Submitting the Document and Form DCS *29*

2309.13 Electronic Title Lists *30*

2309.13(A) Preparing the Electronic Title List *30*

2309.13(A)(1) The "Article" Column *31*

2309.13(A)(2) The "Title" Column *32*

2309.13(A)(3) The "Authorship Information" Column *32*

2309.13(A)(4) The "Registration Number(s)" Column *32*

2309.13(B) Submitting the Electronic Title List *33*

2309.13(C) Correcting an Error or Omission in an Electronic Title List *33*

2309.14 Return Receipts for Transfers of Ownership or Other Documents Pertaining to Copyright *35*

2309.15 Date of Recordation for a Transfer or Other Document Pertaining to Copyright *35*

2310 Notices of Termination *36*

2310.1 How to Terminate a Grant *36*

2310.2 What Types of Grants May Be Terminated? *36*

2310.3 Terminating a Grant Under Section 203 *37*

2310.3(A) What Types of Grants May Be Terminated Under Section 203? *37*

2310.3(B) Who May Terminate a Grant Under Section 203? *37*

2310.3(C) When May a Grant Be Terminated Under Section 203? *38*
2310.3(C)(1) Terminating a Grant That Conveyed the Right of First Publication *39*
2310.3(C)(2) Terminating a Grant That Did Not Convey the Right of First Publication *40*
2310.3(C)(3) Gap Grants *42*
2310.3(D) How to Prepare and Serve a Notice of Termination Under Section 203 *42*
2310.3(D)(1) Content Requirements *42*
2310.3(D)(1)(a) The Date of Execution and Date of Publication *43*
2310.3(D)(1)(b) Naming the Authors of a Joint Work *43*
2310.3(D)(1)(c) A Copy of the Grant Is Not Required *44*
2310.3(D)(1)(d) Providing a Registration Number *44*
2310.3(D)(2) Signature Requirements *44*
2310.3(D)(3) Service Requirements *44*
2310.4 Terminating a Grant Under Section 304(c) *45*
2310.4(A) What Types of Grants May Be Terminated Under Section 304(c)? *45*
2310.4(B) Who May Terminate a Grant Under Section 304(c)? *46*
2310.4(B)(1) Grants Executed by the Author *46*
2310.4(B)(2) Grants Executed by Persons Other Than the Author *46*
2310.4(C) When May a Grant Be Terminated Under Section 304(c)? *47*
2310.4(D) How to Prepare and Serve a Notice of Termination Under Section 304(c) *47*
2310.4(D)(1) Content Requirements *48*
2310.4(D)(1)(a) A Copy of the Grant Is Not Required *49*
2310.4(D)(1)(b) Date of Execution Not Required *49*
2310.4(D)(1)(c) Naming the Author and His or Her Heirs *49*
2310.4(D)(1)(d) Providing a Registration Number *49*
2310.4(D)(2) Signature Requirements *49*
2310.4(D)(3) Service Requirements *50*
2310.5 Terminating a Grant Under Section 304(d) *50*
2310.5(A) What Types of Grants May Be Terminated Under Section 304(d)? *50*
2310.5(B) Who May Terminate a Grant Under Section 304(d)? *51*
2310.5(C) When May a Grant Be Terminated Under Section 304(d)? *51*
2310.5(D) How to Prepare and Serve a Notice of Termination Under Section 304(d) *52*
2310.5(D)(1) Content Requirements *52*
2310.5(D)(2) Signature Requirements *52*
2310.5(D)(3) Service Requirements *53*

2310.6 How to Record a Notice of Termination *53*

2310.7 Recordation Requirements for Notices of Termination *53*

2310.7(A) The Legibility Requirement *54*

2310.7(B) The Completeness Requirement *54*

2310.7(C) The Signature Requirement *55*

2310.7(D) The Filing Fee Requirement *55*

2310.8 Contesting or Withdrawing a Notice of Termination *55*

2310.9 Examination Guidelines *56*

2310.10 Date of Recordation for a Notice of Termination *57*

2310.11 Recording a Notice of Termination Distinguished from the Legal Sufficiency of a Termination Notice *58*

2310.12 Harmless Errors in a Notice of Termination *58*

2310.13 Is the Grant Subject to Termination Under Sections 203, 304(c), or 304(d)? *58*

2310.13(A) General Questionnaire *58*

2310.13(B) Termination Questionnaire for Sound Recordings *62*

2310.13(C) Termination Questionnaire for Architectural Works *64*

2311 Abandonment *65*

2312 Designation of Agent to Receive Notifications of Alleged Infringement Under Section 512(c) of the Copyright Act *66*

2313 The Computer Shareware Registry *66*

2313.1 What Is Computer Shareware? *66*

2313.2 The Purpose of the Computer Shareware Registry *67*

2313.3 Registration Distinguished from the Computer Shareware Registry *67*

2313.4 Recordation Requirements for Documents Pertaining to Computer Shareware *67*

2313.5 Who May Record a Document Pertaining to Computer Shareware? *68*

2313.6 When May a Document Pertaining to Computer Shareware Be Recorded? *68*

2313.7 How to Record a Document Pertaining to Computer Shareware *68*

2313.8 Filing Fee for Recording a Document Pertaining to Computer Shareware *68*

2314 The Visual Arts Registry *68*

2314.1 What Is a Work of Visual Art? *69*

2314.2 A Work of Visual Art Distinguished from Visual Art Works and Works of the Visual Arts *70*

2314.3 The Purpose of the Visual Arts Registry *70*

2314.4 Registration Distinguished from the Visual Arts Registry *71*

2314.5 Recordation Requirements for a Visual Arts Registry Statement *72*

2314.6 Who May Record a Visual Arts Registry Statement? *72*
2314.7 When May a Visual Arts Registry Statement Be Recorded? *72*
2314.8 How to Record a Visual Arts Registry Statement *72*
2314.8(A) Statements Submitted by or on Behalf of the Author of a Work of Visual Art *73*
2314.8(B) Statements Submitted by or on Behalf of Building Owners *73*
2314.9 Filing Fee for Recording a Visual Arts Registry Statement *74*
2314.10 Date of Recordation for a Visual Arts Registry Statement *74*
2314.11 Recorded Statements *74*
2314.12 Amendments *75*

RECORDATION

2301 What This Chapter Covers

This Chapter discusses the practices and procedures for recording the following types of documents with the U.S. Copyright Office:

- **Transfers** of copyright ownership.
- Documents pertaining to copyright.
- Documents pertaining to **mask works** and **vessel designs** (which may be recorded under the same practices and procedures applicable to documents pertaining to copyright).
- Notices of termination.
- Abandonments.
- Designations of agents to receive notifications of claimed **infringement** under **Section 512(c)** of the Copyright Act.
- Documents pertaining to computer shareware.
- Visual Arts Registry Statements.

For information concerning the **recordation** of statements pertaining to renewal claims, see **Chapter 2100**, Section 2139.

This Chapter does not discuss statements regarding the identity of authors of **anonymous** and **pseudonymous** works or statements relating to the life or death of authors. Although the Office is authorized to record these types of statements under **Sections 302(c)** or **302(d)** of the Copyright Act, it has not issued specific regulations on this issue.

This Chapter does not discuss the following types of documents, which are recorded by the Copyright Office's **Licensing Division**:

- Certain contracts entered into by cable systems located outside of the forty-eight contiguous states filed under **Section 111(e)(2)** of the Copyright Act.
- Statements of account filed by cable systems and satellite carriers under **Sections 111** and **119** of the Copyright Act.
- Notices of intention to obtain a **compulsory license** for making and distributing **phonorecords** as well as statements of account filed under **Section 115** of the Copyright Act.

- Notices of distribution of digital audio recording devices or media and statements of account filed under **Sections 1003** and **1004** of the Copyright Act.

This Chapter does not discuss the procedure for recording a notice of intent to enforce a restored copyright filed under the **Uruguay Round Agreements Act** ("URAA") or a statement of intent pertaining to the restoration of copyright protection for certain **motion pictures** and works embodied therein under the North American Free Trade Agreement Implementation Act ("NAFTA"). For information concerning this procedure, see ***Copyright Restoration Under the URAA* (Circular 38b)**.

Likewise, this Chapter does not discuss the procedure for recording a distinctive identification for an owner of a vessel design. For information concerning this procedure, see **Chapter 1300**, Section 1309.3.

2302 The Recordation Section

The U.S. Copyright Office is a federally designated agency of record that is authorized by law to maintain official records relating to copyright, including **transfers** of copyright ownership, notices of termination, and other documents pertaining to copyright.

The Recordation Section is responsible for examining and recording documents that are filed with the Office under **Sections 203**, **205**, **302**, **304**, **903**, and **1320** of the Copyright Act. The Recordation Section is part of the Office of Public Records and Repositories. Among its other responsibilities, this Office is responsible for recording interim designation of agents that are filed under **Section 512(c)(2)** of the Copyright Act.

17 U.S.C. §§ 203(a)(4), 205(a), 302(c), 302(d), 304(c)(4)(A), 304(d)(1), 512(c)(2), 903(c), 1320(d).

2303 Recordation Distinguished from Registration

Recordation and registration are separate procedures. The U.S. Copyright Office registers **claims** to copyright, while the Office records **transfers** of copyright ownership, documents pertaining to copyright, and other documents that are listed in Section **2304** below.

To register a claim to copyright, an **applicant** must submit an application, **deposit copy(ies)**, and the appropriate **filing fee**. The **registration specialist** will examine the application and the deposit copy(ies) to determine if the material deposited constitutes **copyrightable** subject matter and if the other legal and formal requirements for registration have been met.

To record a document, a remitter must submit a signed document together with the appropriate filing fee. A separate application is not required, although a remitter may submit a transfer or other document pertaining to copyright together with a document cover sheet submitted on Form DCS. For information concerning this form, see Section **2309.6**.

A transfer of copyright ownership, a document pertaining to copyright, and other types of documents may be recorded, even if the copyright has not been registered with the Office. However, recording a document is not a substitute for registering a copyright claim, and registering a copyright claim is not a substitute for recording a document.

For a general overview of the practices and procedures for registering a claim to copyright, see **Chapter 200**.

2304 What Types of Documents May or Must Be Recorded with the U.S. Copyright Office?

2304.1 Documents That Must Be Recorded

The following types of documents must be recorded with the U.S. Copyright Office:

- Notices of termination.
- Security interests in registered works.
- Designation of agent to receive notifications of alleged **infringement** under **Section 512(c)** of the Copyright Act.

These types of documents are discussed in Sections **2304.1(A)** through **2304.1(C)** below.

2304.1(A) Notices of Termination

The Copyright Act allows authors or their heirs, under certain circumstances, to terminate an agreement that transferred or licensed the author's copyright to a third party. To terminate a grant, the author or the author's heirs, must serve an advance written "notice of termination" on the grantee or the grantee's successor-in-interest and must record a copy of that notice with the U.S. Copyright Office.

A notice of termination must be recorded before the effective date of termination specified in the notice. If a notice of termination is not recorded in a timely manner the notice will be invalid, meaning that "the agreement will continue according to its own terms" and "all rights covered by an existing grant will continue unchanged…." **H.R. Rep. No. 94-1476, at 126, 128 (1976)**, *reprinted in* 1976 U.S.C.C.A.N. 5659, 5742, 5744.

For information concerning notices of termination and the procedure for recording these types of documents, see Section **2310**.

2304.1(B) Security Interests in Registered Works

Some courts have held that a security interest in a registered work must be recorded with the U.S. Copyright Office as a condition for perfecting that interest.

For information concerning security interests and the procedure for recording these types of documents, see Section **2309.3(E)**.

2304.1(C) Designation of Agent to Receive Notifications of Alleged Infringement Under Section 512(c) of the Copyright Act

The Copyright Act allows online service providers to limit their liability for copyright **infringement** claims involving material that has been posted on their systems or networks at the direction of a user. To invoke this safe harbor, service providers must designate an agent to receive notifications of alleged infringement and must provide the agent's name, address, and other contact information to the U.S. Copyright Office. *See* **17 U.S.C. § 512(c)(2)**.

For information concerning these types of documents and the procedures for recording them with the Office, see Section **2312**.

2304.2 Documents That May Be Recorded

The following types of documents may be recorded with the U.S. Copyright Office:

- **Transfers** of copyright ownership.
- Documents pertaining to copyright.
- Documents pertaining to **mask works**.
- Documents pertaining to **vessel designs**.
- Abandonments.
- Documents pertaining to computer shareware.
- Visual Arts Registry Statements.
- Statements regarding the identity of an author of an **anonymous** or **pseudonymous** work.
- Statements relating to the date of death of an author or a statement that an author is still living on a particular date.

This is not an exhaustive list and other types of documents with a copyright interest may be recorded with the U.S. Copyright Office.

Transfers and other documents pertaining to copyright (as well as documents pertaining to mask works and vessel designs) are discussed in Section **2309** below.

Abandonments are discussed in Section **2311**. For a discussion of documents pertaining to computer shareware and Visual Arts Registry Statements, see Sections **2313** and **2314**.

2305 Overview of the Recordation Process

The U.S. Copyright Office has recorded assignments and other documents related to copyright since 1897. Although the Office has performed this function for more than 100 years, the recordation process is frequently misunderstood.

Typically, a party submits an original signed document or a legible reproduction of a signed document that has been certified to be a true copy of the original. The party that makes this submission is known as the "remitter."

Upon request, the Office will provide a return receipt confirming that a transfer or other document pertaining to copyright has been received in the Office. For information concerning this procedure, see Section **2309.14** below.

A recordation specialist will examine the document to determine if it satisfies the requirements of the Copyright Act and the Office's regulations and to determine if the correct **filing fee** has been paid. If the relevant requirements have been met, the document will be recorded and made a part of the Office's public records.

The Office does not provide or require special forms for preparing a notice of termination, a **transfer** of ownership, or any other document pertaining to copyright. Any written document will be accepted for recordation if it is legible, if it contains an actual signature, and if it satisfies the other requirements set forth in Sections **2309** through **2314** below.

The Office offers a document cover sheet known as Form DCS, and encourages remitters to complete and submit this form together with the document when recording a transfer of ownership or other document pertaining to copyright. If a document contains 100 titles or more the remitter also may submit an electronic title list to facilitate the indexing of that document. For information concerning the benefits of using Form DCS or an electronic title list, see Sections **2309.12(A)** and **2309.13** below.

When a document is recorded, the Office will assign a unique identifying number to the document, such as V9920 D781. The letters "V" and "D" refer to the volume and document numbers that have been assigned to the document.

The Office will prepare a certificate of recordation bearing the date of recordation and the identifying number that has been assigned to that document. The certificate, the recorded document, and Form DCS (if it was submitted with the document) will be imaged and stored in the Office's electronic recordation system. These images will be made available to the general public for inspection and copying upon request. *See* **Chapter 2400**, Section 2407.2. The Office then returns the original document to the remitter, along with the certificate of recordation.

The Office creates an **online public record** that contains pertinent information about the recorded document. These records are made available to the general public through the Office's website. For a discussion of the online public record and the information that these records typically contain, see Section **2306** below.

Although the Office will record a document after it has been executed, it does not issue or enforce notices of termination, transfers of ownership, or other documents pertaining to copyright. The Office only serves as an office of public record for such documents. For this reason, a document that is submitted for recordation should not consist of a letter or other written communication addressed to the **Register of Copyrights** or the U.S. Copyright Office.

The fact that a document has been recorded is not a determination by the U.S. Copyright Office concerning the validity or the effect of that document. That determination can only be made by a court of law. As discussed above, the Office only examines documents to determine if they comply with the requirements of the Copyright Act and the Office's regulations. The Office will

not attempt to interpret the substantive content of any document that has been submitted for recordation. Likewise, the Office will not attempt to determine whether a document satisfies the legal requirements that may be necessary for it to be effective or enforced.

Members of the general public who submit documents for recordation cannot expect the Office to screen a document for even obvious errors or discrepancies. Therefore, parties are strongly advised to review and scrutinize any document to ensure that the document is legally sufficient to accomplish the purpose for which it is intended before it is submitted for recordation.

As discussed above, a recorded document will be made available to the general public upon request. Therefore, parties should be aware that if a recorded document contains private, confidential, or personally identifiable information that information will be accessible to any person who submits a request to inspect or copy that document.

2306 Indexing

When a document is recorded with the U.S. Copyright Office, the recordation specialist will create an **online public record** that contains pertinent information about the recorded document. This process is known as "indexing."

2306.1 The Online Public Record

The **online public record** for a recorded document typically contains the following information:

- A brief statement identifying the type of document that has been recorded (*e.g.*, assignment, exclusive license, memorandum of publishing rights agreement, etc.).
- The identifying number that has been assigned to the document (*e.g.*, V3487 D777 P1).
- The **date of recordation**.
- The name(s) of the parties listed in the document.
- The title(s) of the work(s) listed in the document (if any).
- The registration number(s) for those work(s) (if they were listed in the document).
- The date of execution specified in the document (if any).

In some cases, the online public record may contain additional information. For example, if the recordation specialist used an electronic title list to index the document, he or she will include a note to that effect in the record. When indexing a notice of termination the specialist may indicate whether the grant was terminated under **Sections 203, 304(c), or 304(d)** of the Copyright Act or whether the notice involves a "gap grant." The specialist also may include the effective date of termination specified in the notice, and the date and manner of service specified in the notice.

2306.2 Indexing Guidelines

As a general rule, the recordation specialist will index a document using the information that appears in the document itself and any schedule, exhibit, appendix, or other attachments thereto. However, if the remitter submits a document together with an electronic title list, the specialist will index the titles and registration numbers (if any) using the information provided in that list.

