

## WORKS OF THE PERFORMING ARTS

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## WORKS OF THE PERFORMING ARTS

### 801 What This Chapter Covers

This Chapter covers issues related to the examination and registration of **works of the performing arts**, and the legal standards for the copyrightability and registrability of such works. Issues pertaining to the copyrightability and registrability of works in general are discussed in the following Chapters:

- For a general overview of the registration process, see [Chapter 200](#).
- For a general discussion of **copyrightable** subject matter, see [Chapter 300](#).
- For a discussion of who may file an application, see [Chapter 400](#).
- For guidance in identifying the work that the **applicant** intends to register, see [Chapter 500](#).
- For a discussion of examination practices by field/space of a basic application, see [Chapter 600](#).
- For guidance on the **filing fee**, see [Chapter 1400](#).
- For guidance on submitting the **deposit copy(ies)**, see [Chapter 1500](#).

#### 801.1 Performing Arts Division

The Performing Arts Division (“PA”) of the U.S. Copyright Office handles the examination and registration of all works of the performing arts. Each **registration specialist** in the Division has expertise in music, as the examination of music and **sound recordings** often requires such expertise. The Division also has a team of registration specialists who specialize in the examination of **motion pictures** (the “Motion Picture Team”).

#### 801.2 What Is a Work of the Performing Arts?

The Office uses the term “work of the performing arts” to collectively refer to the following works of authorship:

- Musical Works, including any accompanying words.
- **Sound Recordings**.
- Dramatic Works, including any accompanying music.

- **Choreographic works.**
- **Pantomimes.**
- **Audiovisual Works.**
- **Motion Pictures.**

See **17 U.S.C. § 102(a)**. The Copyright Act does not define the term “work of the performing arts,” nor does it provide definitions for the majority of the works listed above (*i.e.*, musical works, dramatic works, choreographic works, and pantomimes). When Congress revised what is now the Copyright Act of 1976, it determined that definitions for musical works, dramatic works, choreographic works, and pantomimes were unnecessary because these terms “have fairly settled meanings.” **H.R. REP. NO. 94-1476, at 53 (1976)**, reprinted in 1976 U.S.C.C.A.N. 5659, 5666-67; **S. REP. NO. 94-473 at 52 (1975)**. As a general matter, a work that was created to be performed before an audience, directly or indirectly, is a work of the performing arts. **37 C.F.R. § 202.3(b)(1)(ii)**.

Descriptions of each of these types of works and issues relating to the registration of such works are set forth in Sections **802** through **808**.

The Office classifies the following types of works as works of the performing arts, but they also may be classified as **literary works**:

- Interviews intended to be performed before an audience (*e.g.*, television interviews, radio interviews, onstage interviews, etc.).
- Lectures and sermons.
- Videogames.

**Screen displays** for videogames may be registered as visual art works, as well as works of the performing arts.

For more information on literary works, see **Chapter 700**. For more information on visual art works, see **Chapter 900**.

### **801.3 Fixation of Works of the Performing Arts**

The Copyright Act states that “[a] work is ‘fixed’ in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are transmitted, is ‘fixed’ for the purposes of this title if a fixation of the work is being made simultaneously with its transmission.” **17 U.S.C. § 101** (definition of “fixed”).

All fixations of works of the performing arts are grouped into two main categories: copies and phonorecords, which are defined in Sections **801.3(A)** and **801.3(B)** below.

For a more detailed discussion of fixation, see **Chapter 300**, Section 305.

**801.3(A) Copies**

Copies are defined as “material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term ‘copies’ includes the material object, other than a phonorecord, in which the work is first fixed.” [17 U.S.C. § 101](#). Copies include all forms of embodiment for works of the performing arts, except for “phonorecords,” which are defined in Section [801.3\(B\)](#) below.

Copies may be submitted in hard copy or electronic format. Examples of copies include, but are not limited to books, scripts, musical scores, sheet music, librettos, lyric sheets, filmstrips, and electronic text and presentation files.

**801.3(B) Phonorecords**

A “phonorecord” is a material object “in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” The term also refers to the material object in which sounds are first fixed. [17 U.S.C. § 101](#).

Phonorecords may be submitted in hard copy or electronic format. Examples of phonorecords include, but are not limited to .mp3 files, compact discs, LP albums, and audiotapes.

**801.4 Copyrightable Authorship in Works of the Performing Arts**

“To qualify for copyright protection, a work must be original to the author,” which means that the work must be “independently created by the author” and it must possess “at least some minimal degree of creativity.” *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 345 (1991).

The term “independent creation” means that the author created the work without copying from other works. *See id.* at 345. The copyright law protects “those components of a work that are original to the author,” but “originality” does not require “novelty.” *Id.* at 348. A work may satisfy the independent creation requirement “even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying.” *Id.* at 345.

In addition, a work of the performing arts must have at least a “modicum of creativity” to be **copyrightable**. *Id.* at 346. This means that the fruits of creative thought originating from the author must be evident in the work, and the work must not be simply the result of wholesale copying, discovery, or an uncopyrightable change to a preexisting work.

For more information concerning the originality requirement, see [Chapter 300](#), Section 308. For information concerning the originality requirement for specific types of works of the performing arts, see the following Sections:

- Section [802.5](#): Musical Works.
- Sections [803.5](#) and [803.6\(B\)](#): Sound Recordings.

- Section **804.6**: Dramatic Works.
- Section **805.4**: Choreographic Works.
- Section **806.4**: Pantomimes.
- Section **807.5**: Audiovisual Works.
- Section **808.7**: Motion Pictures.

### **801.5 Uncopyrightable Material in Works of the Performing Arts**

A work of the performing arts is deemed uncopyrightable if it does not constitute **copyrightable** subject matter, if it is not original to the author, or if it contains insufficient or *de minimis* expression. For general information on uncopyrightable works, see **Chapter 300**, Section 313. Specific information concerning uncopyrightable authorship for particular types of works of the performing arts is provided in the following Sections:

- Section **802.5**: Musical Works.
- Sections **803.5** and **803.6(B)**: Sound Recordings.
- Section **805.5**: Choreographic Works.
- Section **806.5**: Pantomimes.
- Section **807.5**: Audiovisual Works.
- Section **808.7**: Motion Pictures.

### **801.6 Joint Authorship in Works of the Performing Arts**

**Joint works** are works “prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.” **17 U.S.C. § 101**.

Works of the performing arts often have more than one author, and in many cases, the authors are joint authors. It is important to name each author in the application and clearly identify the authorship each author contributed to the work.

The Office may communicate with the **applicant** to confirm whether the work is a joint work if it appears that authors of the separate elements of the work did not intend to join the works into inseparable or interdependent parts of a unitary whole.

If the multiple authors of a work created their contributions with the intention of merging them into a unitary, interdependent whole at the time of creation, their contributions should be registered together as a joint work on the same application. If the authors did not intend for their separate elements to be merged into an interdependent whole, the separate **copyrightable** elements should be registered as separate works on separate applications. See **H.R. REP. NO. 94-1476, at 120 (1976)**, reprinted in 1976 U.S.C.C.A.N. at 5736 (stating that the “touchstone” of

the definition of a joint work “is the intention, at the time the writing is done, that the parts be absorbed or combined into an integrated unit...”); **S. REP. NO. 94-473, at 103 (1975)**. If the parts of the unitary work are inseparable, each joint author must be listed in the application unless the work is a **work made for hire**.

*Examples:*

- Jay Munroe, Justin Edison, and Ava Applebaum wrote a musical drama together, entitled *Life on Mars*. Jay wrote the book (script), and Justin and Ava wrote the songs, with Justin writing the lyrics and Ava the music. Jay, Justin, and Ava are joint authors of the musical and all three of them should be named in the application.
- Jay Munroe writes the script for a new musical based on music previously recorded by the recording artist, Shawn 2K. He obtains the appropriate licenses from Shawn 2K to use the music in the musical. Jay and Shawn 2K are not joint authors. The script and the music should be registered separately.

For more information on joint works, see **Chapter 500**, Section 505.

### 801.7 Works Made for Hire

A work made for hire is (i) “a work prepared by an employee within the scope of his or her employment” or (ii) “a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.” **17 U.S.C. § 101**.

For more information on works made for hire, see **Chapter 500**, Section 506.

### 801.8 Derivative Works

A derivative work is “a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a ‘derivative work.’” **17 U.S.C. § 101**.

*Examples:*

- A motion picture based on a preexisting play.
- A new arrangement of a musical work.

Copyright protection provides **exclusive rights** to the author and/or owner of the copyrighted work. One of those exclusive rights is the right to create **derivative works**. See **17 U.S.C. § 106(2)**. Generally, if the author of the derivative work is not the copyright owner of the preexisting work, and the preexisting work is still under copyright protection, the author of the derivative work may not use the preexisting copyrighted work as the basis for a new work, unless a copyright

exception applies. *See, e.g., 17 U.S.C. § 115* (providing a **compulsory license** for the creation of a new sound recording of a preexisting nondramatic musical work).

*Example:*

- A director may not register the stage directions for a play unless he or she has obtained permission to use the dramatic work.

For more information on derivative works, see **Chapter 500**, Section 507.

### **801.9 Compilations**

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

For more information on compilations, see **Chapter 500**, Section 508.

### **801.10 Collective Works**

A collective work is a “work in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.” **17 U.S.C. § 101**.

For more information on collective works, see **Chapter 500**, Section 509.

### **801.11 Completing the Application for Works of the Performing Arts**

The Copyright Office may register a **claim** to copyright in a work of the performing arts only if the material deposited constitutes **copyrightable** subject matter and if the other legal and formal requirements of Title 17 have been met. **17 U.S.C. § 410(a)**.

Detailed information on how to complete an application is set forth in **Chapter 600**. Additional tips on how to complete applications for particular types of works of the performing arts are provided in the following Sections:

- Section **802.9**: Musical Works.
- Section **803.9**: Sound Recordings.
- Section **804.9**: Dramatic Works.
- Section **805.9**: Choreographic Works.
- Section **806.7**: Pantomimes.
- Section **807.8**: Audiovisual Works.
- Section **808.11**: Motion Pictures.

## 801.12 Deposit Requirements for Works of the Performing Arts

For information concerning the deposit requirements for works of the performing arts, see [Chapter 1500](#), Section 1509.2.

## 802 Musical Works

### 802.1 What Is a Musical Work?

For purposes of copyright registration, musical works (which are also known as musical compositions) are original works of authorship consisting of music and any accompanying words. Music is a succession of pitches or rhythms, or both, usually in some definite pattern.

### 802.2 Musical Works Distinguished from Other Types of Works

#### 802.2(A) Nondramatic Musical Works Distinguished from Dramatic Musical Works

A dramatic musical work is a musical work created for use in a [motion picture](#) or a dramatic work, including musical plays and operas. These types of works are discussed in [Section 804](#).

By contrast, a nondramatic musical work is a musical work that was not created for use in a motion picture or a dramatic work, such as a ballad intended for distribution solely on an album or an advertising jingle intended solely for performance on the radio.

#### 802.2(B) Musical Works Distinguished from Sound Recordings

A musical work and a [sound recording](#) of that musical composition are separate works. The copyright in a musical work covers the music (and lyrics, if any) embodied in the musical composition itself, but does not cover a particular recording of that composition (or *vice versa*).

For more information on this issue, see [Sections 802.8\(A\)](#) and [803.8\(A\)](#).

### 802.3 Elements of Musical Works

The Office's [registration specialists](#) examine musical works for [copyrightable](#) authorship. The main elements of copyrightable musical work authorship include melody, rhythm, harmony, and lyrics, if any. These terms are defined in [Sections 802.3\(A\)](#) through [802.3\(D\)](#).

#### 802.3(A) Melody

Melody is a linear succession of pitches.

**802.3(B) Rhythm**

Rhythm is the linear succession of durational sounds and silences.

**802.3(C) Harmony**

Harmony is the vertical and horizontal combination of pitches resulting in chords and chord progressions.

**802.3(D) Song Lyrics**

Lyrics are a set of words, sometimes grouped into verses and/or choruses, that are intended to be accompanied by music. Lyrics may consist of conventional words or non-syntactical words or syllables, and may be spoken or sung.

**802.4 Fixation of Musical Works**

To be **copyrightable**, musical works must be **fixed** in a tangible medium of expression. **17 U.S.C. § 102(a)**. Musical works may be embodied either in copies or **phonorecords**, as explained in Sections **802.4(A)** through **802.4(C)**. **17 U.S.C. § 101** (definition of “fixed”).

Improvised works are not registrable unless they are fixed in tangible form, such as in a transcribed copy, a **phonorecord**, or an audiovisual recording. A registration for an improvised musical work will extend only to the material that has been submitted to the Office.

**802.4(A) Copies**

Musical works **fixed** in copies include their embodiment in both hard copy and electronic formats. Standard musical notation, using the five-line, four-space staff, is the form of notation often employed to embody musical works. Precision equal to that offered by standard notation is not required for registration, although the deposit should constitute as precise a representation of the work as possible. A graphic representation or textual description of pitch, rhythm, or both may suffice as long as the notation is sufficiently precise.

Copies of musical works include the following:

- Hard copy formats, including but not limited to sheet music and lead sheets.
- Non-audio digital files, including text files (*e.g.*, .pdf or Microsoft Word) or files created by music notation software embodied in compact discs, flash drives, hard drives, and other digital file storage devices.
- Music accompanying a **motion picture** or other **audiovisual work** (as fixed in the audiovisual work).
- A non-audio digital file (*e.g.*, digital notation) that is uploaded to the Office’s server in support of an online application.

For the deposit requirements for musical works **published** in copies, see **Chapter 1500**, Section 1509.2(A)(2). For **unpublished** musical works, see **Chapter 1500**, Section 1509.2(A)(1).

#### **802.4(B) Phonorecords**

**Phonorecords** of musical works include the following:

- Hard copy formats embodying recorded sound, including but not limited to compact discs, vinyl records, and tapes.
- Digital audio files embodying recorded sound, including .wav, .mp3, .wma (uploaded or embodied in compact discs, flash drives, and other digital file storage devices). A digital audio file that is uploaded to the Office's server in support of an electronic registration application is a phonorecord for registration purposes.

For the deposit requirements for musical works published in phonorecords, see **Chapter 1500**, Section 1509.2(A)(3). For **unpublished** musical works, see **Chapter 1500**, Section 1509.2(A)(1).

#### **802.4(C) Motion Pictures**

Where music is first **published** in a **motion picture** soundtrack, the motion picture is considered a copy of the musical work.

For the deposit requirements for musical works published in motion pictures, see **Chapter 1500**, Section 1509.2(A)(5). For **unpublished** musical works, see **Chapter 1500**, Section 1509.2(A)(1).

### **802.5 Copyrightable Authorship in Musical Works**

#### **802.5(A) Independent Creation**

A musical work must originate from the author of that work to be protected by copyright. A musical work that is merely copied from another source is not **copyrightable**. For instance, a musical work consisting entirely of common property material would not constitute original authorship. Some examples of common property musical material include:

- Diatonic or chromatic scales.
- Arpeggios.
- Chord symbols based on standard chord progressions.

See **37 C.F.R. § 202.1(d)**; see also **Chapter 300**, Section 313.4(D).

**802.5(B) Creative Expression**

To be **copyrightable**, a musical work must contain a sufficient amount of creative musical expression. Generally, the musical and lyrical elements of the work are considered separately in determining whether there is sufficient creative expression. There is no predetermined number of notes, measures, or words that automatically constitutes *de minimis* authorship or automatically qualifies a work for copyright registration. However, short musical phrases are not copyrightable because they lack a sufficient amount of authorship (just as words and short textual phrases are not copyrightable). See **37 C.F.R. § 202.1(a)**; see also **Chapter 300**, Section 313.4(D). For example, the phrase, “I love you so much it hurts” is both too short and too lacking in creative spark to be registrable. Similarly, a short phrase of only a few musical notes, such as clock chimes or “mi do re sol, sol, re mi do” would be considered too short and too lacking in creative expression to be registrable.

**802.5(C) Human Authorship**

To be **copyrightable**, musical works, like all works of authorship, must be of human origin. A musical work created by solely by an animal would not be registrable, such as a bird song or whale song. Likewise, music generated entirely by a mechanical or an automated process is not copyrightable. For example, the automated transposition of a musical work from one key to another is not registrable. Nor could a musical composition created solely by a computer algorithm be registered.

For more information on works created by non-human authors and mechanical processes, see **Chapter 300**, Section 306.

**802.6 Derivative Musical Works**

A derivative musical work is one that is based on one or more preexisting, **copyrightable** work(s) of any nature. The new music authorship may be registered if it represents sufficient new original authorship. The **applicant** should identify any preexisting work or works that the **derivative work** is based on or incorporates, and should provide a brief general statement identifying the additional material covered by the copyright **claim** being registered. Descriptions of new material might include:

- New or revised lyrics.
- New or revised arrangements.

Issues related to derivative musical work authorship are set forth in Sections **802.6(A)** through **802.6(J)** below. For general information on derivative works, see Section **801.8** and **Chapter 500**, Section 507.

**802.6(A) Permission to Use Preexisting Material**

Musical works that unlawfully employ a work that is protected by copyright are not subject to copyright protection if they are inseparably intertwined with the preexisting work. **17 U.S.C. §**

**103(a)**; see also **H.R. REP. NO. 94-1476, at 57-58 (1976)**, reprinted in 1976 U.S.C.C.A.N. at 5670-5671; **S. REP. NO. 94-473, at 54-55 (1975)**.

The U.S. Copyright Office generally does not investigate the copyright status of preexisting material or determine whether it has been used lawfully, but if the preexisting material is known to the specialist he or she may communicate with the **applicant**. The applicant may clarify the lawful use of preexisting material by including a statement to that effect in the Note to Copyright Office field of the online application or in a cover letter submitted with the paper application.

Where the authorship of the **derivative work** is clearly separable from that of the preexisting work, such as when a songwriter sets a copyrighted poem to new music, the specialist generally will not communicate with the applicant to determine whether the use was lawful. Where the authorship of the derivative work is not separable from the preexisting work, such as a new printed arrangement of a copyrighted song, the specialist may ask whether the derivative author's arrangement lawfully incorporates the preexisting work. Where a work employs preexisting copyrighted material that is separable from the new material, the new work generally is registrable, even if the use of the preexisting material was unauthorized.

For more information concerning this issue, see **Chapter 300**, Section 313.6(B).

### **802.6(B) Permission to Use Under a Section 115 Compulsory License**

**Section 115** of the Copyright Act establishes a “compulsory license” permitting any person to make and distribute phonorecords of a nondramatic musical work without obtaining permission from the copyright owner of that work, if certain conditions are met. See **17 U.S.C. § 115(a)(1)-(2)**. In particular, the musical work must have been “distributed in the United States under the authority of the copyright owner.” *Id.* **§ 115(a)(1)**. A party using the compulsory license may also make a musical arrangement of the underlying musical work “to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work.” *Id.* **§ 115(a)(2)**. **Section 115(a)(2)** also states that the arrangement “shall not be subject to protection as a derivative work” under the Copyright Act without “the express consent of the copyright owner.” *Id.* This means that the arrangement cannot be registered with the U.S. Copyright Office unless the licensee obtains express consent from the owner of the musical work. This is the case even if the arrangement made pursuant to the compulsory license contains enough original authorship to qualify as a derivative work.

If it seems unlikely that the licensee obtained permission to claim copyright in the new arrangement of the preexisting musical work, the registration specialist may communicate with the applicant or may refuse registration.

### **802.6(C) Musical Arrangements**

When sufficient new harmonies or instrumentation are added to a preexisting musical work, the musical arrangement may be registered as a **derivative work**.

**802.6(C)(1) Harmonization**

Harmonization is the addition of chords or musical lines to a melody. To be **copyrightable**, the addition of chords to a melody must constitute sufficient new and original authorship, not simply standard chords in common sequences such as C, F, G, C. The harmonization of a melody using multiple musical lines involves additional compositional creative factors, such as voicing and counterpoint.

*Example:*

- An applicant submits an application to register words and a musical arrangement of a preexisting melody. The work is comprised solely of the chord symbols C (major), Am (minor), Dm (minor), and G (major) along with original words. The arrangement is not registrable because this chord sequence is both standard and too short to be sufficiently creative. The accompanying words, however, may be registered if they are sufficiently creative.

**802.6(C)(2) Instrumentation**

Musical instrumentation or orchestration is the distribution or redistribution of harmonic elements among different instruments. Instrumentation authorship may be registered as a **derivative work** if the author added sufficient original authorship to the preexisting work. Simply assigning entire lines from a preexisting work to new instruments would not be considered sufficient new authorship, such as a four-part choral work assigned without change to four brass instruments.

*Examples of sufficient original authorship:*

- An orchestration of a work originally composed for piano, such as Debussy's "Reverie."
- A marching band arrangement of Beethoven's String Quartet in G Major, Opus 18, No. 2.
- A hip hop arrangement of a famous pop ballad.

**802.6(D) Adaptations**

A musical adaptation may be registered as a derivative work if the author contributed a sufficient amount of original authorship to the preexisting musical work. An adaptation may involve a reworking of the melody, rhythm, harmony, and/or lyrics in a preexisting musical work that changes the style or genre of that work. It also may include a lyrical adaptation of the text of a preexisting work, such as an adapted poem or adapted Biblical text.

*Examples:*

- A hip hop musical based on a Bizet opera.
- A song based on a Shakespearean sonnet.

**802.6(E) Variations**

Variations usually consist of a theme followed by a number of changed or transformed versions of that theme. A registration for this type of work covers the new music that the author added to the work.

**802.6(F) Setting**

Setting usually means the act of putting a preexisting poem or text to new music. A registration for this type of work covers the new music that the author added to the work.

A musical setting of Biblical or other preexisting text may be registered if the music represents sufficient original authorship. In the Material Excluded field the **applicant** should identify the preexisting text, and in the New Material Included field the applicant should check the box for “music.” If there has been sufficient adaptation of the preexisting words, and if the preexisting text is in the **public domain** or has been used with permission, the **claim** also may include “some adapted lyrics.”

**802.6(G) Musical Works Containing Samples or Interpolation**

Sampling is the incorporation of a fragment or snippet from a preexisting recorded song into a new song. Sometimes the sampled portion is looped, modified, or repeated continuously. The Office may register such works based on the original new music or lyrics that the author added to the work, but not based on the use of the sample. Moreover, use of more than a *de minimis* amount of recognizable sample may be questioned for lawful inclusion.

**802.6(H) Revised or Additional Music / Lyrics**

The addition of music or lyrics, such as a new bridge or verse, may be registered if the additions represent sufficient original authorship. Small changes, however, such as substituting “he” for “she” in each incidence in a song would not be considered sufficient authorship to support a new **claim**.

**802.6(I) Editorial Authorship**

Musical editing generally consists of adding markings for the performance of a musical composition, such as additional or altered fingering, accents, dynamics, and the like. Editing also may consist of textual notes on performance practice or the historical background for a musical composition. To assert a **claim** to copyright in this type of authorship, the **applicant** may use the term “musical editing” in the Other field of the online application or space 2 of the paper application.

A work consisting of editorial revisions, annotations, elaborations, or other modifications which as a whole represent an original work of authorship, is a **derivative work**. These types of works may be registered only if the underlying authorship has been used lawfully. When asserting a **claim** to copyright in these types of work, the **applicant** may use the term “musical editing,” or may provide a more specific description of the new material that the author contributed to the work.

### 802.6(J) Method Books

Instructional books for learning to play an instrument are sometimes known as method books. Method books typically contain common property elements such as scales, arpeggios, chord charts, and musical examples taken from preexisting sources. They also may contain original elements, such as instructional text, new music, and original musical exercises. If a method book contains sufficient **copyrightable** text and/or new music, the application will be accepted on that basis.

A method book that contains only previously published material or chords, scales, exercises, and other information that is common property may be registered as a **compilation** (*i.e.*, based on the selection, coordination, and/or arrangement of the preexisting material, as defined under **17 U.S.C. § 101**) if it contains at least a minimal amount of compilation authorship. If the compilation authorship is *de minimis*, the claim cannot be registered. For example, a compilation of all the diatonic major and minor scales would not constitute sufficient creative compilation authorship, because the selection and arrangement is dictated by the Western musical scale system.

For a general discussion of compilations, see **Chapter 500**, Section 508.

### 802.7 Collective Musical Works

A collective musical work is a work that contains “a number of contributions” that constitute “separate and independent works in themselves” that have been “assembled into a collective whole” “in such a way that the resulting work as a whole constitutes an original work of authorship.” **17 U.S.C. § 101** (definitions of “collective work” and “compilation”). Examples of collective musical works include the following types of works:

- A quarterly journal of contemporary art songs.
- A hymnal comprised of several single contributions from various hymn composers.
- A folio of selected Rodgers and Hammerstein songs.

Collective works potentially contain two types of **copyrightable** authorship: (i) the compilation authorship involved in selecting, coordinating, and/or arranging a number of separate and independent musical works and assembling them into the collective whole; and (ii) the authorship involved in creating the music and/or lyrics for the individual musical works.

A collective work may be registered together with the individual musical works contained therein, provided that the collective work and the individual works are owned by the same party, and provided that the individual works have not been previously published or previously registered. In no case may the claimant register a musical work that is in the public domain. If the owner of the individual musical works does not own the copyright in the collective work as a whole, then each musical work must be registered separately as an individual contribution to a collective work.

For general information on **collective works**, see **Chapter 500**, Section 509.

## 802.8 Registration Issues

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

### 802.8(A) A Registration for a Musical Work Distinguished from a Registration for a Sound Recording

As discussed in Section 802.2(B), a musical work and a **sound recording** of that work are separate works. For example, the song “America the Beautiful” and a recording of Whitney Houston singing “America the Beautiful” are two distinct works. The song itself (*i.e.*, the music and lyrics) is a “musical work.” An audio recording of that song performed by a particular artist is a “sound recording.”

