

WHO MAY FILE AN APPLICATION

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WHO MAY FILE AN APPLICATION

401 What This Chapter Covers

This Chapter provides general information on who may and may not submit an application to register a copyright claim.

For information on who may file a claim for specific types of works, who may file a renewal application, and who may record a transfer of ownership, a notice of termination, or other documents pertaining to copyright, see the following chapters:

- For **mask works**, see **Chapter 1200**, Section 1211.
- For **vessel designs**, see **Chapter 1300**, Section 1311.2.
- For **renewal** applications, see **Chapter 2100**, Section 2115.5.
- For recording documents, see **Chapter 2300**, Sections 2309.4, 2310.6, 2311, 2312.1, 2313.5, and 2314.6.

402 Who Is the Applicant?

The **applicant** is the party who signs the certification and submits the application to the U.S. Copyright Office. Any of the following parties may certify and submit an application to register a copyright claim:

- The author of the work;
- The owner of all the **exclusive rights** in the work;
- The owner of one or more—but less than all—of the exclusive rights in the work; or
- A duly **authorized agent** of any of the foregoing parties.

No other parties are entitled to file an application for copyright registration. See **17 U.S.C. § 408(a)** (stating that “the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim”); see also **37 C.F.R. § 202.3(c)(1)** (specifying the parties who may submit an application for copyright registration); **Registration of Copyright: Definition of Claimant**, 77 Fed. Reg. 29,257, 29,258 (May 17, 2012).

403 Who Is the Correspondent?

When completing an application, the applicant must provide the name, address, and other contact information for the person or persons whom the Office should contact if the **registration specialist** has questions or concerns regarding the application. This person is referred to as the correspondent.

In most cases, the correspondent and the applicant are the same person, because the correspondent typically certifies and submits the application. In all cases, the correspondent must be:

- An author of the work;
- An owner who owns all of the **exclusive rights** in the work;
- An owner of one or more—but less than all—of the exclusive rights in the work; or
- A duly **authorized agent** of one or more of the foregoing parties.

As a general rule, the U.S. Copyright Office will send all communications concerning an application or a registration to the correspondent at the address provided in the registration record.

For guidance in completing the Correspondent field/space of the application, see **Chapter 600**, Section 622.2. For information on who may certify an application, see **Chapter 600**, Section 624.

404 Who Is the Claimant?

The only parties who are eligible to be the copyright claimant are (i) the author of the work, or (ii) a copyright owner who owns all of the exclusive rights in the work. **37 C.F.R. § 202.3(a)(3)**. A person or entity who owns one or more—but less than all—of the exclusive rights in a work is not eligible to be a claimant. See **Part 202 - Registration of Claims to Copyright, 43 Fed. Reg. 965, 965 (Jan. 5, 1978); Registration of Copyright: Definition of Claimant, 77 Fed. Reg. 29,257, 29,258 (May 17, 2012)**.

Although the author or the copyright owner who owns all of the rights are the only parties who are entitled to claim ownership of the copyright, an application to register that claim may be certified and submitted by any of the parties listed in Section **402**. In some cases, the applicant and the claimant may be the same party, while in other cases they may be different.

405 Applications Filed by or on Behalf of the Author

An author is either (i) the person or persons who created the work, or (ii) the employer or other person for whom the work was prepared, if the work was created during the course of employment or commissioned as a **work made for hire**. The author may be either a U.S. or a foreign citizen.

If the author owns all of the rights under the copyright on the date that the application is filed, the author must be named in the application as the copyright claimant. The author or the author's duly **authorized agent** may certify and submit an application to register that claim. In the situation where the author certifies and submits the application, the author is considered both the applicant and the claimant. If the author's duly authorized agent certifies and submits the application, the author is still the claimant but the author's agent is considered the applicant.

The author also may be named as the copyright **claimant** even if the author has transferred the copyright or one or more of the **exclusive rights** to another party, or even if the author does not own any of the rights at the time the application is filed. See *generally* **Registration of Copyright: Definition of Claimant, 77 Fed. Reg. 29,257, 29,258 (May 17, 2012); Registration of Claims to Copyright, 43 Fed. Reg. 965, 965 (Jan. 5, 1978)**.