When indexing a document, the specialist will not include information from any other source, such as a document cover sheet or an oral or written communication with the Office. Therefore, parties, titles, or other pertinent information should clearly be identified in the document itself, any attachments to that document, and in the electronic title list for that document (if any).

As a general rule, the specialist will not attempt to verify any of the information that appears in a document, except for the number of titles listed therein. Ordinarily, the specialist will transcribe titles, parties, dates of execution, and the like without verifying the accuracy of that information.

If the document contains minor but obvious typographical errors in the names or titles listed in the document, the specialist may index the document under the correct name or title.

Examples:

- A document containing the title "Great Russiand Short Stories" may be indexed as "Great Russian Short Stories."
- A document naming "Docter Michael Du Barry" as a party to the transaction may be indexed as "Doctor Michael Du Barry."

2306.3 Titles Listed in the Recorded Document

When indexing a document, the recordation specialist will include all the titles that are listed in the document or the electronic title list for that document (if any). Titles typically appear in the **online public record** in the order they are listed in the document or the electronic title list. If the document does not contain any titles, the specialist will add an **annotation** to the record, such as: "No titles given."

2306.4 Registration Numbers Listed in the Recorded Document

When indexing a document, the recordation specialist will include all the registration numbers that are listed in the document or the electronic title list for that document (if any). If the remitter submits a document together with an electronic title list, the specialist will transcribe the registration numbers using the format specified in the electronic title list, even if the registration numbers are presented in a different format in the actual document. For information concerning the proper format for preparing an electronic title list, see Section **2309.13(A)(4)**.

Registration numbers typically appear in the **online public record** for a particular document as part of the title field (where they are listed after the title of each work) as well as in a separate field titled "Registration Number Not Verified." In the case of a document involving more than one work, registration numbers typically appear in the title and registration number fields of the online public records for those works, and those records typically are linked to the online public record for the document.

To search for a registration number in the Office's online database, the registration number must be entered in a twelve-character string, with every letter of the alphabetic prefix capitalized and with zeroes inserted between the alphabetic prefix and the numerical portion of the registration number. For example, the prescribed format for a registration for a **published** visual art work consisting of the alphabetic prefix "VA" and the numbers "999-9-999" would be "VA0009999999." By contrast, the prescribed format for a registration for an **unpublished** visual art work consisting of the alphabetic prefix "VAu" and the numbers "999-9-999" would be "VAU009999999."

Often times, registration numbers are presented in documents using formats that do not follow the prescribed format for searching the online public record. If a registration number appears in a document with spaces, hyphens, or other punctuation (instead of following the prescribed format), the recordation specialist will remove those characters when he or she indexes the document. For example, if a registration number is written in a document as "VAu 9-999-999" the specialist will remove the hyphens, capitalize the letter "u," insert zeroes, and index the registration number as VAU009999999 (rather than "VAu 9-999-999").

To speed the indexing of documents submitted for recordation, the Office strongly encourages parties to use the prescribed format when including registration numbers in a document that will be submitted for recordation. The following examples illustrate the prescribed format for searching for a registration number consisting of the numerals 9999999.

Published Literary Works:

- Correct format: TX0009999999
- Incorrect format: TX 999-9-999

Published Work of the Performing Arts:

- Correct format: PA0009999999
- Incorrect format: PA 9999999

Unpublished Work of the Visual Arts:

- Correct format: VAU009999999
- Incorrect format: VAu 999 9 999

Renewal Registration:

- Correct format: RE0009999999
- Incorrect format: RE9999999

Musical Work Published Before January 1, 1978:

- Correct format: E00009999999
- Incorrect format: Registration No. E 999-9-999

Unpublished Dramatic Work Registered Before January 1, 1978:

- Correct format: DU0009999999
- Incorrect format: Registration Number Du 9999999

Preregistration:

- Correct format: PRE009999999
- Incorrect format: Preregistration PRE 999-9-999

NOTE: Currently, when searching the online public record for recorded documents that contain a particular registration number, the user must conduct a "keyword" search rather than a "registration number" search. A search by "registration number" will retrieve the online public record for that registration and any other registration numbers that have been cross-referenced with that registration, such as a **supplementary registration**. However, a "registration number" search will not retrieve any recorded documents pertaining to that registration number.

2306.5 Parties Named in the Recorded Document

As a general rule, the recordation specialist will include the names of all the parties that are listed in the recorded document, even if one or more of those parties did not execute the document.

If only one party is named in the recorded document, such as an affidavit or a declaration, the recordation specialist will index the document under that party's name.

NOTE: There is a limited exception to this rule. If two or more parties are named in the body of the document and if a signature space has been provided for each party, the specialist will record the document even if some of these spaces have been left blank. However, when indexing the document, the specialist will not include the names of the parties that did not provide a signature.

Parties are typically listed in the **online public record** in the order they are listed in the document (*e.g.*, "Party 1," "Party 2," etc.).

If there is a reconcilable variance between the name that appears the body of the document and the corresponding name that appears in the signature, the specialist generally will index the document under the fullest form of that party's legal name.

When a document has been signed by an officer or employee of a corporation or other legal entity, the specialist will index the document under the name of that entity, rather than the name of the individual who actually signed the document.

Likewise, when a duly authorized agent has signed a document on behalf of a party named therein, the specialist will index the document under the name of the party that the agent represents.

2306.6 Date of Execution

If the recorded document specifies a date of execution, the recordation specialist will include that information in the **online public record**.

If the date of execution appears to be incomplete (*e.g.*, a month and day, but no year), the specialist will include whatever information that is specified in the document.

If the document does not specify a date of execution, the specialist will add an **annotation** to the online public record, such as: "No date given."

2306.7 Effective Date

If the recorded document states that it is effective as of a particular date, the recordation specialist will include that date in the **online public record**.

In the case of a notice of termination, the specialist will include the effective date of termination that is specified in the notice.

2307 Special Handling

Special handling is a procedure for expediting the recordation of a **transfer**, a notice of termination, or other document pertaining to copyright. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate of recordation.

For a detailed discussion of this procedure, see **Chapter 600**, Section 623.

2308 Correcting Errors or Omissions in a Recordation

2308.1 Errors or Omissions in a Recorded Document

A document recorded with the U.S. Copyright Office will be made a permanent part of the public record, and the Office will not modify that document or remove it from the record once a certificate of recordation has been issued.

The Recordation Section will not make any changes or corrections to a document that has been submitted for recordation, even if the recordation specialist has been authorized or instructed to do so by the party that submitted the document.

If the remitter discovers an error or omission in a document that has been submitted for recordation, the remitter may send a corrected version of that document to the address specified in Section **2309.6**. The document should be submitted together with a cover letter explaining that the document is a corrected version of a document that was previously submitted for recordation. If the remitter previously discussed the error or omission with a recordation specialist, the letter should be addressed to that specialist. If the corrected version is received within ten busi-

ness days after the date that the document was initially received in the Office, the Recordation Section will substitute the corrected version for the incorrect version.

In all other cases, the remitter may correct an error or omission in a document by using one of the following options:

- The remitter may prepare a new document that contains the correct or missing information and may submit that document for recordation, along with the appropriate **filing fee**.
- If the Office issued a certificate of recordation and returned the document to the remitter, the remitter may correct that copy and resubmit the corrected copy for recordation, along with the appropriate filing fee.
- The remitter may prepare a declaration or affidavit describing the error or omission in the document and may submit that declaration or affidavit for recordation, along with the appropriate filing fee.

If the relevant requirements have been met, the Office will record the corrected document and will return that document to the remitter, along with a certificate of recordation. In addition, the Office will create an **online public record** for the corrected document that contains the information set forth in Section **2306.1** above.

When the Office records a corrected document, it does not cancel the recordation or the identifying number for the document that was initially submitted to the Office. Likewise, the Office will not change the information set forth in the certificate of recordation or the online public record for that document. Instead, the Office will assign a separate identifying number and **date of recordation** to the corrected document. The recordation for the initial document and the corrected document will coexist with each other in the public record, and the recordation for the corrected document augments — but does not supersede — the recordation for the initial document.

2308.2 Errors or Omissions in the Online Public Record for a Recorded Document

If the remitter submits a document together with an electronic title list and if that list contains errors or omissions, similar errors or omissions may appear in the **online public record** for that document. In such cases, the remitter may correct the record by submitting a corrected version of the electronic title list. For information concerning this procedure, see Section **2309.13(C)**.

If the Office made a clerical or typographical error in indexing a document that was not caused by a corresponding error in the electronic title list for that document (if any), the remitter should contact the Office in writing using the **form** posted on the Office's website. If appropriate, the Office will attempt to correct the error in the online public record.

2309 Recordation of Transfers of Ownership and Other Documents Pertaining to Copyright

Sections **2309.1** through **2309.13** discuss the practices and procedures for recording a **transfer** of ownership or other document pertaining to copyright. The practices and procedures described in these Sections also apply to documents pertaining to **mask works** and **vessel designs**.

2309.1 What Is a Transfer of Ownership?

Section 205(a) of the Copyright Act states that "[a]ny transfer of copyright ownership . . . may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document."

Section 101 of the Copyright Act states that a "transfer of copyright ownership" is "an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect . . ." It also states that a **nonexclusive license** is not a transfer of copyright ownership.

The copyright in a work of authorship initially belongs to the author or co-authors of that work. **Section 201(d)(1)** of the Copyright Act states that "[t]he ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession."

As a general rule, a transfer of copyright ownership must be made in writing and it must be signed by the owner of the rights conveyed or the owner's duly **authorized agent**.

17 U.S.C. §§ 101, 201(d), 204(a).

2309.2 What Is a Document Pertaining to Copyright?

A **document pertaining to copyright** is a document that has a direct or indirect relationship to the existence, scope, duration, or identification of a copyright, or a direct or indirect relationship to the ownership, division, allocation, licensing, **transfer**, or exercise of rights under a copyright. These relationships may be past, present, future, or potential.

Examples:

- Nonexclusive licenses.
- Wills.
- Powers of attorney.
- Affidavits.
- Declarations.
- Bankruptcy decrees.
- Certificates of change of corporate title.
- Statements regarding a change of address.

If a document does not appear to have any direct or indirect relationship to a copyright **claim**, the recordation specialist may communicate with the remitter and may refuse to record the document.

Example:

- A bill of lading referring to a shipment of motion pictures.
- An assignment of rights in a patent or trademark.

2309.3 Benefits of Recording Transfers and Other Documents Pertaining to Copyright

As discussed in Section **2304.1(B)**, some courts have held that a security interest in a registered work must be recorded with the U.S. Copyright Office as a condition for perfecting that interest. As discussed in Section **2304.1(A)**, a notice of termination must be recorded with the U.S. Copyright Office in a timely manner in order for the notice to take effect. For additional information concerning security interests and notice of termination, see Sections **2309.3(E)** and **2310**.

By contrast, recording a **transfer** or other document pertaining to copyright is optional, although it does provide certain benefits that are discussed in Sections **2309.3(A)** through **2309.3(D)**.

2309.3(A) Constructive Notice

Recording a **transfer** or other document pertaining to copyright may provide constructive notice—a legal concept meaning that members of the public are deemed to have knowledge of the facts stated in the document. *See* **Fees, 63 Fed. Reg. 43,426, 43,427 (Aug. 13, 1998)**.

Section 205(c) of the Copyright Act states that **recordation** "gives all persons constructive notice of the facts stated in the recorded document," but only if (i) "the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work," and (ii) the work has been registered with the Office.

2309.3(B) Establishing Priority Between Conflicting Transfers

Recording a **transfer** of ownership with the U.S. Copyright Office may establish priority between two or more transfers involving the same copyrighted work.

If a copyright owner issues two transfers involving the same work, the transfer that was executed first will prevail, provided that the document is recorded (i) within one month after the transfer was executed (in the case of a transfer executed in the United States), (ii) within two months after execution (in the case of a transfer executed in another country), or (iii) at any time before the other document was recorded with the Office.

Otherwise, the later transfer will prevail, provided that (i) the transfer is taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, (ii) the transfer is taken without notice of the earlier transfer, and (iii) the transfer is recorded in a manner required to give constructive notice.

17 U.S.C. § 205(d).

2309.3(C) Establishing Priority Between a Conflicting Transfer and a Nonexclusive License

If a copyright owner issues a **transfer** of copyright ownership and a **nonexclusive license** involving the same work, the **license** will prevail (regardless of whether it has been recorded with the Office), provided that the license is evidenced by a written instrument signed by the owner of the rights licensed or such owner's duly **authorized agent**, and provided that one of the following conditions has been met:

- The license was taken before the execution of the transfer; or
- The license was taken in good faith before the transfer was recorded with the Office and without notice of that transfer.

17 U.S.C. § 205(e).

2309.3(D) Limiting the Innocent Infringer Defense

Recording a **transfer** of ownership with the Office may limit a defendant's ability to assert an innocent infringement defense in a copyright infringement action involving a work **published** before March 1, 1989.

If the person named in the **notice** is not the copyright owner, the defendant may assert a defense in an infringement action by proving that he or she was misled by the notice and that he or she used the work in good faith based on a purported transfer or **license** from the person named in that notice. However, the innocent infringement defense does not apply (i) if the work was registered in the name of the copyright owner before the infringement began, or (ii) if a document executed by the person named in the notice and showing the ownership of the copyright was recorded before the infringement began.

17 U.S.C. § 406(a).

2309.3(E) Perfection of Security Interests

Some courts have held that a security interest in a registered work must be recorded with the U.S. Copyright Office in order to perfect the creditor's interest. In order to perfect the creditor's interest in an unregistered work, some courts have held that the interest must be recorded under a state law version of Article 9 of the Uniform Commercial Code. *See, e.g., Aerocon Engineering, Inc. v. Silicon Valley Bank* (*In re World Auxiliary Power Co.*), 303 F.3d 1120 (9th Cir. 2002); *Morgan Creek Productions, Inc. v. Franchise Pictures LLC* (*In re Franchise Pictures LLC*), 389 B.R. 131 (Bankr. C.D. Cal. 2008).

A security interest in a registered or unregistered work may be recorded with the U.S. Copyright Office by following the practices and procedures described in Sections **2309.1** through **2309.13** concerning the recordation of **transfers** of ownership or other documents pertaining to copyright.

2309.4 Who May Record a Transfer or Other Document Pertaining to Copyright?

Any person may record a **transfer** or other document pertaining to copyright, provided that he or she complies with the recordation requirements set forth in Sections **2309.7** through **2309.11**. The person who submits a document for recordation is known as the "remitter."

2309.5 When May a Transfer or Other Document Pertaining to Copyright Be Recorded?

A **transfer** or other document pertaining to copyright may be recorded at any time.

2309.6 How to Record a Transfer or Other Document Pertaining to Copyright

To record a **transfer** or other document pertaining to copyright, the remitter should submit a signed, complete, and legible copy of the document to the following address together with the appropriate **filing fee**:

Library of Congress
U.S. Copyright Office-DOC
101 Independence Avenue SE
Washington, DC 20559-6000

For information concerning the legibility, completeness, and signature requirements, see Sections **2309.8** through **2309.10** below. For information concerning the procedure for calculating the filing fee, see Section **2309.11** below. For information concerning the methods for paying the filing fee, see **Chapter 1400**, Sections 1403.3 through 1403.5.

When recording a transfer or other document pertaining to copyright, remitters are encouraged—but not required—to submit the document together with Form DCS. For information concerning the benefits of submitting this form, see Section **2309.12(A)** below. For guidance in completing and submitting Form DCS, see Section **2309.12(C)**.

2309.7 Recordation Requirements for Transfers and Other Documents Pertaining to Copyright

A **transfer** of copyright ownership or other document pertaining to copyright may be recorded with the U.S. Copyright Office, provided that the following requirements have been met:

- The document is legible.
- The document is complete.
- The document bears the actual signature or signatures of the person or persons who executed it, or in the case of a signed document that has been scanned or photocopied, the document is accompanied by a **sworn certification** or an **official certification** confirming that the reproduction is a true copy of the original, signed document.
- The document is submitted together with the correct **filing fee**.

If a transfer or other document pertaining to copyright does not comply with these requirements, the recordation specialist may communicate with the remitter or may refuse to record the document.

The legibility, completeness, signature, and filing fee requirements are discussed in more detail in Sections **2309.8** through **2309.11** below.

2309.8 The Legibility Requirement

A **transfer** or other document pertaining to copyright may be recorded, provided that the document is legible and is capable of being imaged or otherwise reproduced in legible copies using the technology employed by the U.S. Copyright Office.

A document should be submitted in a visually perceptible form, it should be sufficiently legible for the recordation specialist to examine and index the contents of that document, and it should be sufficiently legible for the Office to scan the document into the public record. To facilitate the imaging process, documents and any attachments thereto should be 8 ½ by 11 inches in size, and the pages should be clipped together rather than stapled.

If the document is illegible or if it cannot be legibly reproduced by the Office, the recordation specialist may communicate with the remitter or may refuse to record the document.

2309.9 The Completeness Requirement

A **transfer** or other document pertaining to copyright may be recorded, provided that the document is complete by its own terms. A document is considered complete by its own terms if it is submitted for recordation together with any exhibit, schedule, appendix, addendum, or similar attachment that is referenced in the document.

If the document appears to be incomplete, the recordation specialist may communicate with the remitter or may refuse to record the document.

Examples:

- An assignment of copyright is submitted with an attachment titled "Schedule A." The first sentence of the assignment reads: "The assignor hereby assigns the copyright in the musical composition(s) listed in Schedule A to this Assignment to the Assignee." The recordation specialist will record the assignment and the attachment thereto without communicating with the remitter.