A registration for a musical work covers the music and lyrics (if any) embodied in that composition, but it does not cover a particular recording of that composition. Likewise, a registration for a recording of a particular musical work covers the performance and production authorship involved in creating that recording, but does not cover the music or lyrics embodied in the underlying composition.

To register a musical work, the **applicant** generally should select “work of the performing arts” in the Type of Work field when completing the online application and should use **Form PA** when completing a paper application. By contrast, if the applicant intends to register a sound recording, the applicant must select “sound recording” when completing the online application and must use **Form SR** when completing a paper application.

A musical work and a sound recording of that work may be registered with one application and one **filing fee** if the composition and the recording are embodied in the same phonorecord and if the claimant owns the copyright in both works. See 37 C.F.R. § 202.3(b)(1)(iv). If the copyright in the musical work and the sound recording are owned by different parties, a separate application and filing fee must be submitted for each work.

It also may be possible to register multiple musical works together with a sound recording of each work if the compositions and the recordings are owned by the same claimant and if they were packaged or physically bundled together as a single unit and first **published** on the same date. This is known as the unit of publication option. For information concerning this option, see Section 802.8(H).

**NOTE:** To register a musical work together with a sound recording of that work, the applicant must select “Sound Recording” when completing the online application or must use Form SR when completing a paper application.

*Examples:*

- Louise and Stan co-created a song and co-produced a recording of their composition. Louise wrote the music for the song and sang the vocals on the recording. Stan wrote the lyrics and played guitar on the recording. Louise and Stan co-own the copyright in both the song and the sound recording; therefore, both works may be registered with the same application. The applicant should complete an SR application and should name Louise and Stan as the co-claimants for the music, lyrics, and sound recording.
- Renuka wrote the music and lyrics for a song, and she owns the copyright in her composition. Renuka and Gopal co-produced a sound recording of this song, and they co-own the copyright in that recording. Because the ownership of the song and the sound recording are different, they must be registered with separate applications. The applicant should complete a PA application naming Renuka as the author/claimant of the musical composition, and an SR application naming Renuka and Gopal as the co-authors and co-claimants of the sound recording.

**802.8(B) Identifying the Author**

The author of a musical work (including any lyrics) is the creator of the music (and/or lyrics), not the person who merely transcribes the work. Transcribing or fixing a musical work in and of itself does not constitute authorship. Creating a recording of a musical work is not a form of musical work authorship in and of itself, although it may be a form of sound recording authorship if it contains sufficient creativity to constitute a **copyrightable** sound recording.

**802.8(C) Joint Authorship**

If a musical work is a “**joint work**,” the applicant should name all the joint authors on the application. If there is a discrepancy between the individuals identified as authors on the application and the individuals identified as authors on the **deposit copy(ies)**, the **registration specialist** will communicate with an **applicant**, unless this information is clarified elsewhere in the registration materials.

Historically, songs with different composers of music and lyrics have been registered as joint works. Where separate applications are received for the lyrics and the music of a song, the registration specialist may communicate with the applicant to inquire whether the authors intended to merge their contributions into a unitary whole. If the work is a work of joint authorship rather than a **derivative work**, the applicant(s) should submit one application listing both authors.

*Examples:*

- An applicant identifies Bob Jordan as the author of the lyrics of a song. The song contains lyrics and music and the compact disc names Bob Jordan as the author of lyrics and Sam Sanders as the author of music. The specialist may inquire whether the applicant considers the song to be a joint work. If the song is a joint work, the applicant should name Bob as the author of lyrics and Sam as the author of music.

- An applicant names Bill Bland as the author of lyrics and Terry Taylor as the author of music, and states, “Bill owns the lyrics and Terry owns the music.” The specialist will provide information about joint works, and if the lyrics and music are separately owned, will ask that they be registered on separate applications with separate deposits.

For more information on joint works, see Section 801.6 and Chapter 500, Section 505.

### 802.8(D) Name Individual Authors (Not Performing Groups) as the Author of a Musical Work

Generally, the **applicant** should name the individual authors of a musical work, and should not name a performing group as an organizational author, unless the group is a legal entity that created the musical work as a work made for hire. Naming the individuals as the authors rather than the performing group creates a clearer public record, because membership in the performing group may change over time.

The applicant should provide the legal name(s) of all the individual(s) who created the musical work in the Author field or space (unless the work is **pseudonymous**, **anonymous**, or a **work made for hire**). However, the applicant should include only the names of the songwriters (*i.e.*, the author(s) of the music and, if applicable, the lyrics).

The applicant should not list all of the names of the band members unless all of the members contributed to the authorship of the musical work. The band members’ contribution to the recorded performance (*i.e.*, the sound recording) may well be a separate **claim** that includes different authors from the claim in the musical work. If the authors of the musical work are different from the authors of the sound recording, separate applications should be filed for each work.

For instance, if a band is comprised of Bingo, Mick, Paul, and Keith, but Keith wrote all the lyrics and Bingo wrote all the music, the authors for the musical work should be limited to Keith and Bingo. The applicant for the sound recording may list all of the performers who contributed to the sound recording as well as any producer who contributed **copyrightable** production.

Where the authors are members of a performing group and the applicant wishes to include the name of the performing group in the record, the applicant may provide that information in the Note to Copyright Office field of the online application. When completing a paper application, the applicant should list each author in the Author space and may include the statement “member of [performing group X].” In both cases, the **registration specialist** will add the name of the performing group to the record as an index term.

If the musical work is **pseudonymous** (meaning that the individual who created the work is identified on the deposit under a fictitious name), the applicant may give the pseudonym instead of providing the author’s legal name and may indicate that the work is pseudonymous.

For registration purposes, the name of a performing group generally would not be considered a pseudonym, because pseudonyms apply only to individuals. If an applicant names a performing group as the author and indicates that the musical work is pseudonymous, the registration specialist generally will communicate with the applicant to request that the legal names of the individual authors who created the work be added to the application.

If the applicant names a performing group as the author and indicates that the work is a **work made for hire**, the specialist will communicate with the applicant unless it is clear that the performing group is a legal entity and that the work was created by the employees of that entity or was a specially commissioned work under the statutory definition of a work made for hire. If the performing group is a legal entity and that the musical work was created by the employees of that entity or was a specially commissioned work under the statutory definition of work made for hire, then the performing group should be named as the author and the work made for hire question should be answered “yes.”

*Example:*

- The performing group Tangent Image consists of three individuals: Richard Washington, Gary Watts, and Joel Wilson. All three are authors and owners of the song being registered. The application should name the three individuals as authors and claimants. If desired, the applicant may indicate that the individuals are known as Tangent Image by providing that information in the Note to Copyright Office field (online application) or in space 2 (paper application).

### 802.8(E) Work Made for Hire Authorship

A musical work may be considered a **work made for hire** if the musical work was (i) prepared by an employee within the scope of his or her employment, or (ii) was specially ordered for a particular use with an express written agreement signed by both parties that the work is a work made for hire. See **17 U.S.C. § 101** (identifying particular uses for which a specially ordered or commissioned work may be considered a work made for hire).

If the application states that a musical work was a work made for hire, the **registration specialist** may communicate with the **applicant** to determine whether the musical work truly falls within the statutory definition. Since musical works are not one of the categories listed under part two of the work made for hire definition set forth in **Section 101** of the Copyright Act, a musical work must fall under part one of the definition or one of the particular uses identified under part two of the statutory definition to be considered a work made for hire.

*Examples:*

- The applicant names Joe Smith as author of lyrics and music, answers “yes” to the “work made for hire” question, and states that Joe wrote the lyrics and paid a friend to write the music. The registration specialist may communicate with the applicant and provide information on works made for hire, because it appears unlikely (i) that Joe’s friend was employed by Joe and created the music within the scope of his employment, (ii) that the music was specially commissioned in a signed, written agreement, or (iii) that the music falls within one of the nine categories that may be specially ordered or commissioned as a work made for hire.
- The applicant submits an album containing dozens of short, copyrightable musical selections that are intended to be licensed as television cues. The applicant names TV Production Music, LLC as the author of the music, states that the work is made for hire, and states that the company owns the copyright in both the music and the album as a whole. It is possible that the company’s employees compose television production music. In the alternative, it

is possible that the music was specially ordered or commissioned for use as part of a motion picture or as a contribution to a collective work. The registration specialist will register the claim with an annotation, such as: “Basis for registration: collective work.”

For a full discussion of work made for hire authorship, see [Chapter 500](#), Section 506.

#### 802.8(F) Publication Issues

A public performance or display of a work does not, in and of itself, constitute **publication**. [17 U.S.C. § 101](#) (definition of “publication”). If an **applicant** gives a publication date, but states that the publication date refers to a performance of the musical work, the **registration specialist** will communicate with the applicant. *Id.*

Under the current copyright law, the public distribution of **phonorecords** on or after January 1, 1978 publishes the musical works recorded therein. By contrast, musical works distributed only in the form of phonorecords (*e.g.*, records, tapes, or discs) prior to January 1, 1978, cannot be registered as published works under the [1909 Act](#) or the [1976 Act](#). See [17 U.S.C. § 303\(b\)](#). Thus, if a musical work was released only in phonorecords prior to January 1, 1978 and if the phonorecords were still available as of that date, the date of first publication for registration purposes would be January 1, 1978. If the phonorecords were no longer available as of January 1, 1978, but the musical work was subsequently rereleased in any format, the rerelease date would be considered the date of first publication. If the phonorecords were no longer available as of January 1, 1978, and the musical work was not subsequently rereleased, the work may be registered as an **unpublished** work.

For more information on publication, see [Chapter 1900](#).

#### 802.8(G) [Reserved]

#### 802.8(H) [Reserved]

### 802.9 Application Tips for Musical Works

This Section provides basic information on how to complete the online and paper applications for a musical work, as well as terms to use and terms to avoid when describing the authorship in such works.

For detailed information on how to complete an application, see [Chapter 600](#).

#### 802.9(A) Type of Work

A copyright **claim** in music or lyrics may be registered with the U.S. Copyright Office in the same manner as other works of the performing arts. When submitting an online application, the **applicant** should select “Work of the Performing Arts” as the Type of Work. (When submitting a paper application, the applicant should use [Form PA](#).)

**NOTE:** When registering a musical work together with a **sound recording** of that work, the applicant must select “Sound Recording” as the Type of Work when completing the online application. (When completing a paper application, the applicant must use **Form SR**.) If an applicant attempts to register a sound recording as a “Work of the Performing Arts” (or with Form PA), the **registration specialist** will change the Type of Work to “Sound Recording” (or change the application from a Form PA to a Form SR) without communicating with the applicant.

For more information on sound recording authorship, see Section **803**.

### **802.9(B) Title of Work**

The **applicant** should give the title of the work being registered. When registering a musical work with the online application, the applicant should follow these guidelines:

- *Registering a single song contained on an album:* Give the individual song title as the “Title of work being registered” and give the album title as the “Title of larger work.”
- *Registering an entire album:* Give the album title as the “Title of work being registered” and enter each song title separately as a “Contents title” if the **claimant** is the author of or owns all rights in each of the songs.
- *Registering the music contained in a motion picture:* Give the song title(s) as the “Title(s) of work being registered” and give the **motion picture** title as the “Title of larger work.”

For additional guidance in completing this portion of the application, see **Chapter 600**, Section 610.

### **802.9(C) Year of Completion**

The **applicant** must give the year of completion date for the work submitted. If the applicant intends to register a **derivative work**, the applicant must give the year that the **derivative** version was completed (not the year the original work was completed).

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

### **802.9(D) The Author Created Field and the Nature of Authorship Space**

When completing an online application, the **applicant** should identify the **copyrightable** authorship that the applicant intends to register on the Authors screen in the field marked Author Created. When completing a paper application, the applicant should provide this information on space 2 of the application under the heading Nature of Authorship.

In all cases, the applicant should clearly and accurately describe the authorship that each author contributed and should only refer to the material submitted in the **deposit copy(ies)**. When completing an online application, the applicant may use one or more of the following terms:

- Music
- Lyrics

- Text
- Musical Arrangement

Other acceptable terms may be provided in the Author Created/Other field, such as “melody” (for a single line) or “song” (for lyrics and music).

These terms also may be used when completing the Nature of Authorship space on **Form PA**.

For additional guidance in completing this portion of the application, see **Chapter 600**, Section 618.

### **802.9(E) Unclear Authorship Terms**

When completing the Author Created field or the Nature of Authorship space, the **applicant** should avoid ambiguous or unclear terms, such as referring to the physical object in which the musical work has been **fixed** (e.g., CD, mp3, tape, etc.). Additional unclear terms are discussed in Sections **802.9(E)(1)** through **802.9(E)(6)** below and in **Chapter 600**, Section 618.8(A).

#### **802.9(E)(1) Instrument Names / Vocals**

Giving an instrument name (e.g., guitar, trumpet, or keyboard) as a description of authorship is unclear, because the instrument could refer either to the music, the performance, or both. To refer to the musical contribution, the **applicant** should use clear terms, such as music, melody, or arrangement after the instrument named (e.g., “music for guitar,” “trumpet melody,” or “keyboard arrangement”).

Similarly, the term “vocals” is unclear, because it could refer to either lyrics or performance. To refer to the lyrics, the applicant should state “lyrics.” To refer to the melody to which the lyrics are sung, the applicant should state “melody.”

For guidance in asserting a **claim** in the performance contribution, see Sections **803.9(C)** and **803.9(D)(1)**.

#### **802.9(E)(2) Production / Produced**

Using the term “production” to describe musical authorship is unclear, because it could refer either to the musical authorship, the **sound recording** authorship, or both. To refer to the musical work, the **applicant** should use the terms “music” and/or “musical arrangement.”

#### **802.9(E)(3) Rap**

When an **applicant** describes the author’s contributions to a work as “rap,” that term generally is interpreted to mean that the author(s) contributed lyrics, unless information in the registration materials suggests that the applicant intended to register a **claim** in **sound recording** authorship. To clearly describe the musical authorship in a rap, the applicant should use terms such as “lyrics” and/or “music.”

For guidance in registering rap authorship as a sound recording, see Section **803.9(D)(3)**.

#### **802.9(E)(4) Beats**

A beat is an instrumental or drum track often created in a studio as a background for a song or rap. When this term is used it may be unclear whether the **applicant** is referring to the music or the **sound recording**, or both, or whether the beat is based in whole or in part on preexisting music, or is completely original. When the beat was created entirely by the author, the applicant should describe the authorship as “music” or “musical beat.” Where a preexisting beat is used, the applicant generally should exclude this material from the **claim**.

**NOTE:** Some companies offer so-called “royalty-free” beats for download or purchase. Often, the beat is sold to a large number of people and there is no written agreement between the purchaser and the company offering the beats. Thus, even if the company states that the purchaser is the copyright owner of the beat, the purchaser may be merely a nonexclusive licensee of the work rather than an owner. As such, the applicants should exclude the beat from the claim.

#### **802.9(E)(5) Loops**

A loop is a short musical section that is repeated continuously as a part of a song. The repeated musical section of a loop may be preexisting or original. By itself, a loop may not represent sufficient authorship to support a **claim** in music. If the loop is original and sufficiently creative, the **applicant** may describe this authorship as “music” or “musical loop.”

#### **802.9(E)(6) Transcription**

The term “transcription” is unclear, because it could refer to the act of notating or writing down music that someone else created. In this situation, the transcriber’s contribution is not registrable.

Transcription may also refer to arranging a work for a different group of instruments. To describe this type of contribution, the **applicant** should use the terms “musical arrangement” or “orchestration.”

#### **802.9(E)(7) Sound Effects**

The term “sound effects” should not be used to describe the authorship in a musical work, because this term is unclear. Instead, the applicant should describe the authorship as “music.” If it appears that the applicant is asserting a claim in uncopyrightable material or unclaimable material, the registration specialist will communicate with the applicant.

#### **802.9(F) The Material Excluded / New Material Included Fields and the Preexisting Material / Material Added to This Work Spaces**

If the work being registered is a **derivative work** or a **compilation** of preexisting works, the use of the underlying works must be lawful and the preexisting material must be identified and excluded from the **claim**. When completing an online application, the **applicant** should provide

this information in the Material Excluded and New Material Included fields. When completing a paper application, the applicant should provide this information in the Preexisting Material and Material Added to This Work space. For information on how to complete these portions of the application, see [Chapter 600](#), Section 621.8.

In all cases, the applicant should provide a brief description of the new material that is being submitted for registration and the applicant should use an acceptable term to describe the author's contributions to that material (e.g., music, lyrics, musical arrangement).

*Example:*

- Amy Addams creates new lyrics for a previously **published** song. The applicant should identify the previously published song in the Material Excluded field and should describe the “new lyrics” in the Author Created and New Material Included fields.

When describing new material that the author added to a derivative work or compilation, the applicant should avoid using ambiguous or unclear terms, such as providing the name of a musical instrument or referring to the physical object in which the work has been **fixed**.

As a general rule, the U.S. Copyright Office will accept statements that identify the material excluded from the claim and the new material included in the claim, unless they are contradicted by information provided elsewhere in the registration materials or unless the terms used to describe the authorship are otherwise unclear. For examples of unacceptable and unclear authorship terms, see [Chapter 600](#), Section 618.8(A).

## 802.10 Deposit Requirements for Musical Works

To register a musical work with the U.S. Copyright Office, the **applicant** should deposit a copy or phonorecord of the work that is sufficient to identify the applicant's **claim** to copyright in the music and/or lyrics and to allow the Office to examine the work for **copyrightable** authorship.

For information on the deposit requirements for musical works **published** on or after January 1, 1978, see [Chapter 1500](#), Section 1509.2(A). For information on deposit requirements for musical works published before January 1, 1978, see [Chapter 2100](#), Section 2116.5(A).

## 803 Sound Recordings

### 803.1 What Is a Sound Recording?

Sound recordings are “works that result from the fixation of a series of musical, spoken, or other sounds, but not including sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes or other phonorecords, in which they are embodied.” [17 U.S.C. § 101](#).

A **series of musical, spoken, or other sounds** requires a temporal succession of sounds rather than a single sound expressed horizontally or simultaneous sounds expressed vertically, such as in a chord.

## 803.2 Sound Recordings Distinguished from Other Types of Works

### 803.2(A) Sound Recordings Distinguished from Musical Works

A sound recording and the music, lyrics, words, or other underlying content embodied in that recording are separate works. The copyright in a sound recording covers the recording itself, but does not cover the music, lyrics, words, or other underlying content embodied in that recording (or *vice versa*).

For more information on this issue, see Sections [802.8\(A\)](#) and [803.8\(A\)](#).

### 803.2(B) Sound Recordings Distinguished from the Sounds Accompanying a Motion Picture

There is a legal distinction between a sound recording and the soundtrack for a **motion picture** or other **audiovisual work**. The statutory definition for a sound recording specifically states that this category does not include the “sounds accompanying a motion picture or other audiovisual work.” [17 U.S.C. § 101](#). Thus, when an **applicant** intends to register the sounds in a motion picture or other audiovisual work, the applicant must state “sounds,” “soundtrack,” or “sounds accompanying a motion picture/audiovisual work,” rather than “sound recording.”

For further information on this issue, see Sections [803.8\(F\)\(1\)](#), [807.2\(B\)](#), and [808.2\(B\)](#).

## 803.3 Elements of Sound Recordings

There are two types of sound recording authorship:

- Authorship in the performance(s); and
- Authorship in the production of the sound recording.

Both the performer and the producer of a sound recording of a musical performance or spoken word performance may contribute **copyrightable** authorship to the sound recording. Generally, the performance and production are considered a single, integrated work. In some cases, however, the main or sole contribution may be production authorship (as in a recording of bird songs, where there is no human performance) or the main contribution may be performance authorship (as in a recorded performance where the only production involved is to push the “record” button).

### 803.3(A) Performance Authorship

Examples of performance authorship include playing an instrument, singing, speaking, or creating other sounds that are captured and **fixed** in the sound recording. Individual performance authorship may be claimed only if the sound recording is comprised solely of an individual performance that is sufficiently creative. If a performance is part of an integrated work (*e.g.*, a band performance), the Office will not accept a **claim** in an individual performer’s contribution to that work.

### 803.3(B) Production Authorship

Examples of production authorship in a sound recording include (i) capturing and manipulating the sounds that are embodied in the sound recording, and (ii) compiling and editing those sounds to make the final recording.

### 803.4 Fixation of Sound Recordings

A sound recording is “**fixed**” in a tangible medium of expression when its embodiment in a phonorecord, “by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.” [17 U.S.C. § 101](#) (definition of “fixed”).

#### 803.4(A) Unauthorized Fixation

To be “**fixed**,” a live performance must be recorded by or under the authority of the performer. See [17 U.S.C. § 101](#). If a live performance is recorded without the performer’s permission, the U.S. Copyright Office cannot register that recording.

#### 803.4(B) Types of Phonorecords

A sound recording may be submitted to the U.S. Copyright Office in an electronic format by uploading the work to the Office’s electronic registration system. Electronic formats include but are not limited to digital audio files (e.g., .wav, .mp3, .wma).

A digital audio file that is uploaded to the Office’s server in support of an online application is a **phonorecord** for registration purposes. For more information on digital deposits, see [Chapter 1500](#), Sections 1507.2 and 1508.1.

A sound recording also may be submitted to the U.S. Copyright Office in a hard copy format, either by mail, by courier, or in person. Hard copy formats include but are not limited to:

- Compact discs
- Vinyl records
- Tape formats
- Flash drives

#### 803.4(C) Insufficiently Fixed Formats

Certain formats do not sufficiently fix a specific series of sounds. In such cases, the Office will not register a **claim** in sound recording. For example, standard midi files capture the underlying musical score, but they do not capture a specific series of sounds. While they contain instructions for producing sounds, any instrumentation may be applied, resulting in a file that contains different sounds each time it is played. For this reason, the Office does not consider standard midi

files to be **phonorecords** and will not register a copyright claim in a sound recording contained in a standard midi file (although it may accept the claim as a musical work).

### 803.5 Copyrightable Authorship in Sound Recordings

#### 803.5(A) Independent Creation

To be **copyrightable**, a sound recording must originate from the author of that work, either through performance or production. A sound recording that is merely reproduced from another source is not copyrightable.

#### 803.5(B) Creative Expression

To be registrable, a sound recording must contain a sufficient amount of creative, perceptible sound recording authorship **fixed** as a **series of musical, spoken, or other sounds**.

Elements that determine the sufficiency and creativity of a sound recording include the simultaneous or sequential number of sounds, the length of the recording, and the creativity perceptively expressed in creating, fixing, and manipulating the sounds.

Short sound recordings may lack a sufficient amount of authorship to be **copyrightable** (just as words and short textual phrases are not copyrightable). See **37 C.F.R. § 202.1(a)**; see also **Chapter 300**, Section 313.4(D).

#### 803.5(C) Human Authorship

To be registrable, a sound recording must result from human authorship through performance and/or production. A sound recording will not be registered where there is no human authorship, such as a recording that results from a purely mechanical or automated process. The registration of a sound recording that involves no human performance, such as a recording of nature sounds, is only possible if there is sufficient human production authorship present.

For more information on mechanical processes see **Chapter 300**, Section 306.

#### 803.5(D) Pre-1972 Sound Recordings

Sound recordings were not protected under U.S. federal law until February 15, 1972, and the protection provided in 1972 was not retroactive. As such, sound recordings by U.S. authors that were first **fixed** prior to February 15, 1972 are not subject to federal copyright protection in the United States. **17 U.S.C. § 301(c)**.

Registration under the General Agreement on Tariffs and Trade (“GATT”) may be possible for foreign sound recordings fixed prior to February 15, 1972. For more information on **GATT registration**, see **Chapter 2000**, Section 2007.

Sound recordings fixed before February 15, 1972 may be protected under state common law or statutes. The Copyright Act provides that any rights or remedies under the common law or statutes of any State shall not be annulled or limited by federal copyright law until February 15, 2067. **17 U.S.C. § 301(c)**.

### 803.6 Derivative Sound Recordings

A derivative sound recording is a sound recording that is based on preexisting sounds that have been “rearranged, remixed, or otherwise altered in sequence or quality.” **17 U.S.C. § 114(b)**. Preexisting sounds may include sounds that have been previously **published**, previously registered, sounds in the **public domain**, sounds **fixed** before February 15, 1972, or sounds that are owned by another party.

The **applicant** should identify any preexisting work or works that the derivative recording is based on or incorporates, and should provide a brief general description of the additional material covered by the copyright **claim** being registered. For guidance on these procedures, see **Chapter 600**, Section 621.

**IMPORTANT NOTE:** A sound recording usually embodies a preexisting musical composition, literary work, or dramatic work, and in that sense it is a **derivative work** of the underlying musical / literary / dramatic work which has been performed and recorded. For registration purposes, the Office does not require the musical / literary / dramatic work to be excluded from a claim in sound recording authorship, because the preexisting work is presumed to be excluded unless it is expressly claimed in the application.

#### 803.6(A) Permission to Use Preexisting Material

Protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully. **17 U.S.C. § 103(a)**. Sound recordings that unlawfully employ preexisting sounds under copyright protection are not subject to copyright protection if they are inseparably intertwined with the preexisting sounds. *Id.*; see also **H.R. REP. NO. 94-1476, at 57-58 (1976)**, reprinted in 1976 U.S.C.C.A.N. at 5670-71; **S. REP. NO. 94-473, at 54-55 (1975)**.

