UNITED STATES COPYRIGHT OFFICE

COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES

THIRD EDITION

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Introduction to the Third Edition of the

COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES

The *Compendium of U.S. Copyright Office Practices, Third Edition* (the "*Compendium*" or "*Third Edition*") is the administrative manual of the Register of Copyrights concerning Title 17 of the United States Code and Chapter 37 of the Code of Federal Regulations. It provides instruction to agency staff regarding their statutory duties and provides expert guidance to copyright applicants, practitioners, scholars, the courts, and members of the general public regarding institutional practices and related principles of law. *See* 37 C.F.R. § 201.2(b)(7).

Effective Date of the *Third Edition*

The *Compendium, Third Edition* was released and became effective on December 22, 2014.

The *Compendium, Third Edition* is a living, electronic document accessible on the official website of the U.S. Copyright Office. The Office publishes regular revisions, as appropriate, to reflect changes in the law and/or practices, which customers may access, download, or print. The most recent update was released on January 28, 2021. The version posted on the Office's website at any given time should be consulted as the current official version. The Office maintains an archive of all revisions so released, as well as prior versions.

Citing to the *Compendium*

The full title of this manual is the "*Compendium of U.S. Copyright Office Practices, Third Edition*." The full title may be abbreviated as the "*Compendium*." The manual may be cited as follows:

Full citation:

- U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 101 (3d ed. 2021).

Short form citation:

- COMPENDIUM (THIRD) § 101.1(A).

What the *Compendium* Covers

The *Compendium* documents and explains the many technical requirements, regulations, and legal interpretations of the U.S. Copyright Office with a primary focus on the registration of copyright claims, documentation of copyright ownership, and recordation of copyright documents, including assignments and licenses. It describes the wide range of services that the Office provides for searching, accessing, and

retrieving information located in its extensive collection of copyright records and the associated fees for these services. The *Compendium* provides guidance regarding the contents and scope of particular registrations and records. And it seeks to educate applicants about a number of common mistakes, such as providing incorrect, ambiguous, or insufficient information, or making overbroad claims of authorship.

The *Compendium* does not cover every principle of copyright law or detail every aspect of the Office's administrative practices. The Office may, in exceptional circumstances, depart from its normal practices to ensure an outcome that is most appropriate.

Standard of Deference for the *Compendium*

The *Compendium* does not override any existing statute or regulation. The policies and practices set forth in the *Compendium* do not in themselves have the force and effect of law and are not binding upon the Register of Copyrights or Copyright Office staff. However, the *Compendium* does explain the legal rationale and determinations of the Copyright Office, where applicable, including circumstances where there is no controlling judicial authority.

The Supreme Court recognized that courts may consider the interpretations set forth in administrative manuals, policy statements, and similar materials "to the extent that those interpretations have 'the power to persuade.'" *Christensen v. Harris County*, 529 U.S. 576, 587 (2000) (internal citations omitted); *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1510 (2020) (applying "power to persuade" standard to the *Compendium*). The weight of [the agency's] judgment . . . in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade . . . ." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

Courts have cited the *Compendium* in numerous copyright cases. *See, e.g.*, *Olem Shoe Corp. v. Washington Shoe Corp.*, 2015 U.S. App. LEXIS 434, at *20-21 (11th Cir. Jan 12, 2015) (finding that the *Compendium's* construction of the Copyright Act's requirements for disclaiming preexisting works during registration "merits deference"); *Alaska Stock, LLC v. Houghton Mifflin Harcourt Publishing Co.*, 747 F.3d 673, 684 (9th Cir. 2014) (finding the *Compendium* "persuasive" concerning the registration requirements for databases); *Metropolitan Regional Information Systems, Inc. v. American Home Realty Network, Inc.*, 888 F. Supp. 2d 691, 706-07 (D. Md. 2012) (deferring to the *Compendium* concerning the registration requirements for collective works); *Rogers v. Better Business Bureau of Metropolitan Houston, Inc.*, 887 F. Supp. 2d 722, 732 (S.D. Tex. 2012) ("The Copyright Office's 'policy statements, agency manuals, and enforcement guidelines' do not carry 'the force of law,' but they are entitled to some deference given the 'specialized experience and broader investigations and information' of the agency."); *McLaren v. Chico's FAS, Inc.*, 2010 U.S. Dist. LEXIS 120185, at **9-10 (S.D.N.Y. Nov. 9, 2010) (concluding that the Office's interpretation of the unit of publication regulation "is particularly compelling"). A complete list of cases citing the first, second, and third editions of the *Compendium* is provided in the Table of Authorities.

Compendium Chapters

The *Compendium's* chapter scheme addresses the following key areas:

- Background on U.S. Copyright Office and general copyright law (Chapter 100).
- Overview of the registration process (Chapter 200).
- What is copyrightable (Chapter 300).
- Who may file an application for copyright registration, and distinguishing between applicants, claimants, and correspondents (Chapter 400).
- What may be or is covered by a registration and legal concepts relating to the authorship and ownership of joint works, works made for hire, derivative works, compilations, and collective works (Chapter 500).
- How to complete an application, including general categories of works and standards for examination (Chapter 600).
- Guidance regarding the copyrightability and registrability of literary works, works of the performing arts, and visual art works (Chapters 700, 800, and 900).
- Guidance regarding the copyrightability and registrability of websites and website content (Chapter 1000).
- When and how to register multiple works with one application, one filing fee, and one set of deposit copies (Chapter 1100).
- When and how to register mask works and vessel designs (Chapters 1200 and 1300).
- Types of applications and filing fees (Chapter 1400).
- Identifying and filing proper deposit copies for registration and mandatory deposit (Chapter 1500).
- Conditions for, benefits of, and processes for preregistration (Chapter 1600).
- How to request reconsideration of a refusal of a registration (Chapter 1700).
- How to modify a registration record, such as correcting or amplifying the information in a certificate of registration, cancelling a copyright registration, or asserting an adverse claim to copyright (Chapter 1800).
- Guidance on the meaning of publication and how to determine if a work is published (Chapter 1900).

- Registering a foreign work (Chapter 2000).
- How to seek a renewal registration for works first published or registered before January 1, 1978 (Chapter 2100).
- Copyright notice and the works that are subject to the notice requirement (Chapter 2200).
- Recording documents related to copyright ownership, notices of termination, and other documents that the Office records under Title 17 (Chapter 2300).
- Accessing and obtaining Office records and other Office services (Chapter 2400).

First and Second Editions of the *Compendium*

The first edition of the *Compendium* (commonly referred to as "*Compendium I*") governed the Office's general practices for registration, recordation, and other matters arising under the Copyright Act of 1909. Largely an internal manual, it was directed to the Office's examining staff. *Compendium I* was made available to the public for the first time in 1967 and it was last revised in 1973. *See* U.S. COPYRIGHT OFFICE, *Introduction* to COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES (1st ed. 1973); Inspection and Copying of Records and Other Documents, 32 Fed. Reg. 9314 (June 30, 1967).

The second edition of the *Compendium* (commonly referred to as "*Compendium II*") was also designed for internal use. *Compendium II* reflects the Copyright Office's general practices for registration, recordation, and other matters arising under the Copyright Act of 1976, prior to the adoption of the *Third Edition*. It was first published in 1984 and revised in part in 1988 and 1998. In 1988 the Office added Chapter 600 (Registration Procedures) and Chapter 1900 (Records, Indexes and Deposits). In 1995 the Office amended Chapter 600, § 606.04, which discussed the procedure for requesting reconsideration of a refusal to register. In 1998 the Office revised Chapter 1600 (Recordation of Transfers) and Chapter 1900 (Records, Indexes, and Deposits). *See generally* Change in Procedure for Recording Certain Multiple Title Documents, 63 Fed. Reg. 23,475 (Apr. 29, 1998); Modification of Appeal Procedure, 60 Fed. Reg. 21,983 (May 4, 1995); Compendium of Copyright Office Practices, 53 Fed. Reg. 20,392 (June 3, 1988); Compendium of Copyright Office Practices, 49 Fed. Reg. 23,125 (June 4, 1984).

Although the Copyright Act of 1909 was repealed effective January 1, 1978, *Compendium II* did not supersede *Compendium I*. The preface to *Compendium II* expressly stated that *Compendium I* continued "to apply to Copyright Office actions, in situations . . . where the provisions of the Copyright Act of 1909, as amended, are dispositive." U.S. Copyright Office, Preface to Compendium of U.S. Copyright Office Practices (2d ed. 1984). In other words, *Compendium I* remained the governing administrative manual for all registrations, renewals, and recordations issued by the Office prior to January 1, 1978. It also set forth the registration requirements for works published before January 1, 1978 where the applicant subsequently sought to register the work for the original copyright term (*i.e.*, the first twenty-eight years of the copyright), including issues involving copyright notice and the manufacturing clause.

Compendiums I and *II* are available on the Office's website. They are also available for inspection and copying in the Records, Research and Certification Section. *See* 37 C.F.R. § 201.2(b)(7).

Relationship Between the First, Second, and Third Editions of the *Compendium*

This version of the *Third Edition* governs registrations and recordations issued by the U.S. Copyright Office on or after January 28, 2021. Registrations and recordations issued between December 22, 2014 and January 27, 2021 are generally governed by the prior versions of the *Third Edition*, except in cases where those versions have been superseded by an amendment to the regulations, intervening case law, or previously announced changes in practice.

To the extent there is a conflict between the *Third Edition* and *Compendiums I* or *II*, the current version shall control. That said, the *Third Edition* does not comprehensively cover all of the Office's practices under the prior copyright law. To the extent that issues arise that are not addressed by the *Third Edition*, *Compendiums I* and *II* remain in effect and continue to be the governing administrative manuals for practices involving those issues.

In particular, the *Third Edition* generally does not address practices under the Copyright Act of 1909. *Compendium I* continues to be the controlling manual for registrations, renewals, and recordations issued by the Office prior to January 1, 1978, and for the registration requirements for works published before January 1, 1978 that were never registered for the original copyright term. For ease of reference, however, Chapter 2100 of the *Third Edition* summarizes most of the relevant practices from *Compendium I* concerning the registration and renewal of such works.

Similarly, the *Third Edition* does not address all practices involving provisions of the Copyright Act of 1976 that have been amended or repealed since 1978. As a general rule, *Compendium II* continues to be the relevant administrative manual for registrations, renewals, and recordations issued by the Office between January 1, 1978 and December 22, 2014. In particular, Chapter 1200 of *Compendium II* continues to be the governing manual concerning the manufacturing clause, although that Chapter only applies to works published before June 30, 1986, which is the date that the manufacturing clause expired.

Using the *Compendium*

The U.S. Copyright Office makes the *Compendium* available in PDF format. The complete manual may be accessed or downloaded in its entirety or on a chapter-by-chapter basis. Each chapter can be accessed through the link set forth in the table of contents for the *Compendium* as a whole. Additionally, the *Compendium* includes a glossary of terms that are commonly used in registration and recordation practice. These terms are defined and linked throughout the chapters. Certain frequently used phrases are defined for convenience.

How to Search the *Compendium*

You may search for specific terms in the *Compendium* by using the "find" features in Adobe Acrobat or Adobe Reader, or by using the search engine on the Office's website. These features are described below.

Basic Searching with Adobe Acrobat or Adobe Reader

The "find" feature in Adobe Acrobat or Adobe Reader allows users to search for specific words or phrases within the entire *Compendium* or within specific chapters. To conduct a basic search, follow these steps:

Step 1:

- Select "Edit" from the toolbar at the top of your screen, and then select "Find" from the drop-down menu. In the alternative, you may press Ctrl+ F to activate the Find feature. A box labeled "Find" will appear on your screen.

Step 2:

- Enter the word or phrase you would like to find in the box labeled Find. To search for specific provisions of the Copyright Act, U.S. Copyright Office regulations, or the *Compendium,* enter the section number you would like to find, such as "409(1)" or "202.1."

Step 3:

- Click the "previous" or "next" button. If the search term appears within the document it will be highlighted on your screen. If the search term appears elsewhere within the same document you may find it by clicking the "previous" or "next" buttons again. If the search term does not appear within the document the following message will appear: "Reader has finished searching the document. No matches were found." To close the Find feature, click the "x" that appears in the upper right corner of that box.

Advanced Searching with Adobe Acrobat or Adobe Reader

Use the "advanced search" feature in Adobe Acrobat or Adobe Reader to identify all of the places where a specific word or phrase appears within the *Compendium* or within specific chapters. To conduct an advanced search, follow these steps:

Step 1:

- Save a copy of the entire *Compendium* or a specific chapter to your desktop.

Step 2:

- Open the document using Adobe Reader or Adobe Acrobat.

Step 3:

- Select "Edit" from the toolbar at the top of your screen and then select "Advanced search" from the drop-down menu. In the alternative, you may press Shift+Ctrl+ F to activate the advanced search feature. A box labeled "Search" will appear on the left side of your screen.

Step 4:

- Enter the word or phrase you would like to find in the box marked "What word or phrase would you like to search for?" To search for specific provisions of the Copyright Act, U.S. Copyright Office regulations, or the *Compendium,* enter the section number you would like to find, such as "409(1)" or "202.1."

Step 5:

- Click the "Search" button. If the search term appears within the document, it will appear in a box labeled "Results," along with a brief excerpt from each sentence where that term appears. If the search term does not appear within the document the following message will appear: "0 document(s) with 0 instance(s)." To conduct another search click the "New Search" button. To close the advanced search feature, click the "x" that appears in the upper right corner of the Search box.

How to Provide Comments on the *Compendium*

The U.S. Copyright Office welcomes substantive input regarding the *Compendium* during formal notice and commenting periods. The Office also appreciates feedback on readability, clarity, coverage, and usability of the *Compendium* on an ongoing basis. These comments may be emailed by using the form posted on the Office's website.

COMPENDIUM: Chapter 100

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U.S. Copyright Office and the Copyright Law: General Background

101 The U.S. Copyright Office

101.1 History of the U.S. Copyright Office

In May 1790, when Congress enacted the first federal copyright law, the U.S. Copyright Office did not yet exist. Instead, authors and publishers recorded their claims with federal district courts and submitted copies of their works (in those days, book, maps, and charts) in support of their applications. These works, known as deposits, were stored in a variety of places, including in the U.S. Department of State and the U.S. Department of the Interior. As of 1846, the Smithsonian Institution and the Library of Congress shared them. This meant that records of copyright ownership were scattered among different government offices, and despite the federal scheme of protection, there was neither a consolidated tracking system nor centralized plan for preserving or using deposited works.

In 1870, Congress moved registration and deposit functions from the dispersed federal courts to the Library of Congress, which under Ainsworth Spofford advocated for and utilized the deposit copies as a foundation for the Library's collection. This move helped transform the Library of Congress into a national institution. However, as copyright law evolved in both scope and complexity, the Nation and the Congress began grappling with a variety of policy issues that required leadership and expertise, including, for example, provisions that extended the public performance right to musical compositions and provided corresponding criminal penalties and injunctive relief, and amendments establishing reciprocity with foreign governments. Moreover, the volume of copyright-related work required greater focus and segregation from general Library functions. *See Condition of the Library of Congress: Hearings Before the Joint Committee on the Library*, 54th Cong. (1897) (statement of Ainsworth Spofford) ("The fruit of [the Copyright Act] has been to enormously enrich the Library of Congress. On the other hand, it has at the same time enormously increased the difficulties of administration in such miserably narrow quarters."), *reprinted in* S. REP. NO. 54-1573, at 28 (1897).

In 1897, Congress established and funded the U.S. Copyright Office as a separate department within the Library and created the position of Register of Copyrights to head it. Since that act, the Register has been appointed by, and works under the general direction of, the Librarian of Congress. This appointment authority, however, required that the Librarian thereafter be appointed with the advice and consent of the Senate. Thus, at the dawn of the twentieth century, Congress had not only created a formal foundation for copyright administration, but also created the Register as the central position of related expertise within the U.S. government, who in turn developed an expert staff.

As with other matters of intellectual property law, Congressional Rules give the respective judiciary committees of both chambers legislative jurisdiction over all copyright matters. *See* Senate Rule XXV; House Rule X. The Register is the principal advisor to Congress regarding domestic and international copyright issues, but also works closely and collaboratively with other federal departments and agencies on copyright matters.

The longstanding role of the U.S. Copyright Office in policy matters was codified in the Copyright Act. 17 U.S.C. § 701. The work of the Office takes several forms. It provides expert subject matter assistance to Congress on copyright policy and interpretation of the copyright law; provides drafting support, including analysis and assistance for copyright legislation and legislative reports; undertakes studies and public roundtables for Congress; and offers advice on compliance with treaties and trade agreements.

As a critical office within the U.S. government, the U.S. Copyright Office also works closely with executive branch offices, including most regularly the Department of Justice, the White House, the Office of the U.S. Trade Representative, the Department of Commerce and U.S. Patent and Trademark Office, and the Department of State. It provides policy analysis to these offices; participates in copyright-related litigation; provides support on trade and enforcement measures; participates on U.S. delegations to intergovernmental meetings and in other international events; hosts copyright training for copyright officials from foreign countries; and provides outreach and education on a routine basis.

The Register of Copyrights has an especially important relationship with the Undersecretary for Intellectual Property, who heads the U.S. Patent and Trademark Office and advises the President on intellectual property matters. These officers frequently work together in the international arena and the Undersecretary must consult with the Register "on all copyright and related matters" that involve his Office. 35 U.S.C. § 2(c)(5). The U.S. Copyright Office also works closely with the Intellectual Property Enforcement Coordinator (the "IPEC"), based in the Executive Office of the President. The Register is a statutory member of the IPEC's interagency intellectual property enforcement advisory committee. 15 U.S.C. § 8111(b)(3)(A)(ii).

Finally, the U.S. Copyright Office's unique position as the guardian of copyright registration documents deserves special mention. The Office maintains a wealth of information about the different types of works that have been registered in the United States throughout the years. This amounts to an unparalleled database of cultural heritage, as the Office has registered millions of copyright claims for authors, artists, publishers, producers, and distributors of creative works since 1897. The Office annually registers more than half a million copyright claims, records more than 10,000 documents relating to chain of title and other copyright-related matters in connection with hundreds of thousands of titles, and collects more than $300 million dollars in statutory licensing funds. Likewise, it has facilitated the acquisition of hundreds of thousands of copies of books, serial publications, sound recordings, motion pictures, photographs, maps, and prints for the Library's collection.

U.S. Copyright Office records also provide a glimpse into the evolution of U.S. registration and recordation practices. Examples of some important historic registrations and recordations include:

- *First federal registration of a work*: John Barry's book, *The Philadelphia Spelling Book*, registered with the U.S. District Court for the District of Pennsylvania in 1790.

- *First federal recordation of a document pertaining to copyright*: *Issued on July 25, 1870.*

- *Registration of the Statue of Liberty*: On August 31, 1876, Henry de Stuckle and Auguste F. Bartholdi secured registration number 9939-G for the "Statue of American Independence," as the Statue of Liberty was first named. The copyright claim was filed in America's centennial year, a decade before the statue was erected in New York Harbor.

- *First registration issued after the establishment of the U.S. Copyright Office*: *"Dr. Quixote – A New Comedy in Three Acts" by Charles F. Coughlan, registered by J.E. Dodson on July 1, 1897.*

- *First motion picture registrations*: The *Edison Kinetoscopic Record of a Sneeze, January 7, 1894*, submitted on January 9, 1894 by William Kennedy Laurie Dickson, is the earliest extant copyrighted motion picture in the Library of Congress's collections. The short clip, known in film circles as *Fred Ott's Sneeze*, shows a mustachioed man sneezing. The motion picture was registered as a series of photographs because motion pictures were not covered by U.S. copyright law until 1912. The first work registered as a motion picture was the Republic Film Company's September 12, 1912 registration for *Black Sheep's Wool*.

- *First television show registration*: "Unexpected Guest" by Hopalong Cassidy, registered in 1947.

- *First registration for a choreographic work embodied in Laban notation*: *Hanya Holm's choreography for Kiss Me Kate, registered as a dramatic work in 1952.*

- *First computer program registration*: John F. Banzhaf's computer program to compute automobile braking distances, registered in 1964.

- *First sound recording registration*: Bob and Dorothy Roberts's "Color Photo Processing Cassette, An Accurate Sound Signal and Oral Instruction System for Processing," registered on February 15, 1972.

101.2 Organization of the U.S. Copyright Office

The Register of Copyrights is the Director of the U.S. Copyright Office and a recognized leader and lawyer within the U.S. government. By statute, the Register works under the general direction of the Librarian of Congress and carries out a variety of legal and policy functions that are enumerated throughout Title 17. The U.S. Copyright Office has eight main divisions, in addition to the Register's Office, and several hundred staff. There

are four Associate Registers of Copyrights and four additional division heads that report directly to the Register and help to carry out her statutory mandate. An organizational chart is available on the Office's website.