- A publishing agreement is submitted together with three attachments titled "Exhibit A: Assignment," "Exhibit B: Bill of Sale," "Exhibit C: Servicing Agreement." Each attachment appears to be a self-contained part of the publishing agreement. The recordation specialist will record the publishing agreement together with the attachments thereto without communicating with the remitter.

2309.9(A) Document Submitted without Attachments

If a **transfer** or other document pertaining to copyright indicates that an exhibit, schedule, appendix, addendum, or other attachment has been made a part of the document or has been attached thereto, the recordation specialist may communicate with the remitter if the document is submitted without the attachment. The remitter may respond by submitting a legible copy of the attachment referenced in the document. If so, the document will be recorded together with the attachment, and the **date of recordation** will be based on the date that the attachment was received by the Office.

In the alternative, the recordation specialist may return the document to the remitter upon request. The remitter may delete the reference to the missing attachment and resubmit the document, provided that the deletion is signed or initialed by the person or persons who executed the document or their authorized representatives. If so, the document will be recorded, and the date of recordation will be based on the date that the amended document was received by the Office.

In the alternative, the remitter may ask the recordation specialist to record the document without the attachment, provided that the remitter confirms the following:

- The attachment is completely unavailable for recordation;
- The attachment is not essential to identify the subject matter of the document; and
- It would be impossible or wholly impracticable for the person(s) who executed the document (or their representatives) to sign or initial an amendment deleting the reference to the attachment.

The remitter may provide this information in a cover letter or other written communication, or by completing Form DCS and checking the box containing the phrase "One or more attachments referenced in this document is missing." In this situation, the specialist will record the document without communicating with the remitter and will add an **annotation** to the online public record for that document, such as: "Document is not complete. Recorded 'as is.'"

For information concerning Form DCS, see Section **2309.12**.

2309.9(B) Self-Contained Parts of a Larger Document

An exhibit, schedule, appendix, addendum, or other attachment that is a self-contained part of a larger document may be recorded if the remitter confirms in writing that the document is complete by its own terms. The remitter may provide this information by submitting a cover letter or other written communication or by completing Form DCS and checking the box marked "All attachments referenced in this document are included." For information concerning Form DCS, see Section **2309.12**.

Example:

- The Office receives an assignment marked "Exhibit A" and a bill of sale marked "Attachment B." Each document appears to be a self-contained part of a larger document. In both cases the remitter submitted Form DCS and checked the box marked "All attachments referenced in this document are included." The recordation specialist will record the documents without communicating with the remitter.

2309.9(C) Incorporation by Reference

If the **transfer** or other document pertaining to copyright merely references another document or merely incorporates terms set forth in another document, the recordation specialist will record the document without communicating with the remitter.

Example:

- The Office receives an assignment of copyright. The first sentence reads: "In accordance with the terms of mutual understanding previously entered into between the parties on January 2, 2008, which are incorporated by reference herein, the assignor hereby assigns the copyright in the musical composition to the assignee." The recordation specialist will record the assignment without communicating with the remitter.

2309.9(D) Failure to Identify the Work

The Office will record a **transfer** or other document pertaining to copyright, even if it does not identify the work that is the subject of the transaction. In this situation, the recordation specialist will record the document without communicating with the remitter, but will add an **annotation** to the **record**, such as: "No titles given."

Although the document will be recorded, the recordation may not provide constructive notice of the facts stated in the document. As discussed in Section **2309.3(A)**, a recordation provides constructive notice only if the work has been registered and if "the document or the materials attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work." **17 U.S.C. § 205(c)**.

Example:

- The Office receives an exclusive license involving "an unpublished novel about New York's Empire State Building, by Jack Douglas." The recordation specialist will record the license with an annotation, such as: "No titles given." Because the license does not identify the title of the work, the recordation may not provide constructive notice of the facts stated in the document.

2309.9(E) Redacted Documents

The Office has adopted an interim practice that allows a remitter to record a redacted document provided that the following conditions have been met:

- The remitter must satisfy the recordation requirements specified in Section **2309.7**.
- The blank or blocked out portions of the document must be initialed or labeled "redacted" (regardless of whether the redactions appear in the document itself or the attachments thereto).
- Each page of the document must be accounted for.

The remitter may redact an entire page of a **transfer** or other document pertaining to copyright, provided that the page contains a brief statement indicating that the entire page has been redacted and provided that the page numbers for the entire document (if any) remain visible. If pages appear to be missing, the recordation specialist will return the document to the remitter and explain that the completeness requirement has not been met.

Although the Office will record a redacted document, the Office does not intend to suggest that it is appropriate to redact large portions of a transfer or other document pertaining to copyright. Remitters should redact only those portions of a document that contain sensitive information, such as financial terms. Excessive redactions limit the benefits of constructive notice, because this presumption only applies to the "facts stated in the recorded documents." **17 U.S.C. § 205(c)**.

NOTE: The Office may adopt final regulations that may alter the interim practice described in this Section. *See* **Recordation of Documents, 70 Fed. Reg. 44,049, 44,051 (Aug. 1, 2005)**.

2309.10 Signature Requirements

To be recordable, a **transfer** of copyright ownership or other document pertaining to copyright must be signed by the person who executed the document. A photocopy or other reproduction of a signed document may be recorded, provided that the document is submitted with a **sworn certification** or an **official certification** confirming that the reproduction is a true copy of the signed original.

These requirements are discussed in Sections **2309.10(A)** through **2309.10(E)** below.

2309.10(A) Actual Signatures

The signature that appears on the document should be the actual signature of an individual person and the signature should contain that individual's own name.

If an individual executed the document on behalf of another person or organization, the signature should contain that individual's own name as well as the name of the party that he or she represents (*e.g.*, "Robert Penn on behalf of Cursive Enterprises, LLC").

The following are representative examples of signatures that satisfy these requirements:

- A handwritten signature.
- A hand-printed signature.

A handwritten or hand-printed signature does not need to be legible. A signature does not need to include the full name of the individual that signed the document, provided that his or her

name is sufficiently identified elsewhere in the document. Likewise, the Office may accept a signature consisting of an individual's mark if it is accompanied by another individual's signature attesting to the authenticity of that mark.

The following are representative examples of signatures that may be questioned:

- A printed signature.
- A typewritten signature.
- A rubber-stamped signature.
- A signature consisting of initials or a monogram.
- A photocopy, facsimile, or other reproduction of a signature that is not accompanied by a **sworn certification** or an **official certification** concerning the authenticity of the signed document.

2309.10(B) Date of Execution

When signing a **transfer** or other document pertaining to copyright, parties are encouraged to provide the month, day, and year that the document was executed. As discussed in Sections **2309.3(B)** and **2309.3(C)**, recordation may establish priority in the event of a conflicting transfer involving a particular work, depending on the date that the document was executed and recorded with the U.S. Copyright Office.

If the document specifies the precise month, day, and year that it was executed, then as discussed in Section **2306.6**, the recordation specialist will include that information in the **online public record**. If the date of execution appears to be incomplete, the specialist will include whatever month, day, and/or year that is specified in the document.

If the document does not specify a date of execution, the specialist will record the document with an **annotation**, such as: "No date given."

2309.10(C) Photocopies or Other Reproductions of a Signed Document

The Office may record a legible photocopy or other legible facsimile reproduction of a signed document, provided that the remitter submits a **sworn certification** or an **official certification** stating that the reproduction is a true copy of the signed document.

These options are discussed in Sections **2309.10(C)(1)** through **2309.10(C)(4)** below.

2309.10(C)(1) What Is a Sworn Certification?

A **sworn certification** is defined as:

- "An affidavit under the official seal of any officer authorized to administer oaths within the United States, or"

- "[I]f the original is located outside of the United States, [an affidavit] under the official seal of any diplomatic or consular officer of the United States or of a person authorized to administer oaths whose authority is proved by the certificate of such an officer, or"

- "A statement in accordance with section 1746 of title 28 of the United States Code."

37 C.F.R. § 201.4(a)(3)(i).

2309.10(C)(2) Requirements for a Sworn Certification

As a general rule, a **sworn certification** may be used to verify that a photocopy or other reproduction of a signed document is a true copy of the original.

The certification must be signed under oath by one of the parties to the document or by an authorized representative of that party. The certification does not need to be signed by the actual person or persons who executed the original document. However, the Office cannot accept a certification that has been signed by a successor in interest to one or more of the parties to the document. Likewise, the Office cannot accept a statement from a notary public confirming that the photocopy or other reproduction of a signed document is a true copy of the original (as opposed to a statement from a notary confirming the identity of the individual who signed the certification).

The oath may be self-administered by providing an appropriate statement, such as: "I declare under penalty of perjury that the accompanying document is a true and correct copy of the original document. Executed on [date]." As discussed in Section 2309.12(C)(4), the remitter may provide this statement by completing space 9 of Form DCS. The remitter also may provide this statement in a cover letter or other written communication with the U.S. Copyright Office. In the alternative, the oath may be administered by a notary public or any other person authorized to administer oaths.

The sworn certification should be submitted together with a legible reproduction of the signed document. The certification should contain the original signature of the party that executed the certification. The Office cannot accept a photocopy or other reproduction of a signed certification.

NOTE: A sworn certification cannot be used if the original signed document has been validated by or filed with a government office. In this situation, the reproduction must be submitted with an official certification, as discussed in Section 2309.10(C)(4) below.

2309.10(C)(3) What Is an Official Certification?

An **official certification** is a certification, issued by an appropriate government official, that the original of the document is on file in a public office and that the reproduction is a true copy of the original.

Examples:

- A copy of a certificate of corporate merger that has been submitted for recordation together with an official certification issued by the Secretary of State for the jurisdiction where the original document has been filed.

- A judicial decree establishing a change of name for a person that has been submitted for recordation together with an official certification from the clerk of the court that issued the decree.

2309.10(C)(4) Requirements for an Official Certification

To record a photocopy or other reproduction of a signed document that has been validated by or filed with a government office, the remitter must submit the reproduction together with an **official certification**.

The official certification should state that the original signed document is on file in the public office and that the reproduction is a true copy of the original.

In all cases, the reproduction should be submitted together with the original official certification. The Office cannot accept a photocopy or other reproduction of an official certification.

2309.10(D) Notarization and Certificate of Acknowledgement

A signed document may be recorded with the U.S. Copyright Office, regardless of whether the signature(s) have been verified by a notary public.

Likewise, a signed document may be recorded, regardless of whether the signature(s) have been verified by a certificate of acknowledgment.

2309.10(E) Unsigned Documents

As discussed in Section **2309.10(A)**, a **transfer** or other document pertaining to copyright should contain the actual signature or signatures of the person or persons who executed the document. Documents that have not been signed will be returned to the remitter. If the remitter subsequently submits a signed copy of the document, the recordation specialist may record the document if the requirements set forth in Section **2309.7** have been met. The **date of recordation** will be based on the date that the signed document was received by the Office.

2309.11 The Filing Fee Requirement

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

Specifically, the remitter must pay a basic recording fee for each document that is submitted for recordation. The basic recording fee is listed in the Office's **fee schedule** under the heading "Recordation of Documents: Recordation of document, including a notice of intention to enforce (containing no more than 1 title)."

If the document contains multiple titles the remitter must pay the basic recording fee plus an additional filing fee. The additional fee is listed in the fee schedule under the heading "Recordation of Documents: Additional titles (per group of 10 or fewer titles)."

These fees are discussed in more detail below. For information concerning the methods for paying the filing fee, see **Chapter 1400**, Sections 1403.3 through 1403.5.

2309.11(A) [Reserved]

2309.11(B) The Fee for Additional Titles

The amount of the **filing fee** for a **transfer** or other document pertaining to copyright varies depending on the number of titles listed in the document.

- If the document contains only one title the remitter should submit the basic recording fee discussed in Section **2309.11**.
- If the document contains two or more titles the remitter should submit the basic recording fee discussed in Section **2309.11** plus an additional filing fee.

The amount of the additional filing fee is based on the number of titles listed in the document. Specifically, the remitter should submit an additional filing fee for each group of ten titles or less that are listed in the document.

For general guidance in calculating the filing fee for documents that contain two or more titles, see ***Calculating Fees for Recording Documents and Notices of Termination in the Copyright Office*** **(Factsheet SL 4d)**. For guidance in identifying the number of titles listed in a document, see Sections **2309.11(B)(1)** through **2309.11(B)(5)**.

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

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

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

Examples:

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

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

2309.11(B)(2) Subtitles and Alternative Titles

When counting the number of titles, the remitter should include any subtitles, alternative titles, or variant titles listed in the document, including "previous titles," "formerly known as titles," or "also known as titles" that have been assigned to the same work.

Example of a single title:

- "How to Get Ahead in Life or Ten Ways to Improve Your Memory."

Examples of multiple titles:

- "Money Isn't Everything," also known as "Who Wants To Be Rich?"
- "Café Tales," formerly known as "Draw One."

2309.11(B)(3) Translated Titles

When the title of a work is listed in the document together with a **translation** of that title, both the original title and the translated title should be counted as separate titles.

Examples of multiple titles:

- "On the Water" ("Auf dem Wasser").
- "Blanco y Negro" (originally published as "Blanc et Noir").

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

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

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

Examples of multiple titles:

- Help Is On The Way (TX 2-536-224)
  Help Is On The Way (PA 3-718-116)
  Help Is On The Way (SR 3-290-390)

- *Fan Club News*, vol. 1, no. 3 (June 2011)
  Fan Club News, vol. 1, no. 4 (July 2011)
  Fan Club News, vol. 1, no. 5 (Aug. 2011)

- "Trapped in the Snack Bar," Installment I
  "Trapped in the Snack Bar," Installment II

2309.11(B)(5) Descriptive Statements Indicating Multiple Works or Multiple Versions of the Same Work

When a title is listed once in a document together with a version number, publication date, author name, or other descriptive information, it should be counted as a single title.

Examples of a single title:

- "You Are The One (Romantic Song)"

By contrast, when the same title is repeated multiple times throughout the same document with different version numbers, publication dates, author names, or other descriptive information, each entry should be counted as a separate title.

Examples of multiple titles:

- "You Are The One (from Summer Romance)"
  "You Are The One (from Sunny Days)"

- "Rondo (Massenet)"
  "Rondo (Respighi)"

- InkJet Writer (v. 2.0)
  InkJet Writer (v. 3.0)
  InkJet Writer (v. 4.0)

2309.11(C) Refunds

Once a document has been submitted for recordation, the Office will not refund the basic recording fee, regardless of whether the Office issues a certificate of recordation.

If the Office refuses to record a document containing multiple titles and if the fee for the additional titles is more than $50, the Office will refund the fee automatically. If the fee is $50 or less the Office may issue a refund if the remitter makes a specific request.

2309.12 Form DCS

2309.12(A) Benefits of Using Form DCS

When recording a **transfer** of ownership or other document pertaining to copyright, the remitter is strongly encouraged but not required to submit the document together with Form DCS. Submitting this form is optional, but it does provide certain benefits.

- Form DCS assists the recordation specialist in determining whether the remitter complied with the requirements for recording the document with the Office. For information concerning these requirements, see Sections **2309.8** through **2309.11**.

- Upon request, the Office will issue a return receipt confirming that the document was received on a particular date, but only if the remitter submits the document together with two copies of Form DCS. For information concerning this procedure, see Section **2309.14** below.

- The remitter may use Form DCS to notify the Office that the document has been submitted together with an electronic title list. For information concerning electronic title lists, see Section **2309.13** below.

- An exhibit, schedule, appendix, addendum, or other attachment that is a self-contained part of a larger document may be recorded if the remitter confirms in writing that the document is complete by its own terms. The remitter may provide this information by completing Form DCS and checking the box marked, "All attachments referenced in this document are included." For information concerning this procedure, see Section **2309.9(B)** above.

- If a transfer or other document pertaining to copyright indicates that an exhibit, schedule, appendix, addendum, or other attachment has been made a part of the document or has been attached thereto and if the remitter submits the document for recordation without the attachment, the recordation specialist may record the document if the remitter completes Form DCS and checks the box containing the phrase "One or more attachments referenced in this document is missing." For information concerning this procedure, see Section **2309.9(A)** above.

- The Office may record a photocopy or other reproduction of a signed document if the remitter submits a **sworn certification** stating that the reproduction is a true copy of the original. The remitter may provide this statement by submitting a copy of Form DCS that has been signed by one of the parties to the document or an authorized representative of that party. For information concerning this procedure, see Section **2309.10(C)(2)** above.

- When the remitter submits a document together with Form DCS, the form becomes part of the public record for that submission. If the Office subsequently records the document, the Office will return the original document to the remitter along with a certificate of recordation and a copy of the form. In this respect, Form DCS serves as a summary of the newly created record and improves recordkeeping and communication between the Office and the remitter.

NOTE: A document submitted with Form DCS will be processed in the same manner as a document submitted without a cover sheet. As discussed in Section **2306.2**, recordation specialists will index the document by transcribing information from the document itself or the electronic title list for that document (if any) but will not transcribe any information from Form DCS. Likewise, documents submitted with or without a form will not be processed on an expedited basis unless the remitter requests **special handling**. For a discussion of this procedure, see Section **2307**.

See generally **Changes to Recordation Practices, 79 Fed. Reg. 41,470, 41,471 (July 16, 2014)**.

2309.12(B) Form DCS Distinguished from an Instrument or Conveyance That Transfers the Copyright from One Party to Another

Form DCS is distinct from a legal instrument, conveyance, or other document that **transfers** copyright ownership from one party to another. A document cover sheet does not convey any rights in the copyright; it is merely a form that may be used to facilitate the recordation of a transfer of ownership or other document pertaining to copyright.