The U.S. Copyright Office generally does not investigate the copyright status of preexisting material or investigate whether it has been used lawfully. However, the **registration specialist** may communicate with the **applicant** to determine whether permission to use was obtained where a recognizable preexisting work has been incorporated in a sound recording. The applicant may clarify the lawful use of preexisting material by including a statement to that effect in the Note to Copyright Office field of the online application or in a cover letter submitted with the paper application.

For a general discussion of this issue, see **Chapter 300**, Section 313.6(B).

#### 803.6(B) Copyrightable Authorship in Derivative Sound Recordings

To be registrable, a derivative sound recording must contain a sufficient amount of new, creative sound recording authorship. Where the changes made to the preexisting sound recording are

the result of a purely mechanical process rather than creative human authorship, or where only a few slight variations or minor additions have been made, registration will be refused. See Section 803.5(B) and 803.5(C).

Although sound-alike recordings do not infringe preexisting sound recordings, a sound-alike recording is not **copyrightable** unless it contains new, original and sufficiently creative authorship to support a new registration. 17 U.S.C. § 114(b). A virtually identical sound-alike recording will be refused registration.

Common types of derivative sound recordings and the registration issues associated with such works are discussed in Sections 803.6(B)(1) through 803.6(B)(6).

#### 803.6(B)(1) Additional Sounds

Additional sounds that have been added to a preexisting sound recording may be registered if there is a sufficient amount of creative and original sound recording authorship in the new sounds.

#### 803.6(B)(2) Remix

A remix is a recombination and manipulation of audio tracks or channels from a preexisting sound recording to produce a new or modified sound recording. Remixing from multi-track sources generally is a sufficient basis for a copyright **claim** in a derivative sound recording. Likewise, if a producer and/or engineer is able to manipulate a number of variables and make creative judgments or decisions in determining the outcome of the new recording, there is usually a sufficient basis for a copyright claim. However, the **registration specialist** will communicate with the **applicant** to clarify a claim in a remix from monaural or stereophonic sources, because in such cases it is unlikely that there was sufficient derivative authorship. In all cases, the remixing of preexisting sound recordings must be lawful to be **copyrightable** (*i.e.*, authorized or permissible by law). 17 U.S.C. § 103(a).

For a discussion of “mashups,” see Section 803.6(B)(5).

#### 803.6(B)(3) Editorial Authorship

The Office may register a **claim** in **copyrightable** editorial authorship where an original sound recording is recast, transformed, or adapted with editorial revisions or abridgments of the recorded material such that there is sufficient authorship to constitute a **derivative work**.

#### 803.6(B)(4) Sound Recordings Containing Samples

Sampling is the incorporation of a fragment or snippet from a preexisting track into a new track. The Office may register a **claim** based on new **copyrightable** sound recording that has been added to the work, but not based on the use of the sample.

### 803.6(B)(5) Mashups

For sound recordings, a mashup is a track formed by combining elements from two or more pre-existing (often disparate) works. A simple example would be laying a vocal track from one work on top of the instrumental track from another. Usually, the preexisting materials are edited and remixed in order to create a seamless, integrated work. **Copyrightable** editing / remixing authorship that has been added may support a derivative authorship **claim**. Mashups that unlawfully employ preexisting sound recordings are not subject to copyright protection. **17 U.S.C. § 103(a)**.

Where it appears that no new material has been added, there may not be a basis for a claim in a **derivative work**. For example, in some cases, third party software may be used to generate the mashup through an automated process. This type of contribution does not constitute original, human authorship.

### 803.6(B)(6) Mixtapes

The term “mixtape” may refer to a **compilation** of preexisting tracks, often based on a particular theme, or may refer to an album containing remixes of preexisting tracks. **Copyrightable** remix or compilation authorship may support a derivative authorship **claim**. Mixtapes that unlawfully employ preexisting sound recordings are not subject to copyright protection. **17 U.S.C. § 103(a)**.

## 803.7 Compilations of Preexisting Sound Recordings

### 803.7(A) Registrable Compilations

A **compilation** of sound recordings is a work consisting of preexisting sound recordings that are selected, coordinated, and/or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. A compilation of sound recordings may be **copyrightable** if there is sufficient creativity in the selection, coordination and/or arrangement of the preexisting recordings.

*Examples:*

- The Chimpanzees, *Greatest Hits* (compilation of fifteen tracks from multiple albums).
- *Best of 20th Century Jazz* (compilation of thirty-three tracks from multiple albums).
- *Dance Hits of 2012* (selection and arrangement of twenty-five tracks from multiple sources).

### 803.7(B) Unregistrable Compilations

A re-issue containing previously released or registered sound recordings cannot be registered as a **compilation** unless the author contributed a sufficient amount of original authorship in selecting or arranging the preexisting sound recordings. For instance, taking all the works by a

particular artist and arranging them in chronological order would not be registrable, because there is no creativity in selecting all the artist's works and putting them in date order.

*Examples:*

- Two previously released albums are combined onto a single CD and rereleased; the tracks are not reordered. The **registration specialist** will refuse registration because the author merely combined two preexisting albums, which does not represent enough original authorship to support a claim in a compilation of sound recordings.
- Kalorama Records released a box set of all of the singles that the label released in a particular calendar year, presented in chronological order. The registration specialist will refuse registration because the order of the singles was predetermined by the order of the calendar year.

### 803.8 Registration Issues

This Section discusses frequent registration issues that arise in connection with sound recordings.

#### 803.8(A) A Registration for a Sound Recording Distinguished from a Registration for a Musical Work or Literary Work

As discussed in Section **803.2**, a sound recording and the music, lyrics, words, or other underlying content embodied in that recording are separate works. For example, the song “Amazing Grace” and a recording of Aretha Franklin singing “Amazing Grace” are two distinct works. The song itself (*i.e.*, the music and lyrics) is a “musical work.” A recording of that song performed by a particular artist is a “sound recording.”

A registration for a sound recording covers the performance and production authorship involved in creating that recording, but does not cover the music, lyrics, words, or other underlying content embodied in that recording. Likewise, a registration for a musical work covers the music and lyrics embodied in that composition, and a registration for a dramatic work or a literary work covers the text and music embodied in that work, but it does not cover a particular recording of those works.

To register a sound recording, the **applicant** must select “Sound Recording” when completing the online application and must use **Form SR** when completing a paper application. By contrast, when registering a musical work, a dramatic work, or a literary work, the applicant should select “Work of the Performing Arts” or “Literary Work” when completing the online application or should use **Form PA** or **Form TX** when completing a paper application.

An applicant may use one application to register a sound recording together with a musical work, a dramatic work, or a literary work if the recording and the music, lyrics, words, or other underlying content are embodied in the same phonorecord and if the claimant owns the copyright in both works. See **37 C.F.R. § 202.3(b)(1)(iv)**. If the copyright in the sound recording and the underlying content are owned by different parties, a separate application and filing fee must be submitted for each work.

It also may be possible to register multiple sound recordings together with the music, lyrics, words, or other underlying content embodied in each recording if the recordings and the underlying content is owned by the same claimant and if they were packaged or physically bundled together as a single unit and first **published** on the same date. This is known as the unit of publication option. For information concerning this option, see see **Chapter 1100**, Section 1103.

**NOTE:** To register a sound recording together with the underlying content embodied in that recording, the applicant must select “Sound Recording” when completing the online application or must use Form SR when completing a paper application.

*Examples:*

- Bob and Mary co-created a song and co-produced a recording of their composition. Bob wrote the lyrics for the song and sang the vocals on the recording. Mary wrote the music and played keyboards on the recording. Bob and Mary co-own the copyright in both the song and the sound recording; therefore, both works may be registered with the same application. The applicant should complete an SR application and should name Bob and Mary as the co-claimants for the music, lyrics, and sound recording.
- Sam wrote the music and lyrics for a song, and he owns the copyright in his composition. Sam and Bill co-produced a sound recording of this song, and they co-own the copyright in that recording. Because the ownership of the song and the sound recording are different, they must be registered with separate applications. The applicant should complete a PA application naming Sam as the author/claimant of the musical composition, and an SR application naming Sam and Bill as the co-authors and co-claimants of the sound recording.

### **803.8(B) Joint Authorship**

Sound recordings are often created by multiple performers and/or producers as joint authors. For example, a recording of a song might be jointly authored by the members of a band, or a singer and producer might be joint authors of the recording, depending on the authors’ intent.

Generally, where there are multiple authors of a sound recording, the sound recording is a **joint work** and the **applicant** should name all the authors of that work. In such cases, the authors’ contributions are not subject to separate registrations. There may be instances, however, where different tracks of a sound recording were created as independent works, such as when a preexisting beat track is sampled in a song. In such cases, the beat track and the sound recording of the song should be registered separately — one as a derivative of the other.

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

### **803.8(C) Name Individual Authors (Not Performing Groups) as the Author of a Sound Recording**

Generally, the **applicant** should provide the name(s) of the individual(s) who created the sound recording, and should not name the performing group as an organizational author, unless the group is a legal entity and the sound recording is a **work made for hire**. Naming the individuals

as the authors of the sound recording rather than the performing group creates a clearer public record, because membership in the performing group may change over time.

The applicant should provide the legal names of the individual(s) who created the sound recording in the Author field or space (unless the work is **pseudonymous**, **anonymous**, or a work made for hire).

Where the authors are members of a performing group and the applicant wishes to include the name of the performing group in the record, the applicant may provide that information in the Note to Copyright Office field in the online application. When completing a paper application, the applicant should list each author in the Author space and may include the statement, “member of [performing group X].” In both cases, the **registration specialist** will add the name of the performing group to the record as an index term.

If the sound recording is pseudonymous (meaning that the individual who created the sound recording is identified on the phonorecord under a fictitious name), the applicant may give the pseudonym instead of providing the author’s legal name and may indicate that the work is pseudonymous.

For registration purposes, the name of a performing group generally would not be considered a pseudonym, because pseudonyms apply only to individuals. If an applicant names a performing group as the author and indicates that the sound recording is pseudonymous, the **registration specialist** generally will communicate with the applicant to request that the legal names of the individual authors who created the sound recording be added to the application.

If the applicant names a performing group as the author and indicates that the sound recording is a **work made for hire**, the specialist will communicate with the applicant unless it is clear that the performing group is a legal entity and the sound recording was created by the employees of that entity or was a specially commissioned work under the statutory definition of a work made for hire. If the performing group is a legal entity and the sound recording was created by the employees of that entity or was a specially commissioned work under the statutory definition of work made for hire, then the performing group should be named as author and the work made for hire question should be answered “yes.”

### 803.8(D) Work Made for Hire Authorship

For a sound recording to be made for hire, it must fall within the statutory definition. *See* 17 U.S.C. § 101 (definition of “**work made for hire**”). If the **applicant** states that a sound recording was a work made for hire and if it appears that the work does not fall within the statutory definition, the **registration specialist** may communicate with the applicant.

For a detailed discussion of works made for hire, see **Chapter 500**, Section 506.

### 803.8(E) Executive Producer

An executive producer of a sound recording generally is involved only in the financial or administrative aspect of production. This type of contribution does not constitute **copyrightable** sound recording authorship. When an executive producer does contribute copyrightable sound

recording authorship, the **applicant** should describe that author’s contribution using the term “sound recording,” rather than “executive producer.”

### **803.8(F) Publication Issues**

For sound recordings, **publication** is the distribution of **phonorecords** of a work to the public by sale or other **transfer** of ownership or by rental, lease, or lending. Offering to distribute phonorecords to a group of persons for purposes of further distribution or public performance constitutes publication. A public performance of a sound recording does not, in and of itself, constitute publication. **17 U.S.C. § 101** (definition of “publication”).

#### **803.8(F)(1) Sounds Published on Both a Soundtrack Album and in a Motion Picture**

Where the same sounds are **published** on both a soundtrack album and as part of a **motion picture**, the registration requirements vary depending on whether the soundtrack album or the motion picture was published first. The statutory definition of sound recording specifically excludes the sounds accompanying a motion picture. **17 U.S.C. § 101**. Thus, if the sounds were first published on a soundtrack album, they are considered a sound recording and cannot be registered as a motion picture. If the sounds were first published in a motion picture, they are considered the sounds accompanying a motion picture and cannot be registered as a sound recording.

If the soundtrack album was published before the motion picture, the **applicant** may register the sound recording without excluding any material that may be subsequently published in the motion picture. If the applicant subsequently submits an application for the motion picture, the portions of the sound recording that appeared on the soundtrack album should be excluded from the **claim**.

If the motion picture was published before the soundtrack album, the applicant may register the motion picture together with the sounds contained therein, provided that the copyright in the motion picture and the sounds are owned by the same **claimant**. The applicant may submit a separate application for the soundtrack album, provided that the album contains sounds or other **copyrightable** authorship that did not appear in the motion picture. In this situation, the sounds that appeared in the motion picture should be excluded from the claim. If the soundtrack album merely reprocessed sounds from the motion picture without change there would be no basis for registering the soundtrack album.

#### **803.8(F)(2) Combination CD / DVD**

It is not possible to register the same series of sounds both as a sound recording and as sounds accompanying a motion picture. If an applicant submits a package containing a published CD and DVD, and attempts to register the same sounds both as a **sound recording** and as sounds accompanying a **motion picture** (such as a live concert and a concert video published together on the same date), the claim may include either the sound recording or the sounds accompanying the motion picture, but not both. For additional information concerning this issue, see Section **803.8(F)(1)**.

**803.8(F)(3) Album Containing a Previously Published Track**

Where a single track is **published** as a single and then is subsequently published on an album, the single must be registered separately from the album because the dates of first publication differ. When completing the application for the single track the **applicant** should give the earlier date of publication. When completing the application for the remaining tracks on the album the applicant should give the later date of publication and should exclude the previously published track from the **claim**.

**803.8(F)(4) Bonus Track Added to a Previously Published Album**

Where a previously **published** album is rereleased with a bonus track, the album and the bonus track must be registered separately because the dates of first publication are different. To register the previously published album the **applicant** should submit the album in the appropriate format described in **Chapter 1500**, Section 1509.2(B) and should provide the date of first publication for that work. To register the bonus track the applicant should submit the rereleased album in the appropriate format described in **Chapter 1500**, Section 1509.2(B), provide the date of first publication for that album, and exclude the previously published recordings from the claim.

**803.8(G) [Reserved]****803.8(H) [Reserved]****803.9 Application Tips for Sound Recordings**

This Section provides basic information on how to complete the online and paper applications for a sound recording, as well as terms to use and terms to avoid when describing sound recording authorship.

For detailed information on how to complete an application, see **Chapter 600**.

**803.9(A) Type of Work**

If the applicant intends to register a sound recording or a sound recording combined with the underlying musical work, dramatic work, or literary work embodied in that recording, the applicant must select “Sound Recording” when completing the online application or must use **Form SR** when completing a paper application. **37 C.F.R. § 202.3(b)(2)(iii)**.

**NOTE:** If the applicant attempts to register a sound recording as a “Work of the Performing Arts” or with **Form PA** (or selects any other Type of Work other than “Sound Recording” or uses any paper application other than Form SR), the **registration specialist** will change the Type of Work to “Sound Recording” or change the application to a Form SR without communicating with the applicant.

**803.9(B) Title of Work**

The **applicant** should give the title of the work being registered. When registering the following types of sound recordings, the applicant should follow these guidelines:

- *Registering a single track contained on an album:* When completing the online application, the applicant should give the individual track title as the “Title of work being registered” and give the album title as the “Title of larger work.” When completing a paper application, the applicant should state “[Individual track title] as contained in [Album title]” in space 1 of **Form SR**.
- *Registering an entire album:* When completing the online application, the applicant should give the album title as the “Title of work being registered” and enter each track title separately as a “Contents title.” When completing a paper application, the applicant should state “[album title] containing [individual track titles]” in space 1 of Form SR.

For additional guidance in completing this portion of the application, see **Chapter 600**, Section 610.

**803.9(C) The Author Created Field and the Nature of Authorship Space**

When completing an online application, the **applicant** should identify the **copyrightable** authorship that the applicant intends to register on the Authors screen in the field marked Author Created. When completing a paper application, the applicant should provide this information in the Nature of Authorship space on Form SR.

In all cases, the applicant should clearly and accurately describe the contribution of each author and should only refer to the material that will be submitted in the **deposit copy(ies)**.

When completing an online application, the applicant may use the term “sound recording” to describe the performance and/or production authorship that the author contributed to the work. If this term does not fully describe the authorship that the applicant intends to register, the applicant should provide a more specific description in the field marked Other. For example, the applicant may use terms such as “remix” or “additional sound recording,” as appropriate, to describe the authorship involved in creating a derivative sound recording.

For additional guidance in completing this portion of the application, see **Chapter 600**, Section 618.

**803.9(D) Unclear Authorship Terms**

When completing the Author Created field or the Nature of Authorship space, the **applicant** should avoid ambiguous or unclear terms, such as referring to the physical object in which the sound recording has been **fixed** (e.g., CD, mp3, tape, etc.). Additional unclear terms are discussed in **Chapter 600**, Section 618.8(A) and in Sections **803.9(D)(1)** through **803.9(D)(5)** below.

**803.9(D)(1) Instrument Names / Vocals**

Giving an instrument name (e.g., guitar, trumpet, or keyboard) as a description of authorship is unclear because the instrument could refer either to the music, the performance, or both. To refer

to the performance contribution, the **applicant** should use clear terms, such as “performance” after the instrument name, such as “guitar performance.” To refer to the musical contribution, the applicant should use clear terms, such as music, melody, or arrangement after the instrument named (e.g., “music for cello,” “bassoon melody,” or “sitar arrangement”). To refer to both the musical and performance contributions, the applicant should use both terms, such as “guitar music and performance.”

Similarly, the term “vocals” is ambiguous because it could refer to either lyrics, performance, or both. To refer to the vocal performance, the applicant should describe the author’s contribution as “vocal performance.” To refer to the lyrics, the applicant should describe the author’s contribution as “lyrics.” To refer to both lyrics and performance, the applicant should describe the author’s contribution as “lyrics and performance.”

When completing the online application, these terms may be provided in the field marked Other; when completing a paper application these terms may be provided on space 2 of Form SR.

### **803.9(D)(2) Narration / Spoken Words**

These terms are ambiguous because they could refer to authorship in the text, the performance, or both. To refer to the vocal performance, the **applicant** should describe the author’s contribution as “vocal performance.” To refer to the text, the applicant should describe the author’s contribution as “text.” To refer to both text and performance, the applicant should describe the author’s contribution as “text and performance.” When completing the online application, these terms may be provided in the field marked Other; when completing a paper application these terms may be provided on space 2 of Form SR.

### **803.9(D)(3) Rap**

An authorship statement that describes the author’s contribution to a work as “rap music” is generally interpreted to mean that the author(s) contributed music and lyrics in a rap style. To refer to the performance, the **applicant** should state “performance” or “rap performance.” When completing the online application, these terms may be provided in the field marked Other; when completing a paper application these terms may be provided on space 2 of Form SR. For information on registering rap as a musical work, see Section **802.9(E)(3)**.

### **803.9(D)(4) Beats / Music Track**

A beat is an instrumental or drum track often created in a studio as a background for a recording. The term “beat” or “music track” may refer to the music, the sound recording, or both. To refer to the sound recording, the **applicant** should state “sound recording.” To refer to the music, the applicant should state “music.” To refer to both, the applicant should state “music and sound recording.” When completing the online application, these terms may be provided in the field marked Other; when completing a paper application these terms may be provided on space 2 of Form SR.

The beat or “music track” may be preexisting in whole or in part, or it may be completely original. Where the beat is completely original, it may be described as a “sound recording.” Where a

preexisting beat or music track has been used, the material generally should be excluded from the **claim**. For more information on derivative sound recording authorship, see Section **803.6**.

**NOTE:** Some companies offer so-called “royalty-free” beats for download or purchase. Often, the beat is sold to a large number of people and there is no written agreement between the purchaser and the company offering the beats. Thus, even if the company states that the purchaser is the copyright owner of the beat, the purchaser may be merely a nonexclusive licensee of the work rather than an owner. As such, the applicant should exclude the beat from the claim.

*Example:*

- Mark writes lyrics and records them over purchased “beats.” The applicant should name Mark as the author of lyrics and vocal performance, should identify the preexisting music and sound recording in the Material Excluded field, and should describe the lyrics and vocal performance in the Author Created and New Material Included fields.

#### **803.9(D)(5) Executive Producer**

The term “executive producer” usually refers to a person involved in the financing or administration of a recording. A person or entity that contributes only these types of services does not contribute **copyrightable** sound recording authorship and should not be named as an author. If an executive producer contributed copyrightable sound recording authorship, the **applicant** should describe that author’s contribution using the term “sound recording,” rather than “executive producer.”

#### **803.9(D)(6) Sound Effects**

The term “sound effects” should not be used to describe the authorship in a sound recording, because this term is unclear. If an applicant uses this term in the Author Created field or the Nature of Authorship space, the registration specialist may register the claim if he or she determines that the applicant is asserting a claim in sound recording (depending on the information given in the deposit copy(ies) or elsewhere in the registration materials). If it appears that the claimant is asserting a claim in uncopyrightable material or unclaimable material, the specialist will communicate with the applicant.

#### **803.9(E) Claims in Hidden Tracks**

Hidden tracks are tracks that appear on a compact disc or LP that are not listed as a track on the album. When submitting a **claim** for a track not listed on the album, the **applicant** should make the location of the track clear and should provide information on accessing the track, either in the Note to Copyright Office field or in a cover letter.

#### **803.9(F) The Material Excluded / New Material Included Field and the Preexisting Material / Material Added to This Work Spaces**

If the sound recording is a **derivative work** or a **compilation** of preexisting works, the use of the underlying works must be lawful and the preexisting material must be identified and excluded

from the **claim**. When completing an online application, the **applicant** should provide this information in the Material Excluded field. When completing a paper application, the application should provide this information in the Preexisting Material space.

In all cases, the applicant should provide a brief description of the new material that is being submitted for registration and the applicant should use an acceptable term to describe the author's contributions to that material (e.g., sound recording, music, lyrics, remixing, additional sounds). In the online application the applicant should provide this information in the New Material Included field. In the paper application the applicant should provide this information in the space marked Material Added to This Work. For information on how to complete these portions of the application, see **Chapter 600**, Section 621.8.

### 803.9(F)(1) Preexisting Liner Notes, Artwork, and Photographs

The **registration specialist** will require the **applicant** to complete the Material Excluded field if the authorship statement refers to element(s) other than the sound recording (such as the underlying work or artwork on the record jacket) and if it appears that those elements have been previously **published**, previously registered, or are owned by a third party.

For example, when registering an entire album together with the text and photographs in the liner notes, and when two of the photographs are previously published, the two photographs should be identified in the Material Excluded field and the entire sound recording and the text and additional photographs in the liner notes should be identified in the New Material Included field.

### 803.9(F)(2) Samples

Where a sample has been used that is more than *de minimis*, the sampled music and/or the sampled sound recording should be identified in the Material Excluded field/space and the new material should be described in the New Material Included field/space. Any amount of preexisting material may be identified in the Material Excluded field for clarity.

*Example:*

- Safya produces a recording and uses a sample (with permission) from a preexisting sound recording as part of her instrumental track. The applicant should name Safya as author of the sound recording, should identify the preexisting track from which the sample is taken in the Material Excluded field, and should state “additional sound recording” in the Author Created and New Material Included fields.

### 803.9(F)(3) Unclear Authorship Terms for Derivative Sound Recordings

The terms “equalization,” “remastering,” “reverberation,” “reprocessing,” and “re-engineering” may refer to contributions that are mechanical in nature or too minimal to be **copyrightable**, or in some cases may involve sufficient creative authorship. If the **applicant** uses one or more of these terms on the application as the sole basis for the **claim**, the **registration specialist** will request a more detailed explanation or clarification.

To avoid correspondence and to facilitate examination, an applicant should provide a brief statement in the Note to Copyright Office field or the New Material Included/Other field that describes the authorship involved in recasting, transforming, or adapting the preexisting sound recording(s).

#### **803.9(F)(4) Unacceptable Authorship Terms for Derivative Sound Recordings**

The following terms generally denote *de minimis* authorship and thus are not acceptable descriptions for a **claim** in new or derivative sound recording authorship:

- Declicking
- New format
- Noise reduction
- Reissue

#### **803.10 Deposit Requirements for Sound Recordings**

To register a sound recording with the U.S. Copyright Office, the **applicant** should **deposit** a phonorecord of the work that is sufficient to identify the applicant's **claim** to copyright in the sound recording and to allow the Office to examine the work for **copyrightable** authorship.

For information on the deposit requirements for sound recordings, see **Chapter 1500**, Section 1509.2(B).

### **804 Dramatic Works**

#### **804.1 What Is a Dramatic Work?**

For purposes of copyright registration, a dramatic work is a composition generally in prose or verse that portrays a story that is intended to be performed for an audience such as plays, musicals, or operas. Generally, a dramatic work represents the action as it occurs rather than simply narrating or describing the action. Some dramatic works include music.

#### **804.2 Dramatic Works Distinguished from Other Types of Works**

##### **804.2(A) Dramatic Works Distinguished from Nondramatic Literary Works**

For the purposes of copyright registration, dramatic works are distinguished from nondramatic **literary works**, such as novels, which are not intended to be performed for an audience. Other examples of nondramatic literary works include sermons and lectures, which are intended to be performed for an audience, but do not tell a story.

### 804.2(B) Dramatic Works Distinguished from Other Works of the Performing Arts

Dramatic works with accompanying music are distinguished from nondramatic musical works that do not convey a story. Operas and musicals are examples of dramatic works with accompanying music that tell a story. A symphony is an example of a nondramatic musical work that does not tell a story.