101.2(A) Office of the Register

The Office of the Register of Copyrights has overall responsibility for the U.S. Copyright Office and its statutory mandate, specifically: for legal interpretation of the copyright law; administering the provisions of Title 17; promulgating copyright regulations; advising Congress and other government officials on domestic and international copyright policy and other intellectual property issues; determining personnel and other resource requirements for the Office; organizing strategic and annual program planning; and preparing budget estimates for inclusion in the budget of the Library of Congress and U.S. government.

101.2(B) Office of the General Counsel

The Office of the General Counsel ("OGC") is headed by the General Counsel and Associate Register of Copyrights, who is an expert copyright attorney and one of four legal advisors to the Register. This Office assists the Register in carrying out critical work of the U.S. Copyright Office regarding the legal interpretation of the copyright law. The General Counsel liaisons with the Department of Justice, other federal departments, and the legal community on a wide range of copyright matters, including litigation and the administration of Title 17. The General Counsel also has primary responsibility for the formulation and promulgation of regulations and the adoption of legal positions governing policy matters and the practices of the U.S. Copyright Office.

101.2(C) Office of Policy and International Affairs

The Office of Policy and International Affairs ("PIA") is headed by the Associate Register of Copyrights and Director of Policy and International Affairs, who is an expert copyright attorney and one of four legal advisors to the Register. This Office assists the Register with critical policy functions of the U.S. Copyright Office, including domestic and international policy analyses, legislative support, and trade negotiations. PIA represents the U.S. Copyright Office at meetings of government officials concerned with the international aspects of intellectual property protection, and provides regular support to Congress and its committees on statutory amendments and construction.

101.2(D) Office of Registration Policy and Practice

The Office of Registration Policy and Practice is headed by the Associate Register of Copyrights and Director of Registration Policy and Practice, who is an expert copyright attorney and one of four legal advisors to the Register. This Office administers the U.S. copyright registration system and advises the Register of Copyrights on questions of registration policy and related regulations and interpretations of copyright law. This Office has three divisions: Literary, Performing Arts, and Visual Arts, which are described in Chapters 700, 800, and 900 of this Compendium, respectively. It also has a number of specialized sections, for example, in the area of motion pictures. This Office executes major sections of the *Compendium of Copyright Office Practices*, particularly with respect to the examination of claims and related principles of law.

101.2(E) Office of Public Information and Education

The Office of Public Information and Education ("PIE") is headed by the Associate Register for Public Information and Education, who is an expert copyright attorney and one of four legal advisors to the Register. This Office informs and helps carry out the work of the Register and the U.S. Copyright Office in providing authoritative information about the copyright law to the public and establishing educational programs. The Office publishes the copyright law and other provisions of Title 17; maintains a robust and accurate public website; creates and distributes a variety of circulars, information sheets, and newsletters, including NewsNet; responds to public inquiries regarding provisions of the law, explains registration policies, procedures, and other copyright-related topics upon request; plans and executes a variety of educational activities; and engages in outreach with various copyright community stakeholders.

101.2(F) Office of Public Records and Repositories

The Office of Public Records and Repositories is headed by the Director, who is an expert in public administration and one of the Register's top business advisors. This Office is responsible for carrying out major provisions of Title 17, including establishing records policies; ensuring the storage and security of copyright deposits, both analog and digital; recording licenses and transfers of copyright ownership; preserving, maintaining, and servicing copyright-related records; researching and providing certified and uncertified reproductions of copyright deposits; and maintaining the official records of the U.S. Copyright Office. Additionally, the Office engages regularly in discussions with leaders in the private and public sectors regarding issues of metadata, interoperability, data management, and open government.

101.2(G) Copyright Modernization Office

The Copyright Modernization Office ("CMO") directs and coordinates all modernization activities on behalf of the U.S. Copyright Office, including resources, communications, stakeholder engagement, and business project management. The CMO ensures that modernization activities are continuously aligned with the Office's and the Library of Congress's strategic goals, and collaborates with the Office and the Library to drive modernization efforts. The CMO provides project management, data management/analytics, and business analysis. It also serves as the primary liaison with the Library of Congress's Office and Chief Information Officer ("OCIO") and serves in a leadership function on the Office's Modernization Governance Board.

101.2(H) Office of the Chief Financial Officer

The Office of the Chief Financial Officer is headed by the Chief Financial Officer ("CFO"), who advises the Register on all fiscal, acquisition, budget, and financial policy matters of the U.S. Copyright Office. The Office of the CFO supervises the Copyright Office's appropriations process, budget execution, acquisitions and procurements, fee processing, statutory royalty investments and disbursements, financial controls, and resource planning. This Office interacts with every other senior management office that reports to the Register and frequently coordinates with management of the Library of Congress.

The Office of the CFO also oversees the Licensing Division. This division administers certain statutory licenses set forth in the Copyright Act. It collects royalty payments and examines statements of account for the cable statutory license (17 U.S.C. § 111), the satellite statutory license for retransmission of distant television broadcast stations (17 U.S.C. § 119), and the statutory license for digital audio recording technology (17 U.S.C. §§ 1001-1010). It also accepts and records documents associated with the use of the mechanical statutory license (17 U.S.C. § 115).

101.2(I) Office of the Chief of Operations

The Office of the Chief of Operations is headed by the Chief of Operations ("COO"), who advises the Register on core business functions and coordinates and directs the day-to-day operations of the U.S. Copyright Office. The Office of the COO supervises human capital, mandatory deposits and acquisitions, contracts, and strategic planning functions. This Office interacts with every other senior management office that reports to the Register and frequently coordinates and assesses institutional projects. The COO chairs the U.S. Copyright Office's operations committee.

The following divisions fall under the oversight of the Chief of Operations:

- The Receipt Analysis and Control Division is responsible for sorting, analyzing, and scanning incoming mail; creating initial records; labeling materials; and searching, assembling, and dispatching electronic and hard copy materials and deposits to the appropriate service areas. The Division is responsible for operating the U.S. Copyright Office's central print room, mail functions, and temporary storage.

- The Copyright Acquisitions Division ("CAD") administers the mandatory deposit requirements of the Copyright Act, acting as a trusted intermediary between copyright owners of certain published works and the acquisitions staff in the Library of Congress. 17 U.S.C. § 407. This Office creates and updates records for the copies received by the U.S. Copyright Office; demands particular works or particular formats of works as necessary; administers deposit agreements between the Library and copyright owners; and assists the Office in public discussions and rulemakings regarding the submission requirements for digital works and the best edition requirements.

101.3 Functions of the U.S. Copyright Office

The functions of the U.S. Copyright Office are set forth in Title 17 of the U.S. Code, which includes the provisions of the Copyright Act of 1976 as well chapters on the Digital Millennium Copyright Act ("DMCA"), vessel designs, and other *sui generis* protections and exemptions (referenced in this *Compendium*, as the case may require, as "Title 17," the "DMCA," or the "Copyright Act," or with respect to the latter, the "1976 Act" or "Act"). The statute directs the Register of Copyrights, as Director of the U.S. Copyright Office, to carry out a variety of activities, which are described in Sections 101.3(A) through 101.3(D).

101.3(A) National Copyright Registration and Recordation System

The Copyright Act establishes the U.S. Copyright Office's statutory obligation to administer both a copyright registration and copyright recordation system on behalf of the Nation. Pursuant to its provisions, the Office undertakes the following duties, among others:

- *Registration*: The U.S. Copyright Office examines applications for registering claims to copyright and any accompanying deposit copy(ies) to determine whether they satisfy the statutory requirements for registrability, including copyrightability, and otherwise comply with the Office's regulations. Based on its findings, the Office then either registers or refuses to register the claims. Many of the controlling provisions for registration are set forth in Chapter 4 of the Copyright Act. Section 408 of the Act authorizes the Register to promulgate regulations to allow identifying material in place of deposit copy(ies), permit the registration of groups of related works with one application, and provide for the correction and amplification of registrations. Section 410 of the Act sets forth the Register's authority to examine and either register or refuse copyright claims. Sections 411 and 412 address registration as a prerequisite for civil infringement claims and certain remedies. Chapters 200 through 2200 of this *Compendium* discuss the Office's policies and practices relating to the examination of claims for copyright registration.

- *Recordation*: The statutory provisions governing recordation are set forth in Chapter 2 of the Copyright Act. Under Section 205, any transfer of copyright ownership or other document relating to copyright may be recorded in the U.S. Copyright Office, subject to certain conditions. The recordation of documents pertaining to transfers or other ownership matters is voluntary, but recommended because: (i) it provides constructive notice of the facts stated in the recorded document if certain conditions have been met; (ii) when a transfer of copyright is timely recorded (within one month of its execution in the United States or two months of its execution outside of the United States, or any time before a conflicting transfer is recorded), the recorded transfer prevails over a later executed transfer; and (iii) a complete public record may mitigate problems related to orphan works. Interested parties also record or consult documents pertaining to licenses, death of authors, expiration of term, wills, trusts, security interests, and mortgages, to name a few. For a discussion of some of these documents, see Chapter 2300 of this *Compendium*.

- *Termination notices*: The Copyright Act allows, under certain circumstances, authors or their heirs to terminate an agreement that previously granted one or more of the author's exclusive rights to a third party. These termination provisions are set forth in Sections 203, 304(c), and 304(d) of the Act. To terminate an agreement, a notice of termination must be served on the grantee, and it must be recorded with the U.S. Copyright Office in a timely manner as a condition of effect. 17 U.S.C. §§ 203(a)(4), 304(c)(4), 304(d)(1). For a discussion of recordation of notices of termination, see Chapter 2300, Section 2310 of this *Compendium*.

- *Public records*: The U.S. Copyright Office maintains extensive public records of copyright claims dating back to 1870 and in some instances earlier, including:

- Certificates of registration, which attest that registration has been made and may constitute *prima facie* evidence of the validity of the copyright and of the facts stated in the certificate (if registration is made before publication or within five years of first publication). 17 U.S.C. § 410(c).

- The online public record, which provides the basic facts of registrations and recordations made after January 1, 1978. This information is available in a searchable database on the Office's website.

- The Copyright Card Catalog, which is a physical archive available for public use at the Copyright Office in searching for completed registrations and recorded documents made before January 1, 1978.

In some circumstances, the Office will issue certified copies of applications, correspondence, deposit copy(ies), documents, and other materials submitted to the Office in connection with copyright registrations and recorded documents. In addition, the Office has a reference search service that provides search reports regarding the facts of registration and recordation contained in the Office's files. For a discussion of these services, see Chapter 2400 of this *Compendium*.

- *Mandatory deposit*: The U.S. Copyright Office administers Section 407 of the Copyright Act, which requires copyright owners to deposit certain published works with the Library of Congress for its collections. In this role, the Office may facilitate, demand, negotiate, or exempt the provision of copies or phonorecords. Absent a special exemption, the law requires that one or two copies of the best edition of every copyrightable work published in the United States be sent to the Office within three months of publication, regardless of whether a claim in the work is registered. 17 U.S.C. § 407(a). For a detailed discussion of mandatory deposit, see Chapter 1500, Section 1511 of this *Compendium*.

- *Service provider directory*: The Office of Public Records and Repositories administers a directory of service provider agents to receive notifications of claims of infringement as provided under Section 512(c) of the Copyright Act.

- *Mask works*: The U.S. Copyright Office examines and registers claims to mask works fixed in semiconductor chip products filed under the Semiconductor Chip Protection Act of 1984, title III of Pub. L. No. 98-620, 98 Stat. 3347 (codified as amended at 17 U.S.C. §§ 901-914). Chapter 1200 of this *Compendium* discusses the examination of claims in mask works.

- *Vessel designs*: The U.S. Copyright Office examines and registers claims in vessel designs filed under the Vessel Hull Design Protection Act, title V of the Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860, 2905 (1998) (codified as amended at 17 U.S.C. §§ 1301-1332). Chapter 1300 of this *Compendium* discusses the examination of claims in vessel designs.

101.3(B) Regulatory Work

The U.S. Copyright Office promulgates regulations to implement various provisions of Title 17 "not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title." 17 U.S.C. § 702. These regulations are subject to the approval of the Librarian of Congress. *See id.*

Congress expressly made the Register's actions under Title 17 subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended. 17 U.S.C. § 701(e).

101.3(C) Advising Congress and Intergovernmental Work

The Register advises Congress on national and international copyright issues. The U.S. Copyright Office also works closely with the federal departments and agencies discussed in Section 101.1 above. 17 U.S.C. § 701. Among other things, the Office provides expert assistance to Congress in the interpretation of Title 17 and compliance with international agreements, such as the Berne Convention for the Protection of Literary and Artistic Works (the "Berne Convention") and the WIPO Internet Treaties. The Office also conducts public discussions on law and policy; produces major legal studies, makes policy recommendations; participates in copyright-related litigation when the U.S. government has an interest; provides support on trade and enforcement measures; attends intergovernmental meetings and other international events; and hosts copyright training for copyright officials from foreign countries.

101.3(D) Administering Statutory Licenses

As discussed in Section 101.2(H), the U.S. Copyright Office's Licensing Division administers the statutory licenses for cable and satellite retransmissions and the statutory license for digital audio recording technology. It also records certain documents associated with the mechanical statutory license. These statutory licenses allow third parties to make certain limited uses of copyrighted works without the copyright owners' permission, provided that certain statutory requirements are met. The Division deducts its operating costs from these royalty fees and invests the balance in interest-bearing securities with the U.S. Treasury for later distribution to copyright owners.

101.4 U.S. Copyright Office Seal

The Register of Copyrights has adopted the following official seal pursuant to the authority of the Copyright Act. 17 U.S.C. § 701(c); Notice of New Copyright Office Seal, 68 Fed. Reg. 71,171 (Dec. 22, 2003). The U.S. Copyright Office uses this seal on certificates of registration, certified records, and in connection with other official documents, including reports to Congress.

102 Sources of Law

U.S. copyright law is derived from several authoritative sources, including the U.S. Constitution, statutory provisions, court decisions, and regulations. These sources and their role in shaping copyright law in the United States are reviewed in Sections 102.1 through 102.7 below.

102.1 Constitutional Basis for and Purpose of Copyright Law

Copyright has been a part of the American legal landscape since colonial times, when many of the colonies adopted copyright laws. *See* U.S. COPYRIGHT OFFICE BULLETIN 3, COPYRIGHT ENACTMENTS 1783-1900, at 9-29 (listing copyright laws enacted by Connecticut, Massachusetts, Maryland, New Jersey, New Hampshire, Rhode Island, Pennsylvania, South Carolina, Virginia, North Carolina, Georgia, and New York between 1783 and 1786), *available at* www.copyright.gov/history/Copyright_Enactments_1783-1973.pdf. Upon ratification, the U.S. Constitution provided Congress with the ability to make federal laws to protect copyright. Specifically, Article 1, Section 8, Clause 8 (which includes the "Copyright Clause") states that "Congress shall have Power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The promotion of "science," as that term is used in the Copyright Clause, is understood to refer to the purpose of copyright law (despite the contemporary usage of the term). *See Eldred v. Ashcroft*, 537 U.S. 186, 197 (2003). The Supreme Court has confirmed that this clause empowers Congress to enact a copyright system. *See Golan v. Holder*, 565 U.S. 302, 323-25 (2012).

U.S. courts have analyzed the purpose of the Copyright Clause in a number of cases. The Supreme Court has interpreted the Copyright Clause to mean that copyright laws should promote both the creation and dissemination of creative works. *See*, *e.g.*, *Golan*, 132 S. Ct. at 888-89. Thus, "[t]he Framers intended copyright itself to be the engine of free expression." *Harper & Row Publishers, Inc. v. Nation Enterprises et a*l., 471 U.S. 539, 558 (1985); *see also Golan*, 132 S. Ct. at 890 ("By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas.").

102.2 Statutes and Regulations

Congress has exercised its authority to enact federal copyright laws on numerous occasions. The first Copyright Act, enacted in 1790, and subsequent laws are summarized in the historical timeline in Section 102.7 below. The current Copyright Act was enacted in 1976 and became effective on January 1, 1978. It has been amended numerous times since its enactment. The Copyright Act protects "original works of authorship" that are "fixed in any tangible medium of expression…." 17 U.S.C. § 102(a). Section 106 of the Act provides copyright holders with a number of exclusive rights (including the right to reproduce works, prepare derivative works, distribute works, and in certain cases, to publicly perform and display works). It also provides certain exceptions and limitations to these exclusive rights. *See* 17 U.S.C. §§ 107-122.

Works that predate the effective date of the 1976 Act are governed by statutory provisions of the 1909 Copyright Act; the most relevant of these provisions are discussed in Chapter 2100 of this *Compendium*.

102.2(A) Copyright Act of 1976

The 1976 Act replaced the 1909 Copyright Act and changed much of how copyright law operates, including as follows:

- The 1976 Act implemented a new calculus for determining the duration of copyright (known as the "term of protection" or, more simply, the "term"). Previously, works were protected for a specific initial term and could be renewed for an additional renewal term. The 1976 Act does not require renewal. In most cases, the Act provides protection to works based on the time frame of the author's life plus seventy years. 17 U.S.C. § 302(a). In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright lasts for a term of ninety-five years from the year of its first publication, or a term of one hundred twenty years from the year of its creation, whichever expires first. 17 U.S.C. § 302(c).

- Unlike prior U.S. copyright laws, copyright protection under the 1976 Act is not contingent on publication or registration. All copyrightable works are now protected from the moment of fixation in a tangible medium of expression, regardless of whether they are published, registered, or recorded at any time. 17 U.S.C. § 102(a).

- The 1976 Act (in Sections 203, 304(c), and 304(d)) allows an author to terminate certain grants of copyright in the author's work after a specified number of years. The 1909 Act, by contrast, gave the author an opportunity to recoup his or her rights by vesting the copyright in the renewal term in the author, meaning that the author had to provide a separate grant expressly to a publisher or other third party for the renewal term (*i.e.,* after the first twenty-eight years).

- The 1976 Act added protections for certain additional types of works, including pantomime and choreography. 17 U.S.C. § 102(a)(4). Since 1976, the statute has been amended to provide copyright protection for architectural works and certain protection for mask works and vessel designs.

- Congress added numerous exceptions and limitations to the statute (currently set forth in Sections 107 through 122 of the Act), including Sections 107 (which codified the judicially-created fair use doctrine) and 108 (which created specific exceptions for libraries and archives).

Congress has updated the 1976 Act several times. For more information concerning these amendments, see the historical timeline in Section 102.7 below.

102.2(B) U.S. Copyright Office Regulations

Section 702 of the Copyright Act authorizes the Register of Copyrights, subject to the approval of the Librarian of Congress, to promulgate regulations relating to the Register's duties, including the registration of copyrights. Pursuant to this authority, the U.S. Copyright Office has promulgated regulations pertaining to the examination and registration of copyrights and the recordation of transfers of copyright ownership, among other things. These regulations are embodied in Title 37 of the Code of Federal Regulations. They cover a variety of registration topics, such as how to submit applications, how to contest the Office's refusal to issue a copyright registration, and specific deposit requirements. Ordinarily, when the Office decides to issue a new regulation, it publishes a notice of proposed rulemaking in the Federal Register in accordance with the Administrative Procedure Act. 17 U.S.C. § 701(e); *see also* 5 U.S.C. § 553. Typically, the Office also notifies the public through its NewsNet service. In most cases, the public is invited to provide comments on proposed regulations for the Office's consideration.

102.3 Administrative Procedure Act

Congress expressly made the Register's actions under the Copyright Act subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended. 17 U.S.C. § 701(e). Congress legislated only one express exception to this rule: Section 706(b) of the Copyright Act which provides for the U.S. Copyright Office to issue regulations specifying the conditions under which the Office may authorize or furnish copies or reproductions of deposited articles retained by the Office.

102.4 Federal Court Decisions

Federal courts have interpreted the 1976 Act on numerous occasions, resulting in a well-developed body of case law. Sometimes courts decide issues that are not squarely addressed by the 1976 Act and, in doing so, develop standards that are consistent with the Act and provide additional guidance. Thus, certain copyright law doctrines are derived largely from court decisions.

For example, the Copyright Act does not explain what level of creativity is necessary for a work to qualify as a "work of authorship" under the Act. Section 102(a) of the Act states — without further elaboration — that "[c]opyright protection subsists… in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." Numerous courts have analyzed what an original work of authorship is under the Act. For more

information on the originality requirement, see Chapter 300, Section 308 of this *Compendium*.

The standards for comparing works and determining when a work protected by copyright is infringed by another work also come from judicial doctrine. For instance, courts have held that, to prevail in a copyright infringement case, a copyright owner must show (i) direct evidence that the defendant copied the copyright owner's work, or (ii) that the defendant had access to the copyrighted work, and (iii) that the copyright owner's and defendant's works are substantially similar.

