

## VISUAL ART WORKS

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## VISUAL ART WORKS

### 901 What This Chapter Covers

This Chapter covers issues related to the examination and registration of visual art works. Visual art works include a wide variety of pictorial, graphic, and sculptural works and architectural works, which are discussed in more detail below.

- For a general overview of the registration process, see [Chapter 200](#).
- For a general discussion of [copyrightable](#) authorship, 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 guidance in completing the fields/spaces 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](#).

The U.S. Copyright Office uses the term “visual art works” and “works of the visual arts” to collectively refer to the types of works listed in Sections [903.1](#) and [903.2](#) below. This Chapter does not discuss “works of visual art,” which is a specific class of works that are eligible for protection under the Visual Artists Rights Act. See [17 U.S.C. § 101](#) (definition of “work of visual art”), [106A](#). For a definition of this term and for information concerning the Visual Arts Registry for such works, see [Chapter 2300](#), Section 2314.

Likewise, this Chapter does not discuss the registration and examination of [mask works](#) or [vessel designs](#), which are examined by the Visual Arts Division of the U.S. Copyright Office. For information on the registration and examination of mask works and vessel designs, see [Chapters 1200](#) and [1300](#).

### 902 Visual Arts Division

The U.S. Copyright Office’s Visual Arts Division (“VA”) handles the examination and registration of all visual art works. The [registration specialists](#) in VA have experience reviewing a variety of visual art works and specialize in these types of work.

## 903 What Is a Visual Art Work?

For purposes of registration, the U.S. Copyright Office defines visual art works as (i) pictorial, graphic, and sculptural works, and (ii) architectural works.

### 903.1 Pictorial, Graphic, and Sculptural Works

The most common types of visual art works are pictorial, graphic, and sculptural works. The Copyright Act protects a variety of works in these categories and specifically identifies the following:

- Fine art (*e.g.*, painting and sculpture).
- Graphic art.
- Photographs.
- Prints.
- Art reproductions.
- Maps and globes.
- Charts and diagrams.
- Technical drawings, including architectural plans.
- Models.
- Applied art (*i.e.*, the separable features of useful articles).
- Works of artistic craftsmanship.

**17 U.S.C. § 101** (definition of “pictorial, graphic, and sculptural works”).

“[A]n artistic feature of the design of a useful article” “is eligible for copyright protection only if the feature (1) can be perceived as a two-dimensional or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work – either on its own or fixed in some other tangible medium of expression – if it were imagined separately from the useful article into which it is incorporated.” *Star Athletica, LLC, v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1014 (2017).

For information concerning the design aspects of a useful article, see Section 924. For information concerning other types of pictorial, graphic, and sculptural works, see Sections 908 through 923, and Section 925.

### 903.2 Architectural Works

The Copyright Act protects certain architectural works, which are defined as “the design of a building as embodied in any tangible medium of expression, including a building, architectural

plans, or drawings.” [17 U.S.C. § 101](#). An architectural work “includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.” *Id.* For detailed information concerning architectural works, see Section [926](#).

#### 904 Fixation of Visual Art Works

A visual art work must be “fixed” in a “tangible medium of expression” to be eligible for copyright protection. [17 U.S.C. § 102\(a\)](#). The authorship may be new or may consist of derivative authorship. The basic requirement is that the work must be embodied in some form that allows the work to be “perceived, reproduced, or otherwise communicated for a period of more than a transitory duration.” [17 U.S.C. § 101](#) (definition of “fixed”). The U.S. Copyright Office will register visual art works that are embodied in a wide variety of two-dimensional and three-dimensional forms, such as:

- Canvas.
- Paper.
- Clay.
- Stone.
- Metal.
- Prints.
- Collages.
- Photographic film.
- Digital files.
- Holograms and individual slides.
- Edible materials, such as a molded chocolate rabbit or a frosting design on a cake.
- Constructed buildings, architectural drawings, blueprints, or models depicting an architectural work.

This is not an exhaustive list and the Office will consider other forms of embodiment on a case-by-case basis. In particular, architectural works do not have to be constructed to be eligible for copyright protection.

While most visual art works are fixed by their very nature (*e.g.*, a sculpture, a painting, or a drawing), there are some works that may not be sufficiently fixed to warrant registration. Specifically, the Office cannot register a work created in a medium that is not intended to exist for more than a transitory period, or a medium that is constantly changing.

Most visual art works satisfy the **fixation** requirement, because the **deposit copy(ies)** or **identifying material** submitted with the application usually indicate that the work is capable of being perceived for more than a transitory duration. However, the fact that uncopyrightable material has been fixed through reproduction does not make the underlying material **copyrightable**. For example, a photograph of a fireworks display may be a copyrightable fixation of the photographic image, but the fireworks themselves do not constitute copyrightable subject matter.

As a general rule, **applicants** do not have to submit an original or unique copy of a visual art work in order to register that work with the Office. In most cases, applicants may submit photographs or other identifying materials that provide the Office with a sufficient representation or depiction of the work for examination purposes.

When completing an application, applicants should accurately identify the work that is being submitted for registration, particularly when submitting identifying material. For example, if the applicant intends to register a sculpture and submits a photograph of the sculpture as the identifying material, the applicant should expressly state “sculpture” in the application. Otherwise, it may be unclear whether the applicant intends to register the photograph or the sculpture shown in the photograph.

Before submitting identifying material for a **published** visual art work, applicants should determine whether the work is subject to the **best edition** requirement. As a general rule, an applicant should submit the “best edition” if the work was published in the United States on or after January 1, 1978. The criteria used to identify the best edition of a particular work are listed in the “Best Edition Statement,” which is set forth in **Appendix B to Part 202** of the Office’s regulations. It is also posted on the Office’s website in *Best Edition of Published Copyrighted Works for the Collections of the Library of Congress (Circular 7b)*. For specific deposit requirements for different types of visual art works, see **Chapter 1500**, Section 1509.3.

## 905 Copyrightable Authorship in Visual Art Works

The U.S. Copyright Office may register a visual art work (i) if it is the product of human authorship, (ii) if it was independently created (meaning that the work was not merely copied from another source), and (iii) if it contains a sufficient amount of original pictorial, graphic, sculptural, or architectural authorship. The Office reviews visual art works consistent with the general principles set forth in **Chapter 300** (Copyrightable Authorship: What Can Be Registered), as well as the guidelines described in this Chapter.

“In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form.” **37 C.F.R. § 202.10(a)**. The author’s intentions concerning the use of the work, or the number of copies made is irrelevant to this determination. The fact that the work may be protected by a utility or design patent is also irrelevant. *See id.*

In all cases, the work “must be original, that is, the author’s tangible expression of his [or her] ideas. Such expression, whether meticulously delineating the model or mental image or conveying the meaning by modernistic form or color, is copyrightable.” *Mazer v. Stein*, 347 U.S. 201, 214 (1954).

In the case of two-dimensional works, original authorship may be expressed in a variety of ways, such as the linear contours of a drawing, the design and brush strokes of a painting, the diverse



fragments forming a collage, the pieces of colored stone arranged in a mosaic portrait, among other forms of pictorial or graphic expression.

In the case of three-dimensional works, original authorship may be expressed in many ways, such as carving, cutting, molding, casting, shaping, or otherwise processing material into a three-dimensional work of sculpture.

Likewise, original authorship may be present in the selection, coordination, and/or arrangement of images, words, or other elements, provided that there is a sufficient amount of creative expression in the work as a whole.

In all cases, a visual art work must contain a sufficient amount of creative expression. Merely bringing together only a few standard forms or shapes with minor linear or spatial variations does not satisfy this requirement.

The Office will not register works that consist entirely of uncopyrightable elements (such as those discussed in [Chapter 300](#), Section 313 and Section 906 below) unless those elements have been selected, coordinated, and/or arranged in a sufficiently creative manner. In no event can registration rest solely upon the mere communication in two- or three-dimensional form of an idea, method of operation, process, or system. In each case, the author’s creative expression must stand alone as an independent work apart from the idea which informs it. [17 U.S.C. § 102\(b\)](#); *Mazer*, 347 U.S. at 217 (“[A] copyright gives no exclusive right to the art disclosed; protection is given only to the expression of the idea – not the idea itself.”).

For more information on copyrightable authorship, see [Chapter 300](#) (Copyrightable Authorship: What Can Be Registered).

## 906 Uncopyrightable Material

[Section 102\(a\)](#) of the Copyright Act states that copyright protection only extends to “original works of authorship.” [17 U.S.C. § 102\(a\)](#). Works that have not been fixed in a tangible medium of expression, works that have not been created by a human being, and works that are not eligible for copyright protection in the United States do not satisfy this requirement. Likewise, the copyright law does not protect works that do not constitute [copyrightable](#) subject matter or works that do not contain a sufficient amount of original authorship.

The U.S. Copyright Office will register a visual art work that includes uncopyrightable material if the work as a whole is sufficiently creative and original. Some of the uncopyrightable elements that are commonly found in visual art works are discussed in Sections [906.1](#) through [906.10](#) below. For a general discussion of uncopyrightable material, see [Chapter 300](#), Section 313.

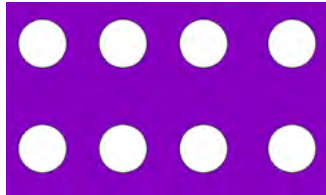
### 906.1 Common Geometric Shapes

The Copyright Act does not protect common geometric shapes, either in two-dimensional or three-dimensional form. There are numerous common geometric shapes, including, without limitation, straight or curved lines, circles, ovals, spheres, triangles, cones, squares, cubes, rectangles, diamonds, trapezoids, parallelograms, pentagons, hexagons, heptagons, octagons, and decagons.

Generally, the U.S. Copyright Office will not register a work that merely consists of common geometric shapes unless the author's use of those shapes results in a work that, as a whole, is sufficiently creative.

*Examples:*

- Geoffrey George creates a drawing depicting a standard pentagon with no additional design elements. The **registration specialist** will refuse to register the drawing because it consists only of a simple geometric shape.
- Georgina Glenn painstakingly sculpts a perfectly smooth marble sphere over a period of five months. The registration specialist will refuse to register this work because it is a common geometric shape and any design in the marble is merely an attribute of the natural stone, rather than a product of human expression.
- Grover Gold creates a painting of a beach scene that includes circles of varying sizes representing bubbles, striated lines representing ocean currents, as well as triangles and curved lines representing birds and shark fins. The registration specialist will register the **claim** despite the presence of the common geometric shapes.
- Gloria Grimwald paints a picture with a purple background and evenly spaced white circles:



The registration specialist will refuse to register this claim because simple geometric symbols are not eligible for copyright protection, and the combination of the purple rectangle and the standard symmetrical arrangement of the white circles does not contain a sufficient amount of creative expression to warrant registration.

- Gemma Grayson creates a wrapping paper design that includes circles, triangles, and stars arranged in an unusual pattern with each element portrayed in a different color:



The registration specialist will register this claim because it combines multiple types of geometric shapes in a variety of sizes and colors, culminating in a creative design that goes beyond the mere display of a few geometric shapes in a preordained or obvious arrangement.

## 906.2 Familiar Symbols and Designs

Familiar symbols and designs are not protected by the Copyright Act. **37 C.F.R. § 202.1(a)**. Likewise, the copyright law does not protect mere variations on a familiar symbol or design, either in two or three-dimensional form. For representative examples of symbols or designs that cannot be registered with the U.S. Copyright Office, see **Chapter 300**, Section 313.4(J).

A work that includes familiar symbols or designs may be registered if the **registration specialist** determines that the author used these elements in a creative manner and that the work as a whole is eligible for copyright protection.

### *Examples:*

- Francis Ford created a sketch of the standard fleur de lys design used by the French monarchy. The registration specialist may refuse to register this **claim** if the work merely depicts a common fleur de lys.
- Samantha Stone drew an original silhouette of Marie Antoinette with a back-drop featuring multiple fleur de lys designs. The registration specialist may register this work because it incorporates an original, artistic drawing in addition to the standard fleur de lys designs.

## 906.3 Colors, Coloring, and Coloration

Mere coloration or mere variations in coloring alone are not eligible for copyright protection. **37 C.F.R. § 202.1(a)**.

Merely adding or changing one or relatively few colors in a work, or combining expected or familiar pairs or sets of colors is not **copyrightable**, regardless of whether the changes are made by hand, computer, or some other process. This is the case even if the coloration makes a work more aesthetically pleasing or commercially valuable. For example, the U.S. Copyright Office will not register a visual art work if the author merely added relatively few colors to a preexisting design or simply created multiple colorized versions of the same basic design. **Copyright Registration for Colorized Versions of Black and White Motion Pictures, 52 Fed. Reg. 23,443, 23,444 (June 22, 1987)**. Likewise, the Office generally will not register a visual art work if the author merely applied colors to aid in the visual display of a graph, chart, table, device, or other article.

The Office understands that color is a major element of design in visual art works, and the Office will allow an **applicant** to include appropriate references to color in an application. For instance, if an applicant refers to specific colors or uses terms such as “color,” “colored,” “colors,” “coloring,” or “coloration,” the **registration specialist** generally will not reject the **claim** if the work contains a sufficient amount of creative authorship aside from the coloration alone.

*Examples:*

- Cleo Camp took a photograph of a tree and digitally edited the image to add new shades of red and blue. Cleo submitted an application to register the altered photograph and described her authorship as “original photograph digitally edited to add new shades of blue and red in certain places.” The registration specialist will register the claim because the creativity in the photograph, together with the alteration of the colors, is sufficiently creative.
- Charles Carter took a digital image of Leonardo da Vinci’s *Mona Lisa* and added different hair color, colored nail polish, stylized clothing, and darkened skin. Charles submitted an application to register the image, and described his authorship as “changed public domain *Mona Lisa* to green and pink streaked hair; purple nail polish; prisoner-stripped black-white clothing; and darkened rouge on cheeks.” The registration specialist will register the work because the changes in color are sufficient to constitute a new work of authorship.
- Clara Connor found a black and white photograph that is in the public domain. She altered the image by adding a variety of colors, shades, and tones to make it appear as if the photo was taken in a different season. Clara submitted an application to register the revised photograph and in the Author Created and New Material Included fields she described her authorship as “adapted public domain black-white image by adding different colors, shades, tones, in various places of derivative work.” The registration specialist may register the work if Clara made sufficient changes to the preexisting photograph.
- Chris Crisp purchased a coloring book and colored the images with watercolors. He submitted an application to register the work and described his authorship in the Author Created and New Material Included fields as “added selected colors to pictures in someone else’s coloring book.” The registration specialist may refuse to register the work if the changes were dictated by the coloring book and the addition of color was not sufficiently creative.
- Colette Card registered a fabric design called “Baby Girl Fabric,” which contains a pink background with stylized images of cribs, rattles, and pacifiers. Colette then created a fabric design called “Baby Boy Fabric” that is identical to the “Baby Girl Fabric” design, except that the background color is blue instead of pink. Colette attempts to register the “Baby Boy Fabric,” disclaiming the prior registration for the “Baby Girl Fabric.” The registration specialist will refuse to register the blue variation because it is identical to the preexisting “Baby Girl Fabric” design aside from the mere change in background color.