Although **motion pictures**, **choreographic works**, and **pantomimes** may contain dramatic elements and may qualify as dramatic works, these types of works are considered separate categories of **copyrightable** authorship, and as such they do not have to fall within the category of dramatic works in order to be registered. For more information on the statutory categories for works of authorship, see **Chapter 300**, Section 307.

### 804.3 Elements of Dramatic Works

Characteristic elements of dramatic works include plot, characters, dialog, and directions for performance, although each element is not necessarily registrable in and of itself. Information on these elements is set forth in Sections **804.3(A)** through **804.3(F)**.

#### 804.3(A) Plot

Plot is the storyline, plan, or sequence of events in a dramatic work. As a general rule, plot is not registrable in and of itself, because it represents only an idea rather than the expression of an idea. Where a plot is sufficiently detailed and/or the author selects and arranges an original sequence of events, it may be possible to register the descriptive text.

#### 804.3(B) Characters

A character is a person, animal, or even an inanimate object that is used to portray the content of a dramatic work. The copyright law does not protect the name or the general idea for a character. See, e.g., *Klinger v. Conan Doyle Estate, Ltd.*, 755 F.3d 496, 502-03 (7th Cir. 2014). However, the Office may issue a registration based on the authorship describing, depicting, or embodying a character.

#### 804.3(C) Dialog / Monolog

Dialog is the conversation between characters in a dramatic work. A monolog is a speech by a single character in a dramatic work.

#### 804.3(D) Stage Directions and Directions for Performance

Stage directions and directions for performance generally refer to the instructions for the actors' movements, gestures, and dramatic action, and/or suggestions for scenery. Directions include stage business and blocking, which are defined in Sections **804.3(D)(1)** and **804.3(D)(2)**.

**804.3(D)(1) Stage Business**

Stage business refers to activity performed by the actors to illustrate character or create dramatic effect, such as rolling up one’s sleeves or tapping a pencil. Stage business may be created by the playwright, the director, and/or the actor. Stage business is not registrable in and of itself because it represents common body movements which are not subject to copyright protection. See Sections [805.5](#) and [806.5](#).

Choreography and pantomime are the only categories of works comprised exclusively of certain types of bodily movements that are eligible for copyright protection under [Section 102\(a\)](#) of the Copyright Act. For more information on [choreographic works](#) and [pantomimes](#), see Sections [805](#) and [806](#) below.

**804.3(D)(2) Blocking**

Blocking refers to the positioning and movement of actors onstage or in frame, such as “cross to stage left.” Blocking may be created by the playwright and/or the director. Blocking is not registrable in and of itself because it represents common movements which are not subject to copyright protection. See Sections [805.5](#) and [806.5](#).

**804.3(E) Music in Dramatic Works**

Dramatic works may include accompanying music, such as musical plays or operas. Music in a dramatic work ranges from incidental music to music that advances the story. Music also may be used as an adjunct rather than integral part of a dramatic work, such as a tape of a preexisting song played in the background of a particular scene.

**804.3(F) Illustrations or Descriptions of Costumes, Scenery, Sets, Props, or Lighting**

Illustrations of costumes, scenery, sets, props, and lighting may be included in a dramatic work. If the illustrations are [copyrightable](#), they may be registered as visual arts works. A textual description of such works may also be registered as a [literary work](#), but the registration does not extend to the costume, prop, set or lighting itself. For more information on literary works and visual arts works, see [Chapters 700](#) and [900](#).

**804.4 Types of Dramatic Works****804.4(A) Stage Plays**

A stage play is a story prepared for production in a theater (*i.e.*, to be performed on a stage for a live audience). The script generally includes instructions for performers and scenery.

**804.4(B) Musical Plays**

Musical plays are works that consist of music and dramatic material where the music is an integral part of the dramatic work, as opposed to incidental music that is merely intended to accompany the dramatic work. Examples of musical plays include musicals, operas, and operettas.

**804.4(C) Screenplays**

A screenplay is a script prepared for production in a **motion picture**. It generally includes textual instructions for performers, sets, and camera.

**804.4(D) Teleplays**

A teleplay is a script prepared for broadcast on television. It generally includes textual instructions for performers, sets, and camera.

**804.4(E) Radio Plays**

A radio play is a script prepared for broadcast on radio.

**804.4(F) Precursors of Dramatic Works**

Precursors of dramatic works generally are written in advance of the dramatic work and may or may not contain the characteristic authorship elements of dramatic works. Examples include treatments and synopses. To be **copyrightable**, these types of works must contain sufficient original expression.

**804.4(F)(1) Synopses**

A synopsis is a summary of the major plot points and description of the characters in a play or other dramatic work, generally consisting of at least a page or two of text. A registration for a synopsis extends to the text of the synopsis submitted to the U.S. Copyright Office, but it does not extend to the completed dramatic work or the idea for the dramatic work. For guidance on registering these types of works, see Section **804.8(B)**.

**804.4(F)(2) Treatments**

A treatment is a written description of a dramatic work or television show, which outlines and describes the scenes and/or characters and often includes sample dialog. A treatment is generally longer and more detailed than a synopsis. A registration for a treatment extends to the text of the treatment submitted to the U.S. Copyright Office, but it does not extend to the idea, subsequent versions of the script, or a completed television series.

## 804.5 Fixation of Dramatic Works

To be **copyrightable**, dramatic works, including improvised works, must be **fixed** in a tangible medium of expression. A registration for a dramatic work extends only to the work that has been submitted to the U.S. Copyright Office. Dramatic works may be embodied either in **copies** or **phonorecords**.

### 804.5(A) Copies

**Copies** of dramatic works, including any accompanying music, include the following:

- Hard copy formats, including handwritten or printed scripts, DVDs, and videotapes.
- Electronic formats (e.g., .txt, .pdf, .mov) embodied in compact discs, digital video discs, flash drives, hard drives, and other digital file storage devices.

**NOTE:** A non-audio digital file that is uploaded to the Office's server in support of an electronic registration application is a copy for registration purposes.

### 804.5(B) Phonorecords

**Phonorecords** of dramatic works, including any accompanying music, include the following:

- Hard copy audio formats, including but not limited to CDs and tapes.
- Electronic audio formats (e.g., wav, mp3, wma) embodied in compact discs, digital video discs, flash drives, hard drives, and other digital file storage devices.

**NOTE:** A digital audio file that is uploaded to the Office's server in support of an electronic registration application is a phonorecord for registration purposes.

## 804.6 Copyrightable Authorship in Dramatic Works

### 804.6(A) Independent Creation

A dramatic work must originate from the author of that work to be protected by copyright. A dramatic work that is merely copied from another source is not **copyrightable**.

### 804.6(B) Creative Expression

A dramatic work must contain a sufficient amount of creative expression.

Words and short phrases, such as names, titles, and slogans, are not **copyrightable** because they lack a sufficient amount of authorship. Thus, the title of a dramatic work or dialog that consists of only several words or phrases is not registrable. **37 C.F.R. § 202.1(a)**; see also **Chapter 300**, Section 313.4(B) and 313.4(D).

A mere idea for a dramatic work—such as “boy meets girl, boy falls in love with girl, girl falls in love with someone else”—is not copyrightable because mere ideas are common property. See *Zambito v. Paramount Pictures Corp.*, 613 F. Supp. 1107, 1112 (E.D.N.Y. 1985) (“That treasure might be hidden in a cave inhabited by snakes, that fire might be used to repel the snake, that birds might frighten an intruder in the jungle, and that a weary traveler might seek solace in a tavern ... are ... simply too general to be protectable.”).

*Scènes à faire* are defined as elements of a dramatic work, “which necessarily follow from a common theme,” such as stock characters, settings, or events that are common to a particular subject matter or medium. *Reyher v. Children’s Television Workshop*, 533 F.2d 87, 91 (2d Cir. 1976) (emphasis added). These types of elements are too commonplace to be copyrightable. For more information concerning *scènes à faire*, see **Chapter 300**, Section 313.4(J).

### 804.7 Derivative Dramatic Works

Derivative authorship in dramatic works occurs when **copyrightable** additions or other changes are made to one or more preexisting works, such as:

- Revisions, including updating or editing dialog, scenes, and other dramatic elements of a preexisting play.
- Adapting a novel or **motion picture** into a play or *vice versa*.
- Translating a play from one language to another.

In each case, the author of the **derivative work** must have permission to use the preexisting work if the preexisting work is protected by copyright, and there must be sufficient new original authorship to register the new work as a derivative work. If it appears that the dramatic work is based on a copyrighted work and permission to use has not been obtained, the **registration specialist** will communicate with the **applicant**.

#### 804.7(A) Dramatizations or Adaptations

When a novel, story, or poem is adapted into a drama, the adaptation is considered a dramatic work. The U.S. Copyright Office categorizes an adaptation of a dramatic work as a dramatic work, because the work remains dramatic in nature, even if the new material added is nondramatic.

To be considered a **derivative work**, an adaptation must be based on a preexisting work that constitutes **copyrightable** subject matter. The Office does not view plays adapted from or based on historical or present day factual events as derivative works because facts are not copyrightable.

*Examples:*

- The **applicant** names Robert Cahill as the author of an adapted screenplay, and names Screenwriters, Inc. as the **copyright claimant** (by written transfer). In the Material Excluded field the applicant identifies the preexisting material as the musical play *Broadway in B*. In the New Material Included field the applicant states that Robert created an “adapted screenplay.” The application will be accepted.

- The applicant names Mark Randolph as the author of an “adaptation,” identifies *The Playground* by well-known author George Beach as preexisting material, and describes the New Material Included as “Adaptation for stage play.” The **registration specialist** may communicate with the applicant, because the preexisting work is well-known, the work is protected by copyright, and it seems unlikely that Mark obtained permission to create a derivative work based upon the preexisting work.

For guidance in completing an application to register a dramatization or adaptation, see Section **804.9(D)(1)**.

### **804.7(B) Revisions**

A revised dramatic work results when an author revises or adds new dramatic material to a preexisting play. The additions or revisions may be registered as a **derivative work** to the extent that they contain new original authorship.

For guidance in completing an application to register a revision of a dramatic work, see Section **804.9(D)(1)**.

### **804.7(C) Translations**

A **translation** of a play or other dramatic work from one language to another is a type of derivative authorship. The U.S. Copyright Office categorizes a translation of a dramatic work as a dramatic work, because the work remains dramatic in nature, even if the new material is nondramatic.

For guidance in completing an application to register a translation of a dramatic work, see Section **804.9(D)(2)**.

### **804.7(D) Stage Directions**

The Office regularly receives applications that **claim** copyright in the directions for the performance of a dramatic work, separate from the dialog or other elements of that dramatic work. In most cases, the **applicant** is attempting to register directions for performance on a stage.

Generally, stage directions are not independently **copyrightable**, although they may constitute an aspect of the overall dramatic work. Because stage directions are completely dependent on a particular dramatic work, a claim in stage directions must be authorized by the author of the dramatic work.

The Office has long held that copyright protection in stage directions is limited to the text of the directions themselves. When removed from the context of the dramatic work, the directions do not, in and of themselves, constitute dramatic content or give rise to a claim in the simple movements that are dictated by that text.

For guidance in completing an application to register the stage directions for a dramatic work, see Section **804.9(D)(3)**.

## 804.8 Registration Issues

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

### 804.8(A) Joint Authorship

A “**joint work**” is “a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.” **17 U.S.C. § 101.**

Scripts for stage and screen are often written by multiple authors. If the authors of the script intend to merge their contributions into inseparable or interdependent parts of a unitary whole, the script is a joint work, and the **applicant** should name all the joint authors in the application.

Musical plays containing script, lyrics, and music are frequently written by multiple authors. If the authors of the script, lyrics, and music intend to merge their contributions into inseparable or interdependent parts of a unitary whole, the musical is a joint work, and the applicant should name all the joint authors in the application.

For examples that illustrate these practices, see Section **801.6.**

#### 804.8(A)(1) Intent to Merge into a Unified Whole

Different components of a dramatic work may be registered together as a **joint work** if the authors intended to merge their contributions into a single, unitary whole. By contrast, the elements should be registered separately if there was no intent to merge the elements when the authors created them. If there is some indication in the registration materials that the authors of the separate elements did not intend to merge the elements into a unitary whole (*e.g.*, separate **copyright notices**), the **registration specialist** may communicate with the **applicant** to clarify the authors’ intent.

#### 804.8(A)(2) Weight of Contribution to the Work as a Whole

When all of the authors’ contributions (*e.g.*, score, music, lyrics, script, book/libretto) have comparable weight and the application names all of the contributors as authors (*e.g.*, composer, lyricist, playwright), the **registration specialist** will not communicate with the **applicant** to clarify the facts of authorship. If there is some indication in the registration materials that one or more authors did not contribute **copyrightable** authorship to the work as a whole (*e.g.*, statements on the deposit or application), the specialist may communicate with the applicant to clarify the facts of authorship.

*Examples:*

- Two authors of a musical play submit one application to register a musical play as a **joint work**. Author A wrote the libretto, and Author B wrote the lyrics and music. Both authors claim ownership in the musical play as a whole. The musical play will be registered as a joint work.
- Three authors of a hip-hop musical play wish to register their copyright claims as a joint work. The work contains a sixty-page script and fifteen songs.

Author A wrote the script, Author B wrote thirteen of the fifteen songs, and Author C wrote two of the fifteen songs. The Office may communicate with the applicant to clarify whether Author C is, in fact, a joint author and owner of the musical play. If not, the songs by Author C must be registered separately.

### 804.8(B) Synopses

The Office frequently receives copyright applications to register brief synopses that summarize other works of authorship. When preparing an application to register such works, the **applicant** should assert a **claim** in the synopsis itself, but often applicants erroneously describe the work that is summarized in the synopsis (*e.g.*, a television show).

If the synopsis contains sufficient **copyrightable** textual expression, but the applicant erroneously describes the author's contribution as a "dramatic work" or "script," the **registration specialist** will add an **annotation** to the record, such as: "Regarding authorship information: Deposit contains synopsis only." If the synopsis contains sufficient textual expression, but the applicant erroneously describes the author's contribution as an idea, concept, or the like, the specialist will communicate with the applicant.

Where the synopsis is very short and/or merely amounts to an idea (*e.g.*, "I have an idea for a television show that will feature famous guest stars"), the specialist will refuse registration if the authorship is insufficient to support a claim in a dramatic work or literary work. Where the work contains sufficient text to be copyrightable, but it is clear that the applicant is seeking to protect the idea, the specialist may add an annotation to the record, such as: "Regarding authorship information: ideas not copyrightable. 17 U.S.C. 102(b)."

### 804.8(C) Redacted Screenplay for a Motion Picture in Production

The Office may accept a redacted version of a screenplay for a motion picture (including screenplays for feature films, television programs, or other works of a similar nature), if the applicant requests special relief from the deposit requirements and confirms that the following conditions have been met:

- The motion picture must be in production (*e.g.*, filming has commenced).
- **Infringement** must be anticipated.
- The applicant must file an online application and upload the redacted screenplay in Portable Document Format (PDF) or other electronic format approved by the Office.
- The applicant must specify the anticipated date of release for the motion picture.

For information concerning the procedure for requesting special relief, see **Chapter 1500**, Section 1508.8.

The redacted copy of the work must reveal at least half the work, and the redaction must be done in a manner that will allow the Office to compare and authenticate the redacted copy with an unredacted copy of the same work. If the work is approved for registration, the **registra-**

**tion specialist** will add an **annotation** to the record, such as: “Regarding deposit: special relief granted under 37 C.F.R. 202.20(d).”

In all cases, the applicant must submit a complete unredacted copy of exactly the same screenplay within ten business days after the release of the motion picture. The Office will compare the redacted and unredacted copies to confirm that they match each other. The Office has the authority to cancel the registration for the screenplay if (i) the complete unredacted copy of the screenplay is not received in a timely manner, or (ii) the redacted and unredacted copies do not match. For information concerning this procedure, see **Chapter 1800**, Section 1807.4(D).

#### 804.8(D) Publication Issues

If the **applicant** provides a date of **publication** in the application, but states that the date refers to a performance of the work, the **registration specialist** will communicate with the applicant, because a performance, in and of itself, does not constitute a publication.

Publication of a **motion picture** or other **audiovisual work** publishes all of the components of that work. Once a dramatic work has been published as part of a motion picture or television show, the dramatic work may not be registered as an **unpublished** work. See *Maljack Productions Inc. v. UAV Corp.*, 964 F. Supp. 1416, 1421 (C.D. Cal. 1997) (finding that publication of the 1963 film *McLintock!* published all underlying works embodied in the film, including screenplays).

#### 804.9 Application Tips for Dramatic Works

This Section provides basic information on how to complete an online or paper application for a dramatic work, as well as terms to use and terms to avoid when describing the authorship in such works.

For detailed information on how to complete an application, see **Chapter 600**.

##### 804.9(A) Type of Work

When registering a **claim** in a dramatic work using the online application, the **applicant** should select “Work of the Performing Arts” as the “Type of Work.” When registering a claim using a paper application, the applicant should complete **Form PA**.

##### 804.9(B) Joint Authors

If the dramatic work is a **joint work**, the **applicant** should name all of the joint authors and describe the contributions of each author, but should name only the authors who contributed **copyrightable**, tangible expression to the work. For instance, if one person contributed the story idea and a second person contributed the script, the applicant should name only the author of the script.

*Examples:*

- The work is a screenplay which states “screenplay by Tom Lamb and Susan French.” The applicant should name both individuals as the authors of this work.

- The work is a script which states “story idea by Tina Black, script by Eric Wright.” The applicant should name Eric as the author of the script, but should not name Tina in the application unless she contributed copyrightable expression to the script.

For additional guidance in completing this portion of the application, see [Chapter 600](#), Section 613.

### 804.9(C) The Author Created Field and the Nature of Authorship Space

When completing an online application, the **applicant** should identify the **copyrightable** authorship that the applicant intends to register on the Authors screen. When completing a paper application, the applicant should provide this information on space 2 of the application under the heading Nature of Authorship.

In all cases, the applicant should clearly and accurately describe the author’s contribution to the work. When completing an online application, the applicant may select the boxes marked “text,” “music,” “lyrics,” and / or “musical arrangement” in the Author Created field. If the author created the text that appears in the dramatic work, the applicant may describe that text by writing one or more of the following terms in the field marked Other.

- Play
- Script
- Screenplay
- Musical play
- Adaptation
- Dramatization
- Treatment
- Synopsis

These terms also may be used when completing the Nature of Authorship space on [Form PA](#).

In all cases, the applicant should use terms that describe the authorship that has been submitted for registration, rather than the applicant’s future plans for the work. For example, if the work is a treatment for a future **motion picture**, the applicant should state “treatment” not “motion picture.”

When completing this portion of the application, the applicant should avoid using ambiguous terms or terms that describe uncopyrightable material, such as:

- Idea
- Plot
- Format

- Characters
- Stage directions

For additional guidance in completing this portion of the application, see [Chapter 600](#), Section 618.

#### **804.9(D) The Material Excluded / New Material Included Fields and the Preexisting Material / Material Added to This Work Spaces**

If the work is a derivative dramatic work or a compilation of dramatic works, and the underlying works are used with permission, the **applicant** should identify and exclude any preexisting work or material from the **claim** and should provide a brief description of the new material that the author contributed to the work.

When completing an online application, the applicant should provide this information in the Material Excluded and New Material Included fields. When completing a paper application, the application should provide this information in the Preexisting Material and Material Added to This Work space. For information on how to complete these portions of the application, see [Chapter 600](#), Section 621.8.

*Example:*

- The work is a screenplay by Steve Morse based on the well-known novel *The Lemon Tartlette* by Rochelle Oiseaux. In the Material Excluded field the applicant states “*The Lemon Tartlette* by Rochelle Oiseaux, used by permission,” and in the Author Created and New Material Included fields the applicant states “screenplay by Steve Morse.” The claim will be registered.

#### **804.9(D)(1) Dramatizations, Adaptations, and Revisions**

When preparing an application to register a dramatization, an adaptation, or a revision the **applicant** should exclude the preexisting work from the **claim** by naming the author and title of the preexisting work in the Material Excluded field of the online application or in space 6(a) of [Form PA](#). The new material may be described as a “dramatization,” “adaptation,” or “revision” in the New Material Included field of the online application or in space 6(b) of [Form PA](#).

As noted in Section [804.7](#), the **registration specialist** will communicate with the applicant if it appears that the author of the adaptation or dramatization unlawfully used a copyrighted work.

#### **804.9(D)(2) Translations**

When preparing an application to register a **translation** of a dramatic work, the **applicant** should exclude the preexisting work from the **claim** by identifying the author and title of the preexisting work in the Material Excluded field of the online application or in space 6(a) of [Form PA](#). The new work should be described as a “translation” in the New Material Included field of the online application or in space 6(b) of [Form PA](#).

### 804.9(D)(3) Stage Directions

Where a director submits an application to register a **claim** to copyright in the text of his or her stage directions, the **registration specialist** will communicate with the **applicant** to determine whether the copyright owner of the play gave the director permission to create a **derivative work**. If the copyright owner of the play did not grant permission, the specialist will refuse registration. If the applicant confirms in writing that the copyright owner of the play granted permission to use the play as a basis for the derivative work, the specialist will register the claim in the text of the stage directions as a derivative work of the play, provided that the text is **copyrightable**.

To avoid correspondence, the applicant should notify the Office if the author of the stage directions obtained permission to use the dramatic work as a basis for the derivative work. When completing an online application, this information may be provided in the Note to Copyright Office field; when completing a paper application, this information may be provided in a cover letter.

In addition, the applicant should specifically exclude the dramatic work from the claim by providing the title and author of that work in the Material Excluded field of the online application or in space 6(a) of the paper application. The derivative authorship should be described as “text of stage directions” in the New Material Included field or in space 6(b).

*Examples:*

- The applicant names Joe Lego as the author of “text of stage directions” and states that the author used the preexisting play *Carpe Diem* by David Abraham “with permission.” The registration specialist will register the claim if the text is sufficiently creative.
- The applicant names Mary Claire as the author of “text of stage directions.” In the Material Excluded field the applicant states “script by David Snow” and the script deposited names David Snow as author of that work. The registration specialist will communicate with the applicant to clarify whether the use of the preexisting dramatic work was lawful.

### 804.10 Deposit Requirements for Dramatic Works

To register a dramatic work with the U.S. Copyright Office, the **applicant** should deposit a copy or phonorecord of the work that is sufficient to identify the applicant’s **claim** to copyright in the dramatic work and to allow the Office to examine the work for **copyrightable** authorship.

For information concerning the deposit requirements for dramatic works, see **Chapter 1500**, Section 1509.2(C).

### 805 Choreographic Works

This Section discusses the U.S. Copyright Office’s practices and procedures for the examination of **unpublished choreographic works** and choreographic works first **published** on or after January 1, 1978 (*i.e.*, the date that choreography became a category of authorship subject to federal copyright protection). For a discussion of choreographic works first published before January 1, 1978, see **Chapter 2100**, Section 2122.3.

### 805.1 What Is a Choreographic Work?

The Copyright Act recognizes choreography as a distinct category of **copyrightable** authorship. **17 U.S.C. § 102(a)(4)**. The statute does not define the term “choreographic works.” However, the legislative history states that this term has a “fairly settled meaning[.]” **H.R. REP. NO. 94-1476, at 53 (1976)**, reprinted in 1976 U.S.C.C.A.N. at 5666-67; **S. REP. NO. 94-473, at 52 (1975)**.

The word “choreography” is derived from the Greek words “*choreia*,” meaning “dance,” and “*graphikos*,” meaning “to write.” A dance is the “static and kinetic succession[] of bodily movement in certain rhythmic and spatial relationships.” *Horgan v. Macmillan, Inc.*, 789 F.2d 157, 161 (2d Cir. 1986) (quoting *Compendium (Second)* § 450.01). The Office defines choreography as the composition and arrangement of “a related series of dance movements and patterns organized into a coherent whole.” *Id.* (quoting *Compendium (Second)* § 450.03(a)).

By definition, choreography is a subset of dance. As such, a work of authorship cannot be registered as a choreographic work unless it is comprised of dance steps, dance movements, and/or dance patterns. However, the term choreography is not synonymous with dance. The legislative history for the 1976 Copyright Act clearly states that “‘choreographic works’ do not include social dance steps and simple routines.” **H.R. REP. NO. 94-1476, at 54 (1976)**, reprinted in 1976 U.S.C.C.A.N. at 5667; **S. REP. NO. 94-473, at 52 (1975)**. For a detailed discussion of the distinction between choreography on the one hand, and social dances and simple routines on the other, see Sections **805.4** and **805.5** below.

### 805.2 Elements of Choreographic Works

Choreographic works typically contain one or more of the elements described below, although the presence or absence of a given element is not determinative of whether a particular dance constitutes choreography.

#### 805.2(A) Rhythmic Movement in a Defined Space

Choreography is executed through the physical movement of a dancer’s body. Specifically, a choreographic work directs the rhythmic movements of one or more dancers’ bodies in a defined sequence and a defined spatial environment, such as a stage.

#### 805.2(B) Compositional Arrangement

A choreographic work “represents a related series of dance movements and patterns” organized into an integrated, coherent, and expressive compositional whole. *Horgan*, 789 F.2d at 161 (quoting *Compendium (Second)* § 450.03(a)).

As discussed in Section **805.5(B)(3)**, non-expressive physical movements, such as ordinary motor activities, functional physical activities, competitive maneuvers, and the like are not registrable as choreographic works. Likewise, *de minimis* dance steps and movements are not protectable, because they do not contain a sufficient amount of choreographic authorship. See Section **805.5(A)**.