2309.12(C) Completing Form DCS

This Section provides guidance for completing Form DCS. Remitters may obtain copies of this **form** from the Office's website or by contacting the Public Information Office at the address specified in **Chapter 200**, Section 204.1(B)(3).

NOTE: Form DCS should only be used if the remitter intends to record a **transfer** of copyright ownership or other document pertaining to copyright. It should not be used if the remitter intends to record a notice of termination, an interim designation of agent for an online service provider, statements identifying anonymous or pseudonymous authors, statements concerning the death of an author, a document pertaining to shareware, or visual arts registry statements. Likewise, it should not be used to file documents with the Licensing Division.

2309.12(C)(1) Spaces 1 and 2: First Party Name Given in the Document / First Title Given in the Document

In space 1 of Form DCS, the remitter should provide the name of the first party listed in the document. In space 2, the remitter should provide the first title listed in the document.

The Office may use this information to connect the form with the document in the event they are separated from each other. However, the recordation specialist will not use the information in spaces 1 or 2 when he or she creates the **online public record** for the document. When indexing a document, the specialist may include the parties and titles listed in the document itself, in the attachments to the document, or in the electronic title list for that document (if any), but as discussed in Section **2306.2**, the specialist will not include parties or titles listed on Form DCS.

2309.12(C)(2) Space 3: Total Number of Titles in the Document

In space 3 of Form DCS the remitter should provide the total number of titles listed in the document.

As discussed in Section **2309.11(B)**, the fee for recording a document is based, in part, on the number of titles listed therein (if any). The recordation specialist may use the information provided in space 3 to determine whether the correct fee has been paid. For guidance in counting the number of titles listed in a document, see Sections **2309.11(B)(1)** through **2309.11(B)(5)**.

2309.12(C)(3) Space 4: Return Receipt Requested

Upon request the Office will issue a return receipt acknowledging that a transfer or other document pertaining to copyright has been received in the Office. To request a receipt, the remitter must check the box on space 4 of Form DCS and must submit the document to the Office together with two copies of the form and a self-addressed envelope bearing an appropriate amount of postage. For more information concerning this option, see Section **2309.14**.

2309.12(C)(4) Space 5: Electronic Title List Enclosed

The remitter should check the box in space 5 of Form DCS if the remitter intends to submit the document together with an electronic title list. For information concerning this option, see Section **2309.13**.

2309.12(C)(5) Spaces 6 and 7: Amount of Fee Calculated / Fee Enclosed

A **transfer** or other document pertaining to copyright should be submitted together with the appropriate filing fee. The remitter should specify the amount of the **filing fee** in space 6 of Form DCS, and in space 7 the remitter should specify whether the fee will be paid by check, by money order, or with a **deposit account**. If the remitter intends to use a deposit account, the remitter should provide the account number and the name of the account holder.

As discussed in Section **2309.11(B)**, the fee for recording a document is based, in part, on the number of titles listed therein (if any). For additional information concerning the methods for paying the filing fee, see **Chapter 1400**, Sections 1403.3 through 1403.5.

2309.12(C)(6) Space 8: Completeness of Document

As discussed in Section **2309.9**, a **transfer** or other document pertaining to copyright may be recorded, provided that the document is complete by its own terms. If the document appears to be incomplete, the recordation specialist may communicate with the remitter, which may delay the examination of the document.

For example, the specialist may communicate with the remitter if the document appears to be an exhibit, schedule, appendix, addendum, or other attachment to another document. However, if the remitter checks the box in space 8 of Form DCS marked "All attachments referenced in this document are included," the specialist will record the document without communicating with the remitter. For information concerning this procedure, see Section **2309.9(B)** above.

Likewise, if the document indicates that an exhibit, schedule, appendix, addendum, or other attachment has been made a part of the document or is attached thereto, the specialist may communicate with the remitter if the document is submitted without the attachments. However, the specialist will record the document without communicating if the remitter checks the box in space 8 of Form DCS attesting to the following statement: "One or more attachments referenced in this document is missing but (a) the attachment is completely unavailable for recordation; (b) the attachment is not essential to the identification of the subject matter of the document; and (c) it would be impossible or wholly impracticable to have the parties to the document sign or

initial a deletion of the reference to the attachment." For information concerning this procedure, see Section 2309.9(A) above.

2309.12(C)(7) Space 9: Certification of Photocopied Documents

If the remitter intends to submit a photocopy or other reproduction of a signed document, the remitter must submit a **sworn certification** stating that the reproduction is a true copy of the original.

As discussed in Section 2309.10(C)(2), this certification may be provided by completing space 9 of Form DCS. The certification must be signed by one of the parties to the document or an authorized representative of that party. The date provided in space 9 should be the date that the certification was signed (rather than the date that the original document was signed).

NOTE: If the remitter intends to submit a photocopy or other reproduction of a document that has been validated by or is on file with a public office, the reproduction must be submitted together with an **official certification**. The certification that appears on space 9 of Form DCS cannot be used for this purpose. For information concerning official certifications, see Section 2309.10(C)(4).

2309.12(C)(8) Space 10: Mailing Address and Contact Information

As discussed in Section 2305, when a document is recorded with the U.S. Copyright Office, the Office will scan the document and return the original to the remitter along with the certificate of recordation.

When completing Form DCS, the remitter should provide the name of the person or organization to whom the document and the certificate should be sent, along with the street address, city, state, and zip code for that person and/or organization. In addition, the remitter should provide the email address, phone number, and/or fax number for the person or persons who should be contacted if the recordation specialist has questions or concerns regarding the submission.

2309.12(D) Submitting the Document and Form DCS

The remitter should prepare two copies of Form DCS for each transfer of ownership or other document pertaining to copyright that will be submitted for recordation. One copy will be used to image the form for the public record while the other copy may be used to create a return receipt for the remitter.

The remitter should place the document, the filing fee, and the forms in the same envelope or package and should mail them to the address specified in Section 2309.6. If the remitter intends to submit an electronic title list, then as discussed in Section 2309.13(B), the remitter should include that item in the envelope or package that contains the rest of the submission. If the remitter would like to receive a return receipt confirming that the Office received the submission, then as discussed in Section 2309.14, the remitter should check box 4 of Form DCS and should include a self-addressed postage-paid envelope with the submission.

2309.13 Electronic Title Lists

When recording a **transfer** of copyright ownership or other document pertaining to copyright, the remitter may submit the document together with an electronic title list if the document contains 100 titles or more. The procedures for preparing and submitting an electronic title list are discussed in Sections **2309.13(A)**and **2309.13(B)** below.

Submitting an electronic title list is optional, but it does provide certain benefits. At the present time, documents must be submitted for recordation in paper form. When the recordation specialist indexes a document, the specialist manually transcribes certain information from the document, including the titles and registration numbers for the works listed therein. Once this information has been converted into an electronic format, the specialist prepares an online public record for the document. Transcribing the titles and registration numbers listed in a document is a labor-intensive and time-consuming process, since many documents contain hundreds or even thousands of titles and registration numbers.

To facilitate this process, the remitter may submit a document together with an electronic file containing a list of the titles and registration numbers specified in the document. This reduces the amount of time and labor needed to index the document, the potential for inaccuracies in the public record, and the amount of time needed to record the document and issue a certificate of recordation.

Submitting an electronic title list is not mandatory. However, this option may only be used if the document contains 100 titles or more (including titles listed in any exhibit, schedule, appendix, addendum, or other attachment to the document).

If the remitter submits a document together with an electronic title list, the recordation specialist will index the titles and registration numbers specified in the document using the information provided in the electronic title list. In addition, the specialist will add a note to the online public record indicating that the document was indexed using an electronic title list.

The specialist may "spot check" some of the entries in the electronic title list and may communicate with the remitter if he or she discovers discrepancies. However, the remitter will bear the consequences (if any) if there are inaccuracies in the list or discrepancies between the information contained in the list and the information contained in the actual document. Therefore, remitters are strongly encouraged to confirm that the electronic title list fully and accurately reflects the information contained in the document before it is submitted to the Office.

For information concerning the procedure for correcting an error or omission in an electronic title list, see Section **2309.13(C)**.

See generally **Changes to Recordation Practices, 79 Fed. Reg. 55,633, 55,634-35 (Sept. 17, 2014)**; **Changes to Recordation Practices, 79 Fed. Reg. 41,470, 41,471-72 (July 16, 2014)**.

2309.13(A) Preparing the Electronic Title List

To prepare an electronic title list, the remitter should create a table that contains a complete list of all the titles listed in the document. The title of each work should be provided in a separate row of the table, and the titles should be listed in the same order that they appear in the docu-

ment. If the document lists the author of a particular work and/or the registration number for that work, the remitter should include that information in the table.

The table must be submitted in Excel (.xls) format or an equivalent electronic format that has been approved by the Office, and should contain only letters, numbers, or other printable characters that appear in the ASCII 128 character set.

The remitter should divide the table into four columns with headings from left to right entitled "Article," "Title," "Authorship Information," and "Registration Number(s)." The remitter should complete each column using the procedures described in Sections **2309.13(A)(1)** through **2309.13(A)(4)**.

The remitter should include all four columns in the table, even if the remitter does not intend to enter information in one or more of those columns. For example, the remitter should include a column entitled "Authorship Information" even if the document does not identify the author of each work and should include a column entitled "Registration Number(s)" even if the works have not been registered with the Office.

The remitter should not provide the title, author, or registration number for a particular work unless that information is listed in the actual document or the attachments thereto. For example, if the document merely lists the title for a particular work, the remitter should include that information in the "Title" column but should not include the name of the author or the registration number in the columns titled "Authorship Information" and "Registration Number(s)." Instead, those columns should be left blank.

If the remitter fails to comply with these requirements the Office may communicate with the remitter or may refuse to accept the electronic title list. This will delay the examination of the document, which in turn, will delay the issuance of the certificate of recordation.

2309.13(A)(1) The "Article" Column

If any of the titles in the document begin with an article, such as "a," "an," "the," or any other article listed below, the remitter should separate that article from the rest of the title and should place it in the first column under the heading entitled "Article." For example, if the title of the work is "*A Suitable Boy*," the remitter should place the word "*A*" in the first column. Similarly, if the title of the work is "*The Moor's Last Sigh*," the remitter should place the word "*The*" in the first column. Separating these articles from the rest of the title will assist the Office in sorting the records within its database.

In all cases, the following articles should be included in the first column of the table:

- *English-language titles*: A, An, The.
- *Spanish-language titles*: Un, Una, El, La, Lo, Las, Los.
- *French-language titles*: L' (as in *L'Innommable*), Le, La, Les, Un, Une.
- *German-language titles:* Der, Die, Das, Einer, Eine, Ein.

If a particular title does not begin with an article, or if the title begins with an article that is not listed above, or if the title is written in a language other than English, Spanish, French, or German, the remitter should include the first column in the table but the "Article" column for that particular work should be left blank. For instance, if the document contains the title "*Il Postino*," the remitter should include the "Article" column in the table, but the remitter should not include the article "*Il*" in that portion of the table.

2309.13(A)(2) The "Title" Column

The title of each work listed in the document should be included in the second column of the table. However, if a title begins with any of the articles listed in Section **2309.13(A)(1)**, the remitter should include that article in the first column entitled "Article" rather than the second column entitled "Title." For example, if the title of the work is "*A New Hope*" or "*The Empire Strikes Back*," the remitter should put the words "*A*" and "*The*" in the first column and should put "*New Hope*" and "*Empire Strikes Back*" in the second column. By contrast, if the title of the work is "*Return of the Jedi*," the remitter should leave the first column blank and should put the entire title in the second column.

2309.13(A)(3) The "Authorship Information" Column

In the third column the remitter should provide the names of the authors who are listed in the document. In each case, the entry should include the word "By" followed by the name of the author or co-authors of the work, as in "By Steven Sondheim" or "By Benny Andersson, Tim Rice, and **Björn Ulvaeus**."

If an author is identified in the document with a designation such as "performer known as," "also known as," or the like, the remitter should include that designation in the "Authorship Information" column, as in "By Gerald Sheldon Herman, also known as Jerry Herman."

If the document contains an abbreviated designation – such as a.k.a. (also known as), d/b/a (doing business as), or the like – the remitter should include that abbreviation in the third column without punctuation between the letters, as in "By Ella Yelich-O'Connor pka Lorde," rather than "By Ella Yelich-O'Connor p/k/a Lorde."

NOTE: As discussed in Section **2309.13(A)**, the remitter should include the "Authorship Information" column in the table, even if the document does not identify the authors of the works listed therein.

2309.13(A)(4) The "Registration Number(s)" Column

In the fourth column the remitter should include any copyright registration numbers that are listed in the document. If there are multiple registration numbers for a particular work, the remitter should place a comma between each number.

Regardless of how they appear in the document, the remitter should use the following format when providing registration numbers in an electronic title list:

- Each registration number should begin with a prefix. The prefix should contain one, two, or three letters, such as E, EU, SR, or VAU. The prefix should be presented in capital letters (as in "PAU" rather than "PAu" or "pau") and there should be no spaces, hyphens, or other punctuation between the letters.

- Each registration number should contain twelve characters, including the prefix and the numbers that follow. If a registration number contains less than twelve characters, the remitter should insert zeroes between the prefix and the numeric portion of that registration number. For example, if the document contains registration number "SR-320-918," that number should be transcribed in the fourth column as "SR0000320918." If the document contains registration number "VAu-598-764," that number should be transcribed in the fourth column as "VAU000598764." For additional examples that illustrate the proper format for transcribing registration numbers, see Section **2306.4**.

  NOTE: As discussed in Section **2309.13(A)**, the remitter should include the "Registration Number(s)" column in the table, even if the document does not identify the registration numbers for the works listed therein.

2309.13(B) Submitting the Electronic Title List

The table should be saved on a compact disc, flash drive, or other digital storage medium approved by the Office, and should be clearly labeled with the following information:

- The name of the remitter.

- The name of the first party listed in the document.

- The first title listed in the document.

- The number of titles listed in the document.

- The date the document will be mailed or delivered to the Office.

The remitter should place the document, the storage device, the cover letter, and the appropriate **filing fee** in the same envelope or package and should mail them to the address specified in Section **2309.6**. To request a return receipt acknowledging the receipt of these items, the remitter should use the procedure described in Section **2309.14**.

2309.13(C) Correcting an Error or Omission in an Electronic Title List

If an electronic title list contains errors or omissions, corresponding errors or omissions may appear in the **online public record** for that document. To correct these errors or omissions the remitter may submit a corrected version of the electronic title list. A corrected title list may be submitted at any time after the Office issued a certificate of recordation and created an online public record for the document.

Specifically, the party that submitted the document should prepare a table using the procedures described in Section **2309.13(A)**. The table must be prepared in Excel (.xls) format or an equivalent electronic format that has been approved by the Office. The table should contain a com-

plete list of all the titles listed in the recorded document, and each row that contains corrected information should be identified with colored highlighting. The header for the table should contain the phrase "CORRECTED TITLE LIST," the volume and document number that the Office assigned to the recorded document, as well as the name of the computer file containing the corrected title list.

The table should be saved on a compact disc, flash drive, or other digital storage medium approved by the Office. The file name for the table should include the volume number and document number that the Office assigned to the recorded document. The storage device should be clearly labeled with the following information:

- The name of the remitter that submitted the document for recordation.
- The name of the first party listed in the recorded document.
- The first title listed in the recorded document.
- The number of titles listed in the recorded document.
- The date the document was mailed or delivered to the Office for recordation.

In addition, the remitter should prepare a cover letter that contains the following information:

- The volume number and document number that the Office assigned to the recorded document.
- The name of the remitter that submitted the document for recordation.
- The name of the first party listed in the recorded document.
- The first title listed in the recorded document.

The remitter should place the storage medium, the cover letter, and the appropriate **filing fee** in the same envelope or package and should mail them to the address specified in Section **2309.6**. To request a return receipt acknowledging the receipt of these items, the remitter should use the procedure described in Section **2309.14**.

The current filing fee for submitting a corrected title list is set forth in the U.S. Copyright Office's **fee schedule** under the heading "Correction of online Public Catalog data due to erroneous electronic title submission (per title)." The amount of the fee is based on the number of titles included in the corrected list.

A recordation specialist will review the submission, and if appropriate, will correct the errors or omissions that appear in the online public record. In addition, the specialist will add a note indicating that the record has been corrected and the date that the corrections were made.

See generally **Fees for Submitting Corrected Electronic Title Appendices, 79 Fed. Reg. 68,622, 68,622 (Nov. 18, 2014)**; **Changes to Recordation Practices, 79 Fed. Reg. 55,633, 55,635 (Sept. 17, 2014)**.

2309.14 Return Receipts for Transfers of Ownership or Other Documents Pertaining to Copyright

When a **transfer** of ownership or other document pertaining to copyright is submitted for recordation it may be several months or more before the remitter receives word from the Office concerning the status of the submission.

Upon request the Office will provide a return receipt confirming that the Office received a document. To request a receipt, the remitter must check the box on space 4 of Form DCS, and must submit two copies of the form in the same envelope or package with the document, the filing fee, and a self-addressed envelope bearing the appropriate amount of postage. When the submission is received, the Office will attach a date-stamped receipt to one of the forms and will mail these items to the remitter in the self-addressed envelope.