#### 906.4 Typeface, Typefont, Lettering, Calligraphy, and Typographic Ornamentation

As a general rule, typeface, typefont, lettering, calligraphy, and typographic ornamentation are not registrable. 37 C.F.R. § 202.1(a), (e). These elements are mere variations of uncopyrightable letters or words, which in turn are the building blocks of expression. *See id.* The Office typically refuses **claims** based on individual alphabetic or numbering characters, sets or fonts of related characters, fanciful lettering and calligraphy, or other forms of typeface. This is true regardless of how novel and creative the shape and form of the typeface characters may be.

*Examples:*

- Felicia Frost creates a font called “Pioneer Living” that evokes historical “Wanted: Dead or Alive” posters. The **registration specialist** will refuse to register this font because it is a building block of writing.
- Calliope Cash creates a textile fabric consisting of a vertically striped grass cloth and a traditional Chinese proverb. Each character is painted on a separate stripe in standard, unembellished calligraphy. The registration specialist will refuse to register this fabric design because the calligraphy consists of standard Chinese characters, and the simple arrangement of characters on vertical stripes and the choice of grass cloth does not add sufficient creativity to warrant registration.

There are some very limited cases where the Office may register some types of typeface, typefont, lettering, or calligraphy, such as the following:

- Pictorial or graphic elements that are incorporated into uncopyrightable characters or used to represent an entire letter or number may be registrable. Examples include original pictorial art that forms the entire body or shape of the typeface characters, such as a representation of an oak tree, a rose, or a giraffe that is depicted in the shape of a particular letter.
- Typeface ornamentation that is separable from the typeface characters is almost always an add-on to the beginning and/or ending of the characters. To the extent that such flourishes, swirls, vector ornaments, scrollwork, borders and frames, wreaths, and the like represent works of pictorial or graphic authorship in either their individual designs or patterned repetitions, they may be protected by copyright. However, the mere use of text effects (including chalk, popup papercraft, neon, beer glass, spooky-fog, and weathered-and-worn), while potentially separable, is *de minimis* and not sufficient to support a registration.

The Office may register a **computer program** that creates or uses certain typeface or typefont designs, but the registration covers only the **source code** that generates these designs, not the typeface, typefont, lettering, or calligraphy itself. For a general discussion of computer programs that generate typeface designs, see **Chapter 700**, Section 723.

To register the **copyrightable** ornamentation in typeface, typefont, lettering, or calligraphy, the **applicant** should describe the surface decoration or other ornamentation and should explain how it is separable from the typeface characters. The applicant should avoid using unclear terms, such as “typeface,” “type,” “font,” “letters,” “lettering,” or similar terms.

## 906.5 Spatial Format and Layout Design

As a general rule, the U.S. Copyright Office will not accept vague **claims** in “format” or “layout.” The general layout or format of a book, a page, a website, a webpage, a poster, a form, etc., is not **copyrightable**, because it is merely a template for expression and does not constitute original expression in and of itself. If the **applicant** uses the terms “layout” and/or “format” in the application, the **registration specialist** will communicate with the applicant to clarify the claim. Copyright protection may be available for the author’s original selection and/or arrangement of specific content if it is sufficiently creative, but the copyright does not extend to the organization without that particular content.

*Examples:*

- Loretta Leonard **published** a series of books on bird watching. Each book has a two-inch right margin and a half-inch left margin, with the text appearing in two columns of differing lengths. Loretta submits an application to register the template for this layout. The registration specialist will refuse to register this claim because the layout of these books does not contain a sufficient amount of originality to be protected by copyright law.
- Fred Foster publishes a one-page newsletter titled *Condo Living* that provides information for residents of his condominium complex. Each issue contains the name of the newsletter, a drawing of the sun rising over the complex, two columns reserved for text, and a box underneath the columns reserved for photographs. Fred attempts to register the layout for his newsletter. The registration specialist will reject the claim in layout, but may register the illustration if it is sufficiently creative.

**906.6 Blank Forms**

The U.S. Copyright Office will not register blank forms, which are solely designed for recording information and do not convey information, regardless of how they are described in an application. **37 C.F.R. § 202.1(c)**. Examples of blank forms include time cards, graph paper, account books, diaries, bank checks, scorecards, address books, report forms, order forms, and vouchers. *Id.*

Blank forms are not **copyrightable** because they merely reflect and implement underlying procedures, processes, systems, methods, concepts, or principles. **17 U.S.C. § 102(b); *Baker v. Selden*, 101 U.S. 99 (1879)**. Likewise, the Office will refuse to register **claims** based solely on the arrangement, spacing, or juxtaposition of standard text on a blank form. **Registration of Claims to Copyright; Notice of Termination of Inquiry Regarding Blank Forms, 45 Fed. Reg. 63,297 (Sept. 24, 1980)**. However, a **registration specialist** may register literary or visual arts content that has been added to a blank form if it is copyrightable, such as artwork that decorates the form or literary elements that describe or explain how to complete the form. *See id.* at 63,298.

*Examples:*

- Brenda Bland creates a color-coded daily journal. The journal includes six columns with typical headings and multiple colors to aid the user in organizing content. The registration specialist will refuse to register this journal because it is a blank form that does not contain a sufficient amount of literary or pictorial authorship to support a registration.
- Bernice Brown creates a daily diary that includes six columns with typical headings and graphic artwork along the border of each page. The registration specialist will refuse to register the columns and headings because it is merely a blank form, but may register the decorative border if it is sufficiently creative.
- Blythe Burn files an application to register a “graphic aid for diagnosing Alzheimer’s disease.” The **deposit copy** consists of a blank form for recording patient data. The form contains eight boxes with various questions that are intended to identify symptoms of this disease. The registration specialist will

refuse the claim in “graphic aid” and may refer the claim to the Literary Division to determine whether the textual authorship supports a claim in a literary work.

### 906.7 Naturally Occurring and Discovered Material

Because human authorship is required for copyright protection, the U.S. Copyright Office will not register naturally occurring objects or materials that are discovered in nature. This includes natural objects or materials with standard wear or acute breaks or fissures resulting from weather conditions or other natural phenomena, such as water currents, wind, rain, lightning, sunlight, heat, or cold. Similarly, the Office will refuse to register a work that is created through naturally occurring processes or events, such as the resulting visual appearance of an object or liquid when different chemical elements interact with each other.

*Examples:*

- Nina Nine found a piece of driftwood that was smoothed by ocean currents. She carved an intricate seagull design in the side of the driftwood, polished it, and submitted an application to register the overall work. Although there is no human authorship in the driftwood itself, the **registration specialist** may register the seagull carving if it is sufficiently creative.
- Felipe French found a stone with deep grooves. Felipe brought the stone to his studio, polished it, mounted it on a brass plate, and submitted it for registration. The registration specialist will refuse registration because the stone’s appearance was the result of a naturally occurring phenomenon and the polishing and mounting were merely *de minimis*.
- Natalia Night creates a sticker made of two clear plastic sheets bonded together with a small amount of colored liquid petroleum between the sheets. Due to the way petroleum naturally behaves, any slight pressure on the outside of the sticker creates undulating patterns and shapes, no two of which are ever identical. The registration specialist will refuse to register this sticker because the specific outlines and contours of the patterns and shapes formed by the liquid petroleum were not created by Natalia, but instead were created by a naturally occurring phenomenon.

### 906.8 Mechanical Processes and Random Selection

The copyright law only protects works of authorship that are created by human beings. Works made through purely mechanical processes or with an automated selection and arrangement are not eligible for copyright protection without sufficient human authorship. The U.S. Copyright Office will refuse to register a **claim** in a work that is created through the operation of a machine or process without sufficient human interaction, even if the design is randomly generated.

*Example:*

- Megan Mott developed linoleum flooring with a random confetti design. The design was created by a purely mechanical process that randomly distributed material on the surface of the linoleum. The **registration specialist** will refuse



to register this design because it was produced by a mechanical process and a random selection and arrangement.

### 906.9 Measuring and Computing Devices

Devices that compute, measure, and record data are useful articles. Common examples of such devices include slide rulers, wheel dials, depth gauges, dive computers, echo-sounders, and perpetual calendar designs. These types of devices do not contain expressive authorship and are merely designed to calculate and produce facts, data, or other useful information. As such, they are not copyrightable. See 37 C.F.R. § 202.1(d).

The U.S. Copyright Office may register pictorial, graphic, or sculptural features that have been applied to a measuring or computing device, but only if those features are separable from the article. For example, a logo appearing on a scale, or a fanciful graphic on a telescope may be registered if they incorporate “pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” 17 U.S.C. § 101 (definition of “pictorial, graphic, and sculptural works”). For a general discussion of useful articles, see Section 924.

Likewise, textual or artistic material that explains or illustrates a device and its use may be protectable if it is sufficiently creative, as long as it does not itself perform the actual useful function of the device. For example, a technical drawing with significant text and pictures that shows how to use a device may be registrable. But the registration for that drawing would extend only to the descriptive or illustrative authorship and would not extend to the concept, physical design, and use of the device itself. See 17 U.S.C. § 113(b).

When asserting a **claim** in an instructional manual or other text or images that explain or illustrate a device, **applicants** should use terms that specifically describe the expressive authorship that the author contributed to the work, such as “text of description of device,” “text of instructions,” “technical diagrams,” or “photographs of device.”

Applicants should avoid using the terms “device,” “equipment,” “sculpture,” “housing,” or “container” to refer to content that appears on the face or surface of the device. Applicants should avoid using the terms “format,” “layout,” and “compilation” to refer to the overall design features or to the overall combination of content on the face or surface of the device. Applicants also should avoid using vague terms, such as “entire work.”

### 906.10 Useful Articles and the Mechanical or Utilitarian Aspects of Works of Artistic Craftsmanship

The copyright law does not protect useful articles. 17 U.S.C. § 101 (definition of pictorial, graphic, and sculptural works). But it does protect two- or three-dimensional artistic features that have been incorporated into the design of a useful article, if those features are separable from the article. *Id.*

Copyright also protects the creative form of a work of artistic craftsmanship, but it does not protect the “mechanical or utilitarian aspects” of such works.” *Id.*

For a definition and detailed discussion of the legal standards for evaluating copyrightable authorship in the design of a useful article or a work of artistic craftsmanship, see Sections 924 and 925.



## 907 Derivative Visual Art Works

### 907.1 Copyrightable Authorship in Derivative Works

A derivative visual art work is a work based on or derived from one or more preexisting works. A **derivative work** may be registered if the author of that work contributed a sufficient amount of new authorship to create an original work of authorship. The new material must be original and **copyrightable** in itself.

Examples of visual art works that may be registered as derivative works include:

- Sculptures based on drawings.
- Drawings based on photographs.
- Lithographs based on paintings.
- Books of maps based on **public domain** maps with additional features.

Examples of works that cannot be registered as derivative works, because they contain no new authorship or only a *de minimis* amount of authorship include the following types of visual art works:

- Photocopies and digital scans of works.
- Mere reproductions of preexisting works.

For a general discussion of the legal standard for determining whether a derivative work contains a sufficient amount of original expression to warrant registration, see **Chapter 300**, Section 311.

### 907.2 Permission to Use Preexisting Material

Authors often incorporate material created by third parties into their visual art works, such as a third party photograph that is used in a collage or third party clip art that is used in a logo. Generally, if the third party material is protected by copyright, the **applicant** must exclude that material from the **claim** using the procedure described in **Chapter 600**, Section 621.8. However, the applicant does not have to disclaim uncopyrightable elements, such as letters of the alphabet or geometric shapes.

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 was obtained where a recognizable preexisting work has been incorporated into a visual art work. 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. If it becomes clear that preexisting material was used unlawfully, the registration specialist will refuse to register the claim.

*Example:*

- Theresa Tell creates a collage that combines her own artwork with logos from a number of famous companies. She files an application to register her “two-dimensional artwork.” Depending on the facts presented, the registration specialist may ask the applicant to exclude the logos from the claim by stating “preexisting logos incorporated” in the Material Excluded field. In addition, the specialist may ask Theresa to limit her claim by stating “selection and arrangement of preexisting logos with new two-dimensional artwork added” in the New Material Included field.

For more information on **derivative works** incorporating third party content, see **Chapter 300**, Section 313.6(B).

## 908 Jewelry Designs

Jewelry designs are typically protected under the U.S. copyright law as sculptural works, although in rare cases they may be protected as pictorial works. This Section discusses certain issues that commonly arise in connection with such works.

### 908.1 What Is Jewelry?

Jewelry designs include any decorative article that is intended to be worn as a personal adornment, regardless of whether it is hung, pinned, or clipped onto the body (such as necklaces, bangles, or earrings) or pinned, clipped, or sewn onto clothing (such as brooches, pins, or beaded motifs).

Jewelry also includes jeweled and beaded designs that may be applied to garments, footwear, and accessories (such as hatpins, hairpins, hair combs, and tiepins). However, when these types of works are fixed onto a useful article, they may be registered only if they are separable from the utilitarian aspects of that article.

### 908.2 Copyrightable Authorship in Jewelry

Jewelry designs may be created in a variety of ways, such as carving, cutting, molding, casting, or shaping the work, arranging the elements into an original combination, or decorating the work with pictorial matter, such as a drawing or etching.