**805.2(C) Musical or Textual Accompaniment**

Choreography is usually accompanied by a specific musical composition, although in some cases it may be accompanied by the recitation of a **literary work**, such as a poem, or it may be performed in silence. See *Horgan*, 789 F.2d at 161 (quoting *Compendium (Second)* § 450.01).

The accompaniment for a choreographic work typically provides an established rhythm or theme for the work. In some cases, choreographic works may be intended to express—through bodily movement—the themes or emotions conveyed by a specific musical composition or literary work. See *U.S. Copyright Office, Copyright Office Study No. 28, Copyright in Choreographic Works*, at 93 n.2 (1961) (“Copyright Office Study No. 28”) (“Choreography is commonly devised to be performed with music; the dance may be intended to express a theme suggested by the music, or the music may be intended to heighten the dramatic effect of the dance.”).

**805.2(D) Dramatic Content**

A choreographic work may present a story or theme or it may be an abstract composition. See *U.S. Copyright Office, Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law 17 (Comm. Print 1961)* (“We see no reason why an ‘abstract’ dance, as an original creation of a choreographer’s authorship, should not be protected as fully as a traditional ballet presenting a story or theme.”).

Choreographic works often tell a story, develop characters or themes, and convey dramatic concepts or ideas through a sequence of bodily movements presented in an integrated, compositional whole. “Choreographic works of this character are typified by ballets.” *Copyright Office Study No. 28*, at 101.

A choreographic work may convey dramatic action through specific dance movements and physical actions, even though it does not tell a story or follow a narrative structure. “[M]any ‘modern’ dances, as distinguished from traditional ballets, are no doubt creative works of authorship; and although no ‘story’ may be readily evident in a dance of the ‘modern’ variety, the dance movements are expected to convey some thematic or emotional concept to an audience.” *Id.*

By contrast, choreographic works **published** prior to January 1, 1978 cannot be registered unless the work tells a story, develops a character, or expresses a theme or emotion by means of specific dance movements and physical actions. Choreography was not mentioned in the **1909 Act**, and as a result, dances movements could be registered only if the work qualified as a “dramatic work.” See *id.* at 94. For a discussion of these requirements, see **Chapter 2100**, Section 2122.3.

**805.2(E) Presentation Before an Audience**

Choreographic works are typically performed before an audience. By contrast, social dances are not intended to be performed for an audience; they are typically performed for the personal enjoyment of the dancers themselves. As discussed in Section **805.5(B)**, this is one of the distinctions between choreography (which is eligible for copyright protection) and social dances (which do not constitute **copyrightable** subject matter).

### 805.2(F) Execution by Skilled Performers

Choreographic works are typically performed by skilled dancers. See *Copyright Office Study No. 28*, at 100. As discussed in Section 805.5(B), this is one of the distinctions between choreography (which is eligible for copyright protection) and social dances (which do not constitute **copyrightable** subject matter). As a general rule, social dances are not created for professional dancers; they are intended to be performed by the general public. While ballroom dances, line dances, and similar movements generally can be performed by members of the public, choreographic works typically cannot.

### 805.3 Fixation of Choreographic Works

#### 805.3(A) The Work Must Be Fixed in a Tangible Medium of Expression

The U.S. Copyright Office may register a **claim** to copyright in a choreographic work, provided that the specific movements constituting the work have been **fixed** in a tangible medium of expression. **17 U.S.C. § 102(a)**. As a general rule, the work should be fixed in a visually perceptible form, because choreography involves the physical movements of a dancer's body which are visually perceived.

#### 805.3(B) Capacity for Uniform Performance

A choreographic work should be **fixed** in a form that reveals “the movements of the dance in sufficient detail to permit the work to be performed therefrom.” *Copyright Office Study No. 28*, at 103. In other words, the specific movements and physical actions that constitute the choreographic work should be fixed in a form that allows the work to be performed in a consistent and uniform manner.

#### 805.3(C) Improvisation

The U.S. Copyright Office may register a choreographic work if the work has been **fixed** in a visually perceptible form that allows the dance movements to be perceived and performed by dancers, even if the choreographer left some room for improvisation or if some improvisation is intended in the performance of the work. It is not possible to copyright an improvised dance if the improvisation has not been fixed in a tangible medium of expression. See **17 U.S.C. § 102(a)**. For example, the Office may refuse to register a work that simply directs the performer to improvise a dance based on a particular theme or otherwise does not illustrate, depict, or describe the dancers' specific movements. See *Copyright Office Study No. 28*, at 102-03 (“It is doubtful, at best, whether the Federal statute could extend copyright protection to a work presented only in a performance and not recorded in some tangible form of ‘writing.’”).

### 805.3(D) Forms of Fixation for Choreographic Works

#### 805.3(D)(1) Dance Notation

Dance notation may be used to represent the precise movement of the dancers in a choreographic work. Examples of dance notation systems include Labanotation (which employs abstract symbols), Benesh Dance Notation (which employs stick figures), among other systems. See generally Ann Hutchinson Guest, *Choreo-Graphics: A Comparison of Dance Notation Systems from the Fifteenth Century to the Present* (1989).

While dance notation may be used to fix a choreographic work, the notational system itself is a system that is not eligible for copyright protection under [Section 102\(b\)](#) of the Copyright Act.

#### 805.3(D)(2) Audiovisual Recordings

A choreographic work may be embodied in a [motion picture](#) or other audiovisual recording, such as a music video.

#### 805.3(D)(3) Textual Descriptions, Photographs, Drawings, Illustrations, or the Like

A choreographic work may be [fixed](#) with a textual description, photographs, drawings, or any combination of the foregoing, provided that the description is specific enough to identify the precise movements of the dancers and provided that the description is sufficiently detailed to serve as directions for its performance. See *Horgan*, 789 F.2d at 163 (noting that photographs “may communicate a great deal” about a choreographic work, such as “a gesture, the composition of dancers’ bodies” as well as “the moments before and after the split second recorded.”).

### 805.4 Copyrightable Authorship in Choreographic Works

The U.S. Copyright Office may register a [claim](#) to copyright in a choreographic work, provided that (i) the work is a dance; (ii) the dance constitutes [copyrightable](#) subject matter under [Section 102\(a\)\(4\)](#) of the Copyright Act; (iii) the dance contains a sufficient amount of choreographic authorship; and (iv) the dance was created by a human author for human performers. These requirements are discussed in Sections [805.4\(A\)](#) through [805.4\(C\)](#).

#### 805.4(A) Copyrightable Subject Matter

As the Second Circuit observed in *Horgan*, “[d]ance is static and kinetic successions of bodily movement in certain rhythmic and spatial relationships,” while choreography is the composition and arrangement of “a related series of dance movements and patterns organized into a coherent whole.” 789 F.2d at 161 (quoting *Compendium (Second)* §§ 450.01, 450.03(a)).

When evaluating a [claim](#) to copyright in choreography, the [registration specialist](#) will use objective criteria to determine whether the work is a dance that constitutes [copyrightable](#) subject matter under [Section 102\(a\)\(4\)](#) of the Copyright Act. In making this determination, the specialist will focus on the intrinsic nature of the work, rather than the specific performance that is

reflected in the **deposit copy(ies)**. The primary criteria that the specialist will consider are set forth in Section **805.2**. These elements are found in most choreographic works, although the presence or absence of a particular element may not be determinative.

When Congress extended copyright protection to choreographic works, it did not intend to protect all forms of dance or movement. Instead, it used the term “choreographic work” in contrast to non-compositional dances, such as social dances or simple dance routines. Examples of dances and bodily movements that do not constitute copyrightable subject matter are discussed in Section **805.5(B)** below.

#### **805.4(B) Choreographic Authorship**

“As a fundamental premise, copyright presupposes an original intellectual creation of authorship.” *Copyright Office Study No. 28*, at 100. In the case of a choreographic work, original authorship requires the composition and arrangement of “a related series of dance movements and patterns” organized into an integrated, coherent, and expressive whole. *Horgan*, 789 F.2d at 161 (quoting *Compendium (Second)* § 450.03(a)); see also **Registration of Claims to Copyright, 77 Fed. Reg. 37,605, 37,607 (June 22, 2012)**.

The U.S. Copyright Office may register a choreographic work, provided that the dance contains a sufficient amount of choreographic authorship that was created by the choreographer. The **registration specialist** will use objective criteria to determine whether a choreographic work satisfies these requirements by reviewing the information provided in the application and by examining the **deposit copy(ies)**, including the individual elements of the work as well as the dance as a whole. The specific criteria that the specialist will consider are set forth in Section **805.2** above. The specialist will not consider subjective criteria that have no bearing on whether the originality requirement has been met, such as the author’s intent, the aesthetic value, artistic merit, or intrinsic quality of the dance, or the symbolic meaning or commercial impression of the dance.

Examples of dances and bodily movements that do not satisfy the originality requirement are discussed in Section **805.5(A)** below.

#### **805.4(C) Human Performance Required**

The Copyright Act protects “original works of authorship.” **17 U.S.C. § 102(a)**. To qualify as a work of authorship a choreographic work must be created by a human being and it must be intended for execution by humans. Dances performed or intended to be performed by animals, machines, or other animate or inanimate objects are not **copyrightable** and cannot be registered with the U.S. Copyright Office.

#### **805.4(D) Choreographic Works That Incorporate *De Minimis* Dance Steps, Social Dances, Simple Routines, or Other Uncopyrightable Movements**

As discussed in Section **805.5(B)**, social dances, simple routines, and other uncopyrightable movements cannot be registered as separate and distinct works of authorship, even if they contain a substantial amount of creative expression. Nevertheless, uncopyrightable movements may be used as the building blocks for a choreographer’s expression, in much the same way that words

and short phrases provide the basic material for writers. Choreographic works that incorporate social dance steps, simple routines, or even athletic exercises may be protected by copyright, provided that the work as a whole contains a sufficient amount of choreographic authorship. *See Horgan*, 789 F.2d at 161 (quoting *Compendium (Second)* § 450.06).

*Example:*

- José Eduardo da Silva created the choreography for a complex dance production titled, *Tango de Janeiro*. One of the dances in the production incorporates an extensive number of steps and routines from a social dance. While the overall production could be registered as a choreographic work, the U.S. Copyright Office would reject a **claim** limited to the adapted social dance.

## 805.5 Uncopyrightable Dances and Dance Steps

The U.S. Copyright Office is charged with administering the provisions of the Copyright Act and with issuing regulations for the administration of the copyright system that are consistent with the statute. **17 U.S.C. §§ 701, 702**. The Office has no authority to register **claims** to copyright in material that falls outside the scope of federal statutory protection. Some of the more common types of uncopyrightable dances are discussed in Sections **805.5(A)** and **805.5(B)**. These examples are overlapping in the sense that a dance step or routine falling within one category may also fall within other categories described in that Section.

### 805.5(A) *De minimis* Movements and Dance Steps

As discussed in Section **805.1**, choreography is the composition and arrangement of “a related series of dance movements and patterns organized into a coherent whole.” *Horgan*, 789 F.2d at 161 (quoting *Compendium (Second)* § 450.03(a)). Individual movements or dance steps by themselves are not **copyrightable**, such as the basic waltz step, the hustle step, the grapevine, or the second position in classical ballet. *Id.* (quoting *Compendium (Second)* § 450.06). Likewise, the U.S. Copyright Office cannot register short dance routines consisting of only a few movements or steps with minor linear or spatial variations, even if the routine is novel or distinctive. *Cf.* **37 C.F.R. § 202.1(a)**. The individual elements of a dance are not copyrightable for the same reason that individual words, numbers, notes, colors, or shapes are not protected by the copyright law. Individual dance steps and short dance routines are the building blocks of choreographic expression, and allowing copyright protection for these elements would impede rather than foster creative expression. *See Horgan*, 789 F.2d at 161 (quoting *Compendium (Second)* § 450.06).

*Examples:*

- Aruna Desai choreographed a music video for a song titled “Made in the USA.” The dance is a complex and intricate work performed by a troupe of professional dancers. During the chorus, the dancers form the letters “U, S, A” with their arms. Although the dance as a whole could be registered as a choreographic work, the Office would reject a claim limited to the “U, S, A” gesture.
- Butler Beauchamp is a wide receiver for a college football team. Whenever he scores a touchdown, Butler performs a celebratory dance in the endzone. The dance merely consists of a few movements of the legs, shoulders, and arms. The Office would refuse to register this dance as a choreographic work.

## 805.5(B) Social Dances, Simple Routines, and Other Uncopyrightable Movements

Congress expressly recognized choreography as one of the categories of **copyrightable** subject matter under **Section 102(a)(4)** of the Copyright Act. The legislative history indicates that “the technical term ‘choreographic works,’ as used in the context of copyright, may refer both to the dance itself as the conception of its author to be performed for an audience, and to the graphic representation of the dance in the form of symbols or other writing from which it may be comprehended and performed.” *Copyright Office Study No. 28*, at 93. Although Congress did not define this “technical term” in the statute, it does not have the same meaning as “choreography,” which is often used as a noun or verb for any type of dance or artistic display, as in “The square dance caller provides the choreography that the dancers follow” or “The company staged a well-choreographed production of *Richard III*.”

When Congress extended federal copyright protection to choreography, it intended to protect expressive works of authorship, such as ballet or modern dance. However, Congress did not intend to protect all forms of dance or movement. The legislative history specifically states that “choreographic works do not include social dance steps and simple routines.” **H.R. REP. NO. 94-1476, at 54 (1976)**, reprinted in 1976 U.S.C.C.A.N. at 5667; **S. REP. NO. 94-473, at 52 (1975)**.

Thus, the U.S. Copyright Office cannot register a **claim** to copyright in social dances or simple routines, because they do not constitute copyrightable subject matter. Likewise, the Office cannot register a claim to copyright in ordinary motor activities, functional physical movements, competitive maneuvers, feats of physical skill or dexterity, or the like, because such movements lack the necessary creative expression to constitute a work of original authorship. Congress gave federal courts the flexibility to interpret the scope of the existing subject matter categories, but only Congress has the authority to create entirely new categories of authorship. “If the federal courts do not have the authority to establish new categories of subject matter, it necessarily follows that the Office also has no such authority in the absence of any clear delegation of authority to the **Register of Copyrights**.” **Registration of Claims to Copyright**, 77 **Fed. Reg. at 37,607**.

The fact that a dance or movement may contain more than a trivial amount of original authorship is irrelevant to this determination. Social dances, simple routines, and other uncopyrightable movements are not “choreographic works” under **Section 102(a)(4)** of the Copyright Act. As such, they cannot be registered, even if they contain a substantial amount of original, creative expression. For the same reason, the Office cannot register derivative social dances, derivative simple routines, or the like. A dance that is merely an adaptation of a social dance or simple routine is also considered a social dance or simple routine that does not qualify as a choreographic work under **Section 102(a)(4)** of the Act.

The dividing line between copyrightable choreography and uncopyrightable dance is a continuum, rather than a bright line. At one extreme are ballets, modern dances, and other complex works that represent a related series of dance movements and patterns organized into a coherent compositional whole. At the other extreme are social dances, simple routines, and other uncopyrightable movements described in Sections **805.5(B)(1)** through **805.5(B)(3)** below. Many works fall somewhere in between.

The **registration specialist** will use objective criteria to determine whether a particular work falls on one side of the continuum or the other. The primary criteria that the specialist will consider are set forth in **Section 805.2**. The presence or absence of a particular element is not determinative. Instead, the specialist will consider the intrinsic nature of the work, including its

individual elements as well as the work as a whole, to determine whether it is the type of dance that constitutes copyrightable subject matter under [Section 102\(a\)\(4\)](#) of the Copyright Act.

### 805.5(B)(1) Simple Routines

Congress made it clear that there is a distinction between “choreographic works” on the one hand and simple routines on the other. See [H.R. REP. NO. 94-1476, at 54 \(1976\)](#), reprinted in 1976 U.S.C.C.A.N. at 5667 (“choreographic works’ do not include social dance steps and simple routines”); [S. REP. NO. 94-473, at 52 \(1975\)](#). Choreographic works are eligible for copyright protection, but simple routines are not.

The dividing line between [copyrightable](#) choreography and a simple routine is a continuum, rather than a bright line. The U.S. Copyright Office may register complex dances consisting of a related series of dance steps, movements, and patterns organized into a coherent compositional whole. By contrast, the Office cannot register simple routines. For example, it is not possible to copyright a series of dance movements that constitute a relatively small part of a theatrical performance, such as a discrete routine within a variety show, dance contest, or other exhibition. See [Copyright Office Study No. 28](#), at 100.

### 805.5(B)(2) Social Dances

Congress made it clear that there is a distinction between “choreographic works” on the one hand and social dances on the other. See [H.R. REP. NO. 94-1476, at 54 \(1976\)](#), reprinted in 1976 U.S.C.C.A.N. at 5667 (“choreographic works’ do not include social dance steps and simple routines”); [S. REP. NO. 94-473, at 52 \(1975\)](#). Choreographic works are eligible for copyright protection, but social dances are not. Examples of social dance include the following:

- Ballroom dances.
- Folk dances.
- Line dances.
- Square dances.
- Swing dances.
- Break dances.

Choreographic works are compositions that are intended to be performed by skilled dancers, typically for the enjoyment of an audience. By contrast, social dances are intended to be performed by members of the general public for their own personal enjoyment. In other words, “social dances are intended to be *executed by* the public, not to be *performed for* the public as audience.” [Copyright Office Study No. 28](#), at 100. Performing a social dance is often a participatory, social experience, while the performance of a choreographic work is an expressive act that is typically intended to be performed for the enjoyment of others. Whereas social dances are generally capable of being performed by members of the public, choreographic works typically cannot. See *id.* at 93, 100.

If a social dance could be considered a choreographic work under [Section 102\(a\)\(4\)](#) of the Copyright Act, every individual who performed that dance in public would infringe the rights of the copyright owner. Unlike singing a song in the shower or whistling a tune in a car (which would be considered a private performance), social dances are usually performed in public by members of the general public. In other words, these types of dances are typically performed at places that are open to the public or at social functions where a substantial number of people outside the normal circle of a family and its social acquaintances are gathered. [17 U.S.C. § 101](#) (definition of “perform or display a work ‘publicly’”).

Given the express language in the House and Senate Reports concerning the meaning of the term “choreographic works” and given the absence of any limitation on the public performance right with respect to dance, the Office has concluded that social dances do not constitute **copyrightable** subject matter under [Section 102\(a\)\(4\)](#) of the Copyright Act.

*Example:*

- Seymour Winkler created a line dance for a song titled “The Slip,” which was featured in a famous music video. The dance consists of a few steps, a turn, a hop, and a snap, which is then repeated in different directions. “The Slip” is often performed at weddings and other social occasions, and members of the general public often perform Seymour’s line dance when the song is played. The U.S. Copyright Office would refuse to register this line dance, because it is a social dance that is commonly performed by members of the public as a participatory social activity (rather than a theatrical performance for the enjoyment of an audience).

### **805.5(B)(3) Ordinary Motor Activities, Non-Expressive Physical Activities, Competitive Maneuvers, Feats of Physical Skill or Dexterity, and Other Uncopyrightable Movements in Choreographic Works**

Choreography and pantomime are the only types of works comprised exclusively of bodily movements that are eligible for copyright protection under [Section 102\(a\)\(4\)](#) of the Copyright Act. Because choreography is a subset of dance, a work of authorship cannot be registered as a choreographic work unless it is comprised of dance steps, dance movements, and/or dance patterns.

Non-expressive physical movements, such as “ordinary motor activities” or “functional physical movements” — in and of themselves — do not represent the type of authorship that Congress intended to protect as choreography. [Registration of Claims to Copyright, 77 Fed. Reg. at 37,607](#). The U.S. Copyright Office cannot register a **claim** to copyright in such non-expressive activities. *See Bikram’s Yoga College of India, L.P. v. Evolution Yoga, LLC*, 2015 U.S. App. LEXIS 17615 (9th Cir. Oct. 8, 2015) (declining to extend copyright protection in a book describing yoga poses to the yoga poses themselves). Examples of non-expressive physical movements that cannot be registered with the Office include exercise routines, aerobic dances, yoga positions, and the like.

The Office cannot register claims to copyright in athletic activities or competitive maneuvers as such, because they do not constitute **copyrightable** subject matter under [Section 102\(a\)\(4\)](#) of the Copyright Act. *See NBA v. Motorola*, 105 F.3d 841, 846-47 (2d Cir. 1997); [Registration of Claims to Copyright, 77 Fed. Reg. at 37,607](#); *but see H.R. REP. NO. 94-1476 at 52 (1976)*, reprinted in 1976 U.S.C.C.A.N. at 5665 (explaining that Congress intended to protect the telecast of “sports, news coverage, live performances of music, etc.” provided the telecast is simultaneously recorded).

*Examples:*

- Football plays.
- Slam dunking maneuvers.
- Skateboarding or snowboarding.

These types of activities are typically performed by skilled players for the enjoyment of an audience and in some cases they may be accompanied by music or narrative text provided by a play-by-play announcer. However, competitive activities are comprised of athletic maneuvers rather than dance steps, and such maneuvers are non-expressive. Competitive activities lack the capacity for uniform performance because each contest usually involves a different set of maneuvers, and any dramatic content involves the “drama” of the competition rather than a story that is told or a theme that is evoked by the players’ movements. *See* NBA, 105 F.3d at 846 (“[B]asketball games do not fall within the subject matter of federal copyright protection because they do not constitute ‘original works of authorship’ under 17 U.S.C. § 102(a)” although “recorded broadcasts of NBA games – as opposed to the games themselves – are . . . entitled to copyright protection.”)

For similar reasons, the Office cannot register feats of physical skill or dexterity or other choreographed productions that do not involve the movement of a dancer’s body.

*See* NBA, 105 F.3d at 846-47; **COPYRIGHT OFFICE STUDY NO. 28**, at 95 n.13 (1961); **Registration of Claims to Copyright**, 77 Fed. Reg. at 37,607.

## 805.6 Derivative Choreographic Works

A derivative choreographic work is a work that is based on or derived from one or more preexisting works, regardless of whether the preexisting work is a choreographic work, a pantomime, or any other type of work listed in **Section 102(a)** of the Copyright Act. Typically, derivative choreography is a new version of a preexisting choreographic work or an entirely new work that combines preexisting choreography with a substantial amount of new material. **17 U.S.C. § 101** (definition of “derivative work”).

*Examples:*

- Adding a new section to Petipa’s *Don Quixote*.
- A modern dance version of the ballet *The Nutcracker*.
- The new authorship that the choreographer contributed to the derivative work may be registered, provided that it contains a sufficient amount of original choreographic authorship. Specifically, the new material that the choreographer contributed to the work must be independently created and it must contain a sufficient amount of creativity. Simply making minor changes or trivial additions to a preexisting choreographic work does not satisfy this requirement. Moreover, simply adding movements to a social dance will not alter the nature of the work as an uncopyrightable social dance.

## 805.7 Compilations

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

Typically, the author of a compilation selects the preexisting material that is included in the compilation, the author classifies, categorizes, or groups these elements into particular sequences, and the author decides how these elements should be arranged within the compilation as a whole. A compilation may be registered if the author’s selection, coordination, and/or arrangement of preexisting material was independently created and if the selection, coordination, and/or arrangement contains a sufficient amount of creativity.

In addition, the compilation must fall within one or more of the categories of works listed in [Section 102\(a\)](#) of the Copyright Act. See [H.R. REP. NO. 94-1476 at 57 \(1976\)](#), reprinted in 1976 U.S.C.C.A.N. at 5670; [S. REP. NO. 94-473 at 54-55 \(1975\)](#). In other words, the compilation as a whole must constitute a choreographic work, a pantomime, a dramatic work, or one of the other categories of works listed in [Section 102\(a\)](#) of the Copyright Act. If the selection, coordination, and/or arrangement of dance steps or other physical movements as a whole do not fall within one or more of the congressionally established categories of authorship, the [registration specialist](#) may communicate with the [applicant](#) or may refuse registration. See [Registration of Claims to Copyright, 77 Fed. Reg. at 37,606](#).

Unlike other categories of authorship, such as [literary works](#), musical works, [pictorial, graphic, or sculptural works](#), [audiovisual works](#), and [sound recordings](#), the mere selection, coordination, and arrangement of bodily movements does not necessarily result in the creation of a choreographic work, even if the work contains more than a *de minimis* number of dance movements. As discussed in [Section 805.4\(D\)](#), an expressive dance composition may qualify as a choreographic work if it “represents a related series of dance movements and patterns organized into a coherent whole.” *Horgan*, 789 F.2d at 161 (quoting *Compendium (Second)* § 450.03(a)). As a general rule, classical ballet and modern abstract dance are considered choreographic works, because they objectively constitute an expressive compositional whole. By contrast, many combinations of dance steps or other physical movements do not satisfy this requirement.

To be [copyrightable](#), a compilation of movements or steps must fall within one or more of the categories of copyrightable subject matter under [Section 102\(a\)](#). See [Registration of Claims to Copyright, 77 Fed. Reg. at 37,606](#). While a compilation of dance steps may satisfy the criteria for a “choreographic work,” a compilation of social dances, simple routines, or other uncopyrightable movements may not satisfy these criteria when considered individually or in the aggregate. If the author’s selection, coordination, and/or arrangement of steps or movements does not result in an expressive compositional whole, the compilation does not constitute copyrightable subject matter under [Section 102\(a\)\(4\)](#) of the Copyright Act, and as such, cannot be registered as a choreographic work.

## 805.8 Registration Issues

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

**805.8(A) Choreographic Works Embodied in Dramatic Works or Audiovisual Works**

The choreography in a musical, a music video, or a **motion picture** may be registered as a choreographic work (or as a contribution to a dramatic work or **audiovisual work**), provided that the dance contains a sufficient amount of **copyrightable** authorship and provided that the dance is claimed as a distinct form of authorship in the application.