NOTE: Form DCS should only be used if the remitter intends to record a transfer of ownership or other document pertaining to copyright. It should not be used if the remitter intends to record a notice of termination, an interim designation of agent for an online service provider, or any other type of document discussed in this Chapter. To request a return receipt for these types of documents the remitter should follow the procedures described in Sections **2310.6**, **2311**, **2312.2**, **2313.7**, or **2314.8**.

Requesting a return receipt is optional. A receipt indicates that the Office received the document described in the form on a particular date, but it does not establish that the document is eligible for recordation or guarantee that the Office will issue a certificate of recordation. Moreover, if the document is recorded, the date stamped on the receipt may or may not be the same as the date of recordation set forth in the certificate.

See generally **Changes to Recordation Practices, 79 Fed. Reg. 41,470, 41,472 (July 16, 2014)**.

2309.15 Date of Recordation for a Transfer or Other Document Pertaining to Copyright

When the Office records a **transfer** of ownership or other document pertaining to copyright, the Office assigns a **date of recordation** to the certificate of recordation. The date of recordation is the date when the Office receives a proper **filing fee** and a proper document regardless of when the recordation specialist examines and records the document. If the document and the filing fee are received on different dates, the date of recordation is based on the date of receipt for the last item that is received by the Office. Likewise, if the document is returned to the remitter for correction, the date of recordation is based on the date that the corrected document is received by the Office. **37 C.F.R. § 201.4(c)**, **(e)**.

Example:

- On July 1st, the remitter submits an assignment of copyright containing twelve titles, together with the correct filing fee for eleven titles. On November 1st the recordation specialist notifies the remitter that the correct filing fee has not been paid. On November 2nd, the remitter submits the appropriate filing fee for the other titles listed in the document. The document will be recorded with a date of recordation of November 2nd.

2310 Notices of Termination

The Copyright Act allows authors or their heirs, under certain circumstances, to terminate an agreement that transferred or licensed the author's copyright to a third party. These termination provisions are set forth in **Sections 203**, **304(c)**, and **304(d)** of the statute.

2310.1 How to Terminate a Grant

To terminate a grant, the author or the author's heirs must serve an advance written "notice of termination" on the grantee or the grantee's successor in title and must record a copy of that notice with the U.S. Copyright Office.

The notice of termination must specify the date that the termination goes into effect. The effective date must fall within a five-year termination period. The beginning and ending of this five-year period is based on a number of factors, such as whether the grant was executed before or after January 1, 1978.

The notice must be served and recorded before the effective date of termination. Specifically, the notice must be served on the grantee no less than two years and no more than ten years before the effective date, and the notice must be recorded with the Office before the effective date.

Failing to specify an effective date that falls within the five-year termination period, or failing to serve and record the notice in a timely manner is a fatal mistake. If the author or the author's heirs do not comply with these requirements the notice of termination will be invalid, "the agreement will continue according to its own terms," and "all rights covered by an existing grant will continue unchanged…." **H.R. Rep. No. 94-1476, at 126, 128 (1976)**, *reprinted in* 1976 U.S.C.C.A.N. 5659, 5742, 5744.

The types of grants that may be eligible for termination are discussed in Section **2310.2**. The specific procedures for terminating a grant are discussed in Sections **2310.3** through **2310.5**, including who may terminate a grant, when a grant may be terminated, what should be included in the notice of termination, and how the notice should be served. The procedure for recording a notice of termination with the U.S. Copyright Office is discussed in Sections **2310.6** and **2310.7**.

2310.2 What Types of Grants May Be Terminated?

Sections 203, **304(c)**, and **304(d)** allow authors or their heirs to terminate an exclusive or nonexclusive **transfer** or **license** of the copyright in the author's work or an exclusive or nonexclusive transfer or license of any right under a copyright. This includes assignments, mortgages, exclusive licenses, or any other conveyances, alienations, or hypothecations of a copyright or any of the **exclusive rights** comprised in a copyright. However, the termination provisions do not apply to grants made by will, grants involving a **work made for hire**, or grants involving rights arising under any other federal, state, or foreign law.

Determining whether a particular grant is subject to termination under **Sections 203**, **304(c)**, or **304(d)** depends on a number of factors, including the date the grant was executed, the person(s) who executed the grant, and in some cases, the date that copyright was secured in the work.

- **Section 203** only applies to grants executed by the author on or after January 1, 1978, regardless of whether the copyright in the work was secured before or after that date.

- **Section 304(c)** only applies to grants executed before January 1, 1978, and only if the copyright in the work was secured before January 1, 1978.

- **Section 304(d)** only applies to grants executed before January 1, 1978, and only if the copyright in the work was secured between January 1, 1923 and October 26, 1939.

The Office has developed a series of questionnaires that may be useful in determining whether a particular grant may be eligible for termination under **Sections 203**, **304(c)**, or **304(d)**. These questionnaires are set forth in Section **2310.13**.

The specific procedures for terminating a grant under **Section 203** are discussed in Section **2310.3**. The specific procedures for terminating a grant under **Sections 304(c)** and **304(d)** are discussed in Sections **2310.4** and **2310.5**.

17 U.S.C. §§ 203, 304(c), 304(d).

2310.3 Terminating a Grant Under Section 203

2310.3(A) What Types of Grants May Be Terminated Under Section 203?

A grant may be terminated under **Section 203**, but only if the grant was executed by the author on or after January 1, 1978.

As the legislative history explains, Section 203 only applies "to inter vivos transfers or licenses executed by the author." **H.R. Rep. No. 94-1476, at 125 (1976)**, *reprinted in* 1976 U.S.C.C.A.N. at 5740; **S. Rep. No. 94-473, at 108 (1975)**. Grants executed on or after January 1, 1978 by the author's heirs are not subject to termination under the Copyright Act. Likewise, Section 203 does not apply to grants made by will, grants involving a **work made for hire**, or grants involving rights arising under any other federal, state, or foreign law.

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

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

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

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

If the grant was executed by two or more authors of a joint work, the grant may be terminated by "a majority of the authors who executed" the grant. See **17 U.S.C. § 203(a)(1)**.

If a joint author is deceased, that person's termination interest may be exercised by the heirs holding a majority share of that interest. In this situation, the grant may be terminated by a majority of the joint authors and/or the heirs holding the majority share of the authors' termination interests.

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

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

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

- If the grant conveyed the right to publish the work for the first time, the termination period begins either thirty-five years after the date that the work was first published under the grant, or forty years after the date that the grant was executed (whichever is earlier).
- If the grant did not convey the right to publish the work for the first time, the termination period begins thirty-five years after the date that the grant was executed.

17 U.S.C. § 203(a)(3). The method for calculating the beginning and ending of the termination period is discussed in more detail in Sections **2310.3(C)(1)** and **2310.3(C)(2)** below.

In all cases, the author or the author's heirs (if the author is deceased) must comply with the following requirements in order to terminate a grant under **Section 203**:

- Select an effective date of termination that falls within the five-year termination period;
- Serve a notice of termination on the grantee or the grantee's successor in title not less than two years and not more than ten years before the effective date of termination; and
- Record the notice with the U.S. Copyright Office before the effective date of termination.

17 U.S.C. § 203(a)(4).

If the terminating party selects an effective date that does not fall within the five-year termination period, fails to serve the notice in a timely manner, or fails to record the notice with the Office before the effective date, the termination will be invalid.

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

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

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

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

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

Example:

- On March 10, 1980, the author sent his publisher an outline for an unpublished novel titled, *The Revered and the Reviled*. On April 10, 1980 the author and the publisher executed a book publication contract. The author completed the novel several years later, and the publisher eventually published the work on August 23, 1987.

  For purposes of § **203(a)(3)**, the contract conveyed the right of publication, because the novel was first published when the publisher distributed copies of this work to the public on August 23, 1987. Because the novel was first published more than five years after the author executed the contract, the beginning of the termination period is based on the date of execution, rather than the date of publication. Specifically, the five-year termination period begins on April 10, 2020 (forty years from the execution of the contract), rather than April 10, 2015 (thirty-five years from the execution of the contract) or August 23, 2022 (thirty-five years from the date that the work was first published). The termination period ends on April 10, 2025. If the author decides to make the termination effective on January 1, 2024, the notice may be served as early as January 1, 2014, and it must be served no later than January 1, 2022. The notice must be recorded with the U.S. Copyright Office, and the date of recordation

assigned to the notice must be no later than December 31, 2023. *See* **S. Rep. No. 94-473, at 110 (1975)**. (For information concerning the requirements for establishing a date of recordation, see Section **2310.10**)

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

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

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

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

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

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

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

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

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

Examples:

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

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

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

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

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

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

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

2310.3(C)(3) Gap Grants

What if the author signed a written agreement or entered into an oral agreement before January 1, 1978 involving a work that was created on or after that date? These types of grants are known as "gap grants."

As discussed above, **Section 203** applies to grants executed by the author on or after January 1, 1978. The Office has concluded that gap grants may be terminated under this provision, "because as a matter of copyright law, a transfer that predates the existence of the copyrighted work cannot be effective (and therefore cannot be 'executed') until the work of authorship (and the copyright) come into existence." **Gap in Termination Provisions, 76 Fed. Reg. 32,316, 32,316 (June 6, 2011)**.

In cases where the author agreed, prior to January 1, 1978, to **transfer** or **license** the copyright in a work that was created on or after January 1, 1978, the Office may record a notice of termination under **Section 203** if the notice states that the date of execution for the grant is the date that the work was created. **37 C.F.R. § 201.10(f)(5)**.

2310.3(D) How to Prepare and Serve a Notice of Termination Under Section 203

The regulatory requirements for terminating a grant under **Section 203** are discussed in Sections **2310.3(D)(1)** through **2310.3(D)(3)**.

2310.3(D)(1) Content Requirements

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

- A statement that the grant is being terminated under **Section 203**.
- The name of each grantee whose rights are being terminated or the name of the grantee's successor in title.
- A statement identifying each address at which the notice is being served.
- The date of execution of the grant.
- If the grant conveyed the right to publish the work for the first time, the date of publication of the work under the grant.
- For each work covered by the notice of termination, the title of the work and the name of the author — or in the case of a **joint work**, the authors — who executed the grant, and if possible and practicable, the original copyright registration number.
- A brief statement reasonably identifying the grant to which the notice of termination applies.
- The effective date of termination.

If an author is deceased and if the right to terminate the grant under **Section 203** is being exercised by his or her heirs, the notice also should include the following information:

- The names of the following individuals and a statement identifying his or her relationship to the author:
  - The author's surviving widow or widower;
  - All of the author's surviving children; and
  - If any of the author's children are deceased, all of the surviving children of any such deceased child of that author.
- A specific indication of the person or persons executing the notice who constitute more than one-half of that author's termination interest.

In the alternative, the notice may include a statement containing as much information concerning the author's heirs "as is currently available to the person or persons signing the notice, with a brief explanation of the reasons why full information is or may be lacking," and "[a] statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under 17 U.S.C. [§] 203, or by their duly authorized agents." **37 C.F.R. § 201.10(b)(2)(vii)(A)-(B)**.

NOTE: The use of the word "currently" is intended to avoid any implication that the terminating party is required to conduct an investigation in order to comply with this portion of the regulations.

In all cases, the terminating party or parties must provide "a complete and unambiguous statement of facts in the notice itself, without incorporation by reference of information in other documents or records." **37 C.F.R. § 201.10(b)(3)**.

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

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

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

2310.3(D)(1)(b) Naming the Authors of a Joint Work

If the grant was executed by two or more authors of a **joint work**, then as discussed in Section **2310.3(B)**, the grant may be terminated by a majority of the joint authors who executed the grant or by a majority of his or her heirs if joint author is deceased. For these reasons, the notice of termination should identify all of the joint authors who executed the grant.

2310.3(D)(1)(c) A Copy of the Grant Is Not Required

In most cases, the party issuing the notice of termination may not have a copy of the grant that is being terminated or may not have access to a copy. For these reasons, the terminating party does not need to identify the location of the grant, offer to produce a copy of the grant, or attach a copy of the grant to the notice.

2310.3(D)(1)(d) Providing a Registration Number

Parties are encouraged to provide a registration number for each work listed in the notice of termination (if any), because this information may be useful in identifying the work to which the notice applies. However, this information needs to be provided only if it is possible and practicable.

2310.3(D)(2) Signature Requirements

The notice of termination must be signed by each author who is terminating the grant or by his or her duly **authorized agent**.

If an author is deceased the notice must be signed by the required number and proportion of the owners of that author's termination interest or by their duly authorized agents. In addition, the notice shall contain a brief statement specifying each person's relationship to the deceased author, such as "widow," "widower," "child," or "grandchild."

If the notice is signed by a duly authorized agent, the notice shall clearly identify the person or persons that the agent represents.

In all cases, the notice should contain a handwritten signature and a typewritten or legibly hand printed statement containing the full name and address of each party or agent who signed the notice.

37 C.F.R. § 201.10(c)(3)-(5).

2310.3(D)(3) Service Requirements

This Section discusses the requirements for serving a notice of termination under **Section 203**. The same requirements also apply to notices issued under Sections **304(c)** or **304(d)**.

A notice of termination must be served upon each grantee whose rights are being terminated, or the grantee's successor in title. The notice must be served by personal service or by first class mail. Service by registered mail or certified mail is not required.

The notice must be sent to the address that, after a reasonable investigation, is found to be the last known address of the grantee or successor in title.

The service requirements set forth in the statute will be satisfied if the terminating party takes the following steps:

- The person or persons executing the notice conducts a reasonable investigation before the notice is served as to the current ownership of the rights being terminated; and
- If there is no reason to believe that such rights have been **transferred** by the grantee to a successor in title, the notice is served on the grantee; or
- If there is reason to believe that such rights have been transferred by the grantee to a particular successor in title, the notice is served on that successor in title.

In this context, a "reasonable investigation" includes, but is not limited to the following:

- A search of the records in the U.S. Copyright Office.
- In the case of grant involving a musical composition where the performing rights are **licensed** by a performing rights society, a reasonable investigation also includes a report from that society identifying the person or persons claiming current ownership of the rights being terminated.

37 C.F.R. § 201.10(d)(1)-(3)

2310.4 Terminating a Grant Under Section 304(c)

2310.4(A) What Types of Grants May Be Terminated Under Section 304(c)?

Under the previous copyright law, the copyright in a work could be secured by publishing the work with a proper **copyright notice** or by registering the work with the U.S. Copyright Office. The term of the copyright was divided into two consecutive terms: an initial term of twenty-eight years and a **renewal** term that lasted for another twenty-eight years. The initial term began when the copyright was originally secured through registration or **publication** with notice. The renewal term began twenty-eight years thereafter if the copyright owner filed a renewal application with the Office.

When Congress enacted the current copyright law, it maintained the renewal system for works that were protected by copyright as of January 1, 1978. In addition, Congress extended the length of the copyright term to seventy-five years, consisting of an initial term of twenty-eight years and a renewal term of forty-seven years. The nineteen additional years that Congress added to the renewal term are known as the "extended renewal term."

At the same time, Congress created a procedure that allows an author or the author's heirs to terminate a grant that **transferred** or **licensed** the copyright to a third party and to reclaim the copyright for the duration of the extended renewal term. This procedure is set forth under **Section 304(c)** of the Copyright Act. *See generally* **H.R. Rep. No. 94-1476, at 140-42 (1976)**, *reprinted in* 1976 U.S.C.C.A.N. at 5756-58; **S. Rep. No. 94-473, at 123 (1975)**; **Notice of Termination, 66 Fed. Reg. 22,139, 22,139 (May 3, 2001)**.

Section 304(c) of the Copyright Act may be used to terminate a grant executed before January 1, 1978 involving the copyright in the renewal term or any right under the renewal term, provided that the grant was executed by one or more of the following parties:

- The author of the work.
- The author's widow, widower, or children.
- The author's executors.
- The author's next of kin.

See **17 U.S.C. § 304(a)(1)(C), (c).**

Grants executed on or after January 1, 1978 are not subject to termination under **Section 304(c)**. Likewise, this provision does not apply to grants made by will, grants involving a **work made for hire**, or grants involving rights arising under any other federal, state, or foreign law.

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

2310.4(B)(1) Grants Executed by the Author

A grant executed by the author of a work may be terminated by that individual under **Section 304(c)**.

If the grant was executed by two or more authors of a **joint work**, the grant may be terminated by any of the joint authors who executed the grant. "There is no requirement of unanimity, majority interest, or the like, among granting co-authors." **Termination of Transfers and Licenses Covering the Extended Renewal Term, 42 Fed. Reg. 45,916, 45,917 (Sept. 13, 1977)**. When a particular author issues a notice of termination under **Section 304(c)**, the termination only applies to that author's share of the ownership of the renewal copyright.

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

If all of the author's heirs are deceased and if the author never exercised his or her right to terminate, the grant may be terminated under **Section 304(c)(2)(D)** by the author's executor, administrator, personal representative, or trustee.

2310.4(B)(2) Grants Executed by Persons Other Than the Author

As discussed above, a grant executed by one or more of the following persons may be terminated under **Section 304(c)**:

- The author's widow, widower, or children.
- The author's executors.
- The author's next of kin.

If the grant was executed by one person, the right to terminate must be exercised by that individual.

If the grant was executed by two or more persons, the grant must be unanimously terminated by all of the individuals who executed the grant. If one or more of those persons is deceased, the grant must be unanimously terminated by the other persons who are alive as of the date that the termination is made.

2310.4(C) When May a Grant Be Terminated Under Section 304(c)?

A grant may be terminated under **Section 304(c)** during a five-year termination period. The beginning and the end of this period are based on the month, day, and year that copyright was originally secured in the work. Specifically, the termination period begins fifty-six years after the date that the work was originally secured or January 1, 1978, whichever is later. The termination period ends sixty-one years after the original registration or **publication** date.