The U.S. Copyright Office may register jewelry designs if they are sufficiently creative or expressive. The Office will not register pieces that, as a whole, do not satisfy this requirement, such as mere variations on a common or standardized design or familiar symbol, designs made up of only commonplace design elements arranged in a common or obvious manner, or any of the mechanical or utilitarian aspects of the jewelry. Common *de minimis* designs include solitaire rings, simple diamond stud earrings, plain bangle bracelets, simple hoop earrings, among other commonly used designs, settings, and gemstone cuts.

*Examples:*

- Janine Jackson creates a brooch consisting of three parallel rows of sapphires. The **registration specialist** will refuse registration because the de-

sign is common and there is only a *de minimis* amount of authorship in the arrangement of stones.

- Jeremiah Jones creates a necklace consisting of a standard cross on a black silk cord with a silver clasp. The registration specialist will refuse to register this work because it consists of functional elements (*e.g.*, a silk cord and a silver clasp) and a familiar symbol (the standard cross).

### 908.3 Application Tips for Jewelry

When preparing the identifying material for a jewelry design (which may consist of photographs or drawings) the **applicant** should include all of the **copyrightable** elements that the applicant intends to register. This is important because the **registration specialist** can examine only the designs that are actually depicted in the identifying material. If the applicant wants the registration to cover more than just the face of a jewelry design, the identifying material should depict the design from different angles. Additionally, if the applicant wants the registration to cover part of the design or details that are relatively small, the applicant should make sure that those portions are clearly visible in the identifying material.

When evaluating a jewelry design for copyrightable authorship, the registration specialist will consider both the component elements of the design and the design as a whole. In making this determination, the specialist may consider the following aspects of a jewelry design:

- The shapes of the various elements (*e.g.*, gemstones, beads, metal pieces, etc.).
- The use of color to create an artistic design (although color alone is generally insufficient).
- Decoration on the surface of the jewelry (*e.g.*, engraved designs, variations of texture, etc.).
- The selection and arrangement of the various elements.

The following aspects of jewelry generally are not copyrightable and are not considered in analyzing copyrightability:

- Faceting of individual stones (*i.e.*, gem-cutting).
- Purely functional elements, such as a clasp or fastener.
- Common or symmetrical arrangements.

As a general rule, if the shape or decoration of a particular element contains enough original authorship to support a registration, the specialist will register the claim. If not, the specialist will consider other factors, such as the selection, coordination, and/or arrangement of elements, as well as the degree of symmetry.

When evaluating the copyrightability of a jewelry design, the specialist may consider the number of elements in the design. More elements may weigh in favor of copyrightability, although a work containing multiple elements may be uncopyrightable if the elements are repeated in a standard geometric arrangement or a commonplace design. A work containing only a few elements may

be copyrightable if the decoration, arrangement, use of color, shapes, or textures are sufficient to support a claim.

## 909 Photographic Works

The U.S. copyright law protects photographs as pictorial works. This Section discusses certain issues that commonly arise in connection with such works.

### 909.1 Copyrightable Authorship in Photographs

As with all copyrighted works, a photograph must have a sufficient amount of creative expression to be eligible for registration. The creativity in a photograph may include the photographer's artistic choices in creating the image, such as the selection of the subject matter, the lighting, any positioning of subjects, the selection of camera lens, the placement of the camera, the angle of the image, and the timing of the image.

*Example:*

- The Office receives ten applications, one from each member of a local photography club. All of the photographs depict the Washington Monument and all of them were taken on the same afternoon. Although some of the photographs are remarkably similar in perspective, the **registration specialist** will register all of the **claims**, because each photographer selected the angle and positioning of his or her photograph, among other creative choices.

### 909.2 Subject Matter of Photographs

To be eligible for copyright protection, the subject of the photograph does not need to be **copyrightable**. A photograph may be protected by copyright and registered with the U.S. Copyright Office, even if the subject of the photograph is an item or scene that is uncopyrightable or in the **public domain**.

*Example:*

- Phoebe Pool takes a photograph of a mountain range, selecting the angle, distance, and lighting for the image. The **registration specialist** will register the work even though the mountain range itself is not copyrightable.

### 909.3 Uncopyrightable Material

#### 909.3 (A) Photographic Reproductions, Digital Copying, and Digital Restoration

Although most photographs warrant copyright protection, the U.S. Copyright Office will not register photographs that do not display a sufficient amount of creative expression. A photograph that is merely a “slavish copy” of a painting, drawing, or other **public domain** or copyrighted work is not eligible for registration. The **registration specialist** will refuse a **claim** if it is clear that the photographer merely used the camera to copy the source work without adding any

creative expression to the photo. Similarly, merely scanning and digitizing existing works does not contain a sufficient amount of creativity to warrant copyright protection.

*Example:*

- Pamela Patterson takes a high resolution photograph of Leonardo da Vinci's *Mona Lisa*. The photograph is virtually identical to the painting. The registration specialist will refuse to register the photograph, because it is a slavish copy of a work that is in the public domain. See, e.g., *Bridgeman Art Library, Ltd. v. Corel Corp.*, 36 F. Supp. 2d 191, 196-97 (S.D.N.Y. 1999).

The Office often receives applications to register preexisting works that have been restored to their original quality and character. Merely restoring a damaged or aged photograph to its original state without adding a sufficient amount of original, creative authorship does not warrant copyright protection.

The registration specialist will analyze on a case-by-case basis all claims in which the author used digital editing software to produce a derivative photograph or artwork. Typical technical alterations that do not warrant registration include aligning pages and columns; repairing faded print and visual content; and sharpening and balancing colors, tint, tone, and the like, even though the alterations may be highly skilled and may produce a valuable product. If an **applicant** asserts a claim in a restoration of or touchups to a preexisting work, the registration specialist generally will ask the applicant for details concerning the nature of changes that have been made. The specialist will refuse all claims where the author merely restored the source work to its original or previous content or quality without adding substantial new authorship that was not present in the original.

The specialist may register a claim in a restored or retouched photograph if the author added a substantial amount of new content, such as recreating missing parts of the photograph or using airbrushing techniques to change the image. As a general rule, applicants should use terms such as “photograph” or “2-D artwork” to describe this type of authorship, and should avoid using terms such as “digital editing,” “touchup,” “scanned,” “digitized,” or “restored.”

*Examples:*

- Sarah Smith discovers a box of old family photographs in her great-grandmother's attic. She scans them into her computer and uses software that automatically smoothens the creases in the images. Sarah files an application to register a claim for her own authorship in the altered photographs. The registration specialist will refuse to register the claim, because the use of automated software to smooth preexisting photographs was *de minimis*.
- Dave Daniel submits an application claiming “photograph and two-dimensional artwork.” The registration specialist asks Dave to clarify the nature of the two-dimensional artwork that he contributed to this work. Dave explains that he took a photograph and then digitally touched up several parts of his image. He also explains that he improved the color, tone, and temper; removed noise imperfections inherent in the film; and adjusted aspects to balance the photograph. The specialist will register the claim in the “photograph,” because this term accurately describes the photograph and the authorship involved in editing the original image. The specialist will ask for permission to remove the claim in “two-dimensional artwork” because the work contains no additional artwork aside from the photograph itself.

### 909.3(B) X-Rays, Medical Imaging, and Non-Medical Echo Sonography

As a general rule, the U.S. Copyright Office will not register medical x-rays or imaging, regardless of whether they are claimed on an application as photographs, images, artwork, or graphics. These types of images do not typically possess a sufficient degree of creativity to sustain a copyright claim.

**NOTE:** Medical x-rays or imaging are not considered useful articles for purposes of registration because they convey information. **17 U.S.C. § 101** (definition of “useful article”). As such, they are not subject to the separability test described in Section **924.3**.

In most cases, x-rays or other medical images are produced without any creative input from a human author. And the appearance of the resulting image is dictated entirely by functional requirements, such as obtaining an image that optimally permits the diagnosis of an injury or disease. As a result, these types of images merely contain a *de minimis* amount of expression, if any. See *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 59 (1884) (“[T]he ordinary production of a photograph” with “no place for novelty, invention, or originality” may result in “no protection” for that image).

The following is a nonexhaustive list of such generally uncopyrightable works:

- Medical x-rays.
- Magnetic resonance imaging.
- Echocardiography.
- Echo mammography.
- Varieties of ultrasound.
- Iodinated ultra venous imaging.
- Angiography.
- Electrocardiography.
- Three-dimensional computed tomography.
- Positron emission tomography.
- Electroencephalography imaging.
- Computed axial tomography.

For the same reasons, the Office will not register surveys of water and land masses that are captured by the data that echo-sounders and similar equipment produce.

When x-rays or other medical images are used to illustrate a **literary work**, such as medical textbooks, excavation training guides, and journal articles, the Office may accept a **claim** in a “**compilation** of images,” “text and illustrations,” “text and illustrative diagrams,” or “text and

figures.” The registration for such works will cover the text and the **copyrightable** compilation authorship, but not the underlying x-rays or medical images.

Similarly, **applicants** may use terms such as “illustrations,” “figures,” or “illustrative diagrams” to describe x-rays or medical images that have been modified with words, abbreviations, symbols, or color indicators, such as arrows, markers, or pointers that illustrate topics discussed in the accompanying literary work. In such cases, the Office may register the modified image as a technical drawing if it is sufficiently creative, but the Office will not accept a claim in the underlying image itself.

These types of technologies were created for diagnostic or other functional purposes, but they can conceivably be used in an artistic manner. If an x-ray machine or medical imaging device is used as a tool for an author’s creative expression, that expression may be registered as a pictorial or graphic work if the resulting image contains a sufficient amount of artistic expression created by a human author. In such cases, the author’s expression must be recognizable from the **deposit copy(ies)**, rather than the author’s explanation of his or her creative process.

*Examples:*

- Xavier Xander files an application for an x-ray of a broken arm and describes his authorship as a “photograph.” The registration specialist will refuse to register the claim.
- Xenia Xon submits an application for an x-ray of a farm animal that has been modified with bright red colors and original images of processed food products. She describes her authorship as “two-dimensional artwork.” The registration specialist may register the claim, because the creative expression in the work as a whole is apparent from the deposit copy.
- Xandra Xee submits an application for an x-ray of a creative collage consisting of flowers and cookies. She describes the authorship as a “photograph.” Because Xandra used an x-ray machine as a creative tool, rather than a diagnostic device, the resulting image would be registrable.

## 910 Games

This Section discusses certain issues that commonly arise with board games, card games, and other games with pictorial, graphic, or sculptural authorship. For information concerning videogames, see **Chapter 800**, Section 807.7(A).

Games often include both **copyrightable** and uncopyrightable elements. The copyrightable elements of a game may include text, artwork, **sound recordings**, audiovisual material, or other works of authorship. These types of works may be protectable if they contain a sufficient amount of original authorship. Uncopyrightable elements include the underlying ideas for a game and the methods for playing and scoring a game. These elements cannot be registered, regardless of how unique, clever, or fun they may be.

When completing an application for a game, **applicants** should describe the specific works(s) that the applicant intends to register, such as the instructional text, the artwork on a playing board, and/or the original sculptural elements of game pieces. Applicants should not assert a **claim** in “game” or “game design,” because it is generally understood that the game as a whole

encompasses the ideas underlying the game. For the same reason, applicants should not assert a claim in the methods for playing the game.

*Examples:*

- Gloria Glam files an application to register a new board game. In her application she asserts a claim in “text and board artwork.” The game board contains intricate designs and the instructions consist of two pages of text. The **registration specialist** will register the claim with an annotation, such as: “Basis for registration: Unit of publication.”
- Garfield Grant files an application for a new type of soccer playing field and asserts a claim in “technical drawing.” The deposit contains a set of technical drawings with accompanying text. The registration specialist will register the claim; the registration will extend only to the actual drawings and descriptive text but not to the design for the field itself.
- Glenn Garner files an application to register a “new game of chess, consisting of a new way to play the game, new playing pieces, and a new board with three levels.” The registration specialist may register any descriptive text and the design of the playing pieces if they contain a sufficient amount of creative expression. However, the specialist cannot register the idea for and method of playing the new game, or the idea of playing the game on a board split into three levels. Therefore, the specialist may add two annotations, such as: “Basis for registration: Unit of publication” and “Regarding authorship information: idea for, and procedure or method of operation used in, game not copyrightable. **17 U.S.C. § 102(b)**. Registration extends to artwork deposited.”

Games are often distributed in a physical package that contains separately fixed component works that have been bundled together and distributed to the public as a single, integrated unit. In such cases, it may be possible to register the component works with the unit of publication option, which allows multiple works to be registered together with one application and one filing fee. See **37 C.F.R. § 202.3(b)(4)**. For information concerning this option, see **Chapter 1100**, Section 1103.

For information on how to register purely literary aspects of a game, see **Chapter 700**, Section 714. For information concerning the deposit requirements for games, see **Chapter 1500**, Sections 1509.1(B) and 1509.3(A)(7).

## 911 Characters

The original, visual aspects of a character may be protected by copyright if they are sufficiently original. This may include the physical attributes of the character, such as facial features and specific body shape, as well as images of clothing and any other visual elements.

The U.S. Copyright Office will register visual art works that depict a character, such as drawings, sculptures, and paintings. A registration for such works extends to the particular authorship depicted in the deposit material, but does not extend to unfixed characteristics of the character that are not depicted in the deposit. Nor does it cover the name or the general idea for the character.



When completing an application to register such works, the **applicant** should use an appropriate term to describe the authorship embodied in the deposit material, such as “2-D artwork” or “photograph.” Applicants should not refer to or assert **claims** in “character,” “character concept, idea, or style,” or a character’s generalized personality, conduct, temperament, or costume. If the applicant uses these terms, the **registration specialist** may register the claim with an annotation, such as: “Regarding authorship information: Registration based on deposited [pictorial, graphic, or sculptural] authorship describing, depicting, or embodying character(s). *Compendium* 313.4(H).” If the deposit material contains a well-known or recognizable character, the specialist may ask the applicant to exclude that preexisting material from the claim if the applicant fails to complete the Limitation of Claim portion of the application.