If the author transferred all of the rights in a work to another party, either the author or the transferee may be named as the copyright **claimant**, and the application may be submitted by the author, the transferee, or their respective agents. If the author transferred only some of his or her rights to another party, the author must be named as the copyright claimant, and the application to register the copyright in the author's name may be filed by any of the parties listed in Section **402** (*i.e.*, the author, an owner of one or more exclusive rights, or their respective agents).

405.1 Joint Works

The U.S. Copyright Office will accept an application filed by or on behalf of one or more authors of a **joint work** if the application is otherwise proper and complete. The application must identify all of the authors of the joint work.

If a joint author transferred all of his or her rights to a third party, either the joint author or the transferee may be named as a copyright **claimant**, and the application may be filed by the joint author, the transferee, or their respective agents. If a joint owner transferred only some of his or her rights to a third party, the joint author must be named as the copyright claimant, although the application to register the copyright in the joint author's name may be filed by the transferee or any of the other parties listed in Section **402**.

405.2 Minors

Minors may claim copyright, and the U.S. Copyright Office will accept applications submitted either by or on behalf of a minor if the application is otherwise proper and complete.

Minors may appoint a duly **authorized agent** to file the application on their behalf, such as a parent, guardian, or other qualified agent. Because registration records are open to the public, the applicant should not provide any private or confidential information in the application that is not required for registration if the applicant does not wish to make that information public. Any information that is provided in the application may be made available to the general public through the Office's online database. Once the Office issues a **certificate of registration**, in most cases it cannot remove any information from the registration record, including a minor's name, address, or year of birth.

405.3 Mental Incompetents

Mental incompetents may claim copyright, and the U.S. Copyright Office will accept applications submitted either by or on behalf of a mentally incompetent person, provided the application is otherwise proper and complete. If a committee or guardian has been appointed for a person adjudged to be incompetent, such committee or guardian generally should submit the application as a duly **authorized agent** of the applicant.

405.4 Prisoners

An incarcerated person may claim copyright, and the U.S. Copyright Office will accept applications submitted either by or on behalf of an inmate of a prison or other penal institution if the application is otherwise proper and complete.

405.5 Deceased Authors

The U.S. Copyright Office will accept applications submitted by or on behalf of a claimant who owns all of the rights that initially belonged to a deceased author, such as the author's estate, a devisee, or an heir. Likewise, the Office will accept applications that name a deceased author as the copyright **claimant** if the author is the only party who is eligible to be named as the copyright claimant. If the application names an individual as author and claimant and the Office discovers that the individual died before the application has been approved for registration, the registration specialist may communicate with the applicant for the name of the current claimant. See **Group Registration of Contributions to Periodicals**, 81 Fed. Reg. 86,634, 86,641-42 (Dec. 1, 2016).

405.6 Foreign Authors

The U.S. Copyright Office will register works created by a foreign author if the work is eligible for copyright protection in the United States. U.S. copyright law protects the **unpublished** works of all authors (domestic or foreign) as long as the work is not in the **public domain**. **Published** works of foreign authors may be eligible for protection in the United States if they satisfy the requirements described in **Chapter 2000**, Section 2003.

406 Applications Filed by or on Behalf of a Copyright Owner Who Owns All of the Exclusive Rights

A transferee who owns all of the rights in the copyright may be named in the application as the copyright **claimant**. An application to register the copyright in the transferee's name may be certified and submitted by the author of the work, by the transferee, or by their respective agents. In this situation, the transferee is considered to be the claimant, and — depending on who submitted the application — the author, the transferee, or the **authorized agent** of the author or the transferee is considered the applicant.

407 Applications Filed by an Owner of One or More — But Less than All — of the Exclusive Rights

Any of the **exclusive rights** that make up a copyright or any subdivision of those rights can be transferred and owned separately. 17 U.S.C. § 201(d)(2). A party who owns one or more — but not all — of the rights that initially belonged to an author cannot be named as a copyright **claimant**. See 37 C.F.R. § 202.3(a)(3). However, an owner of one or more of the exclusive rights may submit an application to register the copyright in the author's name. In this situation, the author is considered to be the claimant, and the owner of the exclusive right(s) is considered the **applicant**. See generally **Registration of Copyright: Definition of Claimant**, 77 Fed. Reg. 29,257, 29,258-59 (May 17, 2012).