NOTE: The beginning and end of the termination period is not based on the beginning or end of the calendar year, unless the work happened to be registered or published on January 1st or December 31st.

To terminate a **transfer** or **license** under **Section 304(c)**, the author or the author's heirs (if the author is deceased) must comply with the following requirements:

- Select an effective date of termination that falls within the five-year termination period (*e.g.*, at least fifty-six years after the date that the work was originally registered or published with a proper **copyright notice** (whichever is earlier), but no more than sixty-one years after the original date of registration or publication);
- Serve a notice of termination on the grantee or the grantee's successor in title not less than two years and not more than ten years before the effective date of termination; and
- Record the notice with the U.S. Copyright Office before the effective date of termination.

If the author or the author's heirs (if the author is deceased) select an effective date that does not fall within the five-year termination period, fail to serve the notice in a timely manner, or fail to record the notice before the effective date, the termination will be invalid.

The Office has developed a **table** that may be useful in identifying the beginning and ending of the termination period for a grant that is eligible for termination under **Section 304(c)**. This **table** may also be useful in selecting an effective date of termination and for calculating the relevant deadlines for serving a notice of termination on the grantee and for recording the notice with the Office.

2310.4(D) How to Prepare and Serve a Notice of Termination Under Section 304(c)

The regulatory requirements for terminating a grant under **Section 304(c)** are discussed in Sections **2310.4(D)(1)** through **2310.4(D)(3)**.

2310.4(D)(1) Content Requirements

To terminate a grant under **Section 304(c)**, the notice of termination must include a clear identification of the information listed below. The same requirements also apply to notices issued under **Section 304(d)**:

- A statement that the grant is being terminated under **Sections 304(c)** or **304(d)**.
- The name of each grantee whose rights are being terminated or the name of the grantee's successor in title.
- A statement identifying each address at which the notice is being served.
- For each work covered by the notice of termination, the title of the work, the name of at least one author, the date copyright was originally secured, and if possible and practicable, the original copyright registration number.
- A brief statement reasonably identifying the grant to which the notice of termination applies.
- The effective date of termination.

If the grant was executed by a person or persons other than the author, the notice also should include a list of the surviving person or persons who executed the grant.

If an author is deceased and if the right to terminate the grant under is being exercised by his or her heirs, the notice also should include the following information:

- The names of the following individuals and a statement identifying his or her relationship to the author:
  - The author's surviving widow or widower;
  - All of the author's surviving children; and
  - If any of the author's children are deceased, all of the surviving children of any such deceased child of that author.
- A specific indication of the person or persons executing the notice who constitute more than one-half of that author's termination interest.

In the alternative, the notice may include a statement containing as much information concerning the author's heirs "as is currently available to the person or persons signing the notice, with a brief explanation of the reasons why full information is or may be lacking," and "[a] statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under Section 304 of title 17, U.S.C., or by their duly authorized agents." **37 C.F.R. § 201.10(b)(1)(vii)(A)-(B)**.

NOTE: The "[u]se of the word 'currently,' is intended to avoid any implication that this paragraph of the regulation itself requires that terminating parties first conduct an investigation." **Part 201-General Provisions Termination of Transfers and Licenses Covering Extended Renewal Term, 42 Fed. Reg. 45,916, 45,918 (Sept. 13, 1977)**.

In all cases, the terminating party or parties must provide "a complete and unambiguous statement of facts in the notice itself, without incorporation by reference of information from other documents or records." **37 C.F.R. § 201.10(b)(3)**.

2310.4(D)(1)(a) A Copy of the Grant Is Not Required

In most cases, the party issuing the notice of termination will not have a copy of the grant that is being terminated or will not have access to a copy. For these reasons, the terminating party does not need to state the location of the grant document, include an offer to produce it, or attach a copy of the document to the notice.

2310.4(D)(1)(b) Date of Execution Not Required

The notice of termination must identify the date that the copyright was secured, but it does not need to identify the date of the grant.

2310.4(D)(1)(c) Naming the Author and His or Her Heirs

Parties are encouraged to provide the name of at least one author of the work(s) listed in the notice of termination, because this information may be useful in identifying the work(s) to which the notice applies.

As discussed in Section **2310.4(B)(1)**, a grant may be terminated under **Section 304** by any of the granting authors, or that author's surviving heirs, to the extent of that author's share of the copyright. For this reason, there is no need to identify all the authors of the work or to demonstrate unanimity, majority interest, or the like, among granting co-authors.

Likewise, when issuing a notice of termination on behalf of an author who is deceased, there is no need to provide information as to other, non-terminating, surviving authors or the surviving heirs of other deceased authors.

2310.4(D)(1)(d) Providing a Registration Number

Providing a registration number may be useful in identifying the work to which the notice of termination applies. However, this information is not required.

2310.4(D)(2) Signature Requirements

This Section discusses the signature requirements for terminating a grant under **Section 304(c)**. The same requirements also apply to a notice of termination issued under **Section 304(d)**.

If the grant was executed by one or more of the authors of the work, the notice of termination for any one author's share must be signed by that author or by his or her duly **authorized agent**.

If the author is deceased the notice must be signed by the required number and proportion of the heirs who own that author's termination interest or by their duly authorized agents. In addition,

the notice shall contain a brief statement specifying each person's relationship to the deceased author, such as "widow," "widower," "child," or "grandchild." *See* **Termination of Transfers and Licenses Covering Extended Renewal Term, 42 Fed. Reg. 45,916, 45,919 (Sept. 13, 1977)**.

If the grant was executed by the author's widow, widower, children, executors, or next of kin, the notice must be signed by all of the surviving person or persons who executed the grant or by their duly authorized agents.

If the notice is signed by a duly authorized agent, the notice shall clearly identify the person or persons whom the agent represents.

In all cases, the notice should contain a handwritten signature and a typewritten or legibly hand printed statement containing the full name and address of each party or agent who signed the notice.

37 C.F.R. § 201.10(c)(1)-(2), (4)-(5).

2310.4(D)(3) Service Requirements

For information concerning the requirements for serving a notice of termination under **Section 304(c)**, see Section **2310.3(D)(3)**.

2310.5 Terminating a Grant Under Section 304(d)

2310.5(A) What Types of Grants May Be Terminated Under Section 304(d)?

In 1998 Congress amended the copyright law by adding another twenty years to the copyright term. For works that were protected by copyright as of January 1, 1978, the length of the copyright term was extended to ninety-five years, consisting of an initial term of twenty-eight years and a **renewal** term of sixty-seven years.

At the same time, Congress created a procedure that allows an author or the author's heirs to terminate a grant that **transferred** or **licensed** the copyright to a third party and to reclaim the copyright for the duration of the twenty-year extension. This procedure is set forth under **Section 304(d)** of the Copyright Act.

Section 304(d) may be used to terminate a grant executed before January 1, 1978 involving the copyright in the renewal term or any right under the renewal term, provided that the following requirements have been met:

- The grant involves the copyright in a work that was originally registered or **published** with notice between January 1, 1923 and October 26, 1939.
- The grant was executed by one or more of the following parties:
  - The author.
  - The author's widow, widower, or children.

  - The author's executors.
  - The author's next of kin.

- The author or the author's heirs have not exercised the right to terminate the grant under **Section 304(c)** of the Copyright Act.

Grants executed on or after January 1, 1978 are not subject to termination under **Section 304(d)**. This provision does not apply to grants involving a work that was originally registered or published on or after October 27, 1939. It does not apply to grants made by will, grants involving a **work made for hire**, or grants involving rights arising under any other federal, state, or foreign law. Likewise, it does not apply if the author or the author's heirs already exercised their right to terminate under **Section 304(c)**.

17 U.S.C. § 304(d); 37 C.F.R. § 201.10.

2310.5(B) Who May Terminate a Grant Under Section 304(d)?

As discussed above, a grant may be terminated under **Section 304(d)**, provided that the author or the author's heirs have not exercised their right to terminate under **Section 304(c)**.

If the grant was executed by the author of a work, the grant may be terminated by any of the parties listed in Section **2310.4(B)(1)**.

If the grant was executed by the author's widow, widower, children, executor, or next of kin, the grant may be terminated by any of the parties listed in Section **2310.4(B)(2)**.

NOTE: When a joint author terminates a grant under **Section 304(c)**, the termination only applies to that author's share of the ownership of the **renewal** copyright. In other words, **Section 304(c)** permits joint authors to exercise their termination rights separately. Therefore, if a joint author has not exercised his or her right to terminate under **Section 304(c)**, that author or his or her heirs may terminate the grant under **Section 304(d)** — even if other joint author(s) have exercised their right to terminate the grant under **Section 304(c)**.

2310.5(C) When May a Grant Be Terminated Under Section 304(d)?

A grant may be terminated under **Section 304(d)** during a five-year termination period. The beginning and the end of this period are based on the month, day, and year that copyright was originally secured in the work. Specifically, the termination period begins seventy-five years after the date that the work was originally registered with the U.S. Copyright Office or the date that the work was originally **published** with a proper **copyright notice** (whichever is earlier). The termination period ends eighty years after that original registration or publication date.

NOTE: The beginning and the end of the termination period are not based on the beginning or end of the calendar year, unless the work happened to be registered or published on January 1st or December 31st.

To terminate a **transfer** or **license** under **Section 304(d)**, the author or the author's heirs (if the author is deceased) must comply with the following requirements:

- Select an effective date of termination that falls within the five-year termination period (*i.e.*, at least seventy-five years after the date that the work was originally registered or published with a proper copyright notice (whichever is earlier), but no more than eighty years after the original date of registration or publication);

- Serve a notice of termination on the grantee or the grantee's successor in title not less than two years and not more than ten years before the effective date of termination; and

- Record the notice with the U.S. Copyright Office before the effective date of termination.

If the author or the author's heirs (if the author is deceased) select an effective date that does not fall within the five-year termination period, fail to serve the notice in a timely manner, or fail to record the notice with the Office before the effective date, the termination will be invalid.

The Office has developed a **table** that may be useful in identifying the beginning and ending of the termination period for a grant that is eligible for termination under **Section 304(d)**. This **table** may also be useful in selecting an effective date of termination and for calculating the relevant deadlines for serving a notice of termination on the grantee and for recording the notice with the Office.

2310.5(D) How to Prepare and Serve a Notice of Termination Under Section 304(d)

The regulatory requirements for terminating a grant under **Section 304(d)** are discussed in Sections **2310.5(D)(1)** through **2310.5(D)(3)**.

2310.5(D)(1) Content Requirements

To terminate a grant under **Section 304(d)**, the notice of termination must include a clear identification of the following information:

- A statement that the grant is being terminated under **Section 304(d)**.

- A statement that termination of **renewal** term rights under **Section 304(c)** has not been previously exercised.

- All of the other information specified in **sections 201.10(b)(1)(ii)** through **201.10(b)(vii)** of the Copyright Office's regulations. (For information concerning these regulatory requirements, see Section **2310.4(D)(1)**.)

2310.5(D)(2) Signature Requirements

For information concerning the signature requirements for terminating a grant under **Section 304(d)**, see Section **2310.4(D)(2)**.

2310.5(D)(3) Service Requirements

For information concerning the requirements for serving a notice of termination under **Section 304(d)**, see Section **2310.4(D)(3)**.

2310.6 How to Record a Notice of Termination

Any person may record a notice of termination with the U.S. Copyright Office, provided that the grant is eligible for termination under **Sections 203, 304(c), or 304(d)** of the Copyright Act, and provided that he or she complies with the recordation requirements set forth in Sections **2310.7**. The person who submits a notice for recordation is known as the "remitter."

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

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

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

In the alternative, the notice and the filing fee may be delivered by hand to the Public Information Office at the address specified in **Chapter 200**, Section 204.1(B)(3). The Public Information Office will provide the remitter with a date-stamped receipt that lists the title of no more than one of the works listed in the notice.

Submitting the notice to any other address may result in substantial delays in the receipt and examination of the notice. If the notice does not comply with the statutory or regulatory requirements, the remitter may be required to resubmit the notice or may be required to serve another notice on the grantee. This will change the **date of recordation**, and in some cases, it may prevent the remitter from recording the notice in a timely manner. Because a delay in examination may have serious consequences, remitters should send the notice and the filing fee to the appropriate address in all cases.

NOTE: The remitter should not submit a notice of termination with Form DCS. As discussed in Sections **2309.7** and **2309.12**, Form DCS should only be used if the remitter intends to record a **transfer** of copyright ownership or other document pertaining to copyright.

2310.7 Recordation Requirements for Notices of Termination

A notice of termination may be recorded with the Copyright Office, provided that the grant is eligible for termination under **Sections 203, 304(c), or 304(d)** of the Copyright Act and provided the following requirements have been met:

- The notice is legible.
- The notice is complete.

- The notice bears the actual signature or signatures of the person or persons who signed the notice.
- The notice is submitted together with the correct **filing fee**.

If a notice does not comply with these requirements, the recordation specialist may communicate with the remitter, may refuse to record the notice, or may refuse to index the notice as a notice of termination.

The legibility, completeness, signature, and filing fee requirements are discussed in more detail in Sections **2310.7(A)** through **2310.7(D)** below.

2310.7(A) The Legibility Requirement

A notice of termination may be recorded, provided that it is legible and is capable of being imaged or otherwise reproduced in legible copies using the technology employed by the U.S. Copyright Office.

A notice should be submitted in a visually perceptible form, it should be sufficiently legible for the recordation specialist to examine and index the contents of the notice, and it should be sufficiently legible for the Office to scan the notice into the public record. To facilitate the imaging process, notices and any attachments thereto should be 8 ½ by 11 inches in size, and the pages should be clipped together rather than stapled.

When the Office records a notice of termination, it creates a public record that reflects the nature of the document. These records may be searched by entering certain key information, such as the title of the work. If the notice is illegible or if it cannot be legibly reproduced by the Office, the recordation specialist may communicate with the remitter or may refuse to record the notice.

37 C.F.R. § 201.10(f)(1)(iii).

2310.7(B) The Completeness Requirement

A notice of termination will be recorded, provided that the remitter submits a complete and exact duplicate of the notice that was served on the grantee.

NOTE: If the terminating party served separate copies of the same notice on more than one grantee or successor in title, the remitter should submit only one copy of the notice.

The document submitted for recordation should contain a statement specifying the date that the notice was served on the grantee and the manner of service (*e.g.,* by personal service, by first class mail). This statement may be provided in the notice itself or in a separate document.

NOTE: If the notice was served by first class mail, the date of service is the date that the notice was deposited with the U.S. Postal Service.

If the notice of termination appears to be incomplete, if it does not appear to be an exact duplicate of the notice that was served on the grantee, or if it does not specify the date and manner of

service, the recordation specialist may communicate with the remitter or may refuse to record the notice.

2310.7(C) The Signature Requirement

A notice of termination may be recorded, provided that it contains the actual signature or a reproduction of the actual signature of the person or persons who signed the notice.

The Office will record a legible photocopy or other legible facsimile reproduction of a signed notice. In such cases, there is no need to submit a **sworn certification** or an **official certification** stating that the reproduction is a true copy of the signed notice. Likewise, a signed notice may be recorded, regardless of whether the signature(s) have been verified by a notary public or a certificate of acknowledgment.

Notices that have not been signed will be returned to the remitter. If the remitter subsequently submits a signed copy of the notice, the recordation specialist may record the document if the requirements set forth in Section **2310.7** have been met. The **date of recordation** will be based on the date that the signed notice was received by the Office.

2310.7(D) The Filing Fee Requirement

To record a notice of termination, the remitter must submit the correct **filing fee**. The current fee is set forth in the Office's fee schedule. **37 C.F.R. § 201.3(c)(16)**.

Specifically, the remitter must pay a basic recording fee for each notice of termination. The basic recording fee is listed in the **fee schedule** under the heading "Recordation of document, including a notice of intention to enforce (single title)."

If the notice contains two or more titles the remitter must pay the basic recording fee plus an additional filing fee. The additional filing fee is listed in the fee schedule under the heading "Additional titles (per group of 10 or fewer titles)." The amount of the additional filing fee is based on the number of titles listed in the notice.

For general guidance in calculating the filing fee for notices that contain two or more titles, see ***Calculating Fees for Recording Documents and Notices of Termination in the Copyright Office*** **(Factsheet SL 4d)**. *For guidance in identifying the number of titles listed in a notice, see Sections* **2309.11(B)(1)** through **2309.11(B)(5)**. For information concerning the methods for paying the filing fee, see **Chapter 1400**, Sections 1403.3 through 1403.5.

2310.8 Contesting or Withdrawing a Notice of Termination

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

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

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

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

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

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

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

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

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

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

2310.9 Examination Guidelines

To record a notice of termination, the terminating party must submit an exact duplicate of the notice that was served on the grantee or the grantee's successor in title. The copy must include either an actual signature or an acceptable reproduction of an actual signature, a statement setting forth the date the notice was served, an indication of the manner of service, and must be submitted together with the appropriate **filing fee**. The recordation specialist will review a notice of termination for each of these elements and may refuse to record the notice if any of them are missing.

Failing to serve and record a notice of termination in a timely manner is a fatal mistake that prevents the termination from taking effect. Therefore, the specialist will examine each notice

to confirm that the relevant statutory deadlines have been met. However, the specialist will not attempt to confirm the validity of the alleged facts that are set forth in a notice.