*Examples:*

- Charles Crest creates a sketch of a field mouse with a straw hat and a mischievous grin. He intends to use the sketch in an animated film. He files an application that asserts a claim in “two-dimensional artwork” and “character.” The registration specialist may register the claim with an annotation, such as: “Regarding authorship information: Registration based on deposited pictorial authorship describing, depicting, or embodying character(s). *Compendium* 313.4(H).”
- Chris Crow creates a series of drawings featuring a stylized flamingo in several poses and wearing different hats. He files an application to register his drawings under the title “Concept Drawings for Character Designs” and he asserts a claim in “two-dimensional artwork.” The registration specialist may register the claim and may send the applicant a warning letter noting that the registration covers only the specific sketches included in the deposit.
- Chloe Crown creates a series of drawings depicting several well-known comic book characters. She files an application that asserts a claim in “character redesigns” or “new versions of characters.” The registration specialist may ask Chloe if she has permission to prepare these **derivative works** and to clarify the derivative authorship that she contributed to the preexisting material.

## 912 Cartoons, Comic Strips, and Comic Books

Cartoons, comic strips, and comic books typically contain pictorial expression or a combination of pictorial and written expression. These types of works may be registered as visual art works or literary works, depending on the nature of the expression that the author contributed to the work. If the work contains pictorial material or a substantial amount of pictorial material combined with text, the applicant should select Work of the Visual Arts (in the case of an online application) or **Form VA** (in the case of a paper application). If the work mostly contains text with a small amount of pictorial material, the applicant should select Literary Work for an online application or **Form TX** for a paper application. If the types of authorship are roughly equal, the applicant may use any type of application that is appropriate.

A registration for a cartoon, comic strip, or comic book only covers the specific work that is submitted to the U.S. Copyright Office. The Office does not offer so-called “blanket registrations” that cover prior or subsequent iterations of the same work. For example, a registration for a comic strip that depicts a particular character covers the expression set forth in that particular

strip, but it does not cover the character per se or any other strip or other work that features the same character. (For more information concerning characters, see Section 911.)

In some cases it may be possible to register a number of cartoons, comic strips, or comic books with one application and one filing fee.

- If all of the works are unpublished, it may be possible to register up to ten works together as a group.
- If all of the works were first published as a contribution to a periodical, such as a newspaper or magazine, it may be possible to register the contributions as a group.
- If all the works were physically bundled together by the claimant for distribution to the public as a single, integrated unit, and if all the works were first **published** in that integrated unit it may be possible to register them using the unit of publication option. However, the works cannot be aggregated simply for the purpose of registration; instead they must have been first distributed to the public in the packaged unit.

For detailed information concerning the unit of publication option, and the group registration options for unpublished works and contributions to periodicals, see **Chapter 100**, Sections 1103, 1106, and 1110.

Comic books are typically created by multiple authors, and the issues surrounding the authorship and ownership of the various contributions can be complex. In some cases, the creators may prepare their contributions on a work for hire basis as employees or pursuant to a freelancer **work made for hire** agreement. In some cases, the comic book may be a **joint work**. In other cases, different authors may create different aspects of the comic book, with some aspects originating from the publisher and other aspects originating from one or more individual, nonemployee authors (*i.e.*, **derivative works**). For example, the publisher may **claim** ownership of the characters and the basic story, and may hire others to create the artwork, text, and/or lettering for particular issues. Then a freelance or staff contributor may contribute coloring and editing. If all of the work is done on a work made for hire basis, the authorship is clearly owned by the publisher, and as such the publisher should be named as the **claimant**.

If multiple authors contributed to the comic book as individual authors (not as joint authors or under a work made for hire agreement), and if it is unclear from the face of the deposit copy(ies) which author created what authorship and on what basis, the applicant should provide that information in the Author Created field of the online application or the Nature of Authorship space of the paper application. Such claims may require multiple separate applications to register the derivative authorship (*e.g.*, an application for the pencil drawings and a separate application for the coloring of the preexisting drawings).

In some cases, comic book publishers **license** the use of another party's characters and stories. In other cases, the publisher creates the stories, but the characters have been licensed. In such cases, the applicant should exclude the licensed characters and/or stories from the claim by stating "licensed character" or "licensed character and storyline" in the Material Excluded / Preexisting Materials field/space. The claimant should not name the licensor of the preexisting characters and/or stories as an author of the new text and artwork in the comic book.

The **registration specialist** will communicate with the **applicant** if the authorship or ownership information provided in the application is unclear or inconsistent with other statements in the

application, the **deposit copy(ies)**, or industry practice. In addition, the specialist may question whether a given work is a **collective work** or joint work, rather than a work consisting of separately owned contributions or works.

The Office will not register mere reprints, reissues, re-inks/letters/colors, or previously **published**, or previously registered comic books, unless the author contributed new copyrightable authorship in compiling, adapting, or changing the preexisting content.

## 913 Prints

Prints include a wide variety of pictorial and graphic works, such as greeting cards, postcards, posters, decals, stationery, illustrations, and other abstract and representational designs. This category also includes advertisements, billboards, brochures, and other two-dimensional works “intended for use in advertising and commerce.” **H.R. REP. NO. 94-1476, at 54**, *reprinted in* 1976 U.S.C.C.A.N at 5667.

The U.S. Copyright Office may register a print if it contains at least a minimum amount of original pictorial or graphic authorship. In making this determination, the registration specialist will not consider the artistic merit, aesthetic value, or intrinsic quality of the print. *See id.* Nor will the Office consider the commercial purpose or intended use of the work. *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239, 251 (1903) (“A picture is none the less a picture and none the less a subject of copyright that it is used for an advertisement.”).

A copyright claim cannot be based solely on mere variations of typographic ornamentation, lettering, or coloring. **37 C.F.R. § 202.1(a)**. Likewise, the mere arrangement of type on a page or website cannot support a copyright claim, unless the overall arrangement produces an original pictorial or graphic design, such as a visual representation of a person or product.

## 914 Trademarks, Logos, and Labels

### 914.1 Copyrightable Authorship in Trademarks, Logos, and Labels

A visual art work that is used as a trademark, logo, or label may be registered if it satisfies “the requisite qualifications for copyright.” **37 C.F.R. § 202.10(b)**. The authorship in the work may be pictorial, graphic, or in rare cases sculptural, or the work may contain a combination of these elements. When reviewing an application to register a trademark, logo, or label the U.S. Copyright Office will examine the work to determine if it embodies “some creative authorship in its delineation or form.” *Id.* **§ 202.10(a)**. However, the Office will not consider whether the work has been or can be registered with the U.S. Patent and Trademark Office. *Id.* **§ 202.10(b)**.

The copyright law covers the creative aspects of a pictorial, graphic, or sculptural work, regardless of whether the work has been used or is capable of being used as an indicator of source. Unlike trademark law, copyright law is not concerned with consumer confusion and a trademark, logo, or label may be eligible for copyright protection regardless of whether the work is distinctive or whether consumers may be confused by the use of that work. In other words, a visual art work may be distinctive in the trademark sense, even if it does not qualify as a work of original authorship in the copyright sense.

The Office typically refuses to register trademarks, logos, or labels that consist of only the following content:

- Wording.
- Mere scripting or lettering, either with or without uncopyrightable ornamentation.
- Handwritten words or signatures, regardless of how fanciful they may be.
- Mere spatial placement or format of trademark, logo, or label elements.
- Uncopyrightable use of color, frames, borders, or differently sized font.
- Mere use of different fonts or colors, frames, or borders, either standing alone or in combination.

*Example:*

- Lori Lewis submits a logo consisting of two letters linked together and facing each other in a mirror image, and two unlinked letters facing each other and positioned perpendicular to the linked letters. The **registration specialist** will refuse to register this work because letters alone cannot be registered, and there is insufficient creativity in the combination and arrangement of these elements. *See Coach, Inc. v. Peters*, 386 F. Supp.2d 495, 498 (S.D.N.Y. 2005).

## 914.2 Application Tips for Trademarks, Logos, and Labels

When completing an application for a trademark, logo, or label, **applicants** should describe the pictorial, graphic, or sculptural authorship that the author contributed to the work. Applicants should avoid using vague terms, such as “trademark design,” “trade dress design,” “mark,” “logo,” “logotype,” or “symbol.” Likewise, applicants should avoid using the following terms which may be questioned by the **registration specialist**: “**composite work**,” “**collective work**,” “selection and arrangement,” “look and feel,” “distinctive,” “distinctiveness,” “totality of design,” or “total concept and feel.”

## 915 Catalogs

For purposes of copyright registration, catalogs are considered compilations of information or **collective works** that contain written descriptions and/or pictorial depictions of two or three-dimensional products. Catalogs generally contain **copyrightable** pictorial and/or literary authorship, and they also may contain copyrightable authorship in the selection, coordination, and/or arrangement of copyrightable or uncopyrightable elements.

The photographs within a catalog may be registered together with the catalog as a whole (i) if the photographs and the catalog were created by the same author, or (ii) if the **copyright claimant** owns all of the rights in the photographs and the compilation authorship involved in creating the catalog as a whole, and (iii) if the photographs have not been previously published or previously registered. However, a **claim** in the photographs does not extend to the actual works or objects depicted in those images.

A catalog may be registered as a compilation of photographs or a collective work consisting of photographs if there is a sufficient amount of creative expression in the author's selection, coordination, and/or arrangement of the images. However, a catalog is not considered a compilation of the works or objects depicted in those photographs, nor is it considered a collective work consisting of the works or objects depicted therein. *Accord Registration of Claims to Copyright, 77 Fed. Reg. 37,605, 37,606 (June 22, 2012)*. As a result, a registration for a catalog generally does not extend to the works or objects shown in that work, even if they are eligible for copyright protection and even if the **claimant** owns all of the rights in those works or objects. Instead, the registration extends only to the pictorial authorship involved in creating the images, and the authorship involved in selecting, coordinating, and/or arranging those images within the catalog as a whole. See **17 U.S.C. § 113(b)**.

By contrast, if the applicant submits individual photographs or pictorial illustrations of a two- or three-dimensional work (as opposed to a catalog depicting a two- or three-dimensional work), the registration may cover the pictorial or sculptural authorship that the author contributed to that work if it is clear that the individual photographs or illustrations are being used as **identifying material** for the work depicted therein and that the applicant is not attempting to register the authorship involved in creating the images themselves. For information concerning the types of works that may be registered with identifying material, see **Chapter 1500**, Section 1506.

As a general rule, it is not possible to register a group of pictorial, graphic, or sculptural works with one application, one **filing fee**, and a submission of identifying material. Instead, the applicant generally must submit a separate claim for each work. However, there are two limited exceptions to this rule.

- If the works are **unpublished** it may be possible to register them as a group of unpublished works. Photographs or illustrations of the two- or three-dimensional works may be used as identifying material in this situation. In such cases, the applicant should assert a claim in the works depicted in those images rather than the authorship involved in creating the images themselves.
- If the works were physically bundled together for distribution to the public as a single, integrated unit and if all the works were first **published** in that integrated unit, it may be possible to register them using the **unit of publication** option.

When a group of photographs are published in a catalog the works depicted therein are considered published, regardless of whether they are two- or three-dimensional. However, the fact that a group of works were published in the same catalog does not mean that the catalog constitutes a unit of publication or that the works may be registered together with the unit of publication option.

A unit of publication is a package of separately **fixed** elements and works that are physically bundled together by the claimant for distribution to the public as a single, integrated unit. The unit must contain an actual copy of the works and the works must be distributed to the public as an integral part of the unit. A unit that merely contains a representation of the works, or merely offers those works to the public (without actually distributing them) does not satisfy this requirement. For example, a boxed set of fifty different greeting cards sold as a package to retail purchasers would qualify as a unit of publication. By contrast, a catalog offering fifty different greeting cards for individual purchase would not be considered a unit of publication, even if all of the cards may be ordered from the catalog for a single price. Although a catalog may offer multiple items for sale to the public, the catalog itself does not qualify as a unit of publication,

because the items themselves are not packaged together in the catalog for actual distribution to the public.

For a general discussion of compilations and collective works, see [Chapter 500](#), Sections 508 and 509. For detailed information concerning the unit of publication option and the group registration option for unpublished works, see [Chapter 1100](#), Sections 1103 and 1106.

## 916 Retrospective Works and Exhibition Catalogs

Retrospective works are [published](#) books, websites, or other works that review or look back on the career of a visual artist. Exhibition catalogs are catalogs, brochures, or other works that contain copies of works featured in a particular exhibition or other works by the same visual artist(s). Both retrospective works and exhibition catalogs typically contain both new and pre-existing authorship.

The new authorship is usually prepared expressly for the retrospective work or the exhibition catalog, and may include elements such as an introduction, critical essays, photographs, annotated bibliographies, chronological timelines, and the like.

As for the visual artist's works, retrospective works and exhibition catalogs usually contain (i) works that were published before they appeared in the new work, and (ii) other works that have never been sold or otherwise published or publicly exhibited before they appeared in the new work.

When a previously unpublished work is first published in a retrospective work or exhibition catalog, the fact that the work has been published will affect the subsequent registration options for that work. For this reason, artists may want to consider registering their pictorial, graphic, or sculptural works prior to authorizing their depiction in a retrospective work or exhibition catalog.

To register a retrospective work or exhibition catalog, the [applicant](#) should limit the [claim](#) to the new content that was prepared specifically for that work, such as new artwork, essays, photographs, indexes, chronologies, bibliographies, or the like. Any artwork that was previously registered, published, or in the public domain should be excluded from the claim using the procedures described in [Chapter 600](#), Section 621.8.

In all cases, the applicant should anticipate that the [registration specialist](#) will raise questions about the ownership and first publication provenance of artwork depicted in a retrospective work or exhibition catalog. Therefore, when completing the application, the applicant should provide as much information about those works as possible.

## 917 Art Reproductions

### 917.1 Copyrightable Authorship in Art Reproductions

A reproduction of a work of art or a two-dimensional art reproduction may be protected as a [derivative work](#), but only if the reproduction contains new authorship that does not appear in the original source work. This category includes hand painted reproductions (typically on canvas); plate, screen, and offset lithographic reproductions of paintings; Giclée prints; block prints; aquaprint; artagraph; among other forms of expression.

An exact copy of a source work is not eligible for copyright protection, because it is akin to a purely mechanical copy and includes no new authorship, regardless of the process used to create the copy or the skill, craft, or investment needed to render the copies. For the same reason, a reproduction of a work of art cannot be protected based solely on the complex nature of the source work, the apparent number of technical decisions needed to produce a near-exact reproduction, or the fact that the source work has been rendered in a different medium. For example, the U.S. Copyright Office will not register the following types of works:

- Reproductions of purely textual works.
- Reproductions in which the only changes are to the size or font style of the text in an underlying work.
- Mere scans or digitizations of texts or works of art.
- Reproductions in which the only change from the original work is a change in the printing or manufacturing type, paper stock, or other reproduction materials.
- Preservation and restoration efforts.
- Any exact duplication, regardless of the medium used to create the duplication (*e.g.*, hand painting, etching, etc.).