If an **applicant** submits an application to register a choreographic work embodied in a dramatic work or an audiovisual work, the registration only extends to the copyrightable choreography disclosed in that work.

**NOTE:** The applicant should not assert a **claim** in choreography if the choreographic work was previously registered as a component part of a motion picture or a dramatic work as a whole.

**805.8(B) Choreographic Work Combined with a Musical Work**

If the **claimant** owns the copyright in a choreographic work and the musical accompaniment for that work, the music should be separately claimed in the application. If the claimant does not own the copyright in the musical accompaniment, that element of the work should be excluded from the **claim** using the procedure described in **Chapter 600**, Section 621.8.

**805.8(C) Capacity for Uniform Performance**

As discussed in Section **805.3(D)(3)**, a choreographic work may be embodied with a textual description, photographs, drawings, or any combination of the foregoing, provided that the **deposit copy(ies)** identify the precise movements of the dancers and is sufficiently detailed to serve as directions for the performance of the dance.

If the deposit copy(ies) is not sufficiently specific or if it is so general and lacking in detail that the dance could not be performed therefrom, the **registration specialist** may communicate with the **applicant** or may refuse to register the dance as a choreographic work. In some cases, it may be possible to register a textual description as a **literary work** if the application asserts a **claim** in “text” and it may be possible to register a photograph or drawing as a work of the visual arts if the applicant asserts a claim in “artwork.” In both cases, the registration would extend to the description, depiction, or illustration of the movements, but the movements themselves would not be registered as a choreographic work. *See Registration of Claims to Copyright, 77 Fed. Reg. at 37,607.*

*Example:*

- The U.S. Copyright Office receives an application to register an abstract modern dance, along with a textual description for foot movements. No notations or instructions are provided for torso, head, or arm movements. The registration specialist may refuse registration on the grounds that the work is not sufficiently **fixed** to allow a dancer to perform the work. In the alternative, the specialist may communicate with the applicant and explain that the deposit copy does not support a claim to copyright in a choreographic work. The specialist may invite the applicant to submit dance notation, a **motion picture**, or an additional textual description of the work. If the applicant fails

to provide additional **deposit** material, the specialist may refuse to register the dance as a choreographic work.

#### 805.8(D) Descriptions, Depictions, and Illustrations of Social Dances, Simple Routines, or Other Uncopyrightable Movements

Although the copyright law does not protect social dances, simple routines, ordinary physical movements, or the like, the U.S. Copyright Office may register photographs, drawings, sculptures, or other works of visual art that illustrate a series of uncopyrightable movements. For example, a written description of a social dance may be registered as a **literary work** and a video recording of a simple routine may be registrable as a **motion picture**. See **Registration of Claims to Copyright**, 77 Fed. Reg. at 37,607.

The scope of protection for such works does not extend to the movements themselves, either individually or in combination with each other. Instead, the **claim** is limited to the expressive description, depiction, or illustration of the movements, to the extent that they constitute a pictorial, graphic, or sculptural work, a literary work, or an **audiovisual work**. For instance, making an unauthorized reproduction of a video recording that depicts an athletic competition may infringe the audiovisual expression in that recording. Likewise, making an unauthorized reproduction of a textbook that describes the steps for performing a social dance or simple routine may infringe the textual expression in that book. However, publicly performing a social dance, a simple routine, or an athletic competition that is depicted in a video recording or a book would not be an **infringement**. See **COPYRIGHT OFFICE STUDY NO. 28**, at 100 n.45 (“A narrative or graphic description of a social dance, as in a book designed to teach the dance, might be copyrighted; but the copyright, while affording protection against the reproduction of the description in its narrative or graphic form, would not extend to the execution of the dance.”).

#### 805.9 Application Tips for Choreographic Works

When registering a **claim** in a choreographic work using the online application, the **applicant** should select “Work of the Performing Arts” as the “Type of Work.” When registering a claim using a paper application, the applicant should complete **Form PA**.

The applicant should provide the name of the choreographer who created the choreographic authorship that appears in the work and the applicant should provide the name of the **claimant** who owns the copyright in that material.

The Performing Arts Division may accept a claim in “choreography” or “dance,” provided that the work is a choreographic work under **Section 102(a)(4)** of the Copyright Act and provided that it contains a sufficient amount of choreographic expression. When completing an online application, this information should be provided in the box marked “Other” that appears in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form PA, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see **Chapter 600**, Sections 618.4 and 621.8.

## 805.10 Deposit Requirements for Choreographic Works

As discussed in Section 805.3, choreographic works may be **fixed** with dance notation, an audiovisual recording, a textual description, or any other tangible medium of expression that is sufficient to identify the **applicant's claim** to copyright in the choreography and to allow the U.S. Copyright Office to examine the work for **copyrightable** authorship.

For a discussion of the deposit requirements for choreographic works, see **Chapter 1500**, Section 1509.2(D).

## 806 Pantomimes

This Section discusses the U.S. Copyright Office's practices and procedures for the examination of **unpublished** pantomimes and pantomimes first **published** on or after January 1, 1978 (*i.e.*, the date that pantomimes became a category of authorship subject to federal copyright protection).

### 806.1 What Is a Pantomime?

The Copyright Act recognizes **pantomime** as a distinct category of **copyrightable** authorship. **17 U.S.C. § 102(a)(4)**. The statute does not define "pantomime." However, the legislative history states that this term has a "fairly settled meaning[]." **H.R. REP. NO. 94-1476, at 53 (1976)**, reprinted in 1976 U.S.C.C.A.N. at 5666-67; **S. REP. NO. 94-473, at 52 (1975)**.

Pantomime is the art of imitating, presenting, or acting out situations, characters, or events through the use of physical gestures and bodily movements. Long before Congress extended federal copyright protection to pantomimes, the Supreme Court recognized that a silent performance is worthy of copyright protection if it qualifies as a dramatic work. As Justice Holmes observed: "[D]rama may be achieved by action as well as by speech. Action can tell a story, display all the most vivid relations between men, and depict every kind of human emotion, without the aid of a word. It would be impossible to deny the title of drama to pantomime as played by masters of the art." *Kalem Co. v. Harper Bros.*, 222 U.S. 55, 61 (1911).

Pantomimes and **choreographic works** are separate and distinct forms of authorship. The physical movements in a pantomime tend to be more restricted than the movements in a choreographic work, while pantomime uses more facial expressions and gestures of the hands and arms than choreography. Unlike a choreographic work, a pantomime usually imitates or caricatures a person, situation, or event. While choreography is typically performed with a musical accompaniment, pantomime is commonly performed without music or measured rhythm.

### 806.2 Elements of Pantomimes

Pantomimes typically contain one or more of the elements described below, although the presence or absence of a given element is not determinative of whether a particular work constitutes a pantomime.

**806.2(A) Movements and Gestures in a Defined Space**

Pantomime is executed through the physical movement of a performer's body. Specifically, a pantomime directs the performer's movements, gestures, and facial expressions in a defined sequence and a defined spatial environment, such as a stage.

**806.2(B) Compositional Arrangement**

A pantomime represents a related series of movements, gestures, and facial expressions organized into an integrated, coherent, and expressive compositional whole.

**806.2(C) Silent Action**

Pantomime is typically performed without dialog. The sounds that accompany the work (if any) may include sound effects or a musical accompaniment that accentuate the performer's actions or compliment the work as a whole. However, a **claim** in the pantomime itself does not extend to such music or sounds.

**806.2(D) Dramatic Content**

A pantomime may present a story or theme or it may be an abstract composition. Pantomimes often tell a story, develop characters or themes, and convey dramatic concepts or ideas through a sequence of gestures and bodily movements. They may be performed either with or without makeup, masks, costumes, scenery, or props.

A pantomime first **published** prior to January 1, 1978 cannot be registered unless the work tells a story, develops a character, or expresses a theme or emotion by means of specific movements and physical actions. *Cf. U.S. Copyright Office, Copyright Office Study No. 28*, at 95 (1961). Pantomime was not mentioned in the 1909 Act, and as a result, this type of work could only be registered if it qualified as a "dramatic work." *See Daly v. Palmer*, 6 Fed. Cas. 1132, 1136 (C.C.S.D.N.Y. 1868) (No. 3,552) (holding that written directions for movements and gestures conveying an original story sequence may be protectable as a dramatic composition).

**806.2(E) Presentation Before an Audience**

By definition, a pantomime is a work that is intended to be performed before an audience.

**806.3 Fixation of Pantomimes****806.3(A) The Work Must Be Fixed in a Tangible Medium of Expression**

The U.S. Copyright Office may register a **claim** to copyright in a pantomime, provided that the specific movements, gestures, and facial expressions constituting the work have been **fixed** in a tangible medium of expression. **17 U.S.C. § 102(a)**. As a general rule, the work should be fixed in a

visually perceptible form, because pantomime involves the physical movements of a performer's body which are visually perceived.

### 806.3(B) Capacity for Uniform Performance

A pantomime should be **fixed** in a form that depicts or describes the movements, gestures, and facial expressions in sufficient detail to permit the work to be performed. In addition, the specific movements and physical actions that constitute the pantomime should be fixed in a form that allows the work to be performed in a consistent and uniform manner. Any copy or phonorecord that satisfies this requirement will suffice, such as a written description of the work or an actual performance of the work captured in a **motion picture**. See *Kalem*, 222 U.S. at 61 (“The essence of the matter . . . is not the mechanism employed, but that we see the event or story lived.”).

### 806.3(C) Improvisation

The U.S. Copyright Office may register a pantomime, even if the author left some room for improvisation or if some improvisation is intended in the performance of the work. However, it is not possible to copyright an improvised pantomime if the improvisation has not been **fixed** in a tangible medium of expression. **17 U.S.C. § 102(a)**. For example, the Office will refuse to register a work that simply directs the performer to improvise a pantomime based on a particular theme or otherwise does not illustrate, depict or describe the performer's specific movements.

### 806.3(D) Forms of Fixation for Pantomimes

Unlike choreography, pantomimes are not **fixed** using a specific form of symbolic notation, although a dance notation system could conceivably be used for notating this type of work. See Section **805.3(D)(1)**.

### 806.4 Copyrightable Authorship in Pantomimes

The U.S. Copyright Office may register a **claim** to copyright in a pantomime, provided that the work constitutes **copyrightable** subject matter under **Section 102(a)(4)** of the Copyright Act and provided that it contains a sufficient amount of original authorship.

### 806.4(A) Copyrightable Subject Matter

When evaluating a **claim** to copyright in a pantomime, the **registration specialist** will use objective criteria to determine whether the work constitutes **copyrightable** subject matter. In making this determination, the specialist will focus on the intrinsic nature of the work, rather than the specific performance that is reflected in the **deposit copy(ies)**. The primary criteria that the specialist will consider are set forth in Section **806.2**. These elements are found in most pantomimes, although the presence or absence of a particular element may not be determinative.

Examples of movements, gestures, and facial expressions that do not satisfy this requirement are discussed in Section **806.5(B)**.

**806.4(B) Pantomime Authorship**

“To qualify for copyright protection, a work must be original to the author.” *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 345 (1991). In the case of a pantomime, original authorship requires the composition and arrangement of a related series of movements, gestures, and facial expressions organized into an integrated, coherent, and expressive whole.

The U.S. Copyright Office may register a pantomime, provided that the work contains a sufficient amount of creative authorship that was created by the author of that work. The **registration specialist** will use objective criteria to determine whether a pantomime satisfies these requirements by reviewing the information provided in the application and by examining the **deposit copy(ies)**, including the individual elements of the work as well as the pantomime as a whole. The specific criteria that the specialist will consider are set forth in Section **806.2** above. The specialist will not consider subjective criteria that have no bearing on whether the originality requirement has been met, such as the author’s intent, the aesthetic value, artistic merit, or intrinsic quality of the work, or the symbolic meaning or commercial impression of the work.

Examples of movements, gestures, and facial expressions that do not satisfy this requirement are discussed in Section **806.5(A)**.

**806.4(C) Human Performance Required**

The Copyright Act protects “original works of authorship.” **17 U.S.C. § 102(a)**. To qualify as a work of authorship, a pantomime must involve “the real pantomime of real men.” *Kalem*, 222 U.S. at 61-62. Pantomimes performed by animals, robots, machines, or any other animate or inanimate object are not **copyrightable** and cannot be registered with the U.S. Copyright Office.

**806.4(D) Pantomimes That Incorporate Uncopyrightable Movements, Gestures, and Facial Expressions**

As discussed in Section **806.5**, stock gestures, common techniques, ordinary motor activities, and other uncopyrightable movements cannot be registered as separate and distinct works of authorship, even if they contain a substantial amount of creative expression. Nevertheless, uncopyrightable movements may be used as the building blocks for a pantomime, in much the same way that notes and short musical phrases provide the basic material for a composer. Pantomimes that incorporate stock gestures, ordinary motor activities, or even athletic exercises may be protected by copyright, provided that the work as a whole contains a sufficient amount of original authorship. See *Teller v. Dogge*, 110 U.S.P.Q.2d 1302, 1306 (D. Nev. 2013) (“While [defendant] is correct that magic tricks are not **copyrightable**,... the mere fact that a dramatic work or pantomime includes a magic trick, or even that a particular illusion is its central feature does not render it devoid of copyright protection”).

*Example:*

- Irwin Williams created a complex pantomime titled, *Waiting for Sam*. At one point in the production the performer pretends to walk down a flight of stairs while using a partition to conceal his movements from the audience. While the overall production could be registered as a pantomime, the U.S. Copyright Office would reject a **claim** limited to this standard technique.

## 806.5 Uncopyrightable Pantomimes

The U.S. Copyright Office is charged with administering the provisions of the Copyright Act and with issuing regulations for the administration of the copyright system that are consistent with the statute. The Office has no authority to register **claims** to copyright in material that falls outside the scope of federal statutory protection. Some of the more common types of uncopyrightable movements are discussed in Sections **806.5(A)** and **806.5(B)**.

### 806.5(A) *De Minimis* Movements

As discussed in Section **806.1**, pantomime is the art of imitating, presenting, or acting out situations, characters, or events through the use of movements, gestures, and facial expressions. Individual movements, gestures, or expressions by themselves are not **copyrightable**. Likewise, the U.S. Copyright Office cannot register a pantomime consisting of a few stock gestures, movements, or facial expressions with minor linear or spatial variations, such as pretending to be stuck inside an invisible box or using stiff arms and legs to suggest the movement of a mechanical doll. *Cf.* **37 C.F.R. § 202.1(a)**.

### 806.5(B) Ordinary Motor Activities, Non-Expressive Physical Activities, Competitive Maneuvers, Feats of Physical Skill or Dexterity, and Other Uncopyrightable Movements in Pantomimes

Choreography and pantomime are the only types of works comprised exclusively of bodily movements that are eligible for copyright protection under **Section 102(a)(4)** of the Copyright Act. Non-expressive physical movements, such “ordinary motor activities” or “functional physical activities” — in and of themselves — do not represent the type of authorship that Congress intended to protect as choreography or pantomime. **Registration of Claims to Copyright, 77 Fed. Reg. at 37,607**.

The U.S. Copyright Office cannot register a **claim** to copyright in such non-expressive activities. *See Bikram’s Yoga College of India, L.P. v. Evolution Yoga, LLC*, 2015 U.S. App. LEXIS 17615 (9th Cir. Oct. 8, 2015) (declining to extend copyright protection in a book describing yoga poses to the yoga poses themselves). Examples of non-expressive physical movements that cannot be registered with the Office include exercise routines, aerobic dances, yoga positions, and the like.

The Office cannot register claims to copyright in athletic activities or competitive maneuvers as such, because they do not constitute copyrightable subject matter under **Section 102(a)(4)** of the Copyright Act.

These types of activities are typically performed for the enjoyment of an audience. However, competitive activities are comprised of athletic maneuvers rather than artistic movements, gestures, or facial expressions, and therefore lack sufficient creative expression. Competitive activities lack the capacity for uniform performance because each contest usually involves a different set of maneuvers, they lack compositional arrangement because athletic movements are rarely organized into a coherent compositional whole, and any dramatic content involves the “drama” of the competition rather than a story that is told or a theme that is evoked by the players’ movements. *See NBA v. Motorola*, 105 F.3d 841, 846-47 (2d Cir. 1997) (noting that “[s]ports events are not ‘authored’ in any common sense of the word”).

For similar reasons, the Office cannot register feats of physical skill or dexterity that do not involve the physical movement of a performer’s body in an integrated, coherent, and expressive compositional whole.

*See id.* (concluding that there is a “general understanding that athletic events were, and are, uncopyrightable”); but see [H.R. REP. NO. 94-1476 at 52 \(1976\)](#), reprinted in 1976 U.S.C.C.A.N. at 5665 (explaining that Congress intended to protect the telecast of “sports, news coverage, live performances of music, etc.,” provided the telecast is simultaneously recorded).

## 806.6 Registration Issues

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

### 806.6(A) Pantomime Combined with a Literary Work or Musical Work

If the **claimant** owns the copyright in a pantomime and the textual or musical accompaniment for that work, the music or text should be separately claimed in the application. If the claimant does not own the copyright in the accompaniment, that element of the work should be excluded from the **claim** using the procedure described in [Chapter 600](#), Section 621.8.

### 806.6(B) Capacity for Uniform Performance

As discussed in Section [806.3](#), a pantomime may be embodied in a visually perceptible form, provided that the **deposit copy(ies)** identifies the precise movements, gestures, and facial expressions of the performer and provided that it is sufficiently detailed to serve as directions for the performance of the work.

If the deposit copy(ies) is not sufficiently specific or if it is so general and lacking in detail that the pantomime could not be performed therefrom, the **registration specialist** may communicate with the **applicant** or may refuse to register the work as a pantomime. In some cases, it may be possible to register a textual description as a **literary work** if the application asserts a **claim** in “text” and it may be possible to register a photograph or drawing as a work of the visual arts if the applicant asserts a claim in “artwork.” In both cases, the registration would extend to the description, depiction, or illustration of the movements, but the movements themselves would not be registered as a pantomime. *See Registration of Claims to Copyright, 77 Fed. Reg. at 37607.*

## 806.7 Application Tips for Pantomimes

When registering a **claim** in a pantomime using the online application, the **applicant** should select “Work of the Performing Arts” as the “Type of Work.” When registering a claim using a paper application, the applicant should complete [Form PA](#).

The applicant should provide the name of the author who created the pantomime authorship that appears in the work and the applicant should provide the name of the **claimant** who owns the copyright in that material.

The Performing Arts Division may accept a claim in “pantomime,” “mime,” or even “dumb show,” provided that the work is a pantomime under [Section 102\(a\)\(4\)](#) of the Copyright Act and provided that it contains a sufficient amount of original expression. When completing an online application, this information should be provided in the box marked “Other” that appears in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form PA, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see [Chapter 600](#), Sections 618.4 and 621.8.

## 806.8 Deposit Requirements for Pantomimes

To register a pantomime with the U.S. Copyright Office, the **applicant** should **deposit** a copy of the work that is sufficient to identify the applicant’s **claim** to copyright in the pantomime and to allow the Office to examine the work for **copyrightable** authorship.

For a discussion of the deposit requirements for pantomimes, see [Chapter 1500](#), Section 1509.2(D).

## 807 Audiovisual Works

### 807.1 What Is an Audiovisual Work?

The Copyright Act defines **audiovisual works** as “works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.” [17 U.S.C. § 101](#).

Types of audiovisual works include:

- **Motion pictures.**
- Arcade games and videogames.
- Karaoke displays.
- Applications designed for mobile phones and tablets.
- Banner advertisements.
- Webinars.
- Slide presentations.
- Multimedia kits that have an audiovisual component.
- Virtual reality environments.

## 807.2 Audiovisual Works Distinguished from Other Types of Works

### 807.2(A) Audiovisual Works Distinguished from Motion Pictures

**Motion pictures** are a type of audiovisual work. In describing the categories of **copyrightable** authorship, **Section 102(a)(6)** of the Copyright Act draws a distinction between motion pictures and other audiovisual works. Likewise, the Office generally uses the term “audiovisual works” to refer to audiovisual works other than motion pictures, and assigns motion pictures to a separate team of **registration specialists**. For information on motion pictures, see **Section 808**.

### 807.2(B) Sounds Accompanying Audiovisual Works Distinguished from Sound Recordings

There is a legal distinction between the “soundtrack” of an audiovisual work and a “**sound recording**.” The statutory definition of a sound recording specifically states that this category does not include “sounds accompanying a **motion picture** or other audiovisual work.” **17 U.S.C. § 101**. Thus, when registering a **claim** in the soundtrack for an audiovisual work, the **applicant** should state “sounds,” “soundtrack,” or “sounds accompanying an audiovisual work” in the application, rather than “sound recording.”

For further information concerning sound recordings, see **Section 803**.

### 807.2(C) Audiovisual Works Distinguished from Visual Art Works

Audiovisual works often include visual art works, namely pictorial and graphic images. Audiovisual works are distinguished from visual art works in that the images in an audiovisual work (i) must be in a series, (ii) must be related, and (iii) must be intended to be shown by the use of a machine or device. Visual art works have no such requirements. See **17 U.S.C. § 101** (definition of “audiovisual works”).

For information regarding the copyrightability and registrability of pictorial and graphic works, see **Chapter 900**.

### 807.2(D) Audiovisual Works Distinguished from Literary Works

Audiovisual works may include text and a screen display comprised solely of text may constitute an “image” within an audiovisual work. The statutory definition of a **literary work** specifically states that this category does not include audiovisual works. See **17 U.S.C. § 101** (defining “literary works” as “works, other than audiovisual works”). Thus, continuous text, such as the text of a book, magazine, journal, or other literary work appearing on the screen of a device such as a tablet or karaoke machine would not be considered an audiovisual work.

For information regarding the copyrightability and registrability of literary works see **Chapter 700**.

### 807.3 Elements of Audiovisual Works

#### 807.3(A) Visual Authorship

Any kind of visually perceptible images, such as photographs, artwork, and text, or a combination thereof, may satisfy the requirement that an audiovisual work contain visually perceptible material. The series of related images may appear on succeeding screens (such as a slide presentation) or as images in motion (such as a videogame).

#### 807.3(B) Series of Related Images

A key element of authorship in an audiovisual work is that the images must have some connection to one another and must be displayed as a series. *See, e.g., Midway Manufacturing Co. v. Artic International, Inc.*, 704 F.2d 1009, 1011 (7th Cir. 1983) (construing series of related images “to refer to any set of images displayed as some kind of unit”). A slide presentation created as a cohesive work, for instance, is a series of images, while a single slide or unorganized group of random slides is not.

#### 807.3(C) Intrinsic Use of Machine or Device

A key element of an audiovisual work is that the images must be “intrinsically intended to be shown by the use of machines or devices.” 17 U.S.C. § 101 (definition of “audiovisual works”). Such machines and devices include disc and video cassette players, electronic devices that play digital files, such as computers, tablets, and mobile phones, and machines with dedicated hardware, such as videogame consoles.

For example, a slide show or slide presentation qualifies as an audiovisual work, in part, because it requires a projector or computer to view the series of images as intended. By contrast, a series of photographs intended to be displayed together on a wall does not. *See, e.g., Leadsinger, Inc. v. BMG Music Publishing.*, 512 F.3d 522, 528 (9th Cir. 2008) (concluding that a karaoke display is an audiovisual work because “the visual representation of successive portions of song lyrics” projected by the machine onto a television screen constitutes a series of related images and because a machine is required to display the lyrics on cue).

#### 807.3(D) Single, Integrated Work

The authorship in an audiovisual work generally is considered a single, integrated work and must be registered as a whole, with the possible exception of a **computer program** or musical score that was not created with the intention of being part of the audiovisual work. For this reason, the individual elements of authorship in an audiovisual work generally cannot be registered as separate works.

### 807.3(E) Aural Authorship

An audiovisual work may, and often does, include aurally perceptible authorship in the form of recorded words, music, and sounds. Aurally perceptible authorship, however, is not a required element in a **copyrightable** audiovisual work.

#### 807.3(E)(1) Soundtrack

The term “soundtrack” refers to the accompanying sounds of an audiovisual work, which may include spoken text, sound effects, background music, or musical compositions. Generally, the soundtrack and the audiovisual work constitute a single, integrated work.

#### 807.3(E)(2) Physical Integration of Sounds

When sounds are present in an audiovisual work, they do not need to be physically integrated with the visual element in order to be considered “accompanying sounds.”

Most contemporary audiovisual works contain physically integrated sounds. For example, the soundtrack of a **motion picture** or the sounds of a videogame are considered integrated sounds. By contrast, sounds are considered non-physically integrated if the images and the sounds are **fixed** on separate objects, such as a filmstrip with a separate compact disc containing the narration that accompanies the still images.

### 807.4 Fixation of Audiovisual Works

To be protected by copyright, an audiovisual work must be **fixed** in a tangible medium of expression. See **17 U.S.C. § 101**. Audiovisual works may be fixed in copies and generally they are fixed in one or more of the following electronic or hard copy formats:

- Machines, such as computers, tablets, mobile phones, and arcade consoles.
- Machine readable copies, such as CD-ROMs, hard drives, and flashdrives.
- Discs or tapes, such as Blu-ray, DVD, or videotape.
- Videogame discs and cartridges for consoles with dedicated hardware.
- Server hosted digital files.

### 807.5 Copyrightable Authorship in Audiovisual Works

An audiovisual work must contain a sufficient amount of original and creative human authorship to be **copyrightable**. The visual material, the aural material, and the flow of the work as a whole will be evaluated in determining whether the work can be registered. See *Atari Games Corp. v. Oman*, 979 F.2d 242, 245 (D.C. Cir. 1992) (Ginsburg, J.) (stating that the Office should focus on “the flow of the game as a whole... ‘the entire effect of the game as it appears and sounds’... [and] the sequential aspect of the work”) (citations omitted).