The Office may refuse to record a document as a notice of termination if the notice appears to be untimely. In such cases, the recordation specialist will take the following actions:

- If the notice is premature, the specialist will return it to the remitter so that the notice may be resubmitted within the proper statutory window.
- If the notice is late, the specialist will offer to record and index it as a document pertaining to copyright under **Section 205(a)** of the Copyright Act. The specialist will not record the document as a notice of termination, meaning that it will not be indexed as such.

The following are representative examples of situations where a notice of termination may be considered untimely:

- The effective date of termination does not fall within the five-year termination period specified in **Section 203(a)(3)**, 304(c)(3), or **304(d)(2)**.
- The document indicates that the notice of termination was served less than two or more than ten years before the effective date of termination.
- The document was received by the Office on or after the effective date of termination.
- The notice of termination was issued under **Section 203**, but the document indicates that the date of execution for the grant falls before January 1, 1978.

2310.10 Date of Recordation for a Notice of Termination

To be effective, a notice of termination must be recorded with the U.S. Copyright Office before the effective date of termination.

The **date of recordation** for a notice of termination is the date when the Office receives the proper **filing fee** and a notice that satisfies the relevant requirements set forth in **Section 201.10(f)** of the regulations, regardless of when the recordation specialist examines and records the notice.

If the notice and the filing fee are received on different dates, the date of recordation is based on the date of receipt for the last item that is received by the Office. Likewise, if the notice is returned to the remitter for correction, the date of recordation is based on the date that the corrected notice is received by the Office.

See **37 C.F.R. § 201.10(f)(3)**; *see also* **Filing of Agreements Between Copyright Owners and Public Broadcasting Entities, Termination of Transfers and Licenses Covering the Extended Renewal Terms, Etc., 41 Fed. Reg. 221, 221 (Nov. 15, 1976)**.

2310.11 Recording a Notice of Termination Distinguished from the Legal Sufficiency of a Termination Notice

Recording a notice of termination with the U.S. Copyright Office is a mandatory requirement for terminating a grant under **Sections 203, 304(c), or 304(d)**. However, the fact that the Office recorded a notice of termination does not create a legal presumption that the termination has been properly effected or that the notice is valid.

2310.12 Harmless Errors in a Notice of Termination

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

- Errors in identifying the date of registration or registration number.
- Errors in listing the names of the author's heirs.
- Errors in describing the precise relationships between the author and his or her heirs.

See **37 C.F.R. §201.10(e)(2)**.

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

2310.13 Is the Grant Subject to Termination Under Sections 203, 304(c), or 304(d)?

The author or the author's heirs—not the U.S. Copyright Office—must determine whether a grant is eligible for termination under **Sections 203, 304(c), or 304(d)**. Upon request, the Office will provide general information about these provisions and will explain the relevant procedures for recording a notice of termination. The Office cannot provide specific legal advice on the rights of persons, issues involving a particular use of a copyrighted work, or other matters of a similar nature. *See* **37 C.F.R. § 201.2(a)(3)**.

2310.13(A) General Questionnaire

This questionnaire may be useful in determining whether a grant may be eligible for termination under **Sections 203, 304(c), or 304(d)** of the Copyright Act (although if the grant involves a **sound recording** or an **architectural work** the questionnaires set forth in Sections **2310.13(B)** or **2310.13(C)** should be used instead).

Question 1: Was the grant made by will, bequest, or other form of inheritance?

- If the answer is "yes," the grant cannot be terminated under **Sections 304(c) or 304(d)**.
- If the answer is "no," proceed to Question 2.

Question 2: Is the work a "work made for hire"?

NOTE: The U.S. Copyright Office has created a separate "work made for hire questionnaire," which may be useful in determining whether a particular work may be considered a work made for hire. This questionnaire is set forth in **Chapter 500**, Section 506.4(B).

- If the answer is "yes, the work is a work made for hire," the grant cannot be terminated under **Sections 203**, **304(c)**, or **304(d)**.
- If the answer is "no," proceed to Question 3.

Question 3: Was the grant executed by the author of the work?

- If the answer is "yes," proceed to Question 4.
- If the answer is "no," the grant cannot be terminated under **Section 203**. To determine if the grant may be eligible for termination under **Sections 304(c)** or **304(d)**, proceed to Question 6.

Question 4: Was the grant made on or after January 1, 1978?

- If the answer is "yes," the grant may be eligible for termination under **Section 203**. For information concerning the procedure for terminating a grant under this provision, see Section **2310.3**.
- If the answer is "no, the grant was made on or before December 31, 1977," proceed to Question 5.

Question 5: Was the work created on or after January 1, 1978?

- If the answer is "yes," the grant may be eligible for termination as a gap grant under **Section 203**. For information concerning the procedure for terminating a gap grant, see Section **2310.3(C)(3)**.
- If the answer is "no, the work was created on or before December 31, 1977," the grant cannot be terminated under **Section 203**. To determine if the grant may be eligible for termination under **Sections 304(c)** or **304(d)**, proceed to Question 6.

Question 6: Was the grant executed by the author? Was the grant executed by the author's heirs?

NOTE: If the author is deceased, the author's "heirs" may include the author's widow, widower, or children (if any), the author's executor (if the author's

widow, widower, and children (if any) are deceased), or the author's next of kin (if the author died without leaving a will).

- If the answer to either of these questions is "yes," proceed to Question 7.
- If the answer to both of these questions is "no," the grant cannot be terminated under **Sections 203, 304(c), or 304(d)**.

Question 7: Has the work been published?

- If the answer is "yes," proceed to Question 8.
- If the answer is "no" proceed to Question 10.

Question 8: Was the work first published on or before December 31, 1977?

- If the answer is "yes," proceed to Question 9.
- If the answer is "no, the work was first published on or after January 1, 1978" proceed to Question 10.

Question 9: Was the work first published on or after January 1, 1952?

- If the answer is "yes," the grant may be eligible for termination under **Section 304(c)**. For information concerning the procedure for terminating a grant under this provision, see Section **2310.4**.
- If the answer is "no, the work was first published on or before December 31, 1951," the grant cannot be terminated under **Sections 203** or **304(c)**. To determine if the grant may be eligible for termination under **Section 304(d)**, proceed to Question 13.

Question 10: Has the work been registered with the U.S. Copyright Office?

- If the answer is "yes," proceed to Question 11.
- If the answer is "no," the grant cannot be terminated under **Sections 203, 304(c), or 304(d)**.

Question 11: Was the work first registered with the Copyright Office on or before December 31, 1977?

- If the answer is "yes," proceed to Question 12.
- If the answer is "no, the work was first registered on or after January 1, 1978," the grant cannot be terminated under **Sections 203, 304(c), or 304(d)**.

Question 12: Was the work first registered with the Copyright Office on or after January 1, 1952?

- If the answer is "yes," the grant may be eligible for termination under **Section 304(c)**. For information concerning the procedure for terminating a grant under this provision, see Section **2310.4**.

- If the answer is "no, the work was first registered on or before December 31, 1951," the grant cannot be terminated under **Sections 203 or 304(c)**. To determine if the grant may be terminated under **Section 304(d)**, proceed to Question 13.

Question 13: Was the work first published on or before October 26, 1939?

- If the answer is "yes," proceed to Question 14.

- If the answer is "no, the work was first published on or after October 27, 1939," proceed to Question 15.

Question 14: Was the work first published on or after January 1, 1933?

- If the answer is "yes," proceed to Question 17.

- If the answer is "no, the work was first published on or before December 31, 1932," the grant is not eligible for termination under **Sections 203**, **304(c)**, or **304(d)**.

Question 15: Was the work first registered with the U.S. Copyright Office on or before October 26, 1939?

- If the answer is "yes," proceed to Question 16.

- If the answer is "no, the work was first registered on or after October 27, 1939," the grant cannot be terminated under **Sections 203**, **304(c)**, or **304(d)**.

Question 16: Was the work first registered with the U.S. Copyright Office on or after January 1, 1933?

- If the answer is "yes," proceed to Question 17.

- If the answer is "no, the work was first registered on or before December 31, 1932," the grant cannot be terminated under **Sections 203**, **304(c)**, or **304(d)**.

Question 17: Has the author exercised his or her right to terminate the grant under Section 304(c)? Have the author's heirs exercised their right to terminate the grant under Section 304(c)?

> **NOTE:** If the author is deceased, the author's "heirs" may include the author's widow, widower, or children (if any) the author's executor (if the author's widow, widower, and children (if any) are deceased) or the author's next of kin (if the author died without leaving a will).

- If the answer to either of these questions is "yes," the grant cannot be terminated under **Sections 203**, **304(c)**, or **304(d)**.

- If the answer to both of these questions is "no," the grant may be eligible for termination under **Section 304(d)**. For information concerning the procedure for terminating a grant under this provision, see Section **2310.5**.

2310.13(B) Termination Questionnaire for Sound Recordings

This questionnaire may be useful in determining if a grant involving a **sound recording** may be eligible for termination under **Sections 203** or **304(c)** of the Copyright Act. (A grant involving this type of work cannot be terminated under **Section 304(d)** of the statute.)

NOTE: If the grant involves an **architectural work**, the questionnaire set forth in Section **2310.13(C)** may be used to make this determination. The questionnaire set forth in Section **2310.13(A)** may be used if the grant involves any other type of work.

Question 1: Was the grant made by will, bequest, or other form of inheritance?

- If the answer is "yes," the agreement cannot be terminated under **Sections 203**, **304(c)**, or **304(d)**.

- If the answer is "no," proceed to Question 2.

Question 2: Is the sound recording a "work made for hire"?

NOTE: The U.S. Copyright Office has created a "work made for hire questionnaire," which may be useful in determining whether a particular sound recording may be considered a work made for hire. This questionnaire is set forth in **Chapter 500**, Section 506.4(B).

- If the answer is "yes, the sound recording is a work made for hire," the grant cannot be terminated under **Sections 203**, **304(c)**, or **304(d)**.

- If the answer is "no," proceed to Question 3.

Question 3: Was the sound recording first fixed on or after February 15, 1972?

- If the answer is "yes," proceed to Question 4.

- If the answer is "no, the sound recording was first fixed on or before February 14, 1972," the grant cannot be terminated under **Sections 203**, **304(c)**, or **304(d)**.

Question 4: Was the grant executed by the author of the work?

- If the answer is "yes," proceed to Question 5.

- If the answer is "no," the grant cannot be terminated under **Sections 203** or **304(d)**. To determine if the grant may be eligible for termination under **Section 304(c)**, proceed to Question 7.

Question 5: Was the grant made on or after January 1, 1978?

- If the answer is "yes," the grant may be eligible for termination under **Section 203**. For information concerning the procedure for terminating a grant under this provision, see Section **2310.3**.

- If the answer is "no, the grant was made on or before December 31, 1977," proceed to Question 6.

Question 6: Was the work first fixed on or after January 1, 1978?

- If the answer is "yes," the grant may be eligible for termination as a gap grant under **Section 203**. For information concerning the procedure for terminating a gap grant, see Section **2310.3(C)(3)**.

- If the answer is "no, the work was first fixed on or before December 31, 1977," the grant cannot be terminated under **Sections 203** or **304(d)**. To determine if the grant may be eligible for termination under **Section 304(c)**, proceed to Question 7.

Question 7: Was the grant executed by the author? Was the grant executed by the author's heirs?

NOTE: If the author is deceased, the author's "heirs" may include the author's widow, widower, or children (if any) the author's executor (if the author's widow, widower, and children (if any) are deceased) or the author's next of kin (if the author died without leaving a will).

- If the answer to either of these questions is "yes," proceed to Question 8.

- If the answer to both of these questions is "no," the grant cannot be terminated under **Sections 203**, **304(c)**, or **304(d)**.

Question 8: Has the sound recording been published?

- If the answer is "yes," proceed to Question 9.

- If the answer is "no, the sound recording has not been published," the grant cannot be terminated under **Sections 304(c)** or **304(d)**. To determine if the grant may be eligible for termination under **Section 203**, proceed to Question 3.

Question 9: Was the sound recording first published on or before December 31, 1977?

- If the answer is "yes," proceed to Question 10.

- If the answer is "no, the sound recording was first published on or after January 1, 1978," the grant cannot be terminated under **Sections 304(c)** or **304(d)**. To determine if the grant may be eligible for termination under **Section 203**, proceed to Question 3.

Question 10: Was the sound recording first published on or after February 15, 1972?

- If the answer is "yes," the grant may be eligible for termination under **Section 304(c)**. For information concerning the procedure for terminating a grant under this provision, see Section **2310.4**.

- If the answer is "no," the grant cannot be terminated under **Sections 304(c)** or **304(d)**. To determine if the grant may be eligible for termination under **Section 203**, proceed to Question 3.

2310.13(C) Termination Questionnaire for Architectural Works

This questionnaire may be useful in determining if a grant involving an **architectural work** may be eligible for termination under **Section 203** of the Copyright Act. (A grant involving this type of work cannot be terminated under **Sections 304(c)** or **304(d)** of the statute.)

NOTE: If the grant involves a sound recording, the questionnaire set forth in Section **2310.13(B)** may be used to make this determination. The questionnaire set forth in Section **2310.13(A)** may be used for a grant involving any other type of work.

Question 1: Was the grant made by will, bequest, or other form of inheritance?

- If the answer is "yes," the grant cannot be terminated under **Sections 203**, **304(c)**, or **304(d)**.

- If the answer is "no," proceed to Question 2.

Question 2: Is the architectural work a "work made for hire"?

NOTE: The U.S. Copyright Office has created a separate "work made for hire questionnaire," which may be useful in determining whether a particular architectural work may be considered a work made for hire. This questionnaire is set forth in **Chapter 500**, Section 506.4(B).

- If the answer is "yes, the architectural work is a work made for hire," the grant cannot be terminated under **Sections 203**, **304(c)**, or **304(d)**.

- If the answer is "no," proceed to Question 3.

Question 3: Was the grant executed by the author of the work?

- If the answer is "yes," the grant may be eligible for termination under **Section 203**. For information concerning the procedure for terminating a grant under this provision, see Section **2310.3**.

- If the answer is "no," the grant cannot be terminated under **Sections 203**, **304(c)**, or **304(d)**.

2311 Abandonment

The U.S. Copyright Office may record an affidavit, declaration, statement, or any other document purporting to abandon a **claim** to copyright or any of the **exclusive rights** granted to copyright owners under **Sections 106** or **106A** of the Copyright Act, provided that the following requirements have been met:

- **CONTENT OF THE DOCUMENT.** The document should identify the claim that is subject to the abandonment, preferably including the author(s), title(s), and registration number(s) for the works (if any). It should provide the full name of the party who signed the document, and it should state that the party is the current owner or co-owner of the copyright and/or the exclusive rights in the work. It should state that the rights specified in the document have been abandoned. The document does not need to provide a reason or justification for the owner's decision to abandon the copyright and/or the exclusive rights specified in the document. However, the document should be legible and capable of being imaged or otherwise reproduced by the technology employed by the Office at the time of its submission. **37 C.F.R. § 201.4(c)(3)**.

- **SIGNATURE.** The document should be signed by the current owner or co-owners of the rights specified in the document or by an authorized representative of such owner(s). If the copyright has been registered, the document should be signed by the **copyright claimant(s)** named in the **certificate of registration** or by an **authorized agent** of the copyright claimant(s). If the copyright has been **transferred** or assigned to a party who is not named in the certificate, or if the copyright has not been registered, the document should be signed by all of the owners or co-owners of the rights specified in the document or by an authorized agent of such owner(s). In all cases, the document must contain the actual signature(s) of the person or person(s) who executed the document or a legible photocopy or other facsimile of the signature together with a **sworn certification** that satisfies the requirements set forth in **Section 201.4(c)(1)** of the regulations.

- **FILING FEE.** The remitter should submit the appropriate **filing fee**. The fee for recording an abandonment is the same as the fee for recording a document pertaining to copyright. For information concerning this fee, see Section **2309.11** above.

To record an abandonment, the remitter should submit a signed copy of the document to the following address together with the appropriate filing fee:

Library of Congress
U.S. Copyright Office-DOC
101 Independence Avenue SE
Washington, DC 20559-6000

In the alternative, the document and the filing fee may be delivered by hand to the Public Information Office at the address specified in **Chapter 200**, Section 204.1(B)(3). The Public Information Office will provide the remitter with a date-stamped receipt that lists the title of no more than one of the works listed in the abandonment.

The Office will record an abandonment as a document pertaining to copyright without offering any opinion as to the legal effect of the document. The document will be returned to the party that submitted it, along with a certificate of **recordation**. In addition, the Office will create an **online public record** that identifies the title and registration number (if any) for the first work listed in the document, the name of the party who executed the document, the date of execution, the document number assigned to the recorded document, and the date of recordation. However, the Office will not cross-reference this record with the online public record for the registration(s) referenced in the document (if any).

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

The Digital Millennium Copyright Act ("DMCA") provides safe harbors from copyright infringement liability for online service providers. In order to qualify for safe harbor protection, certain kinds of service providers – for example, those that allow users to post or store material on their systems, and search engines, directories, and other information location tools – must designate an agent to receive notifications of claimed copyright infringement.

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

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

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

2313 The Computer Shareware Registry

This Section discusses the procedure for recording documents pertaining to computer shareware with the U.S. Copyright Office.

2313.1 What Is Computer Shareware?

Shareware is a method for marketing **computer programs**, rather than a specific type of program. Under this approach, the copyright owner distributes copies of his or her program to third parties to give potential users the opportunity to test and review the program. If a user decides to use the program, that person may be required to register his or her use with the copyright owner and to pay a registration fee. Typically, the party that owns the copyright in the computer

program generates income through these registration fees, which tend to be lower than the purchase price for similar programs that are sold through commercial channels.