The Office will register any new and creative authorship that is fixed in an art reproduction. However, the **registration specialist** will not assume that all such works embody new, registrable authorship. In addition, the specialist will communicate with the **applicant** if the application refers to a new process previously unknown to the Office, or if it appears that the author made no more than a high quality copy of the source work.

## 917.2 Application Tips for Art Reproductions

### 917.2(A) Distinguishing Art Reproductions from the Source Work and Identifying Material

To register a reproduction of a work of art, the **applicant** should fully describe the new authorship that the author contributed to the source work. As a general rule, the terms “2-D artwork” or “reproduction of work of art” may be used to describe the authorship involved in recasting, transforming, or adapting the source work. When completing an online application the applicant should provide this information in the Author Created field. When completing a paper application, the applicant should provide this information in the Nature of Authorship space. In addition, applicants are strongly encouraged to provide a clear description of the new authorship that the author contributed to the reproduction using specific terms that distinguish the new authorship from the source work. This information may be provided in the Note to Copyright Office field or in a cover letter. Doing so may avoid the need for correspondence that could delay the examination of the application.

The applicant should not refer to the authorship in the source work that has been recast, transformed, or adapted by the author of the print or reproduction. Likewise, the applicant should not refer to the type of **identifying material** that the applicant intends to submit to the Office. For example, if the applicant intends to register a lithographic reproduction of a preexisting



painting, the applicant should clearly describe the new artwork that the author contributed to that reproduction. The author should not refer to the preexisting painting that is depicted in the lithograph. If the applicant intends to submit a photograph of the lithograph as the identifying material for the **claim**, the applicant should not refer to the reproduction as a “photograph.” If the applicant states “photograph” the **registration specialist** may assume that the applicant intends to register the authorship involved in taking the photograph of the lithograph, rather than the authorship involved in creating the reproduction of the preexisting painting.

### 917.2(B) Authorship Unclear

**Applicants** should not use vague terms to describe the new authorship that the author contributed to an art reproduction. Likewise, applicants should not use terms that merely describe the tools or methods that the author used to create the work, such as “computer print,” “computer reproduction,” “block print,” “offset print,” “print,” or “photoengraving,” because this suggests that the applicant may be asserting a **claim** in an idea, procedure, process, system, method of operation, concept, principle, or discovery.

If the author merely painted over areas of the source work, the **registration specialist** may communicate with the applicant if it appears that the applicant is attempting to register the authorship (if any) involved in restoring the source work to its original condition.

### 918 Installation Art

The U.S. Copyright Office generally discourages **applicants** from using the term “installation art” in applications to register visual art works. Applicants use this term for a wide variety of artistic endeavors and it has many broad, ambiguous meanings. Because this term is unclear, the **registration specialist** may communicate with applicants if they describe a pictorial, graphic, or sculptural work as “installation art.”

Instead, applicants should identify any **copyrightable** content in the work and should describe that content using terms such as “sculpture,” “painting,” “photographs,” or the like. This is true even if the overall installation itself is a registrable work of authorship. In such cases, the applicant should use accepted terms to describe the work, such as “a series of sequentially and thematically related photographs interspersed with drawn and painted images to create a larger work of authorship.”

### 919 Maps

Maps may be protected under the copyright law as pictorial works or sculptural works, depending on whether the work contains two- or three-dimensional authorship. Indeed, maps were among the first works that were eligible for copyright protection under the 1790 Act. This Section discusses certain issues that commonly arise in connection with such works.

#### 919.1 Copyrightable Authorship in Maps

Maps are cartographic or visual representations of an area. Examples include terrestrial maps and atlases, marine charts, celestial maps, as well as three-dimensional works, such as globes



and relief models. A map may represent a real or imagined place, such as a map in a book or videogame that depicts a fictional country.

Maps are not considered useful articles for purposes of registration, because they convey information. [17 U.S.C. § 101](#) (definition of “useful article”). As such, they are not subject to the separability test described in [Section 924.3](#).

The U.S. Copyright Office will register maps, globes, and other cartographic works if they display a sufficient amount of original pictorial or sculptural authorship.

The Office may register an original selection, coordination, and/or arrangement of cartographic features, such as roads, lakes, or rivers, cities, or political or geographic boundaries. But to be **copyrightable**, the work as a whole must be creative. In making this determination, the Office will not consider the amount of effort required to create the work, such as surveying or cartographic field work.

## 919.2 Derivative Maps

Maps are often based on one or more preexisting works. A derivative map may be eligible for registration if the author added a sufficient amount of new authorship to the preexisting material, such as creative depictions of new roads, historical landmarks, or zoning boundaries.

If the map contains an appreciable amount of material that has been previously published, previously registered, material that is in the public domain, or material that is owned by a third party, the **applicant** should exclude that material from the claim and should limit the claim to the new **copyrightable** authorship that the author contributed to the derivative map. For guidance in completing this portion of the application, see [Chapter 600](#), [Section 621.8](#).

The U.S. Copyright Office will refuse to register a derivative map if the work does not contain a sufficient amount of new authorship. For instance, “[a]dditions to . . . preexisting maps such as color, shading, and labels using standard fonts and shapes fall within the narrow category of works that lack even a minimum level of creativity” required for registration. *Darden v. Peters*, 488 F.3d 277, 287 (4th Cir. 2007). Reprints of public domain maps or previously published materials are not registrable. Similarly, maps that consist solely of public domain elements, common elements, or elements that contain no original compilation authorship are not registrable, such as an outline map of the United States containing nothing more than the names of the state capitals.

## 920 Patterns, Stencils, and How-To Books

Pattern books contain specific instructions on how to make various items, such as knitwear and toys, while how-to books typically contain instructions on how to perform various techniques. Stencils provide outlines and shapes that may be used for other purposes, such as a stencil of leaves that may be used for painting a border on a wall. This Section discusses certain issues that commonly arise in connection with such works.

### 920.1 Patterns for Making Articles

The drawings and text in a pattern book may be **copyrightable**, if they are sufficiently original. This may include textual instructions, technical diagrams that demonstrate cutting, stitching, weaving, or other techniques required by the pattern, as well as illustrations of the completed items.

Pattern books are not considered useful articles for purposes of registration, because they typically convey information. **17 U.S.C. § 101** (definition of “useful article”). But as a general rule, a registration for a pattern book does not extend to individual pattern pieces that may be used to create a useful article, such as shapes that may be traced and used to make a sleeve for a dress, because the pieces themselves are also useful articles that rarely contain any separable, copyrightable authorship. *See* **17 U.S.C. § 113(b)**. For similar reasons, the registration does not extend to any useful article that may be created with the pattern, such as an item of clothing. For a general discussion of useful articles, see Section **924**.

### 920.2 Stencils and Templates

Stencils and templates are patterns for tracing, trimming, or cutting designs or other items depicted by the stencil or template. The U.S. Copyright Office may register stencils or templates that contain a sufficient amount of original pictorial or graphic artwork or original compilations of such artwork, such as a stencil book that contains original, artistic images of animals, trees, and automobiles. However, the Office will refuse to register stencils consisting of common figures, symbols, or other uncopyrightable material, including any standard arrangements thereof.

### 920.3 How-To Books, Project Books, and Crafts-Making Books

A how-to book explains how to perform certain skills and techniques. These types of works generally do not contain pattern pieces or parts, because they are intended to teach a craft or technique rather than provide instructions on making a specific item.

How-to books typically contain text, photographs, and technical diagrams, which may be protected by copyright law if they are sufficiently creative. However, the “project” or “craft” as a whole — even if it is original — is merely an idea that is not **copyrightable**. **17 U.S.C. § 102(b)**. The U.S. Copyright Office will reject nonspecific **claims** in project ideas or project design.

### 920.4 Application Tips for Patterns, Stencils, and How-To Books

To register a pattern, stencil, or how-to book, the **applicant** should describe the **copyrightable** content in the **deposit** using terms such as “text,” “2-D artwork,” “photograph,” or “technical drawing,” as applicable. Applicants should not assert a **claim** in “pattern,” “project,” “activity,” or “craft.”

If the **deposit copy(ies)** identify the author or designer of the projects, crafts, or designs and if that author is not named in the application, the applicant should explain how the **claimant** acquired ownership of the copyright by checking the **work made for hire** box “yes” (if the work qualifies as a work made for hire) or by including an appropriate **transfer statement**. For guidance in completing these portions of the application, see **Chapter 600**, Sections 614 and 620.

## 921 Graphs, Charts, Tables, and Figures

The copyright law does not protect blank graphs, charts, tables, and figures that are designed for recording information and do not in themselves convey information. These types of works are not **copyrightable**, because they rarely contain more than a *de minimis* amount of authorship other than that necessary to implement the underlying method, technique, or idea. For the same reasons, the ideas for graphs, charts, tables, and figures or the overall design of a graphing, charting, or tabling method or template are not copyrightable. See 37 C.F.R. § 202.1(c).

The U.S. Copyright Office will not register a blank graph, chart, table, or figure if the **claim** is based solely on standard color variations, such as the mere addition of only a few standard colors. See *id.* § 202.1(a). However, the Office will register any copyrightable expression presented in a graph, chart, table, or figure, such as a copyrightable **compilation** of data, facts, or information. Additionally, the Office will register sufficiently expressive text that describes, explains, and/or interprets a particular graphing, charting, or tabling method.

### *Examples:*

- Gary Grant creates a pie chart that presents demographic information on five generations of a selected family. Gary files an application asserting a claim in “two-dimensional artwork, text, and chart.” The pie chart, in and of itself, is not copyrightable and cannot be registered. The **registration specialist** will communicate with the **applicant** and ask him to limit the claim to any registrable textual or compilation authorship.
- Gayle Giles creates a columnar table that records information about her son’s physical and intellectual growth in ten selected categories. Gayle includes text and photographs throughout the table. Gayle files an application asserting a claim in “design, text, photographs, and two-dimensional artwork.” The registration specialist will ask the applicant to limit the claim to the text, photographs, and the compilation of data to the extent that the selection and arrangement are original.

See generally **Registration of Claims to Copyright: Notice of Termination of Inquiry Regarding Blank Forms**, 45 Fed. Reg. 63,297 (Sept. 24, 1980).

## 922 Technical and Scientific Drawings

Technical and scientific drawings include mechanical drawings, engineering diagrams, and similar works. The U.S. Copyright Office will register these types of works if they contain a sufficient amount of original pictorial or graphic material.

Technical drawings are not considered useful articles for purposes of registration, because they convey information or merely portray the appearance of the object depicted in the drawing. 17 U.S.C. § 101 (definition of “useful article”). As such, they are not subject to the separability test described in Section 924.3.

When the Office registers a technical or scientific drawing, the registration covers only the drawing itself and does not “extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” 17 U.S.C. § 102(b). Likewise, a registration for a technical

drawing does not provide copyright protection for any useful article depicted in the drawing. See 17 U.S.C. § 113(b).

*Examples:*

- Terence Town creates five drawings that show the same screw from different perspectives (e.g., top-down, bottom-up, left elevation, right elevation, and a close-up of the screw’s grooves). Terence files an application that asserts a **claim** in “technical drawing.” The drawings do not provide information concerning the measurements, specifications, or other information concerning the size, design, or material composition of the screw depicted therein. The **registration specialist** may register the claim. The registration covers the drawings, but not the screw itself.
- Teresa Todorov submits several drawings that contain specifications and information concerning the fastener depicted therein. The **applicant** asserts a claim in a “technical drawing and text” as well as “technical drawing and **compilation**.” The registration specialist may ask the applicant to limit the claim to “technical drawing,” because this term adequately describes the authorship in the drawings together with the compilation of information and data concerning the depicted object. The specialist would accept a claim in “text” only if the drawing contained adequate descriptive or informational textual matter other than mere numbers, measurements, descriptive words and phrases, or the like.

## 923 Models

For purposes of copyright registration, a model is a three-dimensional replica or depiction of an object or design, such as a replica of a car or a model of an architectural design. Models are typically protected under U.S. copyright law as sculptural works, although they also may include pictorial or graphic elements. This Section discusses certain issues that commonly arise in connection with such works.

### 923.1 Copyrightable Authorship in Models

Models may be replicas or depictions of either artistic or utilitarian objects. Models themselves, however, are not considered useful articles for purposes of registration, because they convey information or merely portray the appearance of the object depicted in the model. 17 U.S.C. § 101 (definition of “useful article”). Similarly, children’s toys – such as model airplanes – are not themselves typically considered useful articles, because they merely portray the item that the toy represents. See *Gay Toys, Inc. v. Buddy L. Corp.*, 703 F.2d 970, 973 (6th Cir. 1983). Because they are not useful articles, models and toys are not subject to the separability test described in Section 924.3.

A replica of an existing useful article or a model of an existing architectural work may be protectable if it includes a sufficient amount of original authorship and if it contains some original differences from the object depicted. *Star Athletica*, 137 S. Ct. at 1010 (acknowledging that “a replica [of a useful article] could itself be copyrightable”). Specifically, the copyright law protects models if there are distinguishable, creative differences in shape, line, perspective, or details between the model and the depicted object. The amount of effort, time, monetary expense, technical skill, or

craft that the author contributed to the model is irrelevant to this determination. The complexity of the depicted object is also irrelevant. A model of a relatively simple object may be **copyrightable** if the author exercised sufficient creativity in rendering that object as a model. However, the Office will not register a model simply because it depicts an object that is extremely complex. See *Meshwerks, Inc. v. Toyota Motor Sales U.S.A., Inc.*, 528 F.3d 1258, 1265 (10th Cir. 2008) (Gorsuch, J.) (declining to extend copyright protection to digital wire frame models that depicted “nothing more than unadorned Toyota vehicles – the car *as car*”).