408 Exclusive Licensees and Nonexclusive Licensees

An **exclusive licensee** is a party who has been granted one or more of the **exclusive rights** set forth in **Section 106** of the Copyright Act, or any subdivision of those rights. Exclusive licensees are considered owners of those right(s) during the term of the license. A **nonexclusive licensee**

is a party who has the right to use a work or an exclusive right in the work, but does not have the right to prevent others from using the same work. Nonexclusive licensees are not owners of the right(s) or parts thereof, but rather, they are considered authorized users.

The Copyright Act states that only “the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim.” [17 U.S.C. § 408\(a\)](#). Although an exclusive licensee who owns one or more of the exclusive rights is entitled to submit an application, only an exclusive licensee who owns all of the exclusive rights in a work is entitled to be named as a copyright **claimant**. [37 C.F.R. §202.3\(a\)\(3\)](#). An exclusive licensee with less than all rights may submit an application by naming the author as the claimant.

As a general rule, a nonexclusive licensee is not entitled to be named as a copyright claimant or to submit an application to register a copyright **claim**, because a nonexclusive licensee is neither the “owner of copyright or of any exclusive right in the work.” [17 U.S.C. §408\(a\)](#); *see also* [17 U.S.C. § 101](#) (definition of “transfer of copyright ownership,” which explicitly excludes nonexclusive licenses). A nonexclusive licensee may certify or submit an application to register the copyright only if the licensee is a duly **authorized agent** acting on behalf of the author or a person or entity that owns all of the rights under copyright that initially belonged to the author.

409 Authorized Agents

An author, a copyright owner who owns all of the rights in the work, or an owner of one or more of the **exclusive right(s)** may use a duly **authorized agent** to submit an application on their behalf. Examples of such agents include, but are not limited to, legal guardians, business managers, literary agents, and attorneys.

In most cases, the correspondent is a duly authorized agent of one or more of the parties listed above, and as a general rule, the U.S. Copyright Office will direct all communications concerning the application to that person. *See* Section [403](#).

The Office imposes no special qualifications or tests for authorized agents (including attorneys) before they may file applications or otherwise conduct business with the Office. Nor does the Office require applications to be prepared or submitted by an attorney. In certain special cases the Office may suggest that the claimant consider seeking legal advice, but the Office does not furnish the names of copyright attorneys, publishers, agents, or other similar information. *See* [37 C.F.R. § 201.2\(a\)\(2\)](#).

As a general rule, the Office will accept the statement on the application certifying that the person who signs the application is an authorized agent of the author or an owner of the exclusive rights in the work. In some circumstances, the Office may ask an alleged agent to submit documentation showing that he or she is in fact authorized to act for one or more of those parties.

410 Who May File the Application: At a Glance

The following chart is intended to assist potential applicants in determining who may file an application and who may be named as a claimant:

Who May File the Application: At a Glance

Who owns the rights?	Who may be named as claimant?	Who may file the application?
The author of the work owns <i>all</i> of the rights	The author	The author or An authorized agent of the author
The author of the work owns <i>some</i> —but <i>not all</i> —of the rights	The author	The author or An owner of one or more of the exclusive rights or An authorized agent of one or more of the aforementioned parties
The author of the work owns <i>none</i> of the rights	The author and/or The transferee who owns <i>all</i> of the rights	The author or The transferee who owns <i>all</i> of the rights or An owner of one or more—but <i>not all</i> —of the exclusive rights or An authorized agent of one or more of the aforementioned parties
A transferee owns <i>all</i> of the rights	The author and/or The transferee who owns <i>all</i> of the rights	The author or The transferee who owns <i>all</i> of the rights or An authorized agent of one or more of the aforementioned parties
A transferee owns <i>some</i> —but <i>not all</i> —of the rights	The author	The author or An owner of one or more of the exclusive rights or An authorized agent of one or more of the aforementioned parties
An exclusive licensee owns <i>all</i> of the rights	The author and/or The exclusive licensee who owns <i>all</i> of the rights	The author or The exclusive licensee who owns <i>all</i> of the rights or An authorized agent of one or more of the aforementioned parties
A exclusive licensee owns <i>some</i> —but <i>not all</i> —of the rights	The author	The author or An owner of one or more of the exclusive rights or An authorized agent of one or more of the aforementioned parties