NOTE: Electronic **databases** or other works of authorship are not considered computer shareware. *See* **H.R. Rep. No. 101-735**, at 17 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6935, 6948.

See generally **General Provisions—Computer Shareware Registry, 58 Fed. Reg. 29,105 (May 19, 1993)**; **General Provisions—Registry of Documents Pertaining to Computer Shareware and the Donation of Public Domain Software, 56 Fed. Reg. 50,657 (Oct. 8, 1991)**.

2313.2 The Purpose of the Computer Shareware Registry

When Congress created a rental right for **computer programs**, interested parties expressed concern that this might adversely affect the shareware industry. Allowing interested parties to record documents pertaining to shareware was intended to address this concern by providing "a means for notifying the public of the licensing terms applicable to individual programs marketed on a shareware basis." *See* **58 Fed. Reg. at 29,106**; *see also* H.R. Rep. No. 101-735, at 16 (1990), *reprinted in* 1990 U.S.C.C.A.N. at 6947 (explaining that the legislation was intended "to encourage individuals desiring to permit unrestricted, or liberal, use of software they create, to file documents to that effect with the Copyright Office").

2313.3 Registration Distinguished from the Computer Shareware Registry

Recording a document pertaining to computer shareware is optional, but it is not a substitute for registering the copyright in a **computer program**. In particular, it does not provide copyright owners with the ability to claim statutory damages or attorney's fees under **Section 412** of the Copyright Act. Nor does it create a presumption concerning the validity of the copyright in a shareware program.

Likewise, recording a document pertaining to shareware is not a substitute for recording a document that **transfers** ownership of the copyright in a shareware program, such as an assignment, exclusive license, security interest, or other type of transfer. If the copyright in a shareware program has been transferred, that document should be recorded as a transfer of ownership under **Section 205** of the Copyright Act, rather than a document pertaining to shareware. Recording a **license** or other document pertaining to shareware does not provide constructive notice against a subsequent *bona fide* purchaser of the same rights. It simply creates a public record concerning the terms of use for that program.

See generally **General Provisions—Computer Shareware Registry, 58 Fed. Reg. 29,105 (May 19, 1993)**; **General Provisions—Registry of Documents Pertaining to Computer Shareware and the Donation of Public Domain Software, 56 Fed. Reg. 50,657 (Oct. 8, 1991)**.

2313.4 Recordation Requirements for Documents Pertaining to Computer Shareware

Congress has authorized the U.S. Copyright Office to record documents pertaining to computer shareware. *See* Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 805, 104 Stat. 5089, 5136 (authorizing the **Register of Copyrights** "to maintain current, separate records relating to the recordation of documents" pertaining to shareware). Specifically, the Office may record any

document that is clearly designated as a document pertaining to computer shareware, provided that the document governs the legal relationship between the owner of a **computer program** that is marketed as shareware and persons who disseminate or use that program and provided that the document is submitted together with the correct **filing fee**. *See* **37 C.F.R. § 201.26(d)(1)**, **(e)**.

2313.5 Who May Record a Document Pertaining to Computer Shareware?

A document pertaining to computer shareware may be recorded by the author or copyright owner of that program or his or her duly authorized representative. The person who submits the document for recordation is known as the "remitter."

2313.6 When May a Document Pertaining to Computer Shareware Be Recorded?

A document pertaining to computer shareware may be recorded at any time.

2313.7 How to Record a Document Pertaining to Computer Shareware

To record a document pertaining to computer shareware, the remitter should submit a legible photocopy or other facsimile reproduction of the document. The document should be clearly designated as a document pertaining to computer shareware and should be sent to the following address together with the filing fee specified in Section **2313.8**:

Library of Congress
U.S. Copyright Office-DOC
101 Independence Avenue SE
Washington, DC 20559-6000

In the alternative the remitter may deliver the document and the filing fee to the Public Information Office at the address specified in **Chapter 200**, Section 204.1(B)(3). The Public Information Office will provide the remitter with a date-stamped receipt that lists the title of no more than one of the works listed in the document.

2313.8 Filing Fee for Recording a Document Pertaining to Computer Shareware

The **filing fee** for recording a document pertaining to shareware is the same as the fee for recording a document pertaining to copyright. *See* **37 C.F.R. § 201.26(e)**.

For information concerning this fee, see Section **2309.11**. For information concerning the methods for paying the filing fee, see **Chapter 1400**, Sections 1403.3 through 1403.5.

2314 The Visual Arts Registry

This Section discusses the practices and procedures for recording statements pertaining to a work of visual art that has been incorporated into a building. Specifically, the Visual Arts Registry provides "information relevant to an artist's . . . right to prevent destruction or injury to works of visual art incorporated in or made part of a building." **37 C.F.R. § 201.25(a)**.

The term work of visual art is defined in Section 2314.1 below. The purpose of the Visual Arts Registry and the procedure for recording statements pertaining to a work of visual art are discussed in Sections 2314.3 through 2314.9.

2314.1 What Is a Work of Visual Art?

Section 101 of the Copyright Act defines a work of visual art as:

- "A painting, drawing, [or] print … existing in a single copy, [or] in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author …";
- A "sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, … in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author;" or
- "[A] still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author."

17 U.S.C. § 101.

In other words, to qualify as a work of visual art, the work must be a painting, a drawing, a print, a sculpture, or a still photographic image produced for exhibition, and the work must exist in a single copy or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

The legislative history explains that "courts should use common sense and generally accepted standards of the artistic community in determining whether a particular work falls within the scope of [this] definition." H.R. Rep. No. 101-514, at 11 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6915, 6921. For example, the term "painting" includes "murals, works created on canvas, and the like," and the term "'sculpture' includes, but is not limited to, castings, carvings, modelings, and constructions." *Id*. However, the statute expressly states that the following types of works do not qualify as work of visual art:

- Posters.
- Maps, globes, or charts.
- Technical drawings, diagrams, or models.
- Applied art.
- Motion pictures or other audiovisual works.
- Books, magazines, newspapers, or periodicals.
- Databases, electronic information services, electronic publications, or similar publications.
- Merchandising items.

- Advertising, promotional, descriptive, covering, or packaging materials or containers.

17 U.S.C. § 101.

2314.2 A Work of Visual Art Distinguished from Visual Art Works and Works of the Visual Arts

There is an important distinction between a "work of visual art" and the terms "work of the visual arts" and "visual art work," which are used in **Chapter 900** and elsewhere in this *Compendium*.

The term work of visual art is defined in **Section 101** of the statute. As the legislative history explains, this term "is not synonymous with any other definition in the Copyright Act and, in particular, it is narrower than the [statutory] definition of 'pictorial, graphic, and sculptural works.'" H.R. Rep. No. 101-514, at 11 (1990), *reprinted in* 1990 U.S.C.C.A.N. at 6921. Specifically, the work must be a painting, a drawing, a print, a sculpture, or a still photographic image produced for exhibition, and the work must exist in a single copy or in a limited edition of 200 copies or fewer copies that are signed and consecutively numbered by the author. *See id*.

The terms "work of the visual arts" and "visual art works" are synonymous with each other. The U.S. Copyright Office uses these terms when referring to (i) pictorial, graphic, and sculptural works, and (ii) architectural works. In other words, a work qualifies as a "work of the visual arts" or a "visual art work" if it falls within the statutory definition of an architectural work or a pictorial, graphic, or sculptural work, regardless of whether the work exists in a single copy or in multiple copies and regardless of whether the copies have been signed or numbered by the author. For a definition and discussion of these terms, see **Chapter 900**, Section 903.

2314.3 The Purpose of the Visual Arts Registry

Section 106A of the Copyright Act protects the reputation of certain artists and the work of visual art that they create. Specifically, it provides the author of a work of visual art with the right of attribution and the right of integrity.

- The right of attribution allows artists (i) to **claim** authorship of the work of visual art they create, (ii) to prevent others from identifying them as the author of any work of visual art that they did not create, and (iii) to prevent others from using the artist's name in connection with a work of visual art that has been distorted, mutilated, or modified in a way that would be prejudicial to the artist's honor or reputation. *See* **17 U.S.C. § 106A(a)(1)**, **(2)**.

- The right of integrity allows the author of a work of visual art to prevent any intentional distortion, mutilation, or other modification of that work that would be prejudicial to his or her honor or reputation, and to prevent any destruction of a work of recognized stature. *See* **17 U.S.C. § 106A(a)(3)**.

The rights of attribution and integrity apply to work of visual art that have been incorporated in or made a part of a building, such as murals, frescos, mosaics, stained glass windows, architectural sculptures, and similar installations. However, there are a number of exceptions to the right of integrity, which are set forth in **Sections 106A(c)** and **113(d)** of the Copyright Act.

If the owner of a building wishes to remove a work of visual art from a building and if it can be removed without destroying, distorting, mutilating, or modifying the work, the owner may remove that work without violating the author's right of integrity, provided that the following conditions have been met:

- The building owner made a diligent, good faith attempt to notify the author of the owner's intent to remove the work from the building (but did not succeed in notifying the author); or
- The building owner successfully notified the author in writing of the owner's intent to remove the work, but the author failed to remove the work or to pay for its removal within ninety days after receiving such notice.

17 U.S.C. § 113(d)(2).

The statute states that a building owner "shall be presumed to have made a diligent, good faith attempt" to notify the author of a work of visual art if the owner sent the notice to the author by registered mail. *Id.*

Congress recognized that "owners may find it difficult to locate authors whose works have been incorporated into buildings." H.R. Rep. No. 101-514, at 20 (1990), *reprinted in* 1990 U.S.C.C.A.N. at 6930. To address this concern, Congress instructed the **Register of Copyrights** to establish a system permitting an author of a work of visual art to record his or her identity and address with the U.S. Copyright Office. Congress also instructed the Office to establish a system permitting building owners to record statements concerning their efforts to notify authors of their intent to remove a work of visual art from a building. *See* **17 U.S.C. § 113(d)(3)**.

In response to this directive, the Office created the Visual Arts Registry. It is intended to benefit both "authors seeking to protect their rights" and "building owners attempting diligently, and in good faith, to notify these authors of proposed removals." H.R. Rep. No. 101-514, at 21 (1990), *reprinted in* 1990 U.S.C.C.A.N. at 6930-31.

2314.4 Registration Distinguished from the Visual Arts Registry

Recording a Visual Arts Registry Statement is optional, but it is not a substitute for registering the copyright in a work of visual art. In particular, it does not provide authors or copyright owners with the ability to claim **statutory damages** or attorney's fees under **Section 412** of the Copyright Act. Nor does it create a presumption concerning the validity of the copyright in a work of visual art.

Likewise, recording a Visual Arts Registry Statement is not a substitute for recording a document that **transfers** ownership of the copyright in that work, such as an assignment, exclusive license, security interest, or other type of transfer. If the copyright in a work of visual art has been transferred, that document should be recorded as a transfer of ownership under **Section 205** of the Copyright Act, rather than recording a statement on the Visual Art Registry.

See **General Provisions — Registry of Visual Art Incorporated in Buildings, 56 Fed. Reg. 38,340, 38,341 (Aug. 13, 1991)**.

2314.5 Recordation Requirements for a Visual Arts Registry Statement

A Visual Arts Registry Statement may be recorded with the Office, provided that the following requirements have been met:

- The statement is designated as a "Visual Arts Registry Statement."
- The statement pertains to a work of visual art that has been incorporated in a building. *See* **37 C.F.R. § 201.25(f)**.
- The statement is submitted together with the correct **filing fee**.

See **37 C.F.R. § 201.25(c)**, **(d)**.

As a general rule, the recordation specialist will not examine the statement or verify the accuracy or completeness of the information set forth therein. However, the specialist may refuse to record a statement if it is illegible or if it does not pertain to a work of visual art that has been incorporated in a building. *See* **37 C.F.R. § 201.25(f)**; *see also* **General Provisions—Registry of Visual Art Incorporated in Buildings, 56 Fed. Reg. 38,340, 38,341 (Aug. 13, 1991)**.

2314.6 Who May Record a Visual Arts Registry Statement?

A Visual Arts Registry Statement may be recorded by the author of that work, the owner of a building that incorporates that work, or their duly authorized representatives. *See* **37 C.F.R. § 201.25(a)**. The person who submits a statement for recordation is known as the "remitter."

2314.7 When May a Visual Arts Registry Statement Be Recorded?

A Visual Arts Registry Statement may be recorded at any time.

2314.8 How to Record a Visual Arts Registry Statement

To record a Visual Arts Registry Statement, the remitter should submit a legible photocopy or other reproduction of the statement.

Statements submitted by or on behalf of the author of the work should contain the information set forth in Section **2314.8(A)**. Statements submitted by or on behalf of a building owner should contain the information set forth in Section **2314.8(B)**. In all cases, the information contained in the statement should be accurate and as complete as possible. *See* **37 C.F.R. § 201.25(c)**, **(f)**.

The statement should be sent to the following address together with the **filing fee** specified in Section **2314.9**:

Library of Congress
U.S. Copyright Office-DOC
101 Independence Avenue SE
Washington, DC 20559-6000

In the alternative, the statement and the filing fee may be delivered by hand to the Public Information Office at the address specified in **Chapter 200**, Section 204.1(B)(3). The Public Information Office will provide the remitter with a date-stamped receipt that lists the title of no more than one of the works listed in the statement.

2314.8(A) Statements Submitted by or on Behalf of the Author of a Work of Visual Art

Statements submitted by or on behalf of the author of a work of visual art that has been incorporated into a building should be designated as follows: "Visual Arts Registry Statement: Registry of Visual Art Incorporated in a Building—Artist's Statement."

The statement should contain the following information:

- The author's name and current age.
- The author's current address and telephone number (if the telephone number is publicly listed).
- The title of the work of visual art (if any).
- The dimensions and physical description of the work.
- The registration number for the work (if known).
- The name (if any) and address of the building that incorporates the work.
- The name or other identifying information for the owner of the building (if known).

In addition, remitters are encouraged, but not required, to submit photographs of the work, photographs of the building, and photographs of the location within the building where the work appears. The images should be clear and in focus and should be submitted on good quality photographic paper.

37 C.F.R. § 201.25(c)(2).

2314.8(B) Statements Submitted by or on Behalf of Building Owners

Statements submitted by or on behalf of the owner of a building that incorporates a work of visual art should be designated as follows: "Visual Arts Registry Statement: Registry of Visual Art Incorporated in a Building—Building Owner's Statement."

The statement should contain the following information:

- The name or other identifying information for the building owner.
- The name of a person who represents the building owner, along with a telephone number (if this information is publicly listed).
- The name (if any) and address of the building.

- The title of the work of visual art (if known).
- The dimensions and physical description of the work.
- The name or other identifying information for the author of the work, including the author's current address (if known).
- A statement concerning the measures taken by the building owner to notify the author of the removal or pending removal of the work from the building.

The statement should be submitted to the address specified in Section **2314.8**, together with (i) a photocopy of any contracts between the author and the building owner regarding the author's rights of attribution and integrity, and (ii) a photocopy of the notice that the owner sent to the author.

In addition, remitters are encouraged, but not required, to submit eight by ten inch photographs of the building and the work of visual art. The images should be clear and in focus and should be submitted on good-quality photographic paper.

37 C.F.R. § 201.25(c)(3).

2314.9 Filing Fee for Recording a Visual Arts Registry Statement

The **filing fee** for recording a Visual Arts Registry Statement is the same as the fee for recording a document pertaining to copyright. **37 C.F.R. § 201.25(d)**.

For information concerning this fee, see Section **2309.11** above. For information concerning the methods for paying the filing fee, see **Chapter 1400**, Sections 1403.3 through 1403.5.

2314.10 Date of Recordation for a Visual Arts Registry Statement

When the Office records a Visual Arts Registry Statement, the Office assigns a **date of recordation** to the certificate of recordation. The date of recordation is the date when the Office receives a statement that satisfies the requirements set forth in **Section 201.25(c)** of the regulations and the proper filing fee. *See* **37 C.F.R. § 201.25(e)**. If the statement and the **filing fee** are received on different dates, the date of recordation is based on the date of receipt for the last item that is received by the Office.

2314.11 Recorded Statements

When a Visual Arts Registry Statement has been recorded, the Office will return the statement to the remitter, along with a certificate of recordation. If the remitter submitted photographs or other documentation, the Office may retain these materials or may offer them to the Library of Congress for its collections. *See* **37 C.F.R. § 201.25(e)**.

The Office will create an **online public record** that identifies the title and registration number (if any) for the work listed in the statement, the name of the party who executed the statement, the date of execution, the document number assigned to the recorded statement, and the date

of recordation. However, the Office will not cross-reference this record with the online public record for the registration(s) referenced in the statement (if any).

The fact that a statement has been recorded with the Office is not a determination by the U.S. Copyright Office that the statement is accurate, complete, or in compliance with **Section 113(d)** of the Copyright Act. The fact that information may be omitted from a statement shall not, in and of itself, invalidate the recordation, unless a court of competent jurisdiction finds that the statement is materially deficient and fails to meet the minimum requirements of **Section 113(d)**. *See* **37 C.F.R. § 201.25(f)**.

2314.12 Amendments

If there is any change in the information reported in a Visual Arts Registry Statement, the author, the building owner, or his or her duly authorized representative may submit an amended statement. The amendment should contain the information set forth in Sections **2314.8(A)** or **2314.8(B)** and should correct or supplement the information set forth in the previously recorded statement. The amendment should be sent to the address specified in Section **2314.8**, together with the **filing fee** specified in Section **2314.9**. *See* **37 C.F.R. § 201.25(c)(4)**.