The copyright law does not protect models that are exact replicas of the source work, regardless of how much skill or labor was involved in creating the work. Merely reducing or enlarging the size of the source work or producing the source work in a new medium is not sufficient to warrant copyright protection. Likewise, the copyright law does not protect models if the differences between the model and the source work were dictated by manufacturing or material requirements. See *id.* at 1270 (“If the basic design reflected in a work of art does not owe its origin to the putative copyright holder, then that person must add something original to that design, and then only the original addition may be copyrighted.”); see also *ATC Distribution Group, Inc. v. Whatever It Takes Transmissions & Parts, Inc.*, 402 F.3d 700, 712 (6th Cir. 2005) (finding “hand-drawn sketches of transmission parts, copied from photographs” not copyrightable because “the illustrations were intended to be as accurate as possible in reproducing parts shown in the photographs . . . a form of slavish copying that is the antithesis of originality”).

Although a replica of a useful article “could itself be copyrightable,” the copyright in that model does not “give rise to any rights in the useful article that inspired it.” *Star Athletica*, 137 S. Ct. at 1010. In other words, one cannot “claim a copyright in a useful article merely by creating a replica of that article in some other medium,” such as “a cardboard model of a car.” *Id.* And the copyright in a model that portrays a useful article does not extend to the manufacture, distribution, or display of the useful article itself. See 17 U.S.C. § 113(b); H.R. REP. NO. 94-1476, at 105, reprinted in 1976 U.S.C.C.A.N at 5720.

## 923.2 Application Tips for Models

To register a three-dimensional model or a model containing a combination of two- and three-dimensional authorship, the **applicant** should describe the work as a “sculpture” in the Author Created field (when completing an online application) or in the Nature of Authorship space (when completing a paper application using **Form VA**).

Applicants may use the term “reproduction of work of art” to describe a model that is a three-dimensional interpretation of a preexisting work of art, such as a three-dimensional model of the *Mona Lisa*. If the model is an original, sculptural interpretation of an uncopyrightable object that is not a work of art, such as a truck, a train, or the letter “G,” applicants should use the term “sculpture” rather than the term “reproduction of work of art.”

In addition, applicants are strongly encouraged to provide a clear description of the creative authorship that the author contributed to the model using specific terms that distinguish the model from the object depicted. This information may be provided in the Note to Copyright Office field or in a cover letter. Doing so may avoid the need for correspondence that could delay the examination of the application.

If the work described in the application is a model of a work that is protected by copyright, the applicant should describe the new material that the author contributed to the model and should exclude the preexisting material from the **claim** in the appropriate fields or spaces of the applica-

tion. For guidance in completing this portion of the application, see [Chapter 600](#), Section 621.8. Such statements are encouraged, but not required, if the work described in the application is a replica of a useful article or an uncopyrightable object.

## 924 Copyright Law Protects the Design Aspects of a Useful Article

“The statute does not protect useful articles as such.” *Star Athletica*, 137 S. Ct. at 1008. But the pictorial, graphic, or sculptural features of the design of a useful article may be eligible for copyright protection if those features can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article. *See id.* at 1007.

Congress, the Supreme Court, and the U.S. Copyright Office interchangeably refer to “useful articles” as “useful objects,” “industrial articles,” “industrial products,” or “industrial designs.” *Star Athletica*, 137 S. Ct. at 1007; *Mazer*, 347 U.S. at 218-19; [H.R. REP. NO. 94-1476, at 55](#), reprinted in 1976 U.S.C.C.A.N. at 5668; [REPORT OF THE REGISTER OF COPYRIGHTS ON THE GENERAL REVISION OF THE U.S. COPYRIGHT LAW at 12 \(1961\)](#).

“The line between art and industrial design . . . is often difficult to draw.” *Star Athletica*, 137 S. Ct. at 1007. The Copyright Act protects “applied art,” which is defined as “art employed in the decoration, design, or execution of useful objects, or those arts or crafts that have a primarily utilitarian function, or the designs and decorations used in these arts.” *Id.* at 1014 (quotations and citations omitted); [H.R. REP. NO. 94-1476](#), at 54 (noting that “works of ‘applied art’ encompass all original, pictorial, graphic, and sculptural works that are intended to be or have been embodied in useful articles”), reprinted in 1976 U.S.C.C.A.N. at 5667.

But the statute draws a clear distinction “between copyrightable works of applied art and uncopyrighted works of industrial design.” [H.R. REP. NO. 94-1476, at 55](#), reprinted in 1976 U.S.C.C.A.N. at 5668. Specifically, the “design of a useful article shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” [17 U.S.C. § 101](#) (definition of “pictorial, graphic, and sculptural works”).

**NOTE:** As mentioned in [Section 906.10](#), the copyright law also limits the scope of protection for works of artistic craftsmanship. Specifically, the law protects the “form” of a work of artistic craftsmanship, but it does not protect “the mechanical or utilitarian aspects” of such works. *Id.* “Works of artistic craftsmanship” are considered a separate and distinct category of authorship for purposes of registration. For further discussion of these works, see [Section 925](#).

This Section provides a definition and discussion of the terms “useful article” and the “design of a useful article.” It describes the “separability test,” which is a “special rule for copyrighting a pictorial, graphic, or sculptural work [that has been] incorporated into a ‘useful article.’” *Star Athletica*, 137 S. Ct. at 1008, 1011. It also discusses issues that commonly arise in connection with such works.

### 924.1 What Is a Useful Article?

The Copyright Act defines a useful article as “an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.” 17 U.S.C. § 101. Common examples of useful articles include:

- Machinery, such as generators, lathes, and cement mixers.
- Tools and implements, such as hammers, shovels, and saws.
- Instruments, such as hypodermic needles, scalpels, calipers, and hair clippers.
- Measuring and computing devices, such as tape measures and rulers.
- Vehicles, such as automobiles, airplanes, and boats.
- Household appliances, such as refrigerators, stoves, toasters, food processors, vacuum cleaners, washing machines, air conditioners, clocks, and television sets.
- Household fixtures, such as bathtubs and sinks.
- Furniture, carpets, and curtains.
- Lamps and lighting fixtures.
- Tableware and glassware.
- Kitchen utensils, such as pots and pans.
- Bottles and containers.
- Textile fabrics.
- Articles of clothing.

The statute also provides that “[a]n article that is normally part of a useful article is considered a ‘useful article.’” *Id.* For example, the bezel on a wristwatch or a knob on a stove are useful articles, because they are inherently useful and they are intended to be used as part of a larger useful article.

By definition, a useful article must have an “intrinsic utilitarian function.” *Id.* For instance, lamps are inherently useful because they provide illumination, and the “shape, cut, and dimensions” of an article of clothing is inherently useful because it covers the body. *Star Athletica*, 137 S. Ct. at 1015-16.

Not all items that may be described as “useful” are “useful articles” under the Copyright Act:

- An item that merely conveys information is not considered a useful article, even if that information is inherently useful. *See* 17 U.S.C. § 101 (definition of “useful article”). This includes maps, charts, graphs, x-rays, and works of a similar nature.



- An item is not considered a useful article if it merely portrays the appearance of a useful article. *See id.* This includes models, technical drawings, and other works that depict a useful article in two or three dimensions.
- A pictorial, graphic, or sculptural work that does not have an intrinsic utilitarian purpose is not considered a useful article, even if it could potentially be used in a functional manner. For example, a sculpture does not become a useful article simply because it could potentially be used as a doorstop or a coat rack.
- Literary works, motion pictures, audiovisual works, architectural works, musical works, dramatic works, pantomimes, and choreographic works are not considered useful articles for purposes of registration, no matter how useful or functional they may be.

In determining whether an article does – or does not – have an intrinsically utilitarian function, the U.S. Copyright Office focuses solely on the work itself. *See Brandir International, Inc. v. Cascade Pacific Lumber Co.*, 834 F.2d 1142, 1145 (2d Cir. 1987) (“The work itself will continue to give ‘mute testimony’ of its origins.”); *Carol Barnhart, Inc. v. Economy Cover Corp.*, 773 F.2d 411, 414 (2d Cir. 1985) (“[T]he ‘mute testimony’” of a useful article puts a court “in as good a position as the Copyright Office to decide the issue”).

As with any other pictorial, graphic, or sculptural work, the Office will not consider the process or materials used to create the work, or the number of copies that have been made. **37 C.F.R. § 202.10(a)**. The Office will not consider the author’s state of mind concerning the intended use of the work. *Id.* Nor will the Office consider the marketability or commercial value of the work. *See H.R. REP. NO. 94-1476, at 54, reprinted in 1976 U.S.C.C.A.N. at 5667.*

## 924.2 What Is the Design of a Useful Article?

The “design” of a useful article refers “to the combination of details or features that . . . make up the useful article.” *Star Athletica*, 137 S. Ct. at 1009.

As discussed in Section 924, the design of a useful article may be “considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” **17 U.S.C. § 101**.

In making this determination, the U.S. Copyright Office applies the separability test set forth in *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002 (2017), which is described in more detail in Section 924.3.

Congress and the Supreme Court made clear that the Copyright Act does not provide protection for useful articles in and of themselves, no matter how aesthetically pleasing they may be. Thus, if a useful article does not contain any features that can be separated from the utilitarian aspects of the article, the Office will refuse to register the claim. *See id.* at 1007; **H.R. REP. NO. 94-1476, at 55, reprinted in 1976 U.S.C.C.A.N. at 5668** (“[A]lthough the shape of an industrial product may be aesthetically satisfying and valuable, the Committee’s intention is not to offer it copyright protection under the bill.”).



### 924.3 The Separability Test

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

First, the Office will examine the item for any features that “can be perceived as a two- or three-dimensional work of art separate from the useful article.” *Star Athletica*, 137 S. Ct. at 1007. This is known as the “separate-identification” requirement. *Id.*

Second, the Office will determine if that feature “would qualify as a protectable pictorial, graphic, or sculptural work – either on its own or fixed in some other tangible medium of expression – if it were imagined separately from the useful article into which it is incorporated.” *Id.* This is known as the “independent-existence” requirement. *Id.*

These requirements are discussed in more detail in Sections [924.3\(A\)](#) and [924.3\(B\)](#).

#### 924.3(A) The Separate-Identification Requirement

The first part of the separability test “is not onerous.” *Star Athletica*, 137 S. Ct. at 1010.

As a preliminary matter, the registration specialist will review the item depicted in the identifying material to determine if it is a useful article. In addition, the specialist will determine if any part of the article has an intrinsically utilitarian function, and as such, should also be considered a useful article. See [17 U.S.C. § 101](#) (definition of “useful article”). The criteria used in making these determinations are summarized in Section [924.1](#).

“The statute requires separability analysis for *any* ‘pictorial, graphic, or sculptural features’ incorporated into the ‘design of a useful article.’” *Star Athletica*, 137 S. Ct. at 1009 (emphasis added). That necessarily means that the Office must apply the separability test in all cases, even if the design only appears on part of a useful article.

If the item or part of the item appears to be a useful article, the specialist will look at the article to determine if he or she can “spot some two- or three-dimensional element that appears to have pictorial, graphic, or sculptural qualities.” *Id.* at 1010.

In this context, “pictorial” and “graphic” qualities may include pictures, drawings, illustrations, or other two-dimensional artwork. *Id.* at 1009. Sculptural qualities may include carvings, engravings, moldings, or other three-dimensional artwork.

If the useful article appears to have some pictorial, graphic, or sculptural qualities, the specialist will proceed to the second part of the separability test, which is described in Section [924.3\(B\)](#). If the specialist is unable to identify any features that have a pictorial, graphic, or sculptural quality, he or she will refuse to register the claim.

The following are representative examples of two- and three-dimensional features that typically satisfy the separate-identification requirement:

- A painting on a dinner plate.
- A portrait painted on a cigar box.

- An artistic print on wrapping paper or a paper bag.
- An artistic pattern woven into a rug.
- A carving on the back of a chair.
- A decorative hood ornament on an automobile.
- Artistic scroll work framed as a fireplace screen.

For additional examples that help illustrate how the Office applies the separate-identification requirement, see Sections [924.3\(C\)](#) through [924.3\(F\)](#).

### **924.3(B) The Independent-Existence Requirement**

The second part of the separability test is “more difficult to satisfy.” *Star Athletica*, 137 S. Ct. at 1010.

The registration specialist must determine if “the separately identified feature has the capacity to exist apart from the utilitarian aspects of the article.” *Id.* “In other words, the feature must be able to exist” as a pictorial, graphic, or sculptural work – “either on its own or when fixed in some other tangible medium [of expression]” – once it has been “identified and imagined apart from the useful article.” *Id.* at 1010, 1012. “If the feature is not capable of existing as a pictorial, graphic, or sculptural work once [it has been conceptually] separated from the useful article,” then it is simply one of the “utilitarian aspects” of the useful article that is not eligible for copyright protection. *Id.* at 1010.

The Supreme Court made it clear that “the separated feature [must] qualify as a nonuseful pictorial, graphic, or sculptural work on its own.” *Id.* at 1013. The feature cannot “be a useful article” in and of itself. *Id.* at 1010. Nor can it be “[a]n article that is normally a part of a useful article.” *Id.* (quoting [17 U.S.C. § 101](#), definition of “useful article”). And when the feature is conceptually removed from the useful article and imagined in another medium, it cannot be a replica of the article itself. *See id.* at 1010, 1012.

The following are representative examples of two- and three-dimensional features that typically satisfy the separate identification requirement:

- A work of art printed on a t-shirt.
- An etching on a tray.
- An artistic pattern printed on drapery.
- A statuette used as a lamp base.
- A floral relief design on silver flatware.
- A sculpted figure used as the handle of a letter opener.

For additional examples that help illustrate how the Office applies the independent-existence requirement, see Sections 924.3(C) through 924.3(F).

### 924.3(C) Separable Features May Enhance the Functionality of the Useful Article

As discussed in Section 924.3(B), an artistic feature cannot be a useful article in and of itself, and it cannot be “[a]n article that is normally a part of a useful article.” *Id.* at 1010. But the Supreme Court made it clear that a separable artistic feature may be copyrightable “even if it makes that [useful] article more useful.” *Star Athletica*, 137 S. Ct. at 1014.

To be eligible for copyright protection, an artistic feature must “qualify as a nonuseful pictorial, graphic, or sculptural work” once that feature “has been imaginatively separated from the article” and considered entirely “on its own.” *Id.* at 1013, 1014. If that is the case, the feature will satisfy the separability test, even if it serves a useful purpose when it is incorporated into a useful article.