Certain U.S. copyright law doctrines are entirely judicially-created and have never been directly codified in the Act, such as theories of contributory and vicarious liability for infringement. Others, such as principles of fair use (Section 107 of the Act), are codified at a high level in the 1976 Act, but are interpreted on a case-by-case basis by the courts.

For these reasons, it is important to consult court opinions on copyright-related issues. When doing so, note that copyright law doctrines may differ among jurisdictions, as different circuits have followed different standards. For example, the infringement standard in the Ninth Circuit is somewhat different from that of the First and the Second Circuits.

102.5 State Laws

U.S. copyright protection is governed by federal law. Section 301(a) of the 1976 Act preempts all similar protections provided by state law, other than with respect to sound recordings fixed before February 15, 1972, as provided under Section 301(c) of the Act. Preemption applies only when a state law provides protections that are equivalent to those set forth in the Copyright Act (*i.e.*, rights equivalent to any of the exclusive rights under Section 106 of the Act in fixed works of authorship that fall within the subject matter of copyright). There are a significant number of court decisions interpreting exactly when a state claim is close enough to an exclusive right provided by the Copyright Act to be preempted. This case law should be consulted for questions regarding preemption and may vary to some extent by jurisdiction.

Sections 301(b) and (c) of the 1976 Act also specifically set forth some types of copyright-like protections that states may provide. These include: (i) works not fixed in a tangible medium of expression; (ii) a narrow exception for nonsubscription broadcast transmission of pre-1972 sound recordings; (iii) state and local landmarks, historic preservation, zoning, or building codes relating to architectural works protected under Section 102(a)(8) of the Act; and (iv) causes of actions for acts that took place before January 1, 1978.

102.6 Territorial Scope of U.S. Copyright Law

Generally speaking, U.S. copyright law applies only to acts that take place in the United States, including the Commonwealth of Puerto Rico and U.S. territories. *See Subafilms, Ltd. v. MGM-Pathe Communications Co.*, 24 F.3d 1088, 1094-95 (9th Cir. 1994). Under the Berne Convention, national law applies to foreign works, and the law of the country in which infringement takes place generally applies to infringement disputes. Berne Convention for the Protection of Literary and Artistic Works, art. 5(1), (3), Sept. 9, 1886,

as revised at Paris on July 24, 1971 and amended on Sept. 28, 1979, S. Treaty Doc. No. 99-27 (1986). Thus, copyright infringement that occurs in the United States is governed by U.S. law. However, courts may look to the law of a foreign country where ownership of the work was established or transferred in cases where questions are raised concerning foreign ownership and copyright origin even in the context of a U.S. infringement action. *See, e.g., Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 153 F.3d 82, 88-92 (2d Cir. 1998).

102.7 Timeline of Selected Historical Dates in U.S. Copyright Law

The United States has a long and rich history of copyright law. Below is a timeline of some of the most interesting developments that have occurred since the colonial era. In addition to this timeline, the U.S. Copyright Office's website includes a wealth of historical information, including additional notable dates, extensive information on past copyright laws, and prior publications.

- August 18, 1787: James Madison submits to the framers of the Constitution a provision "to secure to literary authors their copyrights for a limited time."

- June 23, 1789: First federal bill relating to copyrights (H.R.10) presented to the first Congress.

- May 31, 1790: Congress enacts the first federal copyright law, "An act for encouragement of learning by securing copies of maps, charts, and books to the authors and proprietors of such copies during the times therein mentioned." This law provided for a term of fourteen years with the option of renewing the registration for another fourteen-year term. The law only applied to books, maps, and charts. It also noted that a copyright should be registered in the U.S. district court where the author or proprietor resided (not the U.S. Copyright Office, which had not yet been created).

- April 29, 1802: Congress adds prints to works protected by copyright law.

- February 3, 1831: First general revision of the copyright law. Music added to works protected against unauthorized printing and vending. First term of copyright extended to twenty-eight years with the option of renewal for another fourteen-year term.

- August 18, 1856: Congress passes a supplementary law to protect dramatic compositions.

- December 31, 1864: President Abraham Lincoln appoints Ainsworth Rand Spofford to be the sixth Librarian of Congress. Spofford served as the *de facto* Register of Copyrights until the formal position of Register was created in 1897.

- March 3, 1865: Congress enacts "An Act to amend the several Acts respecting Copyright," which added protections for photographs and photographic negatives.

- July 8, 1870: In this second major revision of copyright law, Congress centralized copyright activities (including registration and deposit) in the Library of Congress. The law added "works of art" to the list of protected works and reserved to authors the right to create certain derivative works, including translations and dramatizations.

- March 3, 1891: With the passage of the International Copyright Act, Congress extended copyright protection to certain works by foreign authors. This was the first U.S. copyright law authorizing establishment of copyright relations with foreign countries.

- July 1891: The *Catalog of Copyright Entries*, which includes records of registered works, is published in book form for the first time.

- 1895: Congress mandates that U.S. government works are not subject to copyright protection.

- January 6, 1897: Congress enacts a law to protect music against unauthorized public performance.

- February 19, 1897: The U.S. Copyright Office is established as a separate department of the Library of Congress. Position of Register of Copyrights created.

- July 1, 1909: Effective date of third general revision of the copyright law. Certain classes of unpublished works now eligible for registration. Term of statutory protection for a work copyrighted in published form measured from the date of publication of the work. Renewal term extended from fourteen to twenty-eight years.

- August 24, 1912: Motion pictures, previously allowed to be registered only as a series of still photographs, added as a class of protected works.

- July 13, 1914: President Woodrow Wilson proclaims U.S. adherence to the Buenos Aires Copyright Convention of 1910, which established copyright protection between the United States and certain Latin American nations.

- July 1, 1940: Effective date of transfer of jurisdiction for the registration of commercial prints and labels from the U.S. Patent Office to the U.S. Copyright Office.

- July 30, 1947: The copyright law codified as Title 17 of the U.S. Code.

- January 1, 1953: Recording and performing rights extended to nondramatic literary works.

- September 16, 1955: United States becomes party to the 1952 Universal Copyright Convention as revised in Geneva, Switzerland.

- September 19, 1962: First of nine special acts extending terms of subsisting renewal copyrights pending congressional action on general copyright law revision.

- February 15, 1972: Effective date of the act extending limited copyright protection to sound recordings fixed and first published on or after this date.

- March 10, 1974: United States becomes a member of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.

- July 10, 1974: United States becomes party to the 1971 revision of the Universal Copyright Convention as revised at Paris, France.

- October 19, 1976: Fourth general revision of the copyright law signed by President Gerald Ford. This extensive revision included numerous provisions that modernized copyright law, as described in Section 102.2(A) above.

- January 1, 1978: Effective date of principal provisions of the 1976 copyright law.

- December 12, 1980: Copyright law amended to address computer programs.

- May 24, 1982: Section 506(a) amended to provide that persons who infringe copyright willfully and for purposes of commercial advantage or private financial gain shall be subject to criminal penalties.

- October 4, 1984: Effective date of Record Rental Amendments of 1984, which granted the owner of copyright in a sound recording the right to authorize or prohibit the rental, lease, or lending of phonorecords for direct or indirect commercial purposes.

- November 8, 1984: Federal statutory protection for mask works became available under the Semiconductor Chip Protection Act, with the U.S. Copyright Office assuming administrative responsibility. The Office began registering claims in mask works on January 7, 1985.

- June 30, 1986: Expiration of the manufacturing clause of the Copyright Act of 1976, which required that certain types of works be typeset, printed, and bound in the United States. For more information about the manufacturing clause under the 1909 Act, see Chapter 2100 of this *Compendium*.

- March 1, 1989: The effective date of United States adherence to the Berne Convention for the Protection of Literary and Artistic Works, as revised in Paris, France in 1971.

- December 1, 1990: Copyright protection extended to architectural works. Section 106A added to copyright law by the Visual Artists Rights Act, which allows authors of certain types of visual works of art certain moral rights of attribution and integrity.

- December 1, 1990: Effective date of the Computer Software Rental Amendments Act. Grants the owner of copyright in computer programs the exclusive right to

authorize or prohibit the rental, lease, or lending of a program for direct or indirect commercial purposes.

- June 26, 1992: Renewal registration becomes optional on a prospective basis. Any work in its twenty-eighth year of copyright protection no longer requires a renewal application with the U.S. Copyright Office in order for the copyright to extend into and through the renewal term. As such, all works initially copyrighted between January 1, 1964 and December 31, 1977 were renewed automatically, even if the party entitled to claim the renewal copyright failed to file a timely renewal with the Office.

- October 28, 1992: Effective date of the Audio Home Recording Act. The Act requires the placement of serial copy management systems in digital audio recorders and imposes royalties on the sale of digital audio recording devices and media that are distributed to the copyright owners.

- December 17, 1993: Copyright Royalty Tribunal Reform Act of 1993 eliminates the existing Copyright Royalty Tribunal and replaces it with *ad hoc* Copyright Arbitration Royalty Panels administered by the Librarian of Congress and the U.S. Copyright Office.

- December 8, 1994: The Uruguay Round Agreements Act restores copyright to certain foreign works under protection in the source country but in the public domain in the United States. It also repeals the sunset of the Software Rental Amendments Act and creates legal measures to prohibit the unauthorized fixation and trafficking in sound recordings of live musical performances and music videos.

- November 16, 1997: The No Electronic Theft (NET) Act defines "financial gain" in relation to copyright infringement and sets penalties for willfully infringing a copyright either for the purposes of commercial advantage or private financial gain or by reproducing or distributing (including by electronic means) phonorecords of a certain value.

- October 27, 1998: The Sonny Bono Copyright Term Extension Act extends the term of copyright for most works by twenty years.

- October 28, 1998: The Digital Millennium Copyright Act of 1998 ("DMCA") adds several major provisions to the Copyright Act. It provides for the implementation of the World Intellectual Property Organization ("WIPO") Copyright Treaty ("WCT") and the WIPO Performances and Phonograms Treaty ("WPPT"), by adding prohibitions against circumventing technological measures protecting copyrighted works and removing or altering copyright management information. It also creates the Section 512 safe harbors from liability for internet service providers; provides an exemption in Section 117 of the Act permitting the temporary reproduction of computer programs made in the course of maintenance or repair; clarifies the policy role of the U.S. Copyright Office; and creates a new form of protection for vessel designs.

- November 2, 2002: The Technology, Education, and Copyright Harmonization ("TEACH") Act provides for the use of copyrighted works by accredited nonprofit educational institutions in distance education.

- November 30, 2004: The Copyright Royalty and Distribution Reform Act phases out the Copyright Arbitration Royalty Panel system and replaces it with the Copyright Royalty Board.

- April 27, 2005: The Artists' Rights and Theft Prevention Act ("ART Act") allows for preregistration of certain works being prepared for commercial distribution.

- October 13, 2008: The Prioritizing Resources and Organization for Intellectual Property Act of 2008 ("PRO-IP Act") is enacted. Among other things, the PRO-IP Act established the new government position of the Intellectual Property Enforcement Coordinator, codified case law regarding the effect of inaccurate information knowingly included in an application for copyright registration, and prohibited the export and import of infringing copies of works that are or would be protected under the U.S. Copyright Act.

- October 09, 2018: The Marrakesh Treaty Implementation Act was signed into law on this date. By amending Section 121 and adding a new Section 121A to the Copyright Act, this law implemented obligations of this treaty into U.S. law, and allowed the United States to join the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (2013), with an effective date of treaty membership being May 8, 2019. U.S. membership in the treaty came into force on May 8, 2019.

- October 11, 2018: The Orrin G. Hatch – Bob Goodlatte Music Modernization Act ("MMA") is enacted. This bipartisan and unanimously enacted legislation created a blanket licensing system for digital music providers, extended federal copyright infringement remedies to sound recordings fixed before February 15, 1972, and codified a process wherein sound recording royalties can be distributed directly to producers under a "letter of direction."

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Overview of the Registration Process

201 What This Chapter Covers

This Chapter provides a general overview of the copyright registration system and the practices and procedures for submitting an application to register a work created or first published on or after January 1, 1978. For a chart that illustrates the entire registration process at a glance, see Section 213.

For a detailed discussion of the U.S. Copyright Office's registration practices, see the following chapters:

- For the practices and procedures for examining copyright claims, see Chapter 600.
- For the practices and procedures for registering certain groups of works, see Chapter 1100.
- For a general discussion of filing fees and applications, including the Single Application, which may be used to register one work by one author, see Chapter 1400.
- For the practices and procedures for correcting or amplifying the information in an existing copyright registration and for asserting an adverse claim to copyright, see Chapter 1800.
- For the practices and procedures for the renewal of copyright claims, see Chapter 2100.

For a detailed discussion of the Office's practices and procedures for specific types of works, see the following chapters:

- For literary works, see Chapter 700.
- For works of the performing arts, see Chapter 800.
- For visual art works, see Chapter 900.
- For websites and website content, see Chapter 1000.
- For mask works, see Chapter 1200.
- For vessel designs, see Chapter 1300.
- For foreign works, see Chapter 2000.

202 Purposes and Advantages of Registration

Under the current copyright law, a work of authorship is protected by copyright from the moment it is created, provided that the work is original and has been fixed in a tangible medium of expression. *See* 17 U.S.C. §§ 102(a), 408(a). Although registration is not required for a work to be protected by copyright, it does provide several important benefits:

- A registration creates a public record that includes key facts relating to the authorship and ownership of the claimed work, as well as information about the work, such as title, year of creation, date of publication (if any), and the type of authorship that the work contains (*e.g.,* photographs, text, sound recordings).

- A registration (or a refusal to register) is a prerequisite to filing a lawsuit for copyright infringement involving a United States work. *See* 17 U.S.C. § 411(a). A 'registration . . . has been made' within the meaning of 17 U.S.C. § 411(a) . . . when the Register has registered a copyright after examining a properly filed application." *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC,* 139 S. Ct. 881, 892 (2019). "[R]egistration is akin to an administrative exhaustion requirement that the owner must satisfy before suing to enforce ownership rights," because "it is the Register's action that triggers a copyright owner's entitlement to sue." *Id*. at 887, 890. "Once the Register grants or refuses registration, the copyright owner may also seek an injunction barring the infringer from continued violation of her exclusive rights and an order requiring the infringer to destroy infringing materials." *Id*. (citing 17 U.S.C. §§ 502, 503(b)).

  NOTE: There are three exceptions to this rule. A registration or a refusal is not needed to file a lawsuit suit involving a foreign work. *Id*. at 891. Section 408(f) of the Copyright Act allows the owner of a work that is "especially susceptible to prepublication infringement . . . to institute suit before the Register has granted or refused registration." *Id*. at 892. Section 411(c) provides a similar exception for infringements involving live broadcasts. "As to all other works, however, § 411(a)'s general rule requires owners to await action by the Register before filing suit for infringement." *Id*.

- To claim statutory damages or attorney's fees in a copyright infringement lawsuit, a work must be registered before the infringement began or within three months after the first publication of the work. *See* 17 U.S.C. §§ 412(c), 504, 505. "If [the] infringement occurs before a copyright owner applies for registration, that owner may eventually recover [actual] damages for the past infringement and the infringer's profits," but if the claim involves a United States work, the owner must "apply for registration and receive the Copyright Office's decision on her application before instituting suit." *Fourth Estate Public Benefit Corp.,* 139 S. Ct. at 891.

- A registration constitutes *prima facie* evidence of the validity of the copyright and the facts stated in the certificate of registration, but only if the work is registered before or within five years after the work is first published.

- A registration provides information to prospective licensees, such as the name and address for obtaining permission to use the work.

- A document that has been recorded with the U.S. Copyright Office may provide constructive notice of the facts stated therein, but only if the document specifically identifies a work of authorship and only if that work has been registered. *See* 17 U.S.C. § 205(c)(1)-(2).

- The deposit copy(ies) submitted with an application for registration of a published work may satisfy the mandatory deposit requirement, provided that the applicant submitted the best edition of the work. *See* 17 U.S.C. §§ 407, 408(b).

- A registration is necessary to secure the full benefits of a preregistration that has been issued by the U.S. Copyright Office. *See* 17 U.S.C. § 408(f)(3).

- The U.S. Customs and Border Protection Service may seize foreign pirated copies of a copyright owner's work, provided that the work has been registered with the U.S. Copyright Office and the certificate of registration has been recorded with the U.S. Customs and Border Protection Service.

- "To be entitled to receive royalties under [the section 115] compulsory license for nondigital uses, the copyright owner must be identified in the registration or other public records of the Copyright Office." *See* 17 U.S.C. § 115(c)(1)(A).

202.1 Types of Registrations

The U.S. Copyright Office registers claims to copyright in works of authorship. As a general rule, the Office will issue one registration for each work that is submitted for registration. Generally, the Office will not issue separate registrations for the constituent elements or individual components of a work of authorship. And as discussed Chapter 500, Section 503.1(A), the Office generally will not issue separate registrations to each author who contributed copyrightable expression to the work.

The U.S. Copyright Office currently offers the following types of registrations:

- *Basic registrations*. An application for a basic registration is used to register a copyright claim in a work created or first published on or after January 1, 1978, and covers the full term of the copyright. This type of registration may be obtained with a Standard Application, a Single Application (provided certain eligibility requirements have been met), or a paper application. For a discussion of these applications, see Chapter 1400, Sections 1403 and 1405.

- *Group registrations*. An application for a group registration is used to register a claim to copyright in a group of related works that qualify for a single registration. *See* 17 U.S.C. § 408(c)(1), (2). For a detailed discussion of group registration, see Chapter 1100.

- *Supplementary registration*. An application for a supplementary registration may be used to correct or amplify the information in a basic or renewal registration. 17 U.S.C. § 408(d). For a detailed discussion of supplementary registration, see Chapter 1800, Section 1802.

- *GATT registration*. An application for a GATT registration is used to register a copyright claim in a work in which U.S. copyright was restored by the 1994 Uruguay Round Agreements Act (URAA). *See* Uruguay Round Agreements Act, 103 P.L. 465, 108 Stat. 4809 (1994) (codified as amended at 17 U.S.C. § 104A). For a discussion of GATT registration, see Chapter 2000, Section 2007.

- *Renewal registration*. An application for a renewal registration is used to cover the renewal term for works copyrighted before January 1, 1978. *See* 17 U.S.C. § 304. For a detailed discussion of renewal registration, see Chapter 2100.

202.2 Registration Distinguished from Preregistration

Preregistration is a special service that is intended for specific types of works that are likely to be infringed before they are completed or before they are released for commercial distribution, such as feature films. For more information on preregistration, see Chapter 1600.

202.3 Registration Distinguished from Recordation

Registration and recordation are two separate procedures: claims to copyright are registered, while documents related to copyright claims, such as agreements to transfer or grant a mortgage in copyrights, are recorded. As discussed in Section 204, an applicant must submit an application, deposit copy(ies), and a filing fee to register a claim to copyright, and together these items are the primary source of information for the claim. As a general rule, the applicant does not need to submit additional documents substantiating the information provided in these materials.

Registering a claim to copyright is not a substitute for recording a document with the U.S. Copyright Office, and recording a document is not a substitute for registering a claim to copyright. *See* 17 U.S.C. § 205. For a detailed discussion of the practices and procedures for recording a document with the Office, see Chapter 2300.

203 Timing of Registration

Registration may be made at any time before the copyright has entered the public domain. *See* 17 U.S.C. §§ 302-305 and 408(a). Generally speaking, a copyrighted work enters the public domain in the United States when "its full copyright term has expired." *Golan v. Holder*, 565 U.S. 302, 307 (2012).

The U.S. Copyright Office strongly encourages copyright owners to submit their works for registration in a timely manner. As discussed in Section 202, a registration (or a refusal to register) is a prerequisite for filing a lawsuit for copyright infringement involving a United States work. *See* 17 U.S.C. § 411(a). It is also a prerequisite for seeking

statutory damages and attorney's fees in an infringement action. To pursue these remedies, an unpublished work must be registered before the infringement occurs, while a published work must be registered within three months after publication or before the infringement occurs. *See* 17 U.S.C. § 412. Moreover, if the work is registered before or within five years after the work is first published, the registration constitutes *prima facie* evidence of the validity of the copyright and the facts stated in the certificate of registration.

204 Required Elements for Registration

To register a claim to copyright, an applicant must submit the following items to the U.S. Copyright Office:

- Completed application;
- Full filing fee; and
- The requisite deposit copy(ies) of the work.

A general discussion of each of these elements is set forth in Sections 204.1 through 204.3 below. For detailed information on the practices and procedures for completing the application, see Chapter 600. For detailed information on the requirements for the filing fee, see Chapter 1400, Section1412. For detailed information on the requirements for deposit copy(ies), see Chapter 1500.

204.1 Completed Application

An applicant must use the official applications provided by the U.S. Copyright Office. Most claims may be submitted online by using the Office's electronic registration system, and in some cases applicants are required to use the online application to seek a registration.

Applicants generally may submit a paper application as an alternative to using the electronic system, although applicants are required to use a paper application for certain types of claims.