**807.5(A) Independent Creation**

An audiovisual work must originate from the author of that work to be protected by copyright. An audiovisual work that is merely copied from another source is not **copyrightable**.

*Example:*

- At graduation, a student presents a slide show containing her school picture from each year, starting with kindergarten and ending with the senior year photograph. None of the authorship is original to the **applicant**. Registration would be refused because all of the content is owned by a third party and there is *de minimis* originality in compiling all school photos in chronological order.

**807.5(B) Creative Expression**

An audiovisual work must contain a sufficient amount of creative expression in the form of a series of related images.

*Example:*

- A slide of a famous work of art is displayed with extensive aural commentary. This would not be considered an audiovisual work, because it does not contain a series of related images. The aural commentary may be registrable as a sound recording.

**807.5(C) Human Authorship**

An audiovisual work must contain creative human authorship. An audiovisual work created through a purely mechanical process, or generated solely by preexisting software is not **copyrightable**.

*Example:*

- A **screen displays** a preexisting image that flashes. There is no sound. Pre-existing software automatically generates the flash movement. The **claim** will be refused.

**807.6 Derivative Audiovisual Works**

An audiovisual work is considered a **derivative work** if it recasts, transforms, or adapts one or more preexisting works. See **17 U.S.C. § 101** (definition of “derivative work”). The preexisting material may or may not be audiovisual material. For example, a videogame may be based on a **motion picture** or a graphic novel. The author of the derivative work must have permission to use the preexisting material if that material is protected by copyright, and the author must contribute a sufficient amount of new original authorship in order to register the new work as a derivative work. See **Chapter 300**, Sections 311.2 and 313.6(B).

*Examples:*

- A CD-ROM that combines archival footage and photographs from the Korean War with a newly created narration, new interviews with veterans, and new textual information about the conflict.
- A karaoke disc that combines new pictorial displays with the lyrics and music of a preexisting song.

A new version of a preexisting audiovisual work also may qualify as a derivative work, provided that the revisions, additions, deletions, or other modifications, taken as a whole, constitute a new work of authorship.

*Examples:*

- Revising a published website by adding new updates consisting of text and video clips.
- Writing new computer code for a published videogame so that the work can be released on a different platform.

When completing an application for a derivative work, the **applicant** should identify and exclude the preexisting material from the **claim** and describe the new authorship that the author contributed to the preexisting work. The applicant also should limit the claim if the derivative work contains material created by others that is not a part of the claim.

For guidance on these procedures, see **Chapter 600**, Section 621. For general information regarding derivative works, see **Chapter 500**, Section 507.

## 807.7 Registration Issues

This Section discusses frequent registration issues involving certain types of audiovisual works.

### 807.7(A) Videogames

#### 807.7(A)(1) Videogames Distinguished from Computer Programs

Generally, a videogame contains two major components: the audiovisual material and the **computer program** that runs the game. If the copyright in the audiovisual material and the computer program are both owned by the same entity, they should be registered together on one application. By contrast, if the copyright in the program and the audiovisual material are owned by different parties, separate applications will be required.

An application to register a videogame should clearly state whether the **claim** extends to the computer program, the audiovisual material, or both components. If the authorship is described simply as “videogame,” the **registration specialist** may communicate with the **applicant** if the scope of the claim is unclear from the **deposit** material. For example, if the deposit material does not include **source code** for the computer program, the claim will extend only to the audiovisual material.

### 807.7(A)(2) One Videogame, Multiple Platforms

Videogames are commonly released on several different platforms. **Applicants** often attempt to register each platform separately. Generally, when the same work is **published** in different versions, the Office will issue separate registrations for each version only if they contain separable **copyrightable** material. See **Chapter 500**, Section 512.

If there are copyrightable differences in the audiovisual material (or the **computer program**) for each platform, the Office may issue a separate registration for each version. In this situation, the deposit material for each version should show some of the differences. In addition, the applicant should confirm, either in the Note to Copyright Office field or in a cover letter, that the audiovisual material (or computer program) differs between versions. If the applicant does not provide such a statement, the **registration specialist** will communicate with the applicant to determine whether the versions contain copyrightable differences.

If the differences do not appear in the audiovisual content, but instead appear solely in the computer programming that is used to achieve compatibility with the hardware and/or software for a particular device, console, platform, or operating system, the applicant should register only one version of the audiovisual work. This version will cover the copyrightable content in the other versions. For guidance in registering multiple versions of a computer program that generates a videogame, see **Chapter 700**, Section 721.8.

**NOTE:** If the audiovisual material is the same for each platform and the versions are published on separate dates, the applicant must register the version which was published first.

### 807.7(B) Karaoke Displays

Karaoke displays may be registered as audiovisual works if they contain a series of images other than scrolling preexisting lyrics. A display containing only scrolling preexisting song lyrics is not **copyrightable**. See Section **807.2(D)**.

*Example:*

- A karaoke display combining original scenic views of Los Angeles, scrolling lyrics to the Jerry Newfield song “I Love Cake,” and the melody of that song constitutes a copyrightable audiovisual work (provided that the use of the song and the images is lawful).

### 807.7(C) Apps for Computers, Tablets, or Mobile Phones

Apps may constitute audiovisual works. Many apps contain a significant amount of preexisting artwork, such as icons. In such cases the preexisting material should be identified and excluded from the application, and the **claim** should be limited to the new **copyrightable** authorship. If the preexisting material has not been identified on the application, the **registration specialist** may communicate with the **applicant** to request that the claim be limited to the new copyrightable authorship.

The new copyrightable authorship should be described as “audiovisual material,” rather than “app” or “computer app.” See Section **807.8(B)**.

### 807.7(D) Banner Advertisements

Some banner advertisements are comprised of images and words that flash or scroll (using Java- or flash-based script) across a small window. Banner advertisements also may be comprised simply of images, text, and a link. The Office will consider the work as a whole to determine whether it contains sufficient **copyrightable** expression.

When registering a banner advertisement with an online application the applicant should state “audiovisual material” in the Author Created/Other field, and if applicable, in the New Material Included/Other field.

As a general rule, applicants should not select the box marked “entire motion picture.” If the advertisement contains a copyrightable series of images, but does not impart an impression of motion, or if the work lacks sufficient authorship as a “motion picture,” the **registration specialist** will communicate with the applicant and request that the authorship be described as “audiovisual material” rather than “entire motion picture.”

*Examples:*

- Michael Williams submits an application to register his **claim** in a banner advertisement that he created for a local activist organization. The authorship is described as “audiovisual material.” The **deposit** consists of short, textual phrases that alternate and zoom in and out with a mouse click. Michael’s original song plays in the background. The claim to copyright in this work will be accepted because the work, as a whole, contains a sufficient amount of copyrightable authorship.
- Mika Roberts submits an application to register her claim in a banner advertisement that she created for a local religious organization. The ad consists of a line of scrolling continuous text that is a long quote from the Bible. In the background, a **public domain** religious hymn plays. The registration specialist will refuse to register this claim. Although there is a series of images, the work contains an insufficient amount of original material to support a copyright claim.

### 807.7(E) Slide Presentations

A slide presentation is a series of stills on a computer screen, videodisc, or videotape intended to be viewed as a single cohesive work, such as a PowerPoint presentation. If the work contains preexisting visual or aural material, that material should be identified and excluded from the **claim**, and the claim should be limited to the new **copyrightable** authorship.

### 807.8 Application Tips for Audiovisual Works

This Section provides basic information on how to complete the online and paper applications for an audiovisual work, as well as terms to use and terms to avoid when describing the authorship in such works.

For detailed information on how to complete an application, see **Chapter 600**.

### 807.8(A) Type of Work

When registering a **claim** in an audiovisual work using an online application, the **applicant** should select “Motion Picture / AV Work” as the Type of Work. When using a paper application, the applicant should use **Form PA**.

Many works that contain audiovisual material also contain literary and visual arts authorship, and sometimes it is difficult to determine which type of work should be specified in the application. This is particularly true for CD-ROMs, multimedia works, and website content. As a general rule, the applicant should select the type of work that is appropriate for the predominant form of authorship in the works. For example, a videogame that is primarily audiovisual should be registered as a “Motion Picture / AV Work.” A CD-ROM that contains a collection of photographs should be registered as a **visual art work**. A website that predominantly contains text should be registered as a **literary work**.

### 807.8(B) The Author Created Field and the Nature of Authorship Space

When completing an online application, the **applicant** should describe the authorship that will be submitted for registration, either by checking one or more of the box(es) in the Author Created field or by providing an appropriate statement in the box marked “Other.” When completing a paper application, the applicant should provide this information in the Nature of Authorship space. The applicant should only describe authorship that was created by the author(s) named in the application, and is contained in the **deposit copy(ies)**.

The boxes in the Author Created field are typically used to describe the authorship in a **motion picture**. Therefore, the applicant should consider using the box marked Other to describe the authorship in an audiovisual work. As a general rule, the Office will accept the following statements, provided that they accurately describe the **copyrightable** authorship being claimed:

- Audiovisual material.
- **Computer program**.
- Computer program including **screen displays**.
- Text and video clips in a website.
- Audiovisual material and computer program.
- Text of user’s manual.

In describing the authorship, the applicant should avoid using unclear, non-specific terms such as “website” or “computer app.” The applicant should not refer to uncopyrightable or unregistrable aspects of the work, such as “format” or “layout.” When registering a computer program, the applicant should not refer to the program’s functions, features, physical form, hardware, or algorithms. See **Chapter 700**, Section 721.9(J). The applicant also should avoid using the term “**sound recording**” to describe the sounds or soundtrack of an audiovisual work. See Sections **807.2(B)** and **807.3(E)(2)**.

**NOTE:** A **claim** in a computer program generally covers any related screen displays. A claim in HTML or other formatting code, however, does not extend to the screen displays. See **Chapter 1000**, Section 1006.1(A). Thus, if the applicant intends to register both the formatting code and the screen displays, the applicant must include the terms “computer program” and “audiovisual material” in the **authorship statement**.

For additional guidance in completing this portion of the application, see **Chapter 600**, Section 618. For a discussion of the practices and procedures for registering computer screen displays, see **Chapter 700**, Section 721.10.

## 807.9 Deposit Requirements for Audiovisual Works

For information concerning the deposit requirements for audiovisual works, see **Chapter 1500**, Section 1509.2(E).

For some types of audiovisual works, the **applicant** may deposit **identifying material** instead of submitting a complete copy of the work. If the applicant uses the term “audiovisual” to describe the authorship in the work, the **registration specialist** will examine the **deposit copy(ies)** for audio and visual material. If the applicant uses specific terms, such as “music” or “sounds,” the specialist will examine the deposit copy(ies) for that type of authorship. Thus, if the applicant submits identifying material in lieu of the entire work, the identifying material should contain the authorship that is specifically claimed in the application. Otherwise, the specialist will communicate with the applicant to discuss the extent of the **claim**.

## 808 Motion Pictures

### 808.1 What Is a Motion Picture?

The Copyright Act defines **motion pictures** as “audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.” **17 U.S.C. § 101**.

### 808.2 Motion Pictures Distinguished from Other Types of Works

#### 808.2(A) Motion Pictures Distinguished from Audiovisual Works

Motion pictures are a subset of **audiovisual works**. Thus, an audiovisual work may or may not be a motion picture. It is possible for a series of related images to be embodied in a medium that is traditionally used for motion pictures, such as film or videotape, without imparting an impression of motion. In such cases, the work is considered an audiovisual work, but not a motion picture. For example, a series of related photographs or drawings embodied in film stock would not be considered a motion picture unless, when shown, the images give an impression of motion.

When an **applicant** asserts a **claim** in a “motion picture,” the **registration specialist** will examine the material deposited to determine if the images impart some kind of motion. If the material

submitted contains only still images, the specialist will request that the applicant change the authorship statement to “audiovisual material.”

**NOTE:** Machine-readable works, such as videogames that contain computer programming or have an interactive element, generally are registered as audiovisual works rather than motion pictures, even though they impart an impression of motion to the eye.

### **808.2(B) Sounds Accompanying Motion Pictures Distinguished from Sound Recordings**

There is a legal distinction between the “soundtrack of a motion picture” and a “**sound recording**.” The statutory definition of a sound recording specifically states that this category does not include “sounds accompanying a motion picture or other **audiovisual work**.” 17 U.S.C. § 101. Thus, when registering a **claim** in a motion picture soundtrack, the **applicant** should state “sounds,” “soundtrack,” or “sounds accompanying a motion picture” in the application, rather than “sound recording.”

For more information concerning this issue, see Sections **808.4(J)**, **808.10(F)(3)**, and **808.10(G)**.

### **808.2(C) Motion Pictures Distinguished from Underlying Works**

Occasionally, an **applicant** submits a copy of a motion picture in order to register the “underlying work” that is recorded in the motion picture, such as the script, a musical work, choreography, **pantomime**, or artwork. In such cases, the motion picture is simply the medium used to “fix” the underlying work. The copyright owner of the underlying work may or may not be the copyright owner of the motion picture.

If the copyright owner of the motion picture owns the rights in the underlying work, and if the entire motion picture is being registered for the first time, the applicant should register the motion picture and the underlying work(s) with one application. To do so, the applicant should state “entire motion picture” in the application, instead of providing a separate description of the underlying work(s) embodied in the motion picture.

If the copyright in the underlying work and the copyright in the motion picture are owned by different parties, then the underlying work and the motion picture cannot be registered with the same application. Instead, the applicant should submit a separate application for the motion picture, and should identify any preexisting or separately owned material in the Material Excluded field, and should state “all other cinematographic material in the New Material Included field.

## **808.3 Elements of Motion Pictures**

### **808.3(A) Impression of Motion Required**

Motion pictures are **audiovisual works** that contain a series of images which are shown in a certain successive order that imparts the impression of motion. The impression of motion may be accomplished by action that is captured by the camera, such as the performance of one or more actors or the movement of fire in a fireplace, by animation, or through certain cinematic

techniques, such as panning (the movement of the camera from one set point to another in a horizontal plane) or zooming (a camera shot in which the magnification of the objects by the camera lens is increased or decreased).

### **808.3(B) Device Needed for Viewing**

The series of related images in a motion picture are “by their nature, intended for showing by means of projectors or other devices.” *H.R. REP. NO. 94-1476, at 56 (1976)*, reprinted in 1976 U.S.C.C.A.N. at 5669; *S. REP. NO. 94-473, at 54 (1975)*. Such devices may include electronic equipment or devices that play digital files, such as DVD or Blu-ray players, as well as computers, tablets, and cell phones.

### **808.3(C) Sound Not Required**

While moving images are required for a work to be considered a motion picture, sounds are not required. If the work contains sound, the soundtrack is considered an integral part of the motion picture. See Section [808.4\(J\)](#).

### **808.3(D) Single, Integrated Work**

A motion picture, including its production, direction, cinematography, performances, and editing, is a single, integrated work. Generally, a motion picture must be registered as a whole, with the possible exception of the screenplay and musical score. The individual elements that comprise a motion picture cannot be registered apart from the work as a whole. For example, one actor’s performance in a television show may not be registered apart from the rest of the motion picture.

## **808.4 Elements of Motion Picture Authorship**

### **808.4(A) Production**

Production is an all-inclusive term for the various operations involved in movie making, particularly during the phase in which the principal photography occurs. Production authorship includes important decision-making about all aspects of the motion picture that affects the outcome of the final motion picture, including writing, directing, camera work, and editing.

### **808.4(B) Direction**

Direction refers to the creative aspects, both interpretive and technical, used in a motion picture production. Direction may include orchestrating the action in front of the camera, guiding the acting and dialog, controlling the camera position and movement, selecting the sound and lighting, and overseeing the editing, all of which contribute to the finished motion picture.

**808.4(C) Cinematography**

Cinematography is the art of motion picture photography in which moving images are captured. The chief cinematographer for a motion picture often is called the director of photography.

**808.4(D) Performance**

Performance refers to the acting, speaking, singing, or dancing in a motion picture.

**808.4(E) Animation**

Animation is the rapid display of a series of still images to create an illusion of motion. Animation can be produced with hand-drawn art, computer generated images (CGI), special effects, or three-dimensional objects (*e.g.*, puppets or clay figures), or a combination of these elements.

**808.4(F) Screenplay or Script**

The screenplay is the written text upon which a motion picture production is based. The screenplay often is broadly interpreted during filming or taping, and rarely reaches the screen without modification.

**808.4(G) Works That Precede a Screenplay or Script**

A screenplay or script is often preceded by a proposal, synopsis, and treatment. A discussion of these works is set forth below.

**808.4(G)(1) Textual Proposal**

A proposal is a usually a text-based document specifically created to sell a motion picture or television concept to producers and/or investors. In addition to the text, these documents may contain a cover page with artwork and/or photographs, contact information, a proposed budget, and biographies of the writer(s), director, producer(s), and star actor(s).

**808.4(G)(2) Synopsis**

A synopsis is a summary of the major plot points and description of the characters of a script or a motion picture. Generally, they are a page or two in length.

**808.4(G)(3) Treatment**

A treatment is a document consisting of a summary of the major scenes of a proposed movie or television show and descriptions of the main characters, possibly including some dialog. A treatment is generally longer and more detailed than a synopsis.

**808.4(H) Editing**

Editing is a part of the creative post-production process of filmmaking that involves working with raw footage, and selecting and combining shots into sequences to create a finished motion picture. For a discussion of editing as derivative motion picture authorship, see Section **808.8(A)**.

**808.4(I) Musical Score**

The term “musical score” refers to music that accompanies a motion picture.

**808.4(J) Soundtrack**

The soundtrack refers to the accompanying sounds of a motion picture that may include dialog, sound effects, background music, and musical compositions. The soundtrack is an integral part of the motion picture and generally should be registered with the motion picture as a single, unified work. See **Motion Picture Soundtracks, 40 Fed. Reg. 12,500, 12,501 (Mar. 19, 1975)**. For exceptions to this rule and other related issues, see Sections **808.10(F)** and **808.10(G)** below.

**808.5 Types of Motion Pictures**

Motion pictures include movies of all genres (*e.g.*, action, drama, horror, comedy, animation, documentary, etc.), regardless of whether the movie is intended for release in theaters, on television, on DVD or other video format, or online. Other examples include television programs and commercials (*e.g.*, comedy, drama, reality, news, advertisements), music and educational videos, and short videos posted online.

**808.6 Fixation of Motion Pictures**

Motion pictures may be **fixed** in video files, videotape, or film. These formats are defined and discussed below in Sections **808.6(A)** through **808.6(B)(3)**.

To be fixed, the motion picture must have been produced. Textual proposals, treatments, synopses, and screenplays for future motion pictures do not constitute fixations of motion pictures (although they may be fixations of text).

**808.6(A) Video Formats**

Motion pictures may be fixed in a video format, and often they are published in this form. Video formats may include non-linear digital discs, analog or digital tapes, or any other digital recording media, such as memory cards.

**808.6(A)(1) Videodiscs**

A videodisc is a laser readable random-access disc containing both audio and video signals. Videodiscs require dedicated players to be viewed.

*Examples:*

- DVD
- Blu-ray disc

### **808.6(A)(2) Digital Video Files**

A digital video file contains audio and video signals that can be accessed using compatible software. A digital video file may be contained in a physical object.

*Examples:*

- A CD-ROM or DVD-ROM
- A Digital Cinema Package (DCP)
- A hard drive or flash drive

**NOTE:** Applicants may upload digital files through the Office’s electronic registration system. A digital file that is uploaded to the Office’s server in support of an online application is a copy for registration purposes. Acceptable digital file types that may be uploaded for registration include:

- .avi
- .mov
- .mpg
- .mpeg
- .rm
- .rv
- .swf
- .wmv

The most current list of acceptable file formats are posted on the Office’s [website](#).

### **808.6(A)(3) Videotape**

Videotape is a magnetic tape with a thin magnetizable coating on a long, narrow strip of plastic film containing recorded video and/or audio signals in an analog or digital form. Videotapes require dedicated players to be viewed.

*Examples:*

- HDCAM
- HDCAM SR

- Digital Betacam (Digibeta)
- Betacam SP
- VHS Cassette

### 808.6(B) Film Format

Film is a thin sheet or strip of flexible cellulose coated with a photosensitive emulsion. When the emulsion is sufficiently exposed to light it forms a latent image. Chemical processes can be applied to the film to create a visible image. The series of still images are then run through a projector and shown on a screen, creating the illusion of moving images. Films usually include an optical soundtrack, which is a visual representation of the sound waves for the spoken words, music, and other sounds intended to accompany the images. The soundtrack is located on a portion of the film that is not projected on the screen.

*Examples:*

- 70mm
- 35mm
- 16mm
- Betacam SP

### 808.7 Copyrightable Authorship in Motion Pictures

#### 808.7(A) Independent Creation

A motion picture must originate from the author of that work to be protected by copyright. A motion picture that is merely copied from another source is not **copyrightable**.

#### 808.7(B) Creative Expression

A motion picture must contain a sufficient amount of creative expression in the form of a series of sequential images that convey motion.

*Examples:*

- The applicant submits a video recording of a child's birthday party. The claim in motion picture will be registered.
- The author cut two seconds from a preexisting film; the applicant submits a claim in editing. Because the authorship is *de minimis*, the claim will be refused.

### 808.7(C) Human Authorship

A motion picture must contain creative human authorship. A motion picture created by a non-human author, created by a purely mechanical process, or generated solely by preexisting software is not **copyrightable**.

*Examples:*

- The **applicant** submits an application to register a work titled *Punish the Producers*. The applicant explains that the author transferred the motion picture from film to DVD, a process referred to as “digitization.” The **registration specialist** will refuse the claim, because digitization is a mechanical process lacking any creative human authorship.
- A chimpanzee picks up a video camera, inadvertently turns it on and records images. The applicant submits a claim in a motion picture, naming the chimpanzee as the author. The registration specialist will refuse to register the claim, because the author is not a human being.

### 808.8 Derivative Motion Pictures

A motion picture is considered a **derivative work** if it recasts, transforms, or adapts one or more preexisting works. **17 U.S.C. § 101** (definition of “derivative work”). For example, a derivative motion picture may be based on a novel, a play, a painting, or other works of authorship. A new version of a preexisting motion picture also may qualify as a derivative work, provided that the revisions, additions, deletions, or other modifications, taken as a whole, constitute a new work of authorship.

The author of a derivative motion picture must have permission to use the preexisting material if that material is protected by copyright, and the author must contribute a sufficient amount of new original authorship in order to register the new work as a derivative work. For information concerning this rule, see **Chapter 300**, Sections 311.2 and 313.6(B).

When completing an application for a derivative motion picture, the **applicant** should identify and exclude the preexisting material from the **claim**, and should describe the new material that the author contributed to the new motion picture. Likewise, if the derivative motion picture contains material created by others, the applicant should exclude that preexisting material if it is not part of the claim. For guidance on these procedures, see **Chapter 600**, Section 621.

Common types of derivative work authorship in motion pictures are described in Sections **808.8(A)** through **808.8(E)**. For general information regarding derivative works, see **Chapter 500**, Section 507.

### 808.8(A) Editing

The term “editing” refers to the authorship involved in selecting the takes and shots from a motion picture, and splicing them into sequences to achieve continuity and the desired dramatic, comedic, or thematic effect. This term also may be used to describe the authorship involved in revising a preexisting motion picture, such as deleting scenes, reworking footage or the soundtrack, or adding new footage, artwork, sounds, or narration.

For example, reworking a preexisting film for rerelease by making various cuts, adding outtakes, and adding new soundtrack material is a **derivative work** of the original film. Likewise, adding additional archival footage and photographs to a preexisting documentary is a derivative work of the original documentary.

### 808.8(B) Dubbed Soundtracks and Subtitled Motion Pictures

When a work is first **published** abroad and later distributed in the United States, English subtitles are often added to the footage or the soundtrack is dubbed into English. If the foreign version and the U.S. version are published on different dates, the subtitled or dubbed version is considered a **derivative work** that must be registered separately from the original film.

#### 808.8(B)(1) Subtitles

When completing an application for the foreign film, the **applicant** should give the authorship, ownership, creation, and **publication** information for the original motion picture. In the application for the subtitled version, the applicant should give the authorship, ownership, creation, and publication information for the subtitles, and the preexisting motion picture should be excluded from the **claim**.

#### 808.8(B)(2) Dubbed Soundtracks

When completing an application for the foreign film, the applicant should provide the authorship, ownership, creation, and **publication** information for the original motion picture. In the application for the dubbed version, the applicant should give the authorship, ownership, creation, and publication information for the dubbed soundtrack, and the preexisting motion picture should be excluded from the **claim**.

### 808.8(C) Closed and Open Captioning

Television programs containing “closed captioning” enable the hearing-impaired population to read what the hearing audience can hear.

Creative authorship in closed captioning may include adapting, editing, and abridging the text that is spoken to make it fit onto a television screen. The text also may include references to particular sound effects and the musical background, as well as convey the actual sense of the dialog. Once the text has been adapted, it is encoded onto a DVD, videotape, or other storage medium.

With “open captioning,” the text is visible without the need for a special device. In some cases, the captioning is created simultaneously with the **fixation**, as in the case of a congressional hearing or judicial proceeding where a stenographer fixes and edits simultaneously.

If the captioning is a verbatim transcription of the spoken words, the **claim** is not **copyrightable** and will not be registered. See **Chapter 300**, Section 313.4(A). Likewise, the Office cannot register a claim in captioning if the work is mechanically created or if the author did not contribute a sufficient amount of original expression in editing the text.