For example, in *Mazer v. Stein*, the respondent registered a pair of statuettes, which were intended to be used as table lamps “with electric wiring, sockets and lamp shades attached.” 347 U.S. at 202. Pictures of one of these items are shown below.



A lamp is a useful article, because it provides illumination. The lamp base would also be considered a useful article, because it is normally a part of a lamp, and it has an intrinsically useful purpose: It supports the bulb, socket, and lamp shade. Applying the separability test to this element is straightforward. The base is a statuette, and if it was imagined apart from the lamp it would be considered a sculptural work. The statuette would not be intrinsically useful if it was conceptually removed from the lamp and considered on its own. Moreover, this is true even though the statuette could potentially be used in a functional manner when fitted with a shade, bulb, and wires.

### 924.3(D) Separable Features May Cover the Entire Surface of a Useful Article

An artistic feature may be eligible for copyright protection, even if it covers the entire surface of a useful article. Likewise, a feature may be protected even if it would retain the overall shape of a useful article if that feature was imaginatively removed from the surface of that article.

“Just as two-dimensional fine art corresponds to the shape of the canvas on which it is painted, two-dimensional applied art correlates to the contours of the article to which it is applied.” *Star Athletica*, 137 S. Ct. at 1012. An artistic feature may be protectable if it can be identified and imagined apart from a useful article. Once the feature has been conceptually separated from the article, the key question is whether it qualifies as a nonuseful pictorial, graphic, or sculptural work, or whether it is merely a replica of the article itself.

As the Supreme Court noted, a design etched or painted onto the surface of a guitar may have pictorial or graphic qualities. “If that entire design is imaginatively removed from the guitar’s surface and placed on an album cover, it would still resemble the shape of a guitar. But the image on the cover does not ‘replicate’ the guitar as a useful article.” *Id.* Instead, the design could be considered a two-dimensional work of art that simply “corresponds to the shape of the useful article to which it was applied.” *Id.* And if that design is sufficiently creative it could be protected as applied art.

### 924.3(E) Separating the Design Feature from the Useful Article

To satisfy the separability test, an artistic feature must “qualify as a nonuseful pictorial, graphic, or sculptural work on its own.” *Star Athletica*, 137 S. Ct. at 1013. “In other words, the feature must be able to exist as its own pictorial, graphic, or sculptural work . . . once it is imagined apart from the useful article.” *Id.* at 1010.

When applying this test, the U.S. Copyright Office focuses “on the extracted feature and not on any aspects of the useful article that remain after the imaginary extraction.” *Id.* at 1013. This means that “some aspects of the useful article” must be “left behind” once the artistic feature has been “conceptually removed” from that item for copyright protection to apply. *Id.* at 1014 (internal quotation marks omitted).

To be clear, the “imagined remainder” does not need to “be a fully functioning useful article” or an “equally useful” article. *Id.* In other words, the Office does not need to imagine a fully functioning useful article “without the artistic feature.” *Id.* at 1013. Nor does it need to “imagine a nonartistic replacement for the removed feature” to determine if that feature is capable of existing apart from the article. *Id.* at 1014. But to satisfy the separability test, at least some portion of the useful article must remain after the feature has been imaginatively removed.

For example, a decorative carving on the back of a chair can be imagined apart from the utilitarian aspects of the chair itself, because at least some portion of the useful article would be left behind, namely, the back, seat, arms, and legs. By contrast, the overall shape of the chair cannot be imagined apart from the item itself, because it “does not have the capacity to exist apart from the utilitarian aspects” of that item. *Id.* Nor does it have the capacity to exist “on its own” as a sculptural work. *Id.* at 1013.

See generally [H.R. REP. NO. 94-1476](#), at 55 (citing a carving on the back of a chair as an example of a separable feature of a useful article), *reprinted in* 1976 U.S.C.C.A.N. at 5668; Transcript of

Oral Argument at 72-73, *Mazer v. Stein*, 347 U.S. 201 (1954) (No. 228) (distinguishing between a piece of furniture and an ornate carving on furniture).

### 924.3(F) The Overall Shape of a Useful Article Is Not Protectable

Congress provided “limited copyright protection for certain features of industrial designs.” *Star Athletica*, 137 S. Ct. at 1007. Specifically, the copyright law only protects separable “pictorial, graphic, or sculptural *features*” that are “*incorporate[d]*” into the design of a useful article. **17 U.S.C. § 101** (definition of “pictorial, graphic, and sculptural works”; emphasis added).

As discussed above, the copyright law may protect the shape of a particular feature that has been incorporated into the design of a useful article if it is separable – meaning that it can be imagined apart from the utilitarian aspects of that article. But the copyright law does not protect the overall form, shape, or configuration of the useful article itself, no matter how pleasing or attractive it may be. See *Star Athletica*, 137 S. Ct. at 1010 (recognizing that a design feature cannot “be a useful article” in and of itself or “[a]n article that is normally part of a useful article”); **H.R. REP. NO. 94-1476, at 55** (noting that copyright protection does “not cover the over-all configuration of the utilitarian article as such”), *reprinted in* 1976 U.S.C.C.A.N. at 5668.

For example, in *Esquire, Inc. v. Ringer*, the appellant attempted to register “the overall shape of certain outdoor lighting fixtures.” 591 F.2d 796, 798 (D.C. Cir. 1978). The “[p]hotographs accompanying the applications showed stationary outdoor luminaries or floodlights, of contemporary design, with rounded or elliptically-shaped housings.” *Id.* These items could not be registered, because they did not contain any “elements, either alone or in combination, which are capable of independent existence as a copyrightable pictorial, graphic, or sculptural work.” *Id.* at 798-99.

The fixtures contained five elements: An elliptical or oblate-shaped housing, a base, an electrical socket, wires, and a light bulb. See *id.* at 798 n.2, 806. While these elements – particularly the housing and the base – can each be imagined in isolation, that is not the end of the inquiry. These elements are still considered useful articles for purposes of registration, because they have an “intrinsic utilitarian purpose” and each item is “[a]n article that is normally a part of a useful article.” **17 U.S.C. § 101** (definition of useful article).

There is arguably some – albeit minimal – sculptural quality in the overall shape of the housing and base. But that shape cannot exist as a standalone sculptural work. If that shape was recast in another medium, it would merely be an exact replica of a useful article, and unprotectable as a stand-alone sculptural work. See **Chapter 300**, Section 313.4(A). Thus for purposes of registration, the overall shape of the base and housing does not contain any features that can be identified separately from, or any features that are capable of existing independently of, the utilitarian aspects of this useful article.

**NOTE:** Although the Copyright Office would refuse to register a useful article with no separable features, it may register the overall shape, form, and configuration of a work of artistic craftsmanship if that work is sufficiently creative. For a detailed discussion of the differences between a useful article and a work of artistic craftsmanship, see Section **925.3**.

#### 924.4 The Originality Test

If the separability test has been satisfied, the U.S. Copyright Office still must determine if the design is sufficiently original to warrant registration. See *Star Athletica*, 137 S. Ct. at 1012 & n.1 (concluding that the respondent’s surface decorations were separable, but “express[ing] no opinion on whether these works are sufficiently original to qualify for copyright protection” or “whether any other prerequisite of a valid copyright has been satisfied”).

To be registered, the separable features of a useful article must constitute “copyrightable subject matter.” *Id.* at 1008. The statute defines “copyrightable subject matter as ‘original works of authorship fixed in any tangible medium of expression.’” *Id.* at 1008 (quoting 17 U.S.C. § 102(a)). As discussed in [Chapter 300](#), Section 308, the term “original” means that the design must be “independently created by the author” and must possess “at least some minimal degree of creativity.” *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 345 (1991).

As discussed in [Section 924.3\(E\)](#), a separable feature must be capable of existing as a pictorial, graphic, or sculptural work entirely “on its own.” *Star Athletica*, 137 S. Ct. at 1013. “In other words, the feature must be able to exist *as its own* pictorial, graphic, or sculptural work . . . once it is imagined apart from the useful article.” *Id.* at 1010 (emphasis added). That is, the Office imagines how those features would appear if they were conceptually removed from the useful article, and then determines if that “standalone” design contains a sufficient amount of creative expression to warrant registration. *Id.* at 1011.

#### 924.5 Guidelines for Applying the Separability and Originality Tests

When evaluating the design of a useful article, the U.S. Copyright Office focuses solely on the appearance of the artistic features that have been submitted for registration. In other words, the Office imagines how those features would appear if they were conceptually separated from the article, and then determines if that specific design qualifies as an original and nonuseful pictorial, graphic, or sculptural work.

If the registration specialist determines that the useful article contains a sufficient amount of separable, copyrightable authorship, he or she will register the claim. In addition, the specialist will add an annotation to the certificate identifying the separable, copyrightable features of the design, such as: “Basis for registration: [Pictorial / graphic / sculptural] features identified separately from and capable of existing independently of the utilitarian aspects of a useful article.”

As with any other pictorial, graphic, or sculptural work, the Office does not consider the materials used to create the design or the number of copies that have been made. [37 C.F.R. § 202.10\(a\)](#); [H.R. REP. NO. 94-1476, at 54](#), reprinted in 1976 U.S.C.C.A.N. at 5667.

The Office does not consider the author’s intention, artistic reputation, skill, experience, or expertise. *Star Athletica*, 137 S. Ct. at 1015 (declining to consider “the designer’s artistic judgment” because it is not “grounded in the text of the statute”).

The Office will not consider any alternative features or designs that the author may have created, or any other designs that may have been created by third parties. Nor does it consider “the intended use” of the article or its actual use “in industry.” *Mazer*, 347 U.S. at 219.

Evaluating these factors would require the Office “to consider evidence of the creator’s design methods, purposes, and reasons.” *Star Athletica*, 137 S. Ct. at 1015. The Supreme Court made it clear that copyrightability must be based on “how the article and feature are perceived, not how or why they were designed.” *Id.* at 1015.

For similar reasons, the Office does not consider the marketability or commercial appeal of the design. See **H.R. REP. NO. 94-1476, at 54**, reprinted in 1976 U.S.C.C.A.N. at 5667. “Nothing in the statute suggests that copyrightability depends on market surveys.” *Star Athletica*, 137 S. Ct. at 1015. Evaluating the commercial exploitation of a design would make copyright protection turn upon the applicant’s subjective intent at the time when the claim was submitted. “Moreover, asking whether some segment of the market would be interested in a given work threatens to prize popular art over other forms, or to substitute judicial [or administrative] aesthetic preferences for the policy choices embodied in the Copyright Act.” *Id.*

Finally, the fact that an article or design may be eligible for protection by a utility or design patent is irrelevant to the issue of copyrightability. *Id.* at 1015; *Mazer*, 347 U.S. at 217; **37 C.F.R. § 202.10(a)**; **H.R. REP. NO. 94-1476, at 54**, reprinted in 1976 U.S.C.C.A.N. at 5667.

## **924.6 Application Tips for Registering the Design of a Useful Article**

### **924.6(A) One Application Per Article**

For purposes of registration, the separable features of a useful article are considered one design, and the overall design is considered one pictorial, graphic, or sculptural work. **17 U.S.C. § 101** (“the design [singular] of a useful article . . . shall be considered a pictorial, graphic, or sculptural work [singular]”); *Star Athletica*, 137 S. Ct. at 1009 (explaining that the “design” [singular] of a useful article refers “to the combination of details or features [plural] that . . . make up the useful article”).

As a general rule, an applicant may register all of the separable features of a useful article with one application, deposit, and filing fee. If the exact same features have been incorporated into several useful articles – such as a bed, an armoire, and a nightstand – the applicant should select one of those items and submit identifying material showing the features as they appear on that item.

By contrast, when different sets of features have been incorporated into multiple useful articles, the applicant must submit a separate application, deposit, and filing fee for each article, even if those items are sold together or as part of the same set.

### **924.6(B) Completing the Application**

When completing the application, applicants are encouraged to identify the specific artistic features that are being submitted for registration. For example, the U.S. Copyright Office may accept a claim in “pictorial design applied to surface of silverware” or “sculptural design incorporated into the back of a chair.”

If the application merely asserts a claim in the overall “design” of the useful article, the registration specialist may communicate with the applicant if the scope of the claim is unclear. If the



applicant appears to be asserting a claim in the overall shape of the useful article, the specialist may simply refuse registration.

### 924.6(C) Preparing the Identifying Material

To register a design that has been incorporated into a useful article, the applicant should submit a drawing, photograph, or other identifying material that depicts the design as it appears on the useful article. See 37 C.F.R. § 202.20(c)(2)(xi)(A)(2).

Applicants are encouraged – but not required – to mark the deposit to identify the specific features being submitted for registration. For example, if the applicant intends to register a floral design that has been incorporated into the handle of a knife, the applicant may submit a photograph of the knife together with a close-up photo of the design. The applicant may submit a photo of the knife and circle or highlight the portion of the image where the design appears. Alternatively, the applicant may submit a drawing of the knife with solid lines showing the design, and broken lines used to depict all other aspects of the useful article.

## 925 Works of Artistic Craftsmanship

A “work of artistic craftsmanship” may be protected as a pictorial, graphic, or sculptural work, depending on whether it contains two- or three-dimensional authorship. This Section provides a definition of this term, and a discussion of issues that commonly arise in connection with such works.

As mentioned in Section 906.10, the copyright law limits the scope of protection for both works of artistic craftsmanship and the design of a useful article. The law protects the “form” of a work of artistic craftsmanship, but it does not protect “the mechanical or utilitarian aspects” of such works. 17 U.S.C. § 101 (definition of “pictorial, graphic, and sculptural works”). Likewise, the law protects “the design of a useful article,” but it does not protect “the utilitarian aspects” of a useful article. *Id.*

Works of artistic craftsmanship and the design of a useful article are considered separate and distinct categories of authorship for purposes of registration. For a detailed discussion of the differences between these types of works, see Section 925.3.

### 925.1 What Is a Work of Artistic Craftsmanship?

A work of artistic craftsmanship is a “work of art” that primarily serves a decorative or ornamental purpose, but “might also serve a useful purpose.” See *Star Athletica*, 137 S. Ct. at 1011 (interpreting U.S. Copyright Office regulation 37 C.F.R. § 202.8(a) (1948) governing “works of artistic craftsmanship”); *Mazer*, 347 U.S. at 212, 214 (same).