Each type of application is discussed in Sections 204.1(A) and 204.1(B) below.

204.1(A) Online Application

The U.S. Copyright Office's electronic registration system may be accessed from the Office's website.

The Office strongly encourages applicants to use the online application whenever possible. The benefits to filing an online application include:

- *Lower filing fees for online applications*: The filing fee for an online application is lower than the filing fee for a paper application. For a list of the current filing fees, see the Office's fee schedule.

- *Faster processing*: The Office typically processes electronic claims much sooner than non-electronic claims. Current processing times are listed on the Office's website.

- *Multiple options for paying the filing fee*: An applicant may pay the filing fee for an online application by credit card, debit card, electronic check, or with a U.S. Copyright Office deposit account, while in most cases an applicant may pay the filing fee for a paper application only by check, money order, or deposit account.

- *Easier submission of the deposit copy(ies)*: For certain types of works, the applicant may upload deposit copy(ies) directly to the online system as an electronic file, instead of having to submit physical deposit copies through the mail. The Office lists the acceptable file types on its website. If the work is published in hard copy form, the applicant may be required to mail a physical copy to the Office, but filing the application electronically will expedite processing.

- *The ability to track the status of the application*: After submission, the online system allows the applicant to log in and see whether the online application is still pending or whether it has been registered and closed.

For detailed information on completing an online application, see Chapter 600. For information on completing an online application for a group registration, see Chapter 1100, Sections 1106 through 1114. For information on completing an online application for a supplementary registration, see Chapter 1800, Section 1802.8(A).

Once the online application has been submitted, the Office automatically issues an email confirming that the application has been received. If there are issues regarding the claim, a registration specialist may communicate with the applicant via telephone, email, or mail to address those issues. For more information on communications between the Office and the applicant, see Chapter 600, Section 605.

204.1(B) Paper Applications

At this time, applicants must use a paper application to apply for some types of registrations, namely:

- A registration for a group of updates or revisions to a database that does not consist predominantly of photographs.

- Renewal registrations.

- GATT registrations.

- A supplementary registration that corrects or amplifies the information in a renewal registration, a GATT registration, or a registration for a database that does not consist predominantly of photographs.

- Mask work and vessel design registrations.

In such cases, the applicant must submit a paper application using the appropriate form. For detailed information on these types of paper applications, see Chapter 1400, Section 1404, 1406.8, 1408, and 1409.

In all other cases, the Office strongly discourages applicants from using paper applications for the reasons discussed in Section 204.1(A).

Applicants may download paper applications from the Office's website, or request the forms from the Public Information Office via email, fax, telephone, or in person. Once completed, the applicant may submit the paper application, along with the required deposit copy(ies) and filing fee, to the Office by mail, commercial carrier, courier, or hand delivery.

For general information on how to complete a paper application, see the instructions provided with each form. For specific information on how to complete each space of a paper application, see Chapter 600. For information on how to submit a paper application by mail, commercial carrier, courier, or hand delivery, see Sections 204.1(B)(1) through 204.1(B)(3) below.

The address for submitting a paper application, filing fee, and deposit copy(ies) to the U.S. Copyright Office is set forth in space 9 of the paper application in the space marked "Mail To," which may be found at the bottom of every paper application.

Be advised that all packages that are submitted to the Office by mail, commercial carrier, or courier will be screened for the presence of anthrax and other deadly contaminants. This screening will delay the delivery of the registration materials, and, in some cases, it could possibly damage the deposit copy(ies), which may cause additional delays. For more information on this screening procedure, see Chapter 1500, Section 1508.6.

204.1(B)(1) By Mail or Commercial Carrier

A paper application may be sent to the U.S. Copyright Office by mail or by a commercial carrier, such as Federal Express or United Parcel Service. The delivery address is set forth in space 9 of the application in the space marked "Mail To," which may be found at the bottom of every paper application.

204.1(B)(2) By Courier

To submit a paper application, filing fee, and deposit copy(ies) by courier, an applicant must include all of the required elements in a single package and deliver it to the Congressional Courier Acceptance Site ("CCAS"), which is located at 2nd and D Streets

NE, Washington, DC. This location is open Monday through Friday from 8:30 a.m. to 4:30 p.m. Eastern Time, except for federal holidays.

Items delivered to this location typically are sent to the U.S. Copyright Office the next working day. Registration materials submitted through a courier service do not receive a dated receipt from the Office but instead will receive one dated by CCAS. The Office considers the CCAS date of receipt as the date of receipt in the Office.

204.1(B)(3) By Hand Delivery

To submit a paper application, filing fee, and deposit copy(ies) in person, an applicant must deliver all of the required elements to the U.S. Copyright Office's Public Information Office. This Office is open to the public Monday through Friday, from 8:30 a.m. to 5:00 p.m. Eastern Time, except federal holidays, and is located at the following address:

Public Information Office (PIO)
Library of Congress, United States Copyright Office
James Madison Memorial Building, Room LM-401
101 Independence Avenue SE
Washington DC 20559

An applicant who delivers registration materials to the Public Information Office will receive a date-stamped receipt that lists the title of no more than one of the works listed in the application.

NOTE: Visitors to the U.S. Copyright Office must pass through security before entering the building. Sealed packages or packages that are more than twenty-four inches wide by fifteen inches high are not permitted.

204.2 Filing Fee

The current filing fees for online and paper applications are set forth in the U.S. Copyright Office's fee schedule, which is posted on the Office's website. All filing fees are subject to change. For information concerning the types of payments that the Office will accept, see Chapter 1400, Section 1412.4.

If the applicant fails to submit the correct filing fee, a member of the Office's staff will notify the applicant in writing. If the applicant submits the correct filing fee within the specified time frame, the effective date of registration will be changed to reflect the date that the funds were received. If the Office does not receive the correct filing fee within the specified time frame, it will close the file. If the applicant wishes to resubmit the claim, the applicant must file a new application, new deposit copy(ies), and the correct filing fee. The effective date of registration for a new claim will be based on the date that the new submission is received by the Office.

For a discussion of the effective date of registration, see Section 209 below. For a discussion of the Office's practices and procedures for closing a file for failure to respond to a written communication, see Chapter 600, Sections 605.7 and 625.3(B).

204.3 Deposit Copy(ies)

The term "deposit" is frequently misunderstood. It refers to the copy or copies of a work that are submitted to the U.S. Copyright Office. It does not refer to the filing fee that must be paid in order to register a work with the Office.

As a general rule, the applicant must submit a complete copy or copies of the work to register a claim to copyright. In certain cases, the U.S. Copyright Office may accept identifying material in lieu of a complete copy, or the Office may grant special relief from the deposit requirements. (For a definition and discussion of identifying material and special relief, see Chapter 1500, Sections 1506 and 1508.8.) As discussed above, the deposit copy(ies) for a published work also may satisfy the mandatory deposit requirement for certain works that are published in the United States.

If the applicant fails to submit a complete copy of the work, fails to submit sufficient identifying material, and/or fails to obtain special relief from the deposit requirements, the registration specialist may communicate with the applicant or may refuse registration. If the specialist asks the applicant to resubmit the deposit copy(ies) but does not receive the correct deposit within the specified time frame, the specialist will close the file. If the applicant wishes to resubmit the claim, the applicant must file a new application, new deposit copy(ies), and the correct filing fee. The effective date of registration for a new claim will be based on the date that the new submission is received by the Office.

In specific instances, the deposit copy(ies) may be submitted in digital or physical format. The deposit copy(ies) must conform to certain requirements depending on the type of work, the deposit requirements, and whether the work is published or unpublished. As a general rule, the deposit copy(ies) should be clear and should contain all the authorship that the applicant intends to register. An application submitted with an incomplete or unclear deposit copy(ies) may be delayed until the Office receives a complete and/or clear copy or may be refused. Delays due to incomplete and/or unclear deposit copy(ies) may affect the effective date of registration, which is discussed in Section 209 below.

Once the Office receives the registration materials, a registration specialist will examine the deposit copy(ies) to determine if the work is eligible for registration. The Office will not return the deposit copy(ies) or the identifying material to the applicant.

General information on the procedure for submitting the deposit copy(ies) in digital or physical format is set forth in Sections 204.3(A) and 204.3(B) below. For detailed information on the deposit requirements for registration and the mandatory deposit requirements, see Chapter 1500.

204.3(A) Deposit Copy(ies) Submitted in Electronic Format

The applicant may submit deposit copy(ies) electronically through the online registration system if the work meets any of the following requirements:

- The work is unpublished.
- The work has been published only in a digital format.
- The work has been published and identifying material is the appropriate deposit for that type of work. (For a detailed discussion of identifying material, see Chapter 1500, Section 1506.)
- The work is eligible for a group registration, and electronic copies must be submitted as a condition for using that option. (For a detailed discussion of the deposit requirements for a group registration, see Chapter 1500 (Deposits).)

In all cases, the applicant must submit the deposit copy(ies) in an acceptable file format. The currently acceptable file formats are listed on the Office's website. If the applicant fails to comply with this requirement, the registration specialist will refuse registration.

If the work does not meet the requirements listed above, the applicant must submit deposit copy(ies) in a physical format. For a discussion of the procedure for submitting the deposit copy(ies) in physical format, see Section 204.3(B) below.

204.3(B) Deposit Copy(ies) Submitted in Physical Format

Physical deposit copies should be submitted to the U.S. Copyright Office by mail, commercial carrier, courier, or hand delivery if (i) the work does not meet the requirements listed in Section 204.3(A), (ii) the applicant is submitting a paper application rather than an online application, or (iii) if the applicant prefers to submit the deposit copy(ies) in a physical format rather than a digital format.

When completing an online application, the applicant will be given an opportunity to print a deposit copy shipping slip that corresponds to the online application. The applicant must print the shipping slip, attach it to each deposit copy, and send all of these items in a single package to the address specified on the shipping slip. (For further information concerning this procedure, see Chapter 600, Section 625.2(D) and Chapter 1500, Sections 1508.2 through 1508.5.) In such cases, the effective date of registration is based on the date the Office receives the deposit copy(ies) along with the corresponding shipping slip. If an applicant does not include the shipping slip with each mailed physical deposit the Office will not be able to connect the deposit to an application.

When submitting a paper application, an applicant should send the completed application, proper filing fee, and complete and clear deposit copy(ies) in a single package to the address specified in space 9 marked "Mail To," which may be found at the bottom of every paper application.

205 Privacy

The applicant should not provide any private or confidential information in the application that is not required for registration. All of the information that the applicant provides in the application is a permanent part of the public record, and the U.S. Copyright Office generally cannot remove any information from the public record once a registration has been issued.

Section 705(a) of the Copyright Act requires the Register of Copyrights to prepare and maintain "records of deposits, registrations, recordations, and other actions" taken by the Office. 17 U.S.C. § 705(a). Section 705(b) states that all records maintained by the Office in connection with a completed copyright registration "shall be open to public inspection." 17 U.S.C. § 705(b).

With regard to copyright registrations, the Office requests and receives personally identifiable information ("PII"), such as birth dates, addresses, and telephone numbers. The collection of certain types of PII is mandated by statute or regulation, while other requested information is optional for the applicant to provide. *See* 17 U.S.C. § 409. Both types of information are collectively referred to as "Requested PII."

The Office will make information provided in a copyright application available to the general public upon request, and much of this information will be available on the Internet through the Office's online database. For an example of the type of information that is typically displayed in the Office's online database, see the privacy page on the Office's website.

The Office does not request, but sometimes receives, additional PII, such as driver's license, social security, and credit card numbers. This type of information is unnecessary for copyright registration and is referred to in the Office's regulations as "extraneous PII." *See* 37 C.F.R. § 201.2(f).

Applicants should not provide extraneous PII in an application. To protect the privacy of applicants, the Office may remove this type of information from an application during the examination process on its own initiative. If extraneous PII is included within the Office's public records, an author or claimant may request removal of this information in accordance with the Office's regulations. There is no fee for this service. *See id*.

Additionally, applicants should not provide any other type of private or confidential information in the application that is not required for registration, because it may also be included in the Office's online and offline public records.

Before submitting an application, an applicant should consider whether to include a nickname, alias, or other personal information that is not required for registration. For example, providing the name, address, telephone number, and email address of the person who should be contacted for permission to use the work is optional, and the Office will accept an application even if an applicant leaves the Rights and Permissions section blank. Although an applicant is encouraged to provide contact information for rights and permission purposes, it is important to understand that if the applicant

completes this portion of the application, the Office will include this information in the online database.

If an applicant wants to provide contact information for persons who may be interested in using the work — but does not want to provide a home address or other personal information — the applicant should consider providing the name of a designated agent, a P.O. Box, or a designated email address in the Rights and Permissions field of the application.

Modification of the information in the Office's online public record (but not its offline public record) is available where the author or claimant submits a written request to remove or replace non-personally identifiable information for certain types of Requested PII (such as replacing a home address with a P.O. Box number), and pays the appropriate fee for this service. *See* 37 C.F.R §§ 201.1(c)(8), 201.2(e). For more information on this procedure, see Chapter 1800, Section 1805.

See generally Removal of Personally Identifiable Information From Registration Records, 82 Fed. Reg. 9004 (Feb. 2, 2017).

206 General Overview of the Examination Process

Once the U.S. Copyright Office receives the application, deposit copy(ies), and filing fee, the application and deposit copy(ies) will be sent to the Registration Program, where they will be assigned to a registration specialist. The specialist will examine these materials to determine whether the work constitutes copyrightable subject matter and if the applicant has met the other legal and formal requirements, including those set forth in the Copyright Act, the Copyright Office regulations, and the *Compendium of U.S. Copyright Office Practices*. *See* 17 U.S.C. § 410(a). For detailed information on this process, see Chapter 600 (Examination Practices).

207 Special Handling

Special handling is a procedure for expediting the examination of an application to register a claim to copyright. There is an additional fee for this expedited service. For information concerning this fee, see the Office's fee schedule.

The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for an expedited decision on a pending application. Special handling may be requested for an online application or a paper application in the following circumstances:

- Pending or prospective litigation;
- Customs matters; or
- Contract or publishing deadlines that necessitate the expedited issuance of a certificate of registration.

A request for special handling may be made when the claim is submitted to the Office or any time before the Office issues a certificate of registration or a refusal. Once it has received and approved a request for special handling, the Office will make every attempt to process the application within five business days, although the Office cannot guarantee that it will process all special handling applications within that time frame, particularly if the claims present issues requiring correspondence.

For detailed information on special handling, see Chapter 600, Section 623.

208 Withdrawing an Application

An applicant may submit a request to withdraw a pending application at any time before the U.S. Copyright Office has issued a certificate of registration or has refused to register the claim. The request should be made in writing and it should explain why the applicant is seeking to withdraw the claim.

The request should be addressed to the "Associate Register of Copyrights and Director of Registration Policy & Practice." The applicant may email the request to the registration specialist who has been assigned to the claim. Alternatively, the applicant may mail the request to the following address:

Associate Register of Copyrights and
Director of Registration Policy & Practice
Registration Program
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559

The Office will use its discretion to decide whether to approve or deny a timely withdrawal request. In making this decision, the Office will balance the interest of the applicant with the public interest in maintaining the integrity of the registration record. The Office does not routinely grant withdrawals, particularly where the request is made merely to avoid a refusal to register.

In the event that the Office approves a withdrawal request, the Office will not refund the filing fee and will not return the deposit copy(ies). The Office will not reinstate an application once it has been withdrawn. If the applicant wishes to resubmit the claim, the applicant must file a new application, new deposit copy(ies), and the correct filing fee. The effective date of registration for a new claim will be based on the date that the new submission is received by the Office.

209 The Certificate of Registration, the Registration Decision Date, and the Effective Date of Registration

After conducting an examination, if the U.S. Copyright Office determines that the work constitutes copyrightable subject matter and that the other legal and formal requirements have been met, the Office will register the claim. The Office will issue a certificate of registration which contains much of the information that the applicant

provided in the application. In addition, the Office will create an online public record for the registration, which may be accessed through the Office's online database. *See* 17 U.S.C. § 410(a).

Both the certificate and the online public record contain a registration number and an effective date of registration. The certificate may also contain a registration decision date.

The "registration decision date" is the date that the registration specialist completed his or her examination and approved the claim. The "effective date of registration" is the date on which the Office received an acceptable application, complete deposit copy(ies), and the proper filing fee. *See* 17 U.S.C. § 410(d). For detailed information on this topic, see Chapter 600, Section 625.

210 When Does a Registration Expire?

Registrations and renewal registrations issued under the current statute (the 1976 Act) expire when the work enters the public domain in the United States. As discussed in Section 203, a copyrighted work enters the public domain in this country when the copyright term for that work has expired under U.S. law.

Registrations issued under the prior statute (the 1909 Act) expire at the end of the first twenty-eight years of the copyright term, and if the copyright is renewed, the renewal registration expires at the end of the renewal term. *See* Supplementary Registration, 81 Fed. Reg. 86,656, 86,660 n.23 (Dec. 1, 2016).

The fact that a work has entered the public domain in a foreign jurisdiction does not mean it has entered the public domain in the United States.

211 Registration Refused After Examination

The U.S. Copyright Office registers claims to copyright and issues certificates of registration only if the material deposited constitutes copyrightable subject matter and the applicant appears to meet the legal and formal requirements set forth in the Copyright Act, the Copyright Office regulations, and the *Compendium of U.S. Copyright Office Practices*. *See* 17 U.S.C. § 410(a).

If the Office finds that the work is not copyrightable or that the applicant has not met the legal and formal requirements for copyright registration, the Office will refuse to register the claim and will specify the reasons for its decision. The Office will notify the applicant by sending a written communication signed or initialed by the registration specialist or supervisor assigned to the claim. The communication will be mailed to the address provided in the Correspondent field/space of the application. For examples of situations in which the Office will refuse to register a claim because of a failure to meet the legal and/or formal requirements, see Chapter 600, Section 608, and Chapter 1500, Section 1503.2.

An applicant may appeal a refusal to register a copyright claim. For more information on the appeals process, see Chapter 1700.

An applicant may institute a civil suit for copyright infringement even if the Office has refused to register a claim, provided that the applicant satisfies the requirements set forth in Section 411(a) of the Copyright Act. For information concerning this topic, see Chapter 1700, Section 1706.

212 General Policies Regarding Inaccuracies and Misrepresentations

212.1 Material Misrepresentations

Knowingly making a false representation of a material fact in an application for copyright registration, or in any written statement filed in connection with the application, is a crime that is punishable under 17 U.S.C. § 506(e).

212.2 Immaterial Inaccuracies in the Application

As a general rule, the registration specialist may ignore immaterial inaccuracies in the application that appear to be inadvertent and do not affect the registrability of the claim. For information concerning the U.S. Copyright Office's practices and procedures for dealing with inaccuracies in an application, see Chapter 600, Section 603.

212.3 Errors or Omissions in a Certificate of Registration

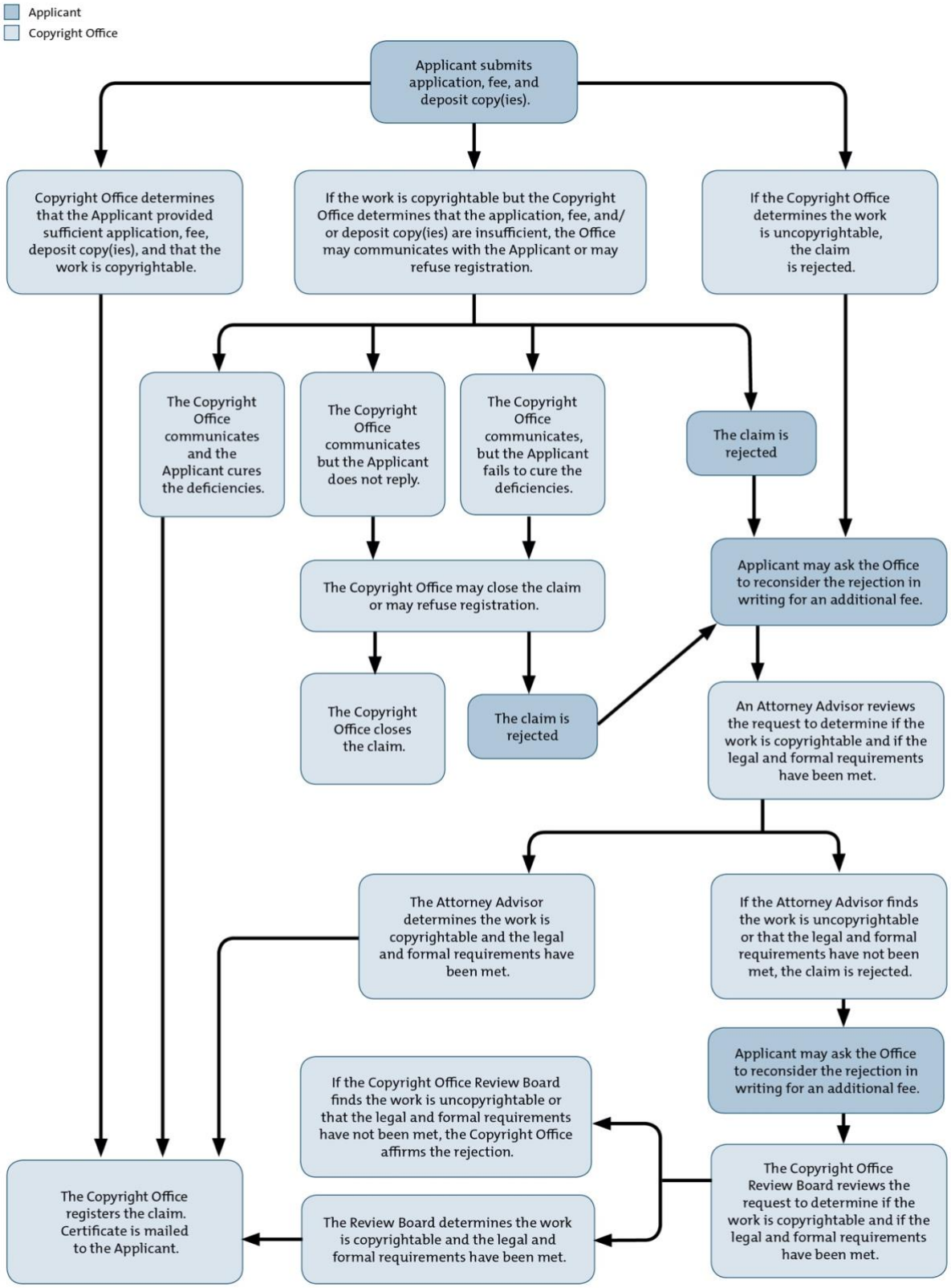
If the information set forth in the registration record is incorrect or incomplete, an applicant may be able to correct that error or omission by submitting an application for a supplementary registration, or under certain limited circumstances, by submitting a new application for a new basic registration. For a discussion of these procedures, see Chapter 1800, Sections 1802 and 1803.