**808.8(D) Bonus Material Contained in DVD**

**Applicants** occasionally submit DVDs that contain bonus footage for a previously **published** or previously registered motion picture, such as outtakes from the original film and interviews with the director and actors. To register this type of work, the applicant should assert a **claim** in the “bonus footage,” and should give the authorship, ownership, creation, and **publication** information for that material. The preexisting motion picture should be excluded from the claim.

**808.8(E) Colorized Motion Pictures**

In 1987 the U.S. Copyright Office concluded that “some computer-colorized films may contain sufficient original authorship to justify registration,” and that the “general standard for determining whether the color added to a black and white motion picture is sufficient to merit copyright protection is the statutory standard that already applies to all derivative works.” **Copyright Registration for Colorized Versions of Black and White Motion Pictures, 52 Fed. Reg. 23,443, 23,446 (June 22, 1987)**. Factors to consider in determining whether the authorship in a colorized film is **copyrightable** include:

- Whether numerous color sections were made by a human author from a wide selection of colors;
- Whether the colorization applied to the black and white film represents more than a trivial amount of creative authorship; and
- Whether the overall appearance of the preexisting black and white film has been modified by the colorization.

The **applicant** may use the following terms to assert a **claim** in a colorized film:

- Colorization.
- Colorized version.
- Selection, coordination, and **fixation** of colors to create a colorized version of the Motion Picture.

The applicant should give the authorship, ownership, creation, and **publication** information for the colorized film, and the preexisting black and white motion picture should be excluded from the claim.

When the Office registers a claim in colorization, the registration only extends to the new material, “that is, the numerous selections of color that are added to the original black and white film.” **Copyright Registration for Colorized Versions of Black and White Motion Pictures, 52 Fed. Reg. at 23,446**.

**808.9 [Reserved]****808.10 Registration Issues**

This Section discusses frequent registration issues that arise in connection with motion pictures.

**808.10(A) Identifying the Author of a Motion Picture**

A number of people may be involved in making a motion picture, including the producer, director, writer, camera operator, editor, and others. In some cases, these individuals may jointly be co-authors of the work. But in most cases, an individual contributor is not considered the author of a motion picture under U.S. copyright law, because most motion pictures are created as a **work made for hire**. These issues are discussed below.

**808.10(A)(1) Work Made for Hire Authorship**

As described in Section **801.7**, a **work made for hire** is a work that is either (i) prepared by an employee within the scope of his or her employment, or (ii) specially ordered or commissioned for use in various types of works, including a motion picture. **17 U.S.C. § 101**. When a work is “made for hire,” the employer or other party for whom the work was prepared is considered the author for copyright purposes.

The **registration specialist** may communicate with the **applicant** if it appears that the work made for hire portion of the application has been completed incorrectly.

*Examples:*

- An application for a major theatrical production names A&O Corporation as the author and the work made for hire question is answered “yes.” The production statement on the footage identifies the motion picture as “An A&O Corporation Production.” The application will be accepted.
- An applicant names Drew Corporation as the producer and Mary Crowson as the director and writer of a motion picture. The applicant checks the box indicating that Mary’s contribution was a work made for hire. Drew Corporation is named as the sole **claimant**, and no **transfer statement** is provided. The registration specialist will communicate with the applicant to determine if Mary is an author of this work. Because the work made for hire box was checked “yes” and because Mary was not named as a co-claimant, it seems likely that Drew Corporation is the sole author and that Mary created the work for that company as a work made for hire.
- An applicant names Barry Monroe as the author and the work made for hire question is answered “yes.” XYZ Corporation is named as the claimant and there is no transfer statement. The registration specialist will communicate with the applicant to determine if Barry is an author of this work.

For a general discussion of works made for hire, see **Chapter 500**, Section 506. For guidance in completing the work made for hire portion of the application, see **Chapter 600**, Section 614.

**808.10(A)(2) Work Made for Hire Authorship and Foreign Motion Pictures**

The copyright laws of many foreign countries do not include a **work made for hire** provision. Therefore, the **registration specialist** may communicate with the **applicant** if the applicant names an individual as the author of a foreign theatrical motion picture but does not indicate that the work was “made for hire.”

**808.10(A)(3) Joint Authorship**

Under the Copyright Act, most motion pictures that are not works made for hire are considered **joint works**. As described in Section **801.6**, a “joint work” is “a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.” **17 U.S.C. § 101**. For instance, the screenwriter, director, and cinematographer may be joint authors of a motion picture absent any agreement and assuming they each contributed a sufficient amount of original authorship to the work. The authors of a joint work are co-owners of the copyright in the entire work. In such cases, the authors’ contributions are not subject to separate registrations.

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

**808.10(A)(3)(a) Identifying the Authors of a Joint Work**

Generally, when a motion picture is a “**joint work**,” the **applicant** should name all of the authors of that work, although the Office will accept an application that names only the major author(s). The major authors of a motion picture are usually the director or producer. For certain types of works, the camera operator, animator, or performer also may be considered major authors.

*Examples:*

- The applicant names the director as the sole author of a motion picture. The work is not a major commercial production. The credits name the director, as well as the producer and camera operator of the work. The registration specialist will register the claim.
- The applicant submits a “how to” video. The camera focuses mainly on an individual who delivers a lecture and performs a demonstration. The applicant names the lecturer as the sole author of the work. The registration specialist will register the claim.
- The applicant submits an application to register an episode of a television series, and names the editor as the sole author of the work. “Editing” is not a sufficient basis for asserting a **claim** in an entire motion picture. The **registration specialist** will communicate with the applicant to clarify the facts of the authorship.

### 808.10(A)(3)(b) Clarifying Joint Authorship

In some cases the applicant names two or more authors, but the motion picture does not appear to be a **joint work**. If so, the registration specialist may communicate with the applicant to determine whether the motion picture satisfies the statutory definition of a joint work.

*Examples:*

- An applicant names two authors/claimants: one created the motion picture, and the other composed the theme music. If the work does not appear to be “made for hire,” the registration specialist may communicate with the applicant to determine whether the music and motion picture are separately owned and should be registered separately, particularly if the contributions are unequal and if it seems unlikely that the composer is a co-owner of the rights in the motion picture.
- A music video is submitted for registration naming the songwriter and director/producer as co-authors. The registration specialist will communicate with the applicant to determine whether the song and video are owned separately by their respective authors.

### 808.10(B) Executive Producer

To be considered an author of a motion picture, an individual must make a direct, creative contribution to the work. Individuals who manage only the business aspects of a motion picture project, such as executive producers, are not considered authors. If the application merely states that the author is the “executive producer” of the motion picture, the **registration specialist** will communicate with the **applicant** to determine if that individual contributed **copyrightable** authorship to the work.

### 808.10(C) Author and Authorship Variances

Generally, the **registration specialist** will compare the authorship statement given on the application with the credits on the copy or other information in the **deposit** material. If there is a variance, and the registration materials do not adequately explain the discrepancy, the specialist may communicate with the **applicant** to request clarification.

*Examples:*

- The applicant names Joan Craven as the author of “cinematography.” The credits name three other individuals as camera operators, but they do not mention Joan. Because the word “cinematography” means camera work and because the credits contradict the information provided in the application, the registration specialist will communicate with the applicant.
- The applicant names Clark James as “producer, director, editor.” The credits state “Produced and directed by Clark James” and “Edited by Don Ackers.” The application will be approved. The credits do not necessarily contradict the information provided in the application, because there are several kinds of editing involved in making a motion picture.

- The application names Cindy Taylor as author of the “entire motion picture.” The footage states that the XYZ Corporation is the author of this work. The registration specialist will communicate with the applicant, because the credits contradict the information provided in the application.

#### 808.10(D) Redacted Screenplay for a Motion Picture in Production

The Office will consider requests for special relief where the **applicant** wishes to submit a redacted version of a screenplay pending the **publication** of the motion picture. For information concerning this procedure, see Section **804.8(C)**.

#### 808.10(E) Claims in Script with No Spoken Parts in the Motion Picture

When an **applicant** includes a **claim** in “script” or “screenplay,” the **registration specialist** will assume that the work includes spoken parts, because this is the essence of most scripts. Occasionally, the Office receives scripts or screenplays that tell a story and include action, but do not contain any spoken parts. In this situation, the specialist may add an **annotation** to the record, such as: “Regarding authorship information: Deposit contains no dialog,” or “Regarding authorship information: Deposit contains no spoken parts.” If the authorship is described solely as “script” or “screenplay,” or if this is the sole contribution for one of the authors, the specialist will communicate with the applicant to determine if the author(s) contributed **copyrightable** authorship to the work.

*Example:*

- The applicant asserts a claim to copyright in “motion picture including screenplay.” The motion picture does not contain any words, although a story is clearly presented. The registration specialist will register the claim with an annotation, such as: “Regarding authorship information: Deposit contains no dialog [or spoken parts].”

**NOTE:** If the work is a music video that contains no additional dialog and does not present a clear story apart from the music and lyrics, the specialist will communicate with the applicant to determine whether the claim in “script” or “screenplay” should be removed and whether the claim should include the song lyrics.

#### 808.10(F) Underlying Works Contained in Motion Picture Soundtracks

The soundtrack is an integral part of the motion picture and generally should be registered with the motion picture as a single, unified work. See **Motion Picture Soundtracks, 40 Fed. Reg. 12,500, 12,501 (Mar. 19, 1975)**. However, a soundtrack may contain an underlying work, such as a musical composition or a script (inasmuch as the script is revealed in the spoken dialog) that is owned apart from the motion picture. These topics are discussed in Sections **808.10(F)(1)** through **808.10(F)(3)**.

**808.10(F)(1) Scripts Contained in a Motion Picture Soundtrack**

A script is incorporated into the soundtrack of a motion picture. A motion picture may be made using a script that was written as a **work made for hire**, or using a preexisting script that is separately owned from the motion picture. If the copyrights in the script and the motion picture are separately owned, each work may be registered with a separate application.

If the screenwriter independently created the script and then transferred the copyright to the party that owns the copyright in the motion picture, the script may be registered with the motion picture. In this situation, the screenwriter should be named as an author of the script, but not as a **claimant**. In addition, the **applicant** should provide a **transfer statement** that explains how the claimant obtained the copyright in the script, such as “by written agreement.”

**808.10(F)(2) Musical Compositions Contained in a Motion Picture Soundtrack**

A song or other musical composition may be incorporated into the soundtrack of a motion picture. The musical composition may be a preexisting work, or it may be a new work that was composed for the motion picture.

If the copyright in the motion picture and the copyright in the musical composition are separately owned, each work should be registered with a separate application.

**808.10(F)(3) Separately Owned Sounds Contained in a Motion Picture Soundtrack**

In some cases, a recording of a song may be incorporated into the soundtrack of a motion picture. Often times the recording of the song is a previously **published** work and the copyright in the motion picture and the copyright in the recording are separately owned. If so, the motion picture and the sound recording should be registered with separate applications. When completing the application for the motion picture, the **applicant** should exclude the previously published sound recording from the **claim** by stating “sound recording” in the Material Excluded field or the Preexisting Work space, even though the recording is an integral party of the motion picture soundtrack.

By contrast, if the recording of the song was first published in the motion picture, the recording is considered an integral part of the motion picture. As such, the applicant should submit one application covering both the motion picture and the recording of the song, rather than a separate application for the motion picture and the sound recording.

**808.10(G) Issues Regarding Sound Recording Claims**

As discussed in Section **808.2(B)**, the term “**sound recording**” should not be used to describe authorship in a motion picture.

**808.10(G)(1) Sounds Contained in One Format**

When an **applicant** submits a **claim** for a motion picture and mistakenly includes the term “**sound recording**” in the authorship statement, the registration specialist will communicate with the applicant and ask for permission to remove that term.

**808.10(G)(2) Sounds Contained in Two Different Formats**

As a general rule, the exact same recorded sounds cannot be registered as both a **sound recording** and as sounds accompanying a motion picture.

When the same sounds are **published** in different formats, such as a CD and a DVD, the **applicant** should decide whether to register the sounds as a sound recording or as a motion picture. This determination may be based a number of factors, such as whether the copy or the phonorecord was registered or published before the motion picture. These issues are discussed in Sections **808.10(G)(2)(a)** through **808.10(G)(2)(d)**.

**808.10(G)(2)(a) Sounds Published on the Same Date**

If the same sounds are **published** on DVD and CD on the same day, and they contain the same **fixation** of sounds:

If the **applicant** prefers to register the sounds as part of the motion picture, the applicant should only submit an application for the motion picture.

If the applicant prefers to register the sounds as a sound recording, the applicant should submit separate **claims** for the motion picture and the sound recording. The sounds should be excluded from the claim in the motion picture by stating “Sounds registered separately as a sound recording” in the Material Excluded field. Both claims will be registered.

**808.10(G)(2)(b) Remixes**

If the sounds **published** on a CD are a remix of the sounds published in the motion picture, and if the publication date is the same for both works, the **applicant** may register both works with separate applications.

By contrast, if the motion picture was published before the CD, the **claim** in the remix should be limited to the new sound recording authorship that appears on the CD by stating “remixed sound recording” in the New Material Included field. In addition, the sounds from the motion picture should be excluded from the claim by stating “sounds from previously published motion picture” in the Material Excluded field.

**808.10(G)(2)(c) Sounds Published on Different Dates**

If an **applicant** submits two applications for the same **published** sounds — one application for a motion picture submitted on a DVD and one application for a soundtrack album submitted

on a CD — and if the applicant provides a different date of publication on each application, the **registration specialist** will communicate with the applicant.

If the soundtrack album was published before the motion picture, the previously published album should be excluded from the **claim** in the motion picture.

If the motion picture was published before the album and if the sounds on the album are taken directly from the motion picture soundtrack and have been reprocessed without change, the specialist will refuse to issue a separate registration for the album, because all of those sounds are covered by the registration for the motion picture.

#### **808.10(G)(2)(d) Multimedia Kits**

A multimedia kit is a work that combines authorship in two or more forms of media (excluding the container for the work). The authorship in a multimedia kit may include:

- Text
- Music
- Sounds
- Cinematography
- Photography
- Artwork
- Sculpture

The forms of media in a multimedia kit may include:

- Printed matter, such as a book, charts or posters, or sheet music.
- Audiovisual material, such as a video disc.
- A phonorecord, such as an audio disc.
- A machine-readable copy, such as a computer-read disc.

If the **applicant** submits an application for a multimedia kit that contains sounds **fixed** on a CD as well as sounds and video fixed on a DVD, and if the applicant asserts a **claim** in both “sound recording” and “motion picture,” the **registration specialist** will communicate with the applicant to determine if the CD and DVD contain the same fixation of sounds.

If the CD and DVD contain the same fixation, the specialist may ask the applicant to delete the term “sound recording” or replace it with the term “sounds” if they appear to be “sounds accompanying a motion picture” rather than a “sound recording.”

By contrast, if the CD and DVD contain different fixations, the specialist may ask the applicant to exclude the motion picture soundtrack from the claim by revising the authorship statement to read “sound recording and motion picture excluding sounds.”

For more information regarding the registration of multimedia kits, see *Copyright Registration for Multimedia Works (Circular 55)*.

## 808.10(H) Motion Pictures of Live Performances

When a live performance is recorded on film, video, or other audiovisual medium, one work is captured and another work is created by the recording. For a musical performance, the work captured is the music and lyrics, if any. For a dramatic performance, the work captured is the dramatic work. In both instances, the work created by the recording is considered a motion picture, rather than a musical work or a dramatic work.

### 808.10(H)(1) Fixation of Live Musical Performances

If a **fixation** of a live musical performance appears to be unlawful, the **registration specialist** may communicate with the **applicant** to determine whether it is an authorized fixation (*i.e.*, a fixation made with the consent of the performer(s) and/or songwriter(s)).

### 808.10(H)(2) Fixation of Live Dramatic Performances

As discussed in Section **808.2(C)** a dramatic work, such as a stage play or musical, may be **fixed** in a motion picture and a motion picture may be used as the **deposit copy** for the dramatic work. Typically, the director of a stage production creates a concept for how a work should be realized on the stage, including the movements of the characters on stage. Concepts and ideas are not protected by copyright, and the ordinary movement of characters on a stage is not a **copyrightable** element. Therefore, the **registration specialist** will refuse to register a **claim** in blocking, stage business, staging, or stage directions for a dramatic work when these terms refer to the movement of actors or the manner or method of their acting. See Sections **804.3(D)(1)** and **804.3(D)(2)**. Likewise, if the **applicant** asserts a claim in the “motion picture,” the registration may cover the motion picture direction, but it will not cover the stage directions for the dramatic work.

## 808.10(I) Publication Issues

The **applicant** should determine whether a motion picture has been **published** for registration purposes. The U.S. Copyright Office can provide general information about publication and the Office may ask for an explanation in certain cases, but the Office is not permitted to give specific legal advice. For more information on publication of copyrighted works, see **Chapter 1900**.

### 808.10(I)(1) Distribution to the Public

A motion picture is distributed to the public when copies are sold or rented, or when film prints, videotapes, DVDs, or other formats are distributed to theaters, schools, or other organizations.

**808.10(I)(2) Offering to Distribute**

An offering may constitute **publication** when copies of a motion picture are offered to a group of persons for the purpose of further distribution, public performance, or public display, regardless of whether the distribution, performance, or display actually occurs. For example, offering copies of a motion picture to a group of wholesalers, retailers, broadcasters, motion picture distributors, or exhibitors generally is considered publication. Likewise, the syndication of a television series generally is considered publication.

**808.10(I)(3) Fixed Copies**

The statutory definition indicates that offering to distribute copies constitutes **publication**, provided that the copies exist when the offer is made. Offering to distribute copies before they exist or before they are ready for further distribution, public performance, or public display does not constitute publication. Thus, making an offer to distribute a motion picture or television show before or during the production of that work does not constitute publication, because the work is not completely **fixed** at the time of the offering. Once an offer has been made, however, a work is considered published once the work has been completed. In the case of an offer involving a television series that has not been completed, the publication date will be the same for the episodes that were completed as of the date that the offer was made and the publication date for the rest of the episodes will be the date that each episode is completed.

**808.10(I)(4) Publication of Underlying Works**

The **publication** of a motion picture constitutes publication of all the underlying works used in the motion picture. Thus, a screenplay, musical score, or other underlying work are published to the extent that they are embodied in a published motion picture. *Maljack Productions Inc. v. UAV Corp.*, 964 F. Supp. 1416, 1421 (C.D. Cal. 1997) (stating that the publication of a film publishes all underlying works embodied in a film, including the screenplay).

**808.10(J) Restored Copyrights in Foreign Motion Pictures**

If a motion picture **published** in a foreign country fell into the **public domain** in the United States for any reason (such as publication without a **copyright notice**) the copyright in that work may have been restored as of January 1, 1996 under the GATT-URAA amendment to the copyright law. For works of Canada and Mexico published between January 1, 1978 and before March 1, 1989, restoration may have occurred as of January 1, 1995 under the North American Free Trade Agreement (NAFTA). These topics are discussed in Sections **808.10(J)(1)** and **808.10(J)(2)**.

**808.10(J)(1) The 1994 Uruguay Round Agreements Act (URAA) and the General Agreement on Tariffs and Trade (GATT)**

On December 8, 1994, the U.S. copyright law was amended in accordance with the intellectual property provisions of the 1994 **Uruguay Round Agreements Act (URAA)**. See Pub. L. No. 103-465, 108 Stat. 4809 (1994) (codified as amended at **17 U.S.C. §§ 104A, 1101**). This amendment provides for the automatic restoration of copyrights in certain **foreign works** that are in the **public domain** in the United States, but are not in the public domain in their **source country**

through the expiration of the term of protection. The earliest effective date of restoration is January 1, 1996. The restoration amendment is codified in [Section 104A](#) of the copyright law and it supersedes the NAFTA amendment discussed below. Works from treaty countries whose copyrights have been restored may be registered on Form GATT. For information concerning this procedure, see [Chapter 2000](#), Section 2007.

#### **808.10(J)(2) North American Free Trade Agreement (NAFTA)**

In 1993, the North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico was implemented. Under NAFTA, the United States agreed to restore copyrights in certain motion pictures which entered the **public domain** in the United States because they were **published** without a **copyright notice** in Mexico and Canada on or after January 1, 1978 and before March 1, 1989. See NAFTA, U.S. – Can. – Mex., annex. 1705.7, Dec. 17, 1992, 107 Stat. 2057, 32 I.L.M. 289 (1993). To benefit from this agreement, a copyright owner had to file a notice of intent to enforce the restored copyright with the U.S. Copyright Office between January 1, 1994 and January 1, 1995. The notice was then published by the U.S. Copyright Office in the Federal Register. Restoration was effective on January 1, 1995. A list of motion pictures restored under NAFTA was posted in the Federal Register, and on the Office’s [website](#). See [Copyright Restoration of Certain Motion Pictures in Accordance with the North American Free Trade Agreement: List of Titles for Which Statements of Intent to Restore Copyright Were Received, 60 Fed. Reg. 8252 \(Feb. 13, 1995\)](#).

Although the period for filing these notices has expired, copyright owners who filed such notices may continue to file applications to register these restored works. If a notice of intent to enforce the restored copyright was not filed in a timely manner, the work may have been restored effective January 1, 1996 under the URAA/GATT provisions of the copyright law. See [Chapter 2000](#), Section 2007.

#### **808.11 Application Tips for Motion Pictures**

This Section provides basic information on how to complete the online and paper applications for a motion picture, as well as terms to use and terms to avoid when describing such works.

For detailed information on how to complete an application, see [Chapter 600](#).

##### **808.11(A) Type of Work**

When registering a **claim** in a motion picture using the online application, the **applicant** should select “Motion Picture/AV Work” as the Type of Work. When submitting a paper application, the applicant should use [Form PA](#).

##### **808.11(B) The Work Made for Hire Field / Space**

Before completing the application, it is important to determine whether part or all of the motion picture was “made for hire.” For general information concerning **works made for hire** for motion pictures, see Sections [808.10\(A\)\(1\)](#) and [808.10\(A\)\(2\)](#). For a detailed discussion of this topic, see [Chapter 500](#), Section 506.

When a work is “made for hire,” the employer or other party for whom the work was prepared is the legal author.

- If the entire work was “made for hire,” the employer or other party for whom the work was prepared should be named as author. The “for hire” question should be answered “yes.” The names of the employees should not be given. Often the authorship in this case will be described as “motion picture.”
- If no part of the work was “made for hire,” the individual(s) who made the motion picture should be named as author(s) and the “for hire” question(s) should be answered “no.” Each author’s contribution to the motion picture should be briefly described in the Author Created field or the Nature of Authorship space using an acceptable authorship term, such as “production” “direction,” “script/screenplay,” “cinematography,” and so forth.
- If part of the work was “made for hire” and part was not, the applicant should provide an appropriate response for each author in the Name of Author and Author Created/Nature of Authorship fields/spaces. In some cases, the applicant may need to list the same name twice, with the “for hire” question answered “yes” or “no” as appropriate.

For guidance in completing this portion of the application, see [Chapter 600](#), Section 614.

### **808.11(C) The Author Created Field and the Nature of Authorship Space**

When completing an online application, the **applicant** should describe the authorship that will be submitted for registration, either by checking one or more of the box(es) in the Author Created field or by providing an appropriate statement in the box marked “Other.” When completing a paper application, the applicant should provide this information in the Nature of Authorship space.

To register the entire work using the online application, the applicant may select the box marked “entire motion picture.” This term covers all of the authorship involved in creating a motion picture, including the screenplay, production, direction, cinematography, and editing. To assert a claim in a specific element of a motion picture, the applicant may select one or more of the following boxes:

- Production
- Directing
- Cinematography
- Editing
- Script/Screenplay

For a definition and discussion of these terms, see [Chapter 600](#), Section 618.4(C).

The “Other” box may be used to describe other types of authorship, such as “music.”

These same terms may be used when completing the Nature of Authorship space in the paper application.

For guidance in completing this portion of the application, see [Chapter 600](#), Section 618.

#### **808.11(D) Unclear Authorship Terms**

Generally, items used in set design, scenery, props, and costumes, are regarded as useful articles. The copyright law does not protect the design or styling of useful articles. If a useful article incorporates any separable and original artwork, such as graphics, pictures, or sculpture, only the artwork may be protected. See [17 U.S.C. § 101](#) (definition of “pictorial, graphic, and sculptural works”); see also [Chapter 900](#), Section 925. In such cases, the authorship should be specifically described, such as “artwork on scenery” or “soft sculpture” (in the case of an animal costume).

These types of works often raise special issues that generally are handled by the Visual Arts Division. Therefore, if the **applicant** combines this type of authorship with a motion picture **claim**, the **registration specialist** may ask the applicant to prepare separate applications for the motion picture and the visual arts work. For more information, see [Chapter 900](#), Section 925.

#### **808.11(E) Unacceptable Authorship Terms**

The **applicant** should not use the following terms in the authorship description for a motion picture:

- Blocking, stage directions, staging, stage business. See Sections [804.3\(D\)](#) and [808.10\(H\)\(2\)](#).
- Concept, idea, format, layout, titles, styles of lettering, credits, characters. See [17 U.S.C. § 102\(b\)](#); [37 C.F.R. § 202.1](#).
- Executive Producer. See Section [808.10\(B\)](#).
- Sound Recording. See Sections [808.2\(B\)](#) and [808.10\(G\)](#).
- Medical Imaging, such as Ultrasound, CAT-scan and x-rays. See [Chapter 900](#), Section 909.3(B).

#### **808.12 Deposit Requirements for Motion Pictures**

The deposit requirements for motion pictures are complex. For information on registration and mandatory deposit requirements for these types of works, see [Chapter 1500](#), Sections 1509.2(F) and 1511.8(E).