Common examples of works that fit within this category include:

- Stained glass.
- Tapestry.



- Wallpaper.
- Decorative bookends.
- Paperweights.
- Piggybanks.

These types of works are considered “objects of art,” even though they may have some “incidentally . . . useful purpose.” *United States v. Perry*, 146 U.S. 71, 75 (1892). In each case, the work is essentially artistic, and any incidental mechanical or utilitarian features are simply inherent in the object of the art form.

For instance, stained glass, tapestries, and wallpaper are primarily used to decorate interior spaces, but they may also be incidentally useful in filtering sunlight, blocking cold air, or reflecting ambient light. Sculpted bookends or paperweights are primarily decorative and incidentally useful in holding books upright or keeping papers in place. And most piggybanks are primarily ornamental, but also incidentally useful for actually storing coins.

## 925.2 Copyrightable Authorship in Works of Artistic Craftsmanship

The copyright law protects works of artistic craftsmanship “insofar as their form but not their mechanical or utilitarian aspects are concerned.” 17 U.S.C. § 101 (definition of “pictorial, graphic, and sculptural works”).

As with any other pictorial, graphic, or sculptural work, a work of artistic craftsmanship may be registered if the “delineation and form” of the work is sufficiently creative. See 37 C.F.R. § 202.10(a). In making this determination, the U.S. Copyright Office will consider the overall shape and configuration of the work. 37 C.F.R. § 202.10(a). But the Office will not consider any of the mechanical or utilitarian aspects of the work, such as the dowel hanger at the top of a tapestry or the plug in the belly of a piggybank.

In this respect, the test for evaluating a work of artistic craftsmanship is the mirror image of the test for evaluating the design of a useful article. Instead of separating an artistic feature from the utilitarian aspects of a useful article, the Office must segregate the mechanical or utilitarian aspects of a work of art. Like the separability test described in Section 924.3, this is a “conceptual undertaking.” *Star Athletica*, 137 S. Ct. at 1014.

If the work satisfies this test, the registration specialist may register the claim with an annotation, such as: “Basis for registration: work of artistic craftsmanship.”

## 925.3 Works of Artistic Craftsmanship Distinguished from a Useful Article

Differences between a work of artistic craftsmanship and the design of a useful article affect the test used to determine if the work is eligible for copyright protection, as well as the scope of protection for the work.

By its express terms, the statutory definition for “[p]ictorial, graphic, and sculptural works” distinguishes between “works of artistic craftsmanship” on the one hand, and “the design of a useful

article” on the other. **17 U.S.C. § 101**. The first part of the definition “is classic language . . . drawn from Copyright Office regulations promulgated in the 1940’s and expressly endorsed by the Supreme Court in the *Mazer* case.” **H.R. REP. NO. 94-1476, at 54-55**, reprinted in 1976 U.S.C.C.A.N. at 5667-68 (referencing 37 C.F.R. § 202.8(a) (1948)). “The second part” of the definition “is an adaptation of language added to the Copyright Office regulations in the mid-1950’s in an effort to implement the Supreme Court’s decision in the *Mazer* case.” *Id.* (referencing 37 C.F.R. § 202.10(c) (1960)); *Star Athletica*, 137 S. Ct. at 1011-12 (noting that “Congress essentially lifted the language governing protection for the design of a useful article directly from the post-*Mazer* regulations and placed it into § 101 of the 1976 Act”).

Works of artistic craftsmanship are protectable “insofar as their form but not their mechanical or utilitarian aspects are concerned,” and they are considered works of original authorship under **Section 102(a)(5)** of the copyright law. **17 U.S.C. §§ 101, 102(a)(5)**.

When examining a work of artistic craftsmanship, the Office applies the test set forth in **Section 925.2** to determine if the “delineation and form” of the work is sufficiently creative, including the overall shape and configuration of the work as a whole. *See* **37 C.F.R. § 202.10(a)**. If the work is registered, the registration covers the work as a whole, but it does not cover any of the mechanical or utilitarian aspects, elements, or features of that work.

By contrast, useful articles are not copyrightable as such, although “the design of a useful article” may be considered a pictorial, graphic, or sculptural work under **Section 102(a)(5)** of the copyright law. **17 U.S.C. §§ 101, 102(a)(5)**. Specifically, the design of a useful article may be protected “only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” **17 U.S.C. § 101**.

To determine if a particular feature satisfies this requirement, the Office applies the separability test set forth in **Section 924.3**, and then determines if that feature contains a sufficient amount of creative expression. Unlike a work of artistic craftsmanship, the copyright law does not protect the overall form, shape, or configuration of the useful article itself, no matter how pleasing or attractive it may be.

A useful article must have “an intrinsic utilitarian function.” **17 U.S.C. § 101** (definition of “useful article”). Works of artistic craftsmanship, by contrast, serve “primarily an ornamental, and incidentally a useful, purpose.” *Perry*, 146 U.S. at 75; *Star Athletica*, 137 S. Ct. at 1011 (noting that the *Mazer* Court approved the Copyright Office’s regulations extending copyright protection to works of art that might also serve a useful purpose); *Mazer*, 347 U.S. at 212, 214.

In determining whether a work does – or does not – have an intrinsically utilitarian function, the Office focuses solely on the work itself. As with any other pictorial, graphic, or sculptural work, the Office will not consider the process or materials used to create the work, or the number of copies that have been made. **37 C.F.R. § 202.10(a)**. The Office will not consider the author’s state of mind concerning the intended use of the work. *Id.* Nor will the Office consider the marketability or commercial value of the work. *See* **H.R. REP. NO. 94-1476, at 54**, reprinted in 1976 U.S.C.C.A.N. at 5667.

If there is any doubt as to whether an item is intrinsically or merely incidentally useful, the Office will treat that item as a useful article and apply the separability test set forth in **Section 924.3**.

## 926 Architectural Works

The Copyright Act protects “architectural works.” **17 U.S.C. § 102(a)(8)**. As discussed in Section **903.2**, the statute defines an architectural work as “the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings.” **17 U.S.C. § 101**. An architectural work “includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.” *Id.*

The U.S. Copyright Office will register an architectural work if it is sufficiently original and if it has been embodied in a tangible medium of expression, such as a constructed building or architectural plans or drawings. **37 C.F.R. § 202.11(c)**.

### 926.1 Architectural Works Distinguished from Technical Drawings

An architectural work and a technical drawing of an architectural work are separate works. **H.R. Rep. No. 101-735, at 19 (1990)** (“An individual creating an architectural work by depicting that work in plans or drawing[s] will have two separate copyrights, one in the architectural work . . . the other in the plans or drawings.”).

If the **applicant** intends to assert a **claim** in a technical drawing and the architectural work depicted therein, the applicant should file an application to register the architectural work and a separate application to register the technical drawing as a pictorial work, even though the **deposit copy(ies)** for both applications may be the same. **37 C.F.R. § 202.11(c)(4)**. (“Where dual copyright claims exist in technical drawings and the architectural work depicted in the drawings, any claims with respect to the technical drawings and the architectural work must be registered separately.”).

A registration for a technical drawing covers the drawing itself, but it does not cover the architectural work depicted therein. Although a technical drawing may be protected by copyright, the copyright owner cannot prevent a third party from using that drawing to construct an actual building. This is due to the fact that the copyright in a pictorial, graphic, or sculptural work that portrays a useful article – such as a building – does not give the owner of that work the right to control “the making, distribution, or display of the useful article.” **17 U.S.C. § 113(b)**. By contrast, when an architectural drawing or blueprint is registered as an architectural work, the registration covers the architectural work depicted in those drawings, and the registration may be used in an infringement action involving the unauthorized reproduction of that work in any material object (including the construction of an actual building).

*Example:*

- Tina Thorn submits a set of drawings and asserts a claim in “drawings for a building.” The **registration specialist** will communicate with the applicant, because it is unclear whether Tina intends to register the drawings or the architectural work depicted therein.

For guidance in completing an application to register an architectural work or an architectural drawing, see Section **926.3**.

## 926.2 Copyrightable Authorship in Architectural Works

The U.S. Copyright Office may register an architectural work if it is a habitable structure that is stationary, intended to have permanence, and intended for human occupancy. **37 C.F.R. § 202.11(b)(2)**. Examples of works that satisfy this requirement include houses, office buildings, churches, museums, gazebos, and pavilions. By contrast, the Office will refuse to register bridges, cloverleaves, dams, walkways, tents, recreational vehicles, or boats (although a house boat that is permanently affixed to a dock may be registrable as an architectural work). *Id.* **§ 202.11(d)(1)**.

The Copyright Act protects “the overall form [of an architectural work] as well as the arrangement and composition of spaces and elements in the design.” **17 U.S.C. § 101** (definition of “architectural work”). This may include “the overall shape of an architectural work.” **H.R. REP. NO. 101-735, at 21**. It may include interior architecture. *Id.* **at 18**. It also may include the “selection, coordination, or arrangement of unprotectible elements into an original, protectible whole,” as well as “new, protectible design elements [incorporated] into otherwise standard, unprotectible building features.” *Id.*

Copyright does not protect individual standard features, “such as common windows, doors, and other staple building components.” *Id.* Nor does it protect interior design, such as the selection and placement of furniture, lighting, paint, or similar items, although a pictorial, graphic, or sculptural representation of an interior design may be registered if it is sufficiently original. Finally, functional elements whose design or placement is dictated by utilitarian concerns are not copyrightable.

### *Examples:*

- Archer Anthony attempts to register a unique birdhouse. The **registration specialist** will refuse to register this item as an architectural work, because a birdhouse is not designed for human occupancy.
- Archibald Arnold attempts to register a moveable, fast-food kiosk for use in shopping malls. The registration specialist will refuse to register this item as an architectural work, because the kiosk is not permanent and stationary.
- Arlinda Atkins designs a condominium complex with a large, complex parking structure and intricate landscape design. She attempts to register each aspect of this design as an architectural work. The registration specialist will register the condominium design if it is sufficiently original, but will ask the **applicant** to remove the reference to the parking structure and landscape design.

While buildings are intrinsically useful, the statutory limitations and restrictions on useful articles only apply to pictorial, graphic, and sculptural works. The design of a building may be considered an “architectural work” under **§ 102(a)(8)** of the Copyright Act if it is sufficiently creative, but that design would not be considered a pictorial, graphic, or sculptural work. Consequently, architectural works are not subject to the separability test described in Section **924.3**. See **H.R. REP. NO. 101-735, at 20**.

When examining an architectural work for copyrightable authorship the Office applies a two-step test. The registration specialist will examine the work to determine “whether there are original design elements present, including [the] overall shape and interior architecture.” *Id.* If so, the specialist will “examine whether the design elements are functionally required.” *Id.* **at 20-**

21. “If the design elements are not functionally required, the work is protectable” and may be registered as an architectural work. *Id.* at 21.

As with any other work of the visual arts, the specialist will not consider the novelty, ingenuity, or aesthetic merit of the work. *Id.*

### 926.2(A) Standard Configurations

The U.S. Copyright Office will not register standard configurations of spaces, such as a square bathroom or one-room cabin. Likewise, the Office will not register **claims** in the individual standard features of an architectural work, such as windows, doors, and other staple building components. **37 C.F.R. § 202.11(d)**.

*Example:*

- Stacey Stone designs a motel comprised of a central hall with uniformly shaped rectangular rooms. The **registration specialist** will refuse to register this claim because it is a standard configuration of space.

### 926.2(B) Functional Features

The U.S. Copyright Office will not register purely functional elements of an architectural work, such as innovations in architectural engineering or construction techniques.

*Example:*

- Fulton Fowler designed a house with a solar-powered hot water heater and an earthquake-resistant bracing system. He filed an application to register each element of his design. The **registration specialist** may register the overall design as an architectural work if it is sufficiently original, but the specialist will ask the **applicant** to remove the references to the heater and bracing system.

### 926.2(C) Building Designs Created Before December 1, 1990

The Copyright Act does not protect building designs **published** or constructed before December 1, 1990. **37 C.F.R. § 202.11(d)(3)(i)**. Likewise, the statute does not protect designs for unconstructed buildings that were embodied in **unpublished** plans or drawings on December 1, 1990 if the design remained unconstructed as of December 31, 2002. **37 C.F.R. § 202.11(d)(3)(ii)**.

The Office will refuse to register these types of designs as an architectural work. The plans, drawings, or models for such works may be registered as a pictorial, graphic, or sculptural work, but the registration for such works does not extend to a building constructed from the plan, drawing, or model.

## 926.3 Application Tips for Architectural Works

To register an architectural work using the online application, the **applicant** should select “Work of the Visual Arts” in the field marked “Type of Work.” To register an architectural work with a paper application, the applicant should use **Form VA**.

If the architectural work has been **published**, the applicant should provide the date and nation of first publication in the Publication field/space. An architectural work is deemed published “when underlying plans or drawings of the building or other copies of the building design are distributed or made available to the general public by sale or other **transfer** of ownership, or by rental, lease, or lending. Construction of a building does not itself constitute publication for purposes of registration, unless multiple copies are constructed.” **37 C.F.R. § 202.11(c)(5)**.

If the work was embodied in unpublished plans or drawings on December 1, 1990, and if the architectural work was constructed before January 1, 2003, the applicant should provide the date that construction was completed. This information may be provided in the Note to Copyright Office field when completing an online application, or in a cover letter when submitting **Form VA**.

To register an architectural work, applicants should check the box marked “architectural work” in the Author Created field when completing an online application or in the Nature of Authorship space when completing a paper application. If an applicant submits an architectural drawing or blueprint and checks the box for “technical drawing,” the registration will cover the diagrams, illustrations, and accompanying text contained within that drawing, but it will not cover the building or other structure depicted in that drawing. For additional information concerning this issue, see Section **923.1**.

An application may cover only one architectural work, regardless of whether the work is published or unpublished. The U.S. Copyright Office will not register multiple architectural works as a group of related works. If the applicant intends to register variations on a single plan, such as a plan for tract housing, the applicant must submit a separate application for each house model with all accompanying floor plan options, elevations, and styles that are applicable to that particular model. **37 C.F.R. § 202.11(c)(2)**.

For information concerning the deposit requirements for architectural works, see **Chapter 1500**, Section 1509.3(D).