212.4 Cancellation

If the U.S. Copyright Office discovers an error or omission in the registration record, it may contact the applicant to correct the error, or it may cancel the registration if warranted under the Office's cancellation regulations. *See* 37 C.F.R. § 201.7. For a discussion of cancellation, see Chapter 1800, Section 1807.

213 The Registration Process at a Glance

The following chart illustrates the registration process from start to finish:


Applicant
Copyright Office
Applicant submits application, fee, and deposit copy(ies).
Copyright Office determines that the Applicant provided sufficient application, fee, deposit copy(ies), and that the work is copyrightable.
If the work is copyrightable but the Copyright Office determines that the application, fee, and/or deposit copy(ies) are insufficient, the Office may communicates with the Applicant or may refuse registration.
If the Copyright Office determines the work is uncopyrightable, the claim is rejected.
The Copyright Office communicates and the Applicant cures the deficiencies.
The Copyright Office communicates but the Applicant does not reply.
The Copyright Office communicates, but the Applicant fails to cure the deficiencies.
The claim is rejected
The Copyright Office may close the claim or may refuse registration.
Applicant may ask the Office to reconsider the rejection in writing for an additional fee.
The Copyright Office closes the claim.
The claim is rejected
An Attorney Advisor reviews the request to determine if the work is copyrightable and if the legal and formal requirements have been met.
The Attorney Advisor determines the work is copyrightable and the legal and formal requirements have been met.
If the Attorney Advisor finds the work is uncopyrightable or that the legal and formal requirements have not been met, the claim is rejected.
Applicant may ask the Office to reconsider the rejection in writing for an additional fee.
If the Copyright Office Review Board finds the work is uncopyrightable or that the legal and formal requirements have not been met, the Copyright Office affirms the rejection.
The Copyright Office registers the claim. Certificate is mailed to the Applicant.
The Review Board determines the work is copyrightable and the legal and formal requirements have been met.
The Copyright Office Review Board reviews the request to determine if the work is copyrightable and if the legal and formal requirements have been met.

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Copyrightable Authorship: What Can Be Registered

301 What This Chapter Covers

This Chapter discusses the U.S. Copyright Office's practices and procedures for evaluating copyrightable authorship. For guidance on practices and procedures relating to specific types of works, see the following Chapters:

- For a general overview of the registration process, see Chapter 200.
- For guidance in determining who may file an application and who may be named as the copyright claimant, see Chapter 400.
- For guidance in identifying the work that will be submitted for registration, see Chapter 500.
- For guidance in completing the application, see Chapter 600.
- For a discussion of literary works, see Chapter 700.
- For a discussion of works of the performing arts, see Chapter 800.
- For a discussion of visual art works, see Chapter 900.
- For a discussion of websites and website content, see Chapter 1000.
- For a discussion of the options for registering certain groups of works, see Chapter 1100.
- For a discussion of renewal registrations, see Chapter 2100.

302 The Legal Framework

The Copyright Act protects "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." 17 U.S.C. § 102(a).

"A valid copyright extends only to copyrightable subject matter." *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1005 (2017). Section 410(a) of the statute states that the Register of Copyrights shall register a claim to copyright and issue a certificate of registration if the U.S. Copyright Office determines that "the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements have been met." If the Office determines that "the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other

reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal." 17 U.S.C. § 410(b).

In determining whether a work is copyrightable, the Office analyzes questions such as:

- Is the work eligible for copyright protection in the United States?
- Has the work been fixed in a tangible medium of expression?
- Was the work created by a human author?
- Does the work constitute copyrightable subject matter?
- Is the work sufficiently original?
- Was the work independently created?
- Does the work possess at least some minimal degree of creativity?

If the answer to all of these questions is "yes," the work is copyrightable and the claim may be registered, as long as there are no other issues in the registration materials that raise questions concerning the claim and as long as the other legal and formal requirements have been met.

These questions are discussed in Sections 304 through 308 below. For information on how the Office interprets these questions when examining derivative works, compilations, and collective works, see Sections 311 and 312.

For information on how the Office interprets these questions when examining specific types of literary works, works of the performing arts, and visual art works, see Chapters 700, 800, and 900.

303 Copyrightability Is Determined Based on U.S. Copyright Law

The U.S. Copyright Act is the exclusive source of copyright protection in the United States. To register a work with the U.S. Copyright Office, all applicants — both foreign and domestic — must satisfy the requirements of U.S. copyright law. In determining whether a work is copyrightable, the Office applies U.S. copyright law pursuant to title 17 of the U.S. Code, even if the work was created in a foreign country, first published in a foreign country, or created by a citizen, domiciliary, or habitual resident of a foreign country.

304 Eligibility

The U.S. Copyright Office may register a work of authorship if it is eligible for copyright protection in the United States. All U.S. works — both published and unpublished — created on or after January 1, 1978, are eligible for U.S. copyright protection. 17 U.S.C. § 104(a), (b). Additionally, all unpublished foreign works and most published foreign works are eligible for U.S. copyright protection. *Id.* For more information on the eligibility requirements for published foreign works, see Chapter 2000, Section 2003.

305 The Fixation Requirement

To be copyrightable, a work of authorship must be "fixed in any tangible medium of expression, now known or later developed, from which [it] can be perceived, reproduced, or otherwise communicated, either directly or indirectly with the aid of a machine or device." 17 U.S.C. § 102(a). Specifically, the work must be fixed in a copy or phonorecord "by or under the authority of the author" and the work must be "sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration." 17 U.S.C. § 101 (definition of "fixed").

The terms "copy" and "phonorecord" are very broad. They cover "all of the material objects in which copyrightable works are capable of being fixed," H.R. REP. NO. 94-1476, at 53 (1976), *reprinted in* 1976 U.S.C.C.A.N 5659, 5666.[1]

- Copies are "material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device," including the material object "in which the work is first fixed." 17 U.S.C. § 101.

- Phonorecords are "material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device," including "the material object in which the sounds are first fixed." 17 U.S.C. § 101.

There are countless ways that a work may be fixed in a copy or phonorecord and "it makes no difference what the form, manner, or medium of fixation may be." H.R. REP. NO. 94-1476, at 52 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5666. For example, a work may be expressed in "words, numbers, notes, sounds, pictures, or any other graphic or symbolic indicia" and the author's expression may be fixed "in a physical object in written, printed, photographic, sculptural, punched, magnetic, or any other stable form." *Id.*

Most works are fixed by their very nature, such as an article printed on paper, a song recorded in a digital audio file, a sculpture rendered in bronze, a screenplay saved in a data file, or an audiovisual work captured on film. Nevertheless, some works of authorship may not satisfy the fixation requirement, such as an improvisational speech, sketch, dance, or other performance that is not recorded in a tangible medium of expression. Other works may be temporarily embodied in a tangible form, but may not be sufficiently permanent or stable to warrant copyright protection, such as "purely evanescent or transient reproductions such as those projected briefly on a screen, shown electronically on a television,… or captured momentarily in the memory of a

[1] The provisions of the House Report cited or quoted throughout this Chapter are identical to the corresponding provisions set forth in Senate Report No. 94-473 (1975).

computer." H.R. REP. NO. 94-1476, at 53 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5666 (internal quotations marks omitted).

The Office rarely encounters works that do not satisfy the fixation requirement because the Office requires applicants to submit copies or phonorecords that contain a visually or aurally perceptible copy of the work. However, the Office may communicate with the applicant or may refuse registration if the work or the medium of expression only exists for a transitory period of time, if the work or the medium is constantly changing, or if the medium does not allow the specific elements of the work to be perceived, reproduced, or otherwise communicated in a consistent and uniform manner.

306 The Human Authorship Requirement

The U.S. Copyright Office will register an original work of authorship, provided that the work was created by a human being.

The copyright law only protects "the fruits of intellectual labor" that "are founded in the creative powers of the mind." *Trade-Mark Cases*, 100 U.S. 82, 94 (1879). Because copyright law is limited to "original intellectual conceptions of the author," the Office will refuse to register a claim if it determines that a human being did not create the work. *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884). For representative examples of works that do not satisfy this requirement, see Section 313.2 below.

307 Copyrightable Subject Matter

A work of authorship may be registered with the U.S. Copyright Office, provided that it constitutes copyrightable subject matter.

Section 102(a) of the Copyright Act states that the subject matter of copyright includes the following categories of works:

- Literary works.
- Musical works, including any accompanying words.
- Dramatic works, including any accompanying music.
- Pantomimes and choreographic works.
- Pictorial, graphic, and sculptural works.
- Motion pictures and other audiovisual works.
- Sound recordings.
- Architectural works.

Section 103(a) states that the subject matter of copyright includes compilations (which cover collective works) and derivative works. *See* 17 U.S.C. § 103(a); *see also* 17 U.S.C. § 101 (explaining that "[t]he term 'compilation' includes collective works"). These types of

works are a subset of the categories set forth in Section 102(a), rather than separate and distinct categories of works. In other words, derivative works, compilations, and collective works may be registered, provided that the work falls within one or more of the congressionally established categories of authorship under Section 102(a). *See* Registration of Claims to Copyright, 77 Fed. Reg. 37,605, 37,606 (June 22, 2012).

The categories of works set forth in Section 102(a) "do not necessarily exhaust the scope of 'original works of authorship' that the [Copyright Act] is intended to protect." H.R. REP. NO. 94-1476, at 53 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5666. The statute "sets out the general area of copyrightable subject matter" with "sufficient flexibility to free the courts from rigid or outmoded concepts of the scope of particular categories." *Id*. The categories are also "overlapping in the sense that a work falling within one class may encompass works coming within some or all of the other categories." *Id*.

Congress gave federal courts the flexibility to interpret the scope of the existing subject matter categories, but only Congress has the authority to create entirely new categories of authorship. "If the federal courts do not have the authority to establish new categories of subject matter, it necessarily follows that the Copyright Office also has no such authority in the absence of any clear delegation of authority to the Register of Copyrights." 77 Fed. Reg. at 37,607.

While the categories listed in Section 102(a) are "very broad . . . there are unquestionably other areas of existing subject matter that [the Copyright Act] does not propose to protect . . . ." H.R. REP. NO. 94-1476, at 52 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5665. If the Office determines that a work does not fall within the categories of copyrightable subject matter, the Office will refuse to register the claim. For representative examples of works that do not satisfy this requirement, see Sections 313.3 and 313.6(C) below.

308 The Originality Requirement

Originality is "the bedrock principle of copyright" and "the very premise of copyright law." *Feist Publications, Inc. v. Rural Telephone Service Co., Inc*., 499 U.S. 340, 347 (1991) (citation omitted).

"To qualify for copyright protection, a work must be original to the author," which means that the work must be "independently created by the author" and it must possess "at least some minimal degree of creativity." *Id*. at 345 (citations omitted).

These requirements are discussed in Sections 308.1 and 308.2 below.

308.1 Independent Creation

The term "independent creation" means that the author created the work without copying from other works. *See Feist,* 499 U.S. at 345.

The copyright law protects "those components of a work that are original to the author," but "originality" does not require "novelty." *Id*. at 345, 348. A work may satisfy the independent creation requirement "even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying." *Id*. at 345. For example, if

two authors created works that are similar or even identical, each work could be registered provided that the authors did not copy expression from each other.

As a general rule, the Office will accept the applicant's representation that the work was independently created by the author(s) named in the application, unless that statement is implausible or is contradicted by information provided elsewhere in the registration materials or in the Office's records or by information that is known to the registration specialist. If the specialist determines that the work was not independently created, he or she may communicate with the applicant or may refuse to register the claim.

For representative examples of works that do not satisfy the independent creation requirement, see Section 313.4(A) below.

308.2 Creativity

A work of authorship must possess "some minimal degree of creativity" to sustain a copyright claim. *Feist*, 499 U.S. at 358, 362 (citation omitted).

"[T]he requisite level of creativity is extremely low." Even a "slight amount" of creative expression will suffice. "The vast majority of works make the grade quite easily, as they possess some creative spark, 'no matter how crude, humble or obvious it might be.'" *Id*. at 346 (citation omitted).

An author's expression does not need to "be presented in an innovative or surprising way," but it "cannot be so mechanical or routine as to require no creativity whatsoever." A work that it is "entirely typical," "garden-variety," or "devoid of even the slightest traces of creativity" does not satisfy the originality requirement. *Feist*, 499 U.S. at 362. "[T]here is nothing remotely creative" about a work that merely reflects "an age-old practice, firmly rooted in tradition and so commonplace that it has come to be expected as a matter of course." *Id*. at 363. Likewise, a work "does not possess the minimal creative spark required by the Copyright Act" if the author's expression is "obvious" or "practically inevitable." *Id*. at 363.

Although the creativity standard is low, it is not limitless. *Id*. at 362. "There remains a narrow category of works in which the creative spark is utterly lacking or so trivial as to be virtually nonexistent. Such works are incapable of sustaining a valid copyright." *Id*. at 359 (citations omitted).

If the Office determines that a work possesses sufficient creativity, it will register the claim and issue a certificate of registration. Conversely, if the Office determines that the work does not possess some minimal degree of creativity, it will refuse registration.

For more information on works that do not satisfy the creativity requirement, see Sections 313.4(A) through 313.4(K) below.

309 Examining a Work for Copyrightable Authorship

As discussed in Section 302, the U.S. Copyright Office will examine a work of authorship to determine if "the material deposited constitutes copyrightable subject matter" and if "the other legal and formal requirements have been met." 17 U.S.C. § 410(a). In

determining whether a work is copyrightable, the registration specialist will consider (i) the application, (ii) the deposit copy(ies), (iii) whether the correct the filing fee was submitted, as well as (iv) any communications between the applicant and the Office relating to the registration of the claim or any other material that has been submitted to the Office. Together, these items are referred to as the "registration materials."

As discussed in Sections 304 through 308, a work may be copyrightable (i) if it is eligible for copyright protection in the United States, (ii) if the work has been fixed in a tangible medium of expression, (iii) if the work was created by a human author, (iv) if the work constitutes copyrightable subject matter, and (v) if the work contains at least a minimum amount of creative authorship that is original to the author.

When examining a claim to copyright, the registration specialist will use objective criteria to determine whether the work satisfies these requirements by reviewing the information provided in the application and by examining the deposit copy(ies), including its individual elements as well as the work as a whole. The specific criteria that the specialist will consider when examining a derivative work, a compilation, or a collective work are discussed in Sections 311 and 312. The specific criteria that the specialist will consider when examining a literary work, a work of the performing arts, or a work of the visual arts are discussed in Chapters 700, 800, and 900.

309.1 Prior Works and Prior Registrations

As a general rule, the registration specialist will not search the U.S. Copyright Office's records to determine if the work has been registered before, unless there is conflicting information in the registration materials or other sources of information that are known by the Office or the general public. For purposes of determining copyrightability, the specialist will not compare the deposit copy(ies) with other works that have been previously registered with the Office. Likewise, the specialist generally will not compare the deposit copy(ies) with other works to determine whether the applicant is attempting to register a work that is substantially similar to another work of authorship, unless the applicant appears to be asserting a claim in a work that is unusually similar to another work of authorship that is known to the specialist.

309.2 Facts Stated in the Application

The U.S. Copyright Office generally will accept the facts stated in the application and other registration materials, unless they are implausible or conflict with information in the registration materials, the Office's records, or other sources of information that are known by the Office or the general public. Knowingly making a false representation of a material fact in an application for copyright registration, or in any written statement filed in connection with an application, is a crime that is punishable under 17 U.S.C. § 506(e).

Ordinarily, the Office will not conduct its own factual investigation to confirm the truth of the statements made in the application. However, the Office may take administrative notice of facts or matters that are known by the Office or the general public, and may communicate with the applicant if the application appears to contain inaccurate or erroneous information.

309.3 No Precedential Value

The determination of copyrightability will be made on a case-by-case basis. The fact that the U.S. Copyright Office registered a particular work does not necessarily mean that the Office will register similar types of works or works that fall within the same category. A decision to register a particular work has no precedential value and is not binding upon the Office when it examines any other application.

310 Factors That Will Not Be Considered in the Examination of Originality

As a general rule, the U.S. Copyright Office will not consider factors that have no bearing on whether the originality requirement has been met. Examples of such factors are discussed in Sections 310.1 through 310.10 below.

310.1 Novelty or Ingenuity

The U.S. Copyright Office will examine each work in isolation to determine whether it satisfies the originality requirement. The fact that a work may be novel, distinctive, innovative, or even unique is irrelevant to this analysis. *See* H.R. REP. NO. 94-1476, at 51 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5664 (stating "the standard of originality established by the courts . . . does not include requirements of novelty [or] ingenuity" and that Congress did not intend "to enlarge the standard of copyright protection" to impose these requirements).

As discussed in Section 308, "originality requires independent creation plus a modicum of creativity." *Feist*, 499 U.S. at 346. The author's expression does not need to be novel, and it does not need to "be presented in an innovative or surprising way." *Id*. at 362; *see also L. Batlin & Son v. Snyder*, 536 F.2d 486, 490 (2d. Cir. 1976) ("Originality is . . . distinguished from novelty; there must be independent creation, but it need not be invention in the sense of striking uniqueness, ingeniousness, or novelty"). A work of authorship may be original, even though it is neither new nor inventive or even if "it closely resembles other works." *Feist*, 499 U.S. at 345 (explaining that "[o]riginality does not signify novelty"). Conversely, the fact that a work is new, innovative, or even unique does not necessarily mean that it contains a sufficient amount of creative expression to satisfy the originality requirement.

310.2 Aesthetic Value, Artistic Merit, and Intrinsic Quality

In determining whether a work contains a sufficient amount of original authorship, the U.S. Copyright Office does not consider the aesthetic value, artistic merit, or intrinsic quality of a work. H.R. REP. NO. 94-1476, at 51 (1976) , *reprinted in* 1976 U.S.C.C.A.N. at 5664. For example, the Office will not look for any particular style of creative expression. Likewise, the Office will not consider whether a work is visually appealing or written in elegant prose.

As the Supreme Court noted, "it would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits." *Bleistein v. Donaldson Lithographing Co*., 188 U.S. 239, 251 (1903). The legislative history for the Copyright Act recognizes that "the standard of originality established by the courts . . . does not include

requirements of . . . esthetic merit" and expressly states that Congress did not intend "to enlarge the standard of copyright protection" to impose this requirement. *See* H.R. REP. No. 94-1476, at 51 (1976) , *reprinted in* 1976 U.S.C.C.A.N. at 5664.

For the same reasons, the Office will not consider the truth or falsity of the facts set forth in a work of authorship. Nor will the Office consider the soundness or the unsoundness of the views espoused in the work. *See Belcher v. Tarbox*, 486 F.2d 1087, 1088 (9th Cir. 1973) ("The gravity and immensity of the problems, theological, philosophical, economic and scientific, that would confront a court if this view were adopted are staggering to contemplate. It is surely not a task lightly to be assumed, and we decline the invitation to assume it.") (footnote omitted).

310.3 Symbolic Meaning and Impression

When the U.S. Copyright Office examines a work of authorship, it determines whether the work "possess[es] the minimal creative spark required by the Copyright Act and the Constitution." *Feist*, 499 U.S. at 363. The symbolic meaning or impression of a work is irrelevant to this determination.

The Office will use objective criteria to determine whether a work constitutes copyrightable subject matter and satisfies the originality requirement. In making this determination, the Office will consider the expression that is fixed in the work itself and is perceptible in the deposit copy(ies). Specifically, the Office will focus only on the actual appearance or sound of the work that has been submitted for registration, but will not consider any meaning or significance that the work may evoke. *See Star Athletica,* 137 S. Ct. at 1015 ("our inquiry is limited to how [the work is] perceived"). The fact that creative thought may take place in the mind of the person who encounters a work has no bearing on the issue of originality. *See* 17 U.S.C. § 102.

310.4 Look and Feel

The U.S. Copyright Office will not consider the so-called "look and feel" of a work. Invoking a work's "feel" is not a viable substitute for an objective analysis of the work's fixed and creative elements. *See* 4 MELVILLE & DAVID NIMMER, NIMMER ON Copyright § 13.03[A][1][c] (2013) (criticizing the use of "feel" as a "wholly amorphous referent" that "merely invites an abdication of analysis").

310.5 The Author's Inspiration and Intent

When examining a work for original authorship, the U.S. Copyright Office will not consider the author's inspiration for the work, creative intent, or intended meaning. Instead, the Office will focus solely on the appearance or sound of the work that has been submitted for registration to determine whether it is original and creative within the meaning of the statute and the relevant case law.

Evaluating the author's inspiration or intent 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 has made it clear that copyrightability should be based on how a work is perceived, not how or why it was designed. *See id*.

Likewise, the fact that creative thought may take place in the mind of the person who created a work (or a person viewing or listening to the work) has no bearing on the issue of originality unless the work objectively demonstrates original authorship.

310.6 The Author's Skill, Experience, and Artistic Judgment

When evaluating a work for copyrightable authorship, the U.S. Copyright Office will not consider the author's skill, experience, or artistic judgment. The author's personal or professional history is irrelevant to the determination of copyrightability. *See 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"). Instead, the Office will focus solely on the appearance or sound of the work that has been submitted for registration to determine whether it satisfies the originality requirement. *See L. Batlin & Son*, 536 F.2d at 491 (finding that "the requirement of originality [cannot] be satisfied simply by the demonstration of 'physical skill' or 'special training'").

310.7 The Time, Effort, or Expense Required to Create the Work

When examining a work for original authorship, the U.S. Copyright Office will focus on the appearance or sound of the work that the author created but will not consider the amount of time, effort, or expense required to create the work. These issues have no bearing on whether a work possesses the minimum creative spark required by the Copyright Act and the Constitution. *See, e.g., Feist*, 499 U.S. at 352-354, 364 (rejecting the so-called "sweat of the brow" doctrine that provided copyright protection solely as a "reward for the hard work" of creating a work); *Star Athletica,* 137 S. Ct. at 1015 ("our inquiry is limited to how the [work is] perceived," not how it was designed). As Justice O'Connor observed, "copyright rewards originality, not effort" and "[w]ithout a doubt, the 'sweat of the brow' doctrine flouted basic copyright principles." *Feist,* 499 U.S. at 352, 354, 364.

310.8 Design Alternatives

When examining a work for original authorship, the U.S. Copyright Office will focus on the appearance or sound of the work that has been submitted for registration, including its individual elements and the work as a whole, to determine whether it contains a sufficient amount of original and creative authorship.

As a general rule, the Office will not consider possible design alternatives that the author may have considered when he or she created the work. Likewise, the Office will not consider potential variations in the use of the work, such as the fact that a work could be presented in a different color, in a different size, or with a different orientation.

The creative process often requires many choices involving the size, coloring, orientation, proportion, configuration, perspective, or other constituent elements of the work. These types of choices are present in every work of authorship. It is not the variety of choices available to the author that must be evaluated, but the actual work that the author created.

310.9 Material Composition of the Work

As a general rule, the materials used to create a work have no bearing on the originality analysis. For example, the U.S. Copyright Office will not consider the fact that a jewelry design was constructed with precious metals or gemstones, or the fact that a silk screen was printed on a particular paper stock.

310.10 Commercial Appeal or Success

When examining a work for copyrightable authorship, the U.S. Copyright Office will not consider the marketability or commercial success of the work. Likewise, the Office will not consider "factors such as mass production" or the number of copies or phonorecords that have been made. H.R. REP. NO. 94-1476, at 54 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5667.

"Nothing in the statute suggests that copyrightability depends on market surveys." *Star Athletica,* 137 S. Ct. at 1015. "Works may experience commercial success even without originality and works with originality may enjoy none whatsoever." *Paul Morelli Design, Inc. v. Tiffany & Co.*, 200 F. Supp. 2d 482, 488 (E.D. Pa. 2002).

"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 aesthetic preferences for the policy choices embodied in the Copyright Act." *Star Athletica*, 137 S. Ct. at 1015.

310.11 Other Forms of Legal Protection

When examining a work of authorship, the U.S. Copyright Office will focus solely on the requirements of U.S. copyright law. The fact that a work may or may not be protected by a design patent, trademark registration, or other form of legal protection is irrelevant to this determination. *See Star Athletica,* 137 S. Ct. at 1015; 37 C.F.R. § 202.10(a), (b); H.R. REP. NO. 94-1476, at 54 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5667.

311 Derivative Works

This Section discusses the U.S. Copyright Office's practices and procedures for evaluating the copyrightability of a derivative work.

For a definition and general discussion of derivative works, see Chapter 500, Section 507. For specific instructions on how to prepare an application to register this type of work, see Chapter 600, Sections 613.6, 617.5, 618.5, 620.7, and 621.

311.1 Copyrightable Subject Matter

A derivative work may be registered with the U.S. Copyright Office, provided that it constitutes copyrightable subject matter.

As discussed in Section 307 above, derivative works are a subset of the subject matter categories, rather than a separate and distinct category of work. In other words, the new material that the author contributed to the derivative work must fall "within one or

more of the categories listed in section 102 [of the Copyright Act]." H.R. REP. NO. 94-1476, at 57 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5670. If the new material does not fall within one or more of the congressionally established categories of authorship, the registration specialist may communicate with the applicant if the authorship is questionable or may refuse registration. For example, the Office may register a drawing of a dress or a photograph of a garden, but it cannot register a "revised dress design" or a "genetically modified plant," because clothing and plants do not constitute copyrightable subject matter under Section 102(a) of the Copyright Act. *Cf.* Registration of Claims to Copyright, 77 Fed. Reg. 37,605, 37,606 (June 22, 2012).

In addition, the preexisting work that has been recast, transformed, or adapted, "must come within the general subject matter of copyright set forth in section 102, regardless of whether it is or was ever copyrighted." H.R. REP. NO. 94-1476, at 57 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5670. In other words, the preexisting work must qualify as a literary work; a musical work; a dramatic work; a pantomime or choreographic work; a pictorial, graphic or sculptural work; a motion picture or audiovisual work; a sound recording; and/or an architectural work. For example, a ballet based on an epic poem would be considered a derivative work, because a poem is a type of literary work. By contrast, a photograph of a lake or a sculpture of a mountain would not be considered a derivative work, because lakes and mountains do not constitute copyrightable subject matter.

The fact that the author incorporated uncopyrightable elements of a preexisting work into his or her work does not necessarily mean that the author's expression qualifies as a derivative work. For example, merely incorporating a word, letter, number, or common geometric shape from one or more preexisting works does not constitute derivative authorship. Instead, the author of the derivative work must recast, transform, or adapt some of the copyrightable portions of a preexisting work. *See* H.R. REP. NO. 94-1476, at 57 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5670 (explaining that a derivative work "requires a process of recasting, transforming, or adapting 'one or more preexisting works'" and that "the 'preexisting work' must come within the general subject matter of copyright" whereas "[a] 'compilation' results from a process of selecting, bringing together, organizing and arranging previously existing material of all kinds, regardless of whether the individual items in the material have been or ever could have been subject to copyright.").

311.2 The Originality Requirement for Derivative Works

Creating a derivative work requires "a process of recasting, transforming, or adapting 'one or more preexisting works.'" H.R. REP. NO. 94-1476, at 57 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5670. Thus, derivative works contain two distinct forms of authorship:

- The authorship in the preexisting work(s) that has been recast, transformed, or adapted within the derivative work; and
- The new authorship involved in recasting, transforming, or adapting those preexisting work(s).

The new authorship that the author contributed to the derivative work may be registered, provided that it contains a sufficient amount of original expression, meaning that the derivative work must be independently created and it must possess more than a modicum of creativity. *See Waldman Publishing Corp. v. Landoll, Inc.,* 43 F.3d 775, 782 (2d Cir. 1994).

As discussed in Section 308.1, independent creation means that the author(s) named in the application created the new or revised material that the applicant intends to register, "and this in turn means that the work must not consist of actual copying." *L. Batlin & Son*, 536 F.2d at 490 (citation omitted).

The amount of creativity required for a derivative work is the same as that required for a copyright in any other work. "All that is needed to satisfy both the Constitution and the statute is that the 'author' contributed something more than a 'merely trivial' variation, something recognizably 'his own.'" *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 102-03 (2d Cir. 1951) (citing *Chamberlin v. Uris Sales Corp*., 150 F.2d 512, 513 (2d. Cir. 1945)). Thus, "the key inquiry is whether there is sufficient nontrivial expressive variation in the derivative work to make it distinguishable from the [preexisting] work in some meaningful way." *Schrock v. Learning Curve International, Inc.*, 586 F.3d 513, 521 (7th Cir. 2009).

"While the quantum of originality that is required may be modest indeed," courts have recognized that derivative works "[l]acking even a modest degree of originality. . . are not copyrightable." *L. Batlin & Son*, 536 F.2d at 490; *Durham Industries, Inc. v. Tomy Corp.,* 630 F.2d 905, 911 (2d Cir. 1980). Miniscule variations do not satisfy this requirement, such as merely changing the size of the preexisting work. Merely recasting a work from one medium to another alone does not support a claim in derivative authorship. *See L. Batlin & Son*, 536 F.2d at 491. "Nor can the requirement of originality be satisfied simply by the demonstration of 'physical skill' or 'special training.'" *Id*.

A registration for a derivative work only covers the new authorship that the author contributed to that work. It does not cover the authorship in the preexisting work(s) that has been recast, transformed, or adapted by the author of the derivative work. H.R. REP. NO. 94-1476, at 57 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5670.

Likewise, a registration for a derivative work does not cover any previously published material, previously registered material, or public domain material that appears in the derivative work. Nor does it cover any material that is not owned by the copyright claimant. *See* 17 U.S.C. § 103(b) (stating that the copyright in a derivative work is "independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material"). If a derivative work contains an appreciable amount of previously published material, previously registered material, public domain material, or third party material, the applicant should exclude that material from the claim using the procedure described in Chapter 600, Section 621. For additional information concerning the scope of the copyright in a derivative work, see Chapter 500, Section 507.2.

312 Compilations and Collective Works

This Section discusses the U.S. Copyright Office's general practices and procedures for evaluating the copyrightability of compilations and collective works.

For a definition and general discussion of these types of works, see Chapter 500, Sections 508 and 509. For specific instructions on how to prepare an application to register a compilation, see Chapter 600, Sections 613.7, 617.5, 618.6, 620.7, and 621.8(C). For specific instructions on how to prepare an application to register a collective work, see Chapter 600, Sections 610.4, 613.8, 618.7, 620.8, and 621.8(D)

312.1 Copyrightable Subject Matter

A compilation or a collective work may be registered with the U.S. Copyright Office, provided that it constitutes copyrightable subject matter.

As discussed in Section 307, compilations and collective works are a subset of the subject matter categories set forth in Section 102(a) of the Copyright Act, rather than separate and distinct categories of works. *See* Registration of Claims to Copyright, 77 Fed. Reg. 37,605, 37,606 (June 22, 2012). Thus, a compilation or a collective work must qualify as a literary work; a musical work; a dramatic work; a pantomime or choreographic work; a pictorial, graphic or sculptural work; a motion picture or audiovisual work; a sound recording; and/or an architectural work. *See id*. If the authorship involved in creating the compilation or collective work as a whole (*i.e.*, the author's selection, coordination, and/or arrangement) does not fall within one or more of the congressionally established categories of authorship, the registration specialist may communicate with the applicant if the authorship appears questionable or may refuse registration. *Id.*

Examples:

- The Office may register a sculptural work comprised of rocks that are selected, coordinated, and arranged in a creative manner. Likewise, the Office may register a photograph of a rock, a drawing of a handtool, or a written expression of an idea. However, the Office cannot register a mere "compilation of ideas," a mere "selection and arrangement of handtools," or a mere "compilation of rocks," because ideas, handtools, and rocks do not constitute copyrightable subject matter under Section 102(a) of the Copyright Act.

- The Office may register a photograph of food if the photographer exercised some minimal level of creativity in taking the picture. However, the Office cannot register a "compilation of food" based on a selection, coordination, and/or arrangement of items on a plate, because food does not constitute copyrightable subject matter under Section 102(a) of the Copyright Act. Although a sculptural depiction of a plate of food may be copyrightable, that would not prevent actual food from being arranged in the same way. *See* 17 U.S.C. § 113(b).

- The Office may register a claim in a compilation containing the names of the author's fifty favorite restaurants. While a restaurant or the name of a restaurant does not constitute copyrightable subject matter under Section 102(a) of the Act, a list of restaurant names may constitute a literary work, which is one of the congressionally established categories of authorship.

See 77 Fed. Reg. at 37,606.

312.2 The Originality Requirement for Compilations

A compilation may contain several distinct forms of authorship:

- *Selection* authorship involved in choosing the material or data that will be included in the compilation;
- *Coordination* authorship involved in classifying, categorizing, ordering, or grouping the material or data; and/or
- *Arrangement* authorship involved in organizing or moving the order, position, or placement of material or data within the compilation as a whole.

See Feist, 499 U.S. at 348.

In determining whether a compilation satisfies the originality requirement, the registration specialist should focus on the manner in which the materials or data "have been selected, coordinated, and arranged" and "the principal focus should be on whether the selection, coordination, and arrangement are sufficiently original to merit protection." *Id*. at 358.

The authorship involved in selecting, coordinating, and arranging the preexisting material or data must be objectively revealed in the deposit copy(ies). *See id*. ("Originality requires only that the author make the selection or arrangement independently . . . and *that it display* some minimal level of creativity") (emphasis added). For instance, a compilation of statistics is not copyrightable if the author's selection, coordination, or arrangement of data is not evident in the claim.

While "[t]he originality requirement is not particularly stringent," the Office cannot register a compilation "in which the selection, coordination, and arrangement are not sufficiently original to trigger copyright protection." *Id*. The preexisting material or data do not need to "be presented in an innovative or surprising way." *See id.* at 362. The Office may register the claim if the author's selection possesses some minimal degree of creativity, even if the coordination and/or arrangement do not (or vice versa). However, the more creative the selection, coordination, and/or arrangement, the more likely it is that the author's compilation will be registered. For example, the Office generally will not register a compilation consisting of all the elements from a particular set of data, because the selection is standard or obvious. Likewise, the Office generally will not register a compilation containing only two or three elements, because the selection is necessarily *de minimis*. *See* H.R. REP. NO. 94-1476, at 122 (1976), *reprinted in* U.S.C.C.A.N.

at 5737 (stating that a work does not qualify as a collective work "where relatively few separate elements have been brought together," as in the case of "a composition consisting of words and music, a work published with illustrations or front matter, or three one-act plays").

In determining whether the author's compilation is sufficiently original, the U.S. Copyright Office may consider the following factors:

- What type of material or data did the author compile?
- How is the material or data presented?
- Was the selection, coordination, and/or arrangement made from a large or diverse pool of material or data?
- Was the coordination or arrangement standard?
- Is the selection exhaustive (*e.g.*, a parts catalog containing standard information for all of the parts sold by a particular company)?
- Is the coordination or arrangement obvious (*e.g.*, is the information listed in alphabetical, numerical, or chronological order)?

The statute also provides that preexisting material or data "must be selected, coordinated, or arranged 'in such a way' as to render the work as a whole original. This implies that some 'ways' will trigger copyright, but that others will not." *Feist*, 499 U.S. at 358 (citing 17 U.S.C. § 101 definition of "compilation").

Examples:

- Generally, a selection consisting of less than four items will be scrutinized for sufficient authorship.
- A selection, coordination, and/or arrangement that is mechanical or routine, such as an alphabetical list of items added to a catalog within the past twelve months, a symmetrical arrangement of stones on jewelry, arranging geometric shapes in a standard or symmetrical manner, arranging notes in standard scales or in standard melodic or harmonic intervals, or a musical work consisting solely of a musical scale(s).
- A selection, coordination, and/or arrangement that is commonplace such that it has come to be expected as a matter of course.
- A compilation that contains an obvious selection, coordination, and/or arrangement of material, such as a complete list of stories written by Zane Grey between 1930 and 1939, a complete collection of Arthur Conan Doyle's Sherlock Holmes stories, or a collection of a

feature writer's contributions to a particular newspaper over a period of six months arranged in chronological order.

- A selection that is dictated by law, such as a law requiring a telephone company to publish a directory containing the names, addresses, and telephone numbers of its subscribers.

- A selection, coordination, and/or arrangement of data that is practically inevitable, such as a standard organizational chart.

- Mailing or subscriber lists that contain standard information about a predetermined group of people organized in an obvious manner, such as an alphabetical list of all the names, telephone numbers, and email addresses for the members of the graduating class of a particular college or university.

- A compilation that contains an exhaustive selection of information where the information is presented in sequential order, such as a genealogy containing a comprehensive selection of public records arranged in alphabetical or chronological order.

312.3 The Originality Requirement for Collective Works

A collective work "is a species of 'compilation'" that "by its nature, must involve the selection, assembly, and arrangement of 'a number of contributions.'" H.R. REP. NO. 94-1476, at 122 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5737 (discussing 17 U.S.C. § 101's definitions of "compilation" and "collective work").

Because a collective work is a type of compilation, the U.S. Copyright Office will apply the criteria set forth in Section 312.2 to determine whether the author's selection, coordination, and/or arrangement satisfies the originality requirement. When examining a particular contribution that appears within a collective work, the Office will apply the criteria set forth in Section 309.

313 Uncopyrightable Material

The U.S. Copyright Office has no authority to register works that are not protected by copyright law. Some of the more common types of uncopyrightable material are discussed in Sections 313.1 through 313.6 below.

Although uncopyrightable material, by definition, is not eligible for copyright protection, the Office may register a work that contains uncopyrightable material, provided that the work as a whole contains other material that qualifies as an original work of authorship (*e.g.*, a selection, coordination, and/or arrangement of uncopyrightable elements where the resulting work as a whole constitutes an original work of authorship).

313.1 Works That Have Not Been Fixed

As discussed in Section 305, a work of authorship may be registered, provided that it has been fixed in a tangible medium of expression. *See* 17 U.S.C. § 102(a). A work that

has not been fixed is not protected by the Copyright Act and cannot be registered with the U.S. Copyright Office, although it might be eligible for protection under state law.

Examples:

- Choreography that has never been filmed or notated.
- An extemporaneous speech that has not been filmed or recorded.
- A work communicated solely through conversation or a live broadcast that has not been filmed, recorded, written, or transcribed.
- A dramatic sketch or musical composition improvised or developed from memory that has not been filmed, recorded, or transcribed.

See H.R. REP. NO. 94-1476, at 52, 131 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5747.

313.2 Works That Lack Human Authorship

As discussed in Section 306, the Copyright Act protects "original works of *authorship*." 17 U.S.C. § 102(a) (emphasis added). To qualify as a work of "authorship" a work must be created by a human being. *See Burrow-Giles Lithographic Co*., 111 U.S. at 58. Works that do not satisfy this requirement are not copyrightable.

The U.S. Copyright Office will not register works produced by nature, animals, or plants. Likewise, the Office cannot register a work purportedly created by divine or supernatural beings, although the Office may register a work where the application or the deposit copy(ies) state that the work was inspired by a divine spirit.

Examples:

- A photograph taken by a monkey.
- A mural painted by an elephant.
- A claim based on the appearance of actual animal skin.
- A claim based on driftwood that has been shaped and smoothed by the ocean.
- A claim based on cut marks, defects, and other qualities found in natural stone.
- An application for a song naming the Holy Spirit as the author of the work.

Similarly, the Office will not register works produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or

intervention from a human author. The crucial question is "whether the 'work' is basically one of human authorship, with the computer [or other device] merely being an assisting instrument, or whether the traditional elements of authorship in the work (literary, artistic, or musical expression or elements of selection, arrangement, etc.) were actually conceived and executed not by man but by a machine." U.S. COPYRIGHT OFFICE, REPORT TO THE LIBRARIAN OF CONGRESS BY THE REGISTER OF COPYRIGHTS 5 (1966).

Examples:

- Reducing or enlarging the size of a preexisting work of authorship.
- Making changes to a preexisting work of authorship that are dictated by manufacturing or materials requirements.
- Converting a work from analog to digital format, such as transferring a motion picture from VHS to DVD.
- Declicking or reducing the noise in a preexisting sound recording or converting a sound recording from monaural to stereo sound.
- Transposing a song from B major to C major.
- Medical imaging produced by x-rays, ultrasounds, magnetic resonance imaging, or other diagnostic equipment.
- A claim based on a mechanical weaving process that randomly produces irregular shapes in the fabric without any discernible pattern.

313.3 Works That Do Not Constitute Copyrightable Subject Matter

As discussed in Section 307 above, a work of authorship may be registered, provided that it falls within one or more of the categories of works set forth in Section 102(a) of the Copyright Act. In other words, a work may be eligible for copyright protection if it qualifies as a literary work; a musical work; a dramatic work; a pantomime; a choreographic work; a pictorial, graphic, or sculptural work; a motion picture or other audiovisual work; a sound recording; or an architectural work. Works that do not fall within the existing categories of copyrightable subject matter are not copyrightable and cannot be registered with the U.S. Copyright Office. *See* Registration of Claims to Copyright, 77 Fed. Reg. 37,605, 37,607 (June 22, 2012) ("Congress did not delegate authority to the courts [or the Copyright Office] to create new categories of authorship. Congress reserved this option for itself.").

313.3(A) Ideas, Procedures, Processes, Systems, Methods of Operation, Concepts, Principles, or Discoveries

Section 102(b) of the Copyright Act expressly excludes copyright protection for "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); *see also* 37 C.F.R. § 202.1(b). As such, any work or

portion of a work that is an idea, procedure, process, system, method of operation, concept, principle, or discovery does not constitute copyrightable subject matter and cannot be registered.

Examples:

- The idea or concept for a work of authorship.
- The idea for a character.
- Ideas, procedures, processes, or methods for doing, making, or building things.
- Scientific or technical methods or discoveries.
- Business operations or procedures.
- Mathematical principles, formulas, algorithms, or equations.
- DNA sequences and other genetic, biological, or chemical substances or compounds, regardless of whether they are man-made or produced by nature.
- An extrapolation or application of an idea or system that always produces substantially the same result, such as a computation of interest based upon a particular rate.

The Office may register a literary, musical, graphic, or artistic description, explanation, or illustration of an idea, procedure, process, system, method of operation, concept, principle, or discovery, provided that the work contains a sufficient amount of original authorship. *See* H.R. REP. NO. 94-1476, at 56 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5669. However, the registration would be limited to the copyrightable literary, musical, graphic, or artistic aspects of the work because copyright law does not give copyright owners any exclusive rights in the ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries described in their works. As such, copyright owners do not have the right to prevent others from using the ideas, concepts, principles, or discoveries or from implementing the procedures, processes, systems, or methods of operation described in such works. *See Feist*, 499 U.S. at 344-45 (explaining that "[t]he most fundamental axiom of copyright law is that 'no author may copyright his ideas or the facts he narrates.'" (quoting *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 556 (1985)).

313.3(B) Merger of Idea and Expression

In some cases, there may be only one way or only a limited number of ways to express a particular idea, procedure, process, system, method of operation, concept, principle, or discovery. If the U.S. Copyright Office determines that extending copyright protection to the author's expression would effectively accord protection to the idea, procedure, process,

system, method of operation, concept, principle, or discovery itself, the registration specialist may communicate with the applicant or may refuse to register the claim.

For example, the Office cannot register a claim in the mere idea for a story that is based on a common theme, such as "a quarrel between a Jewish father and an Irish father, the marriage of their children, the birth of grandchildren and a reconciliation." *See Nichols v. Universal Pictures Corp.*, 45 F.2d 119, 122 (2d Cir. 1930). The Office cannot register a claim based solely on standard programming techniques that are commonly used to achieve a specific result in a computer program. *See, e.g., Sega Enterprises, Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1524 (9th Cir. 1992). Likewise, the Office cannot register a claim based solely on standard expressions that naturally follow from the idea for a work of authorship, such as a sculpture that depicts a brightly colored jellyfish swimming in a vertical orientation. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003).

313.3(C) Facts

Facts are not copyrightable and cannot be registered with the U.S. Copyright Office. "No one may claim originality as to facts . . . because facts do not owe their origin to an act of authorship." *Feist*, 499 U.S. at 347 (internal citation omitted). A person who finds and records a particular fact does not create that fact; he or she merely discovers its existence. As a result, facts "are never original" and Section 102(b) of the Copyright Act "is universally understood to prohibit any copyright in facts." *Id*. at 356. "[This] is true of all facts – scientific, historical, biographical, and news of the day." *Id*. at 348.

For the same reason, theories, predictions, or conclusions that are asserted to be facts are uncopyrightable, even if the assertion of fact is erroneous or incorrect. *See, e.g., Hoehling v. Universal City Studios, Inc.*, 618 F.2d 972, 978-79 (2d Cir. 1980); *Nash v. CBS, Inc.*, 899 F.2d 1537, 1541 (7th Cir. 1990).

Although facts are not copyrightable, a work of authorship that contains factual information may be registered, provided that the work contains a sufficient amount of original authorship. For example, a newspaper may be registered, but the registration does not cover "[t]he news element – the information respecting current events contained in the [publication]," because the news of the day "is not the creation of the writer, but is a report of matter that ordinarily are *publici juris*." *International News Service v. Associated Press,* 248 U.S. 215, 234 (1918) *abrogated on other grounds by Erie Railroad Co. v. Tompkins,* 304 U.S. 64, 58 (1938). Likewise, "a directory that contains absolutely no protectable written expression, only facts," may be protected by copyright only "if it features an original selection or arrangement." *Feist*, 499 U.S. at 348. The copyright in such works only protects the compilation expression that the author contributed to the work. "No matter how original the format . . . the facts themselves do not become original through association." *Id*. at 349.

313.3(D) Typeface and Mere Variations of Typographic Ornamentation

The copyright law does not protect typeface or mere variations of typographic ornamentation or lettering. 17 U.S.C. § 102(b); 37 C.F.R. § 202.1(a), (e).

A typeface is a set of letters, numbers, or other symbolic characters with repeating design elements that are consistently applied in a notational system that is intended to

be used in composing text or other combinations of characters. H.R. REP. NO. 94-1476, at 55 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5668. Typeface includes typefonts, letterforms, and the like. Registrability of Computer Programs that Generate Typefaces, 57 Fed. Reg. 6201, 6202 (Feb. 21, 1992).

The U.S. Copyright Office cannot register a claim to copyright in typeface or mere variations of typographic ornamentation or lettering, regardless of whether the typeface is commonly used or truly unique. Likewise, the Office cannot register a simple combination of a few typefonts, letterforms, or typeface designs with minor linear or spatial variations. In *Eltra Corp. v. Ringer,* 579 F.2d 294 (4th Cir. 1978) the Office refused to register a typeface design under the 1909 Act. Both the District Court and the Court of Appeals affirmed the Office's decision, noting that "typeface has never been considered entitled to copyright under the provisions of [the 1909 Act]." 579 F.2d at 298. The Fourth Circuit noted that many parties have asked "Congress to amend the law in order to provide copyright protection to typeface" and "[j]ust as consistently Congress has refused to grant the protection." *Id*. Congress addressed this issue when it drafted the 1976 Act and concluded that typeface is not copyrightable. The House Report expressly states: "The Committee does not regard the design of typeface, as thus defined, to be a copyrightable 'pictorial, graphic, or sculptural work' within the meaning of this bill. . . ." H.R. REP. NO. 94-1476, at 55 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5668-69.

For the same reasons, the Office cannot register a claim that is based solely on calligraphy because calligraphy is a stylized form of handwriting that is a mere variation of typographic ornamentation. Although calligraphy in itself is not copyrightable, a literary work, a pictorial work, or a graphic work that contains a sufficient amount of original authorship may be registered notwithstanding the fact that it is executed in calligraphic form.

As a general rule, the mere arrangement of type on a page or screen is not copyrightable. *See* Section 313.3(E). However, if the arrangement produces an abstract or representational image, such as an advertisement that uses letters to create a representation of a person, the Office may register the claim provided that the resulting image contains a sufficient amount of pictorial expression.

The Office may register computer programs that generate typeface(s) provided that they contain a sufficient amount of literary authorship. However, the registration does not extend to any typeface or mere variations of typographic ornamentation or lettering that may be generated by the program. *See* Registrability of Computer Programs that Generate Typeface, 57 Fed. Reg. at 6202. For a discussion of computer programs that generate typeface, see Chapter 700, Section 723.

313.3(E) Format and Layout

As a general rule, the U.S. Copyright Office does not accept vague claims of "format" and/or "layout." The general layout or format of a book, a page, a slide presentation, a website, a webpage, a poster, a form, or the like, is not copyrightable because it is a template of expression. These terms should be avoided and, if used, will be questioned by the registration specialist.

Copyright protection may be available for the selection, coordination, and/or arrangement of specific content, such as a compilation of artwork or a compilation of text, provided that the content is arranged in a sufficiently creative manner. However, the claim would be limited to the selection, coordination, and/or arrangement of that specific content, and it would not apply to the format and layout itself.

A standard or common selection, coordination, and/or arrangement of specific content or simple variations thereof will not support a claim of compilation authorship and cannot be registered with the Office. If the content that appears in the work is copyrightable, but the selection, coordination, and/or arrangement of that content is not, the claim should be limited to the copyrightable content that the author contributed to the work (*e.g.*, text, artwork, etc.) and the compilation authorship should not be included in the claim.

For a general discussion of format and layout, see Chapter 900, Section 906.5.

313.4 Works That Do Not Satisfy the Originality Requirement

As discussed in Section 308, the Copyright Act protects "*original* works of authorship." 17 U.S.C. § 102(a) (emphasis added). To qualify as an "original" work of authorship, the work must be independently created and must contain some minimal amount of creativity. The U.S. Copyright Office will not register works that do not satisfy these requirements.

313.4(A) Mere Copies

A work that is a mere copy of another work of authorship is not copyrightable. The Office cannot register a work that has been merely copied from another work of authorship without any additional original authorship. *See L. Batlin & Son*, 536 F.2d at 490 ("one who has slavishly or mechanically copied from others may not claim to be an author"); *Bridgeman Art Library, Ltd. v. Corel Corp.*, 36 F. Supp. 2d 191, 195 (S.D.N.Y. 1999) ("exact photographic copies of public domain works of art would not be copyrightable under United States law because they are not original").

As a general rule, the registration specialist will not search the Office's records or conduct independent research to determine whether the work was created by the author(s) named in the application because the existence of similar or identical works will not preclude a claim in a work that was independently created. However, if the applicant asserts a claim in a work that is unusually similar to another work of authorship that is known to the specialist, he or she may communicate with the applicant. If the specialist determines that the author copied or incorporated another work of authorship, he or she may ask the applicant to exclude the preexisting work from the claim or may refuse registration if the author did not contribute a sufficient amount of additional original authorship to the work.

Examples:

- An exact reproduction of the *Mona Lisa* that cannot be distinguished from the original.

- A photocopy or scan of a photograph.
- Photocopying, scanning, or digitizing a literary work.
- Dubbing a sound recording from a preexisting recording.
- A toy model that is an exact replica of an automobile, airplane, train, or other useful article where no creative expression has been added to the existing design.

313.4(B) *De Minimis* Authorship

The term "*de minimis*" comes from the legal principle "*de minimis non curat lex,*" which means "the law does not take notice of very small or trifling matters." As the Supreme Court stated, "copyright protects only those constituent elements of a work that possess more than a *de minimis* quantum of creativity." *Feist*, 499 U.S. at 363. Works that contain no expression or only a *de minimis* amount of original expression are not copyrightable and cannot be registered with the U.S. Copyright Office.

Examples:

Literary Works:

- Substituting the pronouns "she" and "her" for "he" and "his" in a preexisting work of authorship.
- Combining a coined term with a few short phrases that define the term.
- A Venn diagram consisting of three overlapping circles containing the names of various personality disorders and a few words and short phrases that describe the symptoms of each condition.
- A standard form contract for a real estate transaction requesting factual information from the buyer and containing standard legal language for the release of the seller's interest in the property.
- Editing that merely consists of spelling and grammatical corrections.

Works of the Performing Arts:

- A synopsis consisting of a single sentence.
- A musical phrase consisting of three notes.
- A sound recording consisting of a single tone.

Works of the Visual Arts:

- Solitaire rings, simple diamond stud earrings, simple hoop earrings, and other jewelry designs that contain only a trivial amount of authorship.
- Touching-up an aged or damaged photograph in order to restore it to its original condition, without adding an appreciable amount of authorship to the original image.
- A public domain photograph of Winston Churchill combined with the word "Commitment" and the quotation "Never, never, never give up."
- An outline map of South Carolina with a blue heart in the center of the design featuring the white crescent moon and white palmetto tree from the state flag.

Specific categories of literary works, works of the performing arts, and works of the visual arts that contain a *de minimis* amount of authorship are discussed in Chapters 700, 800, and 900.

313.4(C) Words and Short Phrases

Words and short phrases, such as names, titles, and slogans, are not copyrightable because they contain a *de minimis* amount of authorship. *See* 37 C.F.R. § 202.1(a). The U.S. Copyright Office cannot register individual words or brief combinations of words, even if the word or short phrase is novel or distinctive or lends itself to a play on words. *See Kitchens of Sara Lee, Inc. v. Nifty Foods Corp*., 266 F.2d 541, 544 (2d Cir. 1959) (concluding that the Office's regulation barring the registration of short phrases is "a fair summary of the law").

Examples:

- The name of an individual (including pseudonyms, pen names, or stage names).
- The name of a business or organization.
- The name of a band or performing group.
- The name of a product or service.
- A domain name or URL (*e.g*., www.copyright.gov).
- The title or subtitle of a work of authorship.
- The name of a character.

- Catchwords, catchphrases, mottoes, slogans, or other short expressions.

For the same reasons, short musical phrases consisting of only a few musical notes standing alone are not copyrightable and cannot be registered with the U.S. Copyright Office, even if the phrase is novel or distinctive. *See* 37 C.F.R. § 202.1(a).

Examples:

- Clock chimes.
- "Mi do re sol, sol re mi do."
- A trademark consisting of three musical notes.

Similarly, individual numbers, letters, sounds, and short phrases consisting of such elements are not copyrightable, because they do not contain sufficient creative authorship. *Id*.

The Office maintains various databases, indexes, catalogs, and other records that contain titles of works that have been registered with the Office. These titles are part of the public record, but the titles themselves are not subject to copyright protection.

313.4(D) Works Consisting Entirely of Information That Is Common Property

The U.S. Copyright Office cannot register works consisting entirely of information that is common property because such works contain no original authorship. 37 C.F.R. § 202.1(d). Examples of common property include, without limitation, standard calendars, schedules of sporting events, and lists or tables taken from public documents or other common sources. *Id*. For the same reasons, the Office cannot register a claim in common sayings, diatonic and chromatic musical scales, or common chord progressions that merely consist of standard harmonies or common musical phrases.

313.4(E) Measuring and Computing Devices

The U.S. Copyright Office cannot register devices that are designed for computing or measuring or other useful articles in and of themselves. *See* 37 C.F.R. § 202.1(d). Examples of such devices include, without limitation, height and weight charts, tape measures and rulers, calculators, scales, and thermometers.

Although measuring and computing devices are not copyrightable, the Office may register pictorial, graphic, or sculptural features that have been applied to a device, but only if those features are separable from the article. For example, a drawing that appears on the surface of a height and weight chart or a fanciful graphic that appears on the surface of a thermometer may be registered if the pictorial or graphic feature can be perceived as a two-dimensional "work of art separate from the useful article" and would qualify as a protectable pictorial or graphic work "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, 1007 (2017).

For a general discussion of useful articles, see Chapter 900, Section 924.

313.4(F) Mere Listing of Ingredients or Contents

A mere listing of ingredients or contents is not copyrightable and cannot be registered with the U.S. Copyright Office. 37 C.F.R. § 202.1(a).

Examples:

- A list of ingredients for a recipe.
- A list of components for a formula, compound, prescription, or the like.
- A list of musical tracks contained in a compact disc.
- A product label that merely lists the ingredients for the product, merely describes the product, or merely describes the contents of the product packaging.

The Office may register a work that explains how to perform a particular activity, such as a cookbook or user manual, provided that the work contains a sufficient amount of text, photographs, artwork, or other copyrightable expression. However, the registration does not extend to any list of ingredients or contents that may be included in the work. *See Publications International v. Meredith Corp.,* 88 F.3d 473, 480 (7th Cir. 1996) ("We do not view the functional listing of ingredients as original within the meaning of the Copyright Act."); *see also* Policy Decision on Copyrightability of Digitized Typefaces, 53 Fed. Reg. 38,110, 38,112 (Sept. 29, 1988) (explaining that "the explanation and illustration of recipes is copyrightable even though the end result – the food product – is not").

313.4(G) Blank Forms

Blank forms that are designed for recording information and do not in themselves convey information are not copyrightable. 37 C.F.R. § 202.1(c). Likewise, the copyright law does not protect the ideas or principles behind a blank form, the systems or methods implemented by a form, or any functional layout, coloring, or design that facilitates the use of a form. *See Baker v. Selden*, 101 U.S. 99 (1879).

Blank forms typically contain empty fields or lined spaces, as well as words or short phrases that identify the content that should be recorded in each field or space. Examples include, without limitation, time cards, graph paper, account books, diaries, bank checks, scorecards, address books, report forms, order forms, and the like. 37 C.F.R. § 202.1(c).

As a general rule, the Office will register a work of authorship that contains an appreciable amount of written or artistic expression, even if it contains a blank form that is designed for recording information. For example, bank checks may be registered if they contain sufficient pictorial authorship that decorates the form. Likewise, contracts, insurance policies, and other textual documents with "fill-in" spaces may be

registered if they contain a sufficient amount of expressive, literary authorship that is not standard or functional. However, the mere inclusion of a large number of terms on a blank form may not satisfy the originality requirement if those terms are part of a system for recording information, such as a medical diagnostic form. *See* 17 U.S.C. § 102(b).

When examining these types of works, the Office applies "a standard consistent with that applied to all works submitted for registration: does the work evidence an appreciable quantum of original, creative expression?" *See* Registration of Claims to Copyright: Notice of Termination of Inquiry Regarding Blank Forms, 45 Fed. Reg. 63,297 (Sept. 24, 1980). In applying this standard, the Office focuses on the textual or pictorial expression that the author contributed to the work. In other words, does the form qualify as a literary work, a pictorial work, or a work that contains an original combination of literary and pictorial expression? If so, the Office will register the claim. In all cases, the registration covers only the original textual or pictorial expression that the author contributed to the work, but does not cover the blank form or other uncopyrightable elements that the form may contain.

The Office cannot register the empty fields or lined spaces in a blank form. Likewise, the Office cannot register the words, short phrases, or other *de minimis* text that appears in the headings for a blank form, even if the applicant attempts to register the work as a compilation of uncopyrightable material. As discussed in Section 307, a compilation is a subset of the subject matter categories listed in Section 102(a) of the Copyright Act, rather than a separate and distinct category of authorship. In other words, a compilation may be registered, provided that the work as a whole falls within one or more of the congressionally established categories of authorship. A blank form that merely contains words, short phrases, or a *de minimis* amount of text does not satisfy this requirement because it does not qualify as a literary work, a pictorial work, a graphic work, or any of the other categories of works listed in Section 102(a). *Cf.* Registration of Claims to Copyright, 77 Fed. Reg. 37,605, 37,607 (June 22, 2012).

If a blank form poses an extensive number of questions or contains an exhaustive checklist of information, the registration specialist may communicate with the applicant or may refuse registration if it appears that the applicant is asserting a claim in the ideas, principles, systems, or methods implemented by the form.

313.4(H) Characters

Although the copyright law does not protect the name or the general idea for a character, a work that depicts or describes a particular character may be registered if it contains a sufficient amount of original authorship.

A registration for a visual art work, a literary work, or a work of the performing arts that depicts or describes a character covers the expression set forth in the deposit copy(ies), but it does not cover the character *per se*. In other words, the copyright in the registered work protects the author's expression of the character, but it does not protect the mere concept of the character. The copyright in the character itself is limited to the artistic rendition of the character in visual form or the literary delineation of the character's specific attributes in textual form. (The trademark law may provide additional

protection for the character's name or other attributes if the character is sufficiently distinctive and is used to identify the source of the trademark owner's goods or services.)

For a further discussion of characters, see Chapter 800, Section 804.3(B) and Chapter 900, Section 911.

313.4(I) *Scènes à Faire*

The copyright law does not protect stock characters, settings, or events that are common to a particular subject matter or medium because they are commonplace and lack originality. For example, the copyright for a work about the Hindenburg would not cover elements that are "indispensable, or at least standard, in the treatment of" that topic, such as scenes that take place in a German beer hall or characters who utter common greetings of the period. *See Hoehling*, 618 F.2d at 979. The copyright for a work about a police station in an urban slum would not cover elements that necessarily result from the choice of that setting, such as scenes depicting drunks, prostitutes, vermin, and derelict cars, or stock themes commonly linked to the genre of police fiction, such as foot chases or the "familiar figure of the Irish cop." *See Walker v. Time Life Films, Inc.*, 784 F.2d 44, 50 (2d Cir. 1986). Likewise, the fact "[t]hat treasure might be hidden in a cave inhabited by snakes, that fire might be used to repel the snake, that birds might frighten an intruder in the jungle, and that a weary traveler might seek solace in a tavern . . . [are] simply too general to be protectable." *See Zambito v. Paramount Pictures Corp.*, 613 F. Supp. 1107, 1112 (E.D.N.Y 1985).

While *scènes à faire* cannot be registered by themselves, a work of authorship that contains standard expressions or stock characters, settings, or events may be registered provided that the work as a whole contains a sufficient amount of original expression.

313.4(J) Familiar Symbols and Designs

Familiar symbols and designs are not copyrightable and cannot be registered with the U.S. Copyright Office, either in two-dimensional or three-dimensional form. 37 C.F.R. § 202.1(a). Likewise, the Office cannot register a work consisting of a simple combination of a few familiar symbols or designs with minor linear or spatial variations, either in two-dimensional or three-dimensional form. Examples of familiar symbols and designs include, without limitation:

- Letters.
- Punctuation.
- Symbols typically found on a keyboard, such as asterisks, ampersands, and the like.
- Abbreviations.
- Musical notes and symbols.
- Numbers.

- Mathematical symbols.
- Currency symbols.
- Arrows and other directional or navigational symbols.
- Common representational symbols, such as a spade, club, heart, diamond, star, yin yang, fleur de lys, or the like.
- Common patterns, such as standard chevron, polka dot, checkerboard, or houndstooth designs.
- Well-known and commonly used symbols that contain a *de minimis* amount of expression or that are in the public domain, such as the peace symbol, gender symbols (♀ ♂), the symbols for "play, pause, stop, forward, back," simple emoticons such as the typical smiley face (☺), or the like.
- Standard industry designs, such as the caduceus, the barber pole, food labeling symbols, hazard warning symbols, or the like.
- Familiar religious symbols such as crosses, stars, crescents, and the like.
- Common architecture moldings, such as the volute used to decorate Ionic and Corinthian columns.

While familiar symbols and designs cannot be registered by themselves, a work of authorship that incorporates one or more of these elements into a larger design may be registered if the work as a whole contains a sufficient amount of creative expression.

For additional information concerning familiar symbols and designs, see Chapter 900, Section 906.2.

313.4(K) Mere Variations of Coloring

Color is one of the basic building blocks for pictorial, graphic, and sculptural works. The U.S. Copyright Office may register an original combination or arrangement of colors if it results in a pictorial, graphic, or sculptural work that qualifies as an original work of authorship. *See* Copyright Registration for Colorized Versions of Black and White Motion Pictures, 52 Fed. Reg. 23,443, 23,445 (June 22, 1987).

The Office cannot register a claim to copyright in color in and of itself or a system for matching pairs and sets of colors. *See* 17 U.S.C. § 102(b). Likewise, the Office cannot register mere variations in coloring, regardless of whether the variations are made by hand, by computer, or any other process. 37 C.F.R. § 202.1(a). If the author merely added or changed a few colors that appear in a preexisting work of authorship or merely added, changed, or combined expected or familiar sets or pairs of colors, the Office may communicate with the applicant or may refuse to register the claim. Similarly, the Office may communicate or refuse registration for a compilation of colors if the colors merely enhance the visual display of a chart, table, graph, device, or other article.

Examples:

- Creating a new version of a fabric design where the colors red and blue are substituted for the colors yellow and green.
- Producing three greeting cards containing the same visual and textual content where the only difference is that each card is printed in a different color.
- Making a few minor changes in a preexisting work of authorship, such as simple tone-overs or color overlays.
- Using color as a simple form of typographic ornamentation.
- Using color to enhance sonar imaging or x-rays, sonograms, echocardiograms, magnetic resonance imaging, or the like.
- Removing all the color from a preexisting work of authorship.

For additional information concerning color, see Chapter 900, Section 906.3.

313.5 Specific Types of Works That May Contain Uncopyrightable Material

The U.S. Copyright Office has adopted policies regarding the copyrightability of specific types of literary works, works of the performing arts, and works of the visual arts.

For information concerning literary works that may be or may contain uncopyrightable material, see Chapter 700, Sections 707.1 (Numbers), 707.2 (Research), and 707.3 (Book Design).

For information concerning works of the performing arts that may be or may contain uncopyrightable material, see Chapter 800:

- Common property musical scales and arpeggios (Section 802.5(A)).
- U.S. sound recordings fixed prior to February 15, 1972 (Section 803.5(D)).
- Social dances, simple routines, and other uncopyrightable movements (Sections 805.5(B) and 806.5(B)).

For information concerning works of the visual arts that may be or may contain uncopyrightable material, see Chapter 900:

- Geometric figures and shapes (Section 906.1).
- Bridges, canals, dams, tents, mobile homes, and other uncopyrightable structures (Section 926.2).
- Interior design and landscape design (Section 926.2).

- Useful articles (Section 924).

313.6 Other Types of Works That Cannot Be Registered with the U.S. Copyright Office

313.6(A) Foreign Works That Are Not Eligible for Copyright Protection in the United States

As discussed in Section 304, a work of authorship may be registered, provided that it is eligible for copyright protection in the United States under Sections 104(a) or 104(b) of the Copyright Act. Works that do not satisfy these requirements are not protected by U.S. copyright law and cannot be registered with the U.S. Copyright Office. For more information concerning these requirements, see Chapter 2000, Section 2003.

313.6(B) Unlawful Use of Preexisting Material in a Derivative Work, a Compilation, or a Collective Work

Some derivative works, compilations, and collective works cannot be registered with the U.S. Copyright Office. Section 103(a) of the statute states that copyright protection for a compilation or derivative work "employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully." 17 U.S.C. § 103(a). This provision also applies to collective works because "the term 'compilation' includes collective works." 17 U.S.C. § 101 (definition of compilation).

Section 103(a) is intended to prevent "an infringer from benefiting, through copyright protection, from committing an unlawful act." H.R. REP. NO. 94-1476, at 57 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5671. At the same time, it allows the author of a derivative work, a compilation, or a collective work to claim copyright in "those parts of the work that do not [unlawfully] employ the preexisting work." *Id*.

Ordinarily, the Office will not examine the preexisting material that appears in a derivative work, a compilation, or a collective work to determine whether that material is protected by copyright or whether it has been used in a lawful manner. However, the registration specialist may communicate with the applicant if the preexisting material has not been excluded from the claim and it is reasonably clear that the claimant may not own the copyright in that material, such as a mix tape containing a compilation of well-known sound recordings. The Office also may question derivative claims that appear to be unlawful and that are inseparable or intertwined with an underlying work, such as stage directions for a dramatic work.

The Office may register a derivative work, a compilation, or a collective work that contains preexisting copyrightable material, provided that the author's contribution to that work can be separated from the preexisting material. For example, an anthology of poetry may be registered as a collective work, even if the author accidentally included one poem that was unauthorized, because that poem could be severed from the anthology without affecting the lawful aspects of the collective work as a whole. By contrast, the Office may refuse registration if the preexisting material is inseparably intertwined with the compilation or the derivative work, such as an unauthorized

translation of a novel or an unauthorized arrangement of a song. *See* H.R. REP. NO. 94-1476, at 57-58 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5671.

313.6(C) Government Works

313.6(C)(1) U.S. Government Works

Copyright protection under the Copyright Act is not available for "any work of the United States Government," regardless of whether it is published or unpublished. 17 U.S.C. § 105; *see also* H.R. REP. NO. 94-1476, at 58 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5672.

"[T]he bar on copyright protection for federal works . . . applies to works created by all federal 'officer[s] or employee[s],' without regard for the nature of their position or scope of their authority." *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1509-10 (2020). This includes works created by the President; Congress; the federal judiciary; federal departments, agencies, boards, bureaus, or commissions; or any other officer or employee of the U.S. federal government while acting within the course of his or her official duties. It also includes works prepared by an officer or employee of the government of the District of Columbia, the Commonwealth of Puerto Rico, or the organized territories under the jurisdiction of the federal government.

If an applicant states that the U.S. government or any of its agencies, officers, or employees created the work while acting within the scope of their employment, the registration specialist may communicate with the applicant and may refuse registration, even if the claimant is a nongovernmental entity.

There are several exceptions to these rules:

- Although works prepared by officers or employees of the U.S. government within the scope of their employment are not copyrightable, the federal government may receive and hold "copyrights transferred to it by assignment, bequest, or otherwise." 17 U.S.C. § 105. For example, a U.S. government agency may register a website created by a government contractor, provided that the contractor did not create the website for the agency as a work made for hire and provided that the contractor transferred the copyright in that work to that agency.

- Works prepared by officers or employees of the U.S. Postal Service, the Corporation for Public Broadcasting, the Public Broadcasting Services, or National Public Radio are not considered works of the U.S. government. *See* H.R. Rep. No. 94-1476, at 60 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5674 (expressly exempting the U.S. Postal Service).

- Works prepared by officers or employees of the Smithsonian Institution are not considered works of the U.S. government if the author-employee was paid from the Smithsonian trust fund.

- Literary works prepared for publication in a scholarly press or journal by civilian faculty members of the National Defense University, United States Military

Academy, Army War College, United States Army Command and General Staff College, United States Naval Academy, Naval War College, Naval Post Graduate School, Marine Corps University, United States Air Force Academy, Air University, Defense Language Institute, or United States Coast Guard Academy are not considered U.S. government works. 17 U.S.C. § 105(b), (c) [sic].

- The U.S. Secretary of Commerce may secure copyright for a limited term not to exceed five years in any standard reference data prepared or disseminated by the National Technical Information Service. *See* 15 U.S.C. § 290e; H.R. Rep. No. 94-1476, at 59-60 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5673.

- A work prepared by an officer or employee of the U.S. government may be registered if the work was prepared at that person's own volition and outside his or her official duties, even if the subject matter focuses on the author's work for the government. *See* H.R. REP. NO. 94-1476, at 58 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5671.

313.6(C)(2) Government Edicts

Legislators and judges "empowered to speak with the force of law cannot be the authors of—and therefore cannot copyright—the works they create in the course of their official duties." *Georgia v. Public.Resource.Org, Inc*., 140 S. Ct. 1498, 1504 (2020). This is known as the "government edicts doctrine." *Id.* at 1504, 1506.

The doctrine is based on the principle "that no one can own the law." *Id.* at 1507. It "bars the officials responsible for creating the law from being considered the 'author[s]' of *whatever work* they perform in their capacity' as lawmakers." *Id.* (emphasis in original; citation omitted). As a result, any "work that [a] judge or legislator produces in the course of his [or her] judicial or legislative duties is not copyrightable," regardless of whether it "carries the force of law." *Id.* at 1506, 1513.

The government edicts doctrine "applies to whatever work legislators perform in their capacity as legislators. That of course includes final legislation, but it also includes explanatory and procedural materials legislators create in the discharge of their legislative duties." *Id.* at 1508.

Likewise, judges "cannot be the 'author' of the works they prepare 'in the discharge of their judicial duties,'" because they "are vested with the authority to make and interpret the law." *Id*. at 1507 (citing *Banks v. Manchester*, 128 U.S. 244, 253 (1888)). The doctrine applies to binding opinions issued by any federal, state, local, or territorial court. *Id*. It also applies to any concurrence, dissent, syllabus, headnote, statement of the case, or other "non-binding, explanatory legal materials" a judge may create "in his [or her] judicial capacity." *Id*. at 1504, 1507, 1509, 1511; *Banks*, 128 U.S. at 253.

The U.S. Copyright Office will not register a government edict that has been issued by any federal, state, local, or territorial government, including legislative enactments, judicial decisions, administrative rulings, public ordinances, or similar types of official legal materials. Likewise, the Office will not register a government edict issued by any foreign government or any translation prepared by a government employee acting

within the course of his or her official duties. *See Banks*, 128 U.S. at 253 ("there has always been a judicial consensus, from the time of the decision in the case of *Wheaton v. Peters*, 8 Pet. 591, that no copyright could under the statutes passed by Congress, be secured in the products of the labor done by judicial officers in the discharge of their judicial duties"); *Howell v. Miller*, 91 F. 129, 137 (6th Cir. 1898) (Harlan, J.) ("no one can obtain the exclusive right to publish the laws of a state in a book prepared by him").

There is a limited exception to this rule. Section 104(b)(5) of the Act states that works first published by the United Nations or any of its specialized agencies, or first published by the Organization of American States are eligible for copyright protection in the United States. *See* 17 U.S.C. § 104(b)(5).

The Office may register annotations or other explanatory materials that summarize or comment upon an edict of government, if they were "prepared by a private party, or a non-lawmaking official" "who lack[s] the authority to make or interpret the law," and if they contain a sufficient amount of original authorship. *Georgia*, 140 S. Ct. at 1507, 1509, 1510; *Callaghan v. Myers*, 128 U.S. 617, 647 (1888).

Other than works of the United States Government, a work that does not constitute a government edict may be registered, even if it was prepared by an officer or employee of a state, local, territorial, or foreign government while acting within the course of his or her official duties. For example, the Office may register a tourist magazine written and published by Arizona's department of tourism or a map created and published by the public transit authority for the city of Detroit. *Georgia*, 140 S. Ct. at 1510.

313.6(D) Works in the Public Domain

Works that are in the public domain in the United States cannot be registered with the U.S. Copyright Office. A copyrighted work enters the public domain in the United States when "its full copyright term has expired." *Golan v. Holder*, 565 U.S. 302, 307 (2012). Works that do not comply with certain statutory formalities may also be in the public domain, such as U.S. works published without a copyright notice on or before March 1, 1989, or U.S. works published or registered on or before December 31, 1963 that were not renewed in a timely manner. Likewise, works that are not copyrightable are in the public domain, such as works that have not been fixed in a tangible medium of expression or works that merely contain a *de minimis* amount of authorship.

A derivative work, compilation, or collective work that contains public domain material may be registered, provided that the new work contains a sufficient amount of original authorship. The copyright in such works covers the compilation authorship or the new material that the author contributed to the derivative work, the compilation, or the collective work, but it "is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the [public domain] material." 17 U.S.C. § 103(b).

314 Use of Protected Names, Characters, Slogans, Symbols, Seals, Emblems, and Insignia

Occasionally, the U.S. Copyright Office receives works that contain names, characters, slogans, symbols, seals, emblems, or insignia that may be restricted by federal law, such

as "Olympic," "Smokey Bear," "Woodsy Owl," "Give a Hoot, Don't Pollute," the 4-H Club Emblem, or the sign of the Red Cross. *See, e.g.*, 18 U.S.C. §§ 700-716; 36 U.S.C. § 220506.

If the work contains a sufficient amount of original authorship and if the federally protected material has been excluded from the claim, the registration specialist may register the claim without communicating with the applicant. By contrast, if the specialist is aware that the work contains federally protected material that has not been excluded from the claim, the specialist may notify the applicant that the material appears to be restricted and may ask the applicant whether that material has been used in a lawful manner.

315 Obscenity

Pornographic works may be registered with the U.S. Copyright Office, provided that they contain a sufficient amount of original authorship.

As a general rule, a registration specialist will not examine a work or authorship to determine whether it contains material that might be considered obscene. *See Mitchell Brothers Film Group v. Cinema Adult Theater*, 604 F.2d 852, 858 (5th Cir. 1979) (concluding that the 1909 Act protects "all creative works, obscene or non-obscene, that otherwise meet the requirements of the [statute]" and that there is "no explicit or implicit bar to the copyrighting of obscene materials"). However, if a work contains material that appears to fall within the scope of the Child Protection Act, the specialist will refer the work to the Associate Register of Copyrights and Director of Registration Policy & Practice. If the Associate Register determines that the work clearly falls within the scope of Title 18, Sections 2251-2255, and if the Register of Copyrights concurs, the application, deposit copy(ies), and any other materials that have been submitted to the Office will be referred to the U.S. Department of Justice. *See* Operating Guidelines Regarding the Child Protection Act; Public Availability, 52 Fed. Reg. 10,177 (Mar. 30, 1987).

316 Classified Material

If the U.S. Copyright Office is aware that the deposit copy(ies) contain information that has been classified by the U.S. government, the registration specialist will refer the work to the Associate Register of Copyrights and Director of Registration Policy & Practice. The material should be held or disposed of in accordance with instructions from the Associate Register, and the examination or other processing of the material by the Office should be suspended until the matter has been resolved.

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Who May File an Application

401 What This Chapter Covers

This Chapter provides general information on who may file a copyright claim with the Standard Application or a paper application. It also provides general information on who may file an application for a group registration or supplementary registration.

For information on who may file a claim with the Single Application, or an application for a renewal registration or GATT registration, see the following chapters:

- For the Single Application, see Chapter 1400, Section 1405.
- For renewal registrations, see Chapter 2100, Section 2115.5.
- For GATT registrations, see Chapter 2000, Section 2007.2(A)(2).

For information on who may file a claim for a mask work or vessel design see: Chapter 1200, Section 1211, and

Chapter 1300, Section 1311.2.For information on who may record a transfer of ownership, a notice of termination, or other documents pertaining to copyright, , see Chapter 2300, Sections 2309.4, 2310.6, 2311, 2312.1, 2313.5, and 2314.6.

402 Who Is the Applicant?

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

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

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

403 Who Is the Correspondent?

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

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

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

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

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

404 Who Is the Claimant?

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

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

405 Applications Filed by or on Behalf of the Author

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

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

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

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

405.1 Joint Works

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

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

405.2 Minors

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

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

405.3 Intellectually Disabled Persons

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

405.4 Prisoners

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

405.5 Deceased Authors

The U.S. Copyright Office will accept applications that name a deceased author as the copyright claimant. Likewise, the Office will accept applications submitted by or on behalf of a claimant who owns all of the rights that initially belonged to a deceased author, such as the author's estate, a devisee, or an heir.

405.6 Foreign Authors

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

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

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

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

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

408 Exclusive Licensees and Nonexclusive Licensees

An exclusive licensee is a party who has been granted one or more of the exclusive rights set forth in Section 106 of the Copyright Act, or any subdivision of those rights. Exclusive licensees are considered owners of those right(s) during the term of the license. A nonexclusive licensee is a party who has the right to use a work or an exclusive right in the work, but does not have the right to prevent others from using the same work. Nonexclusive licensees are not owners of the right(s) or parts thereof, but rather, they are considered authorized users.

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

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

409 Authorized Agents

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

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

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

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

410 Who May File the Application: At a Glance

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

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

Who owns the rights?	Who may be named as claimant?	Who may file the application?
A transferee owns *some* — but *not all* — of the rights	The author	The author or An owner of one or more of the exclusive rights or An authorized agent of one or more of the aforementioned parties
An exclusive licensee owns *all* of the rights	The author and/or The exclusive licensee who owns *all* of the rights	The author or The exclusive licensee who owns *all* of the rights or An authorized agent of one or more of the aforementioned parties
An exclusive licensee owns *some* — but *not all* — of the rights	The author	The author or An owner of one or more of the exclusive rights or An authorized agent of one or more of the aforementioned parties

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Identifying the Work(s) Covered by a Registration

501 What This Chapter Covers

This Chapter provides guidance on how to identify the work that the applicant intends to register with the U.S. Copyright Office. It explains how to identify the copyrightable authorship that can be submitted for registration, and how to describe the claim to copyright in that authorship, particularly if the work contains multiple forms of authorship, if it was created by multiple authors, if the authorship is owned by multiple copyright owners, or if the applicant intends to register only a portion of the authorship that appears in the work. In addition, this Chapter assists copyright owners, courts, and the general public in understanding the scope of a registered copyright claim.

When applying to register a work of authorship, it is crucial to correctly identify the work in which copyright is claimed, including the type of work, the author(s) who created that work, and the copyright owner who is entitled to claim copyright in that work. This Chapter provides a general overview of certain forms of authorship and ownership that are recognized under the copyright law, including joint works, works made for hire, derivative works, compilations, and collective works.

For a discussion of the Office's practices and procedures for registering a claim to copyright, see the following chapters:

- For a general overview of the registration process, see Chapter 200.
- For guidance in determining who may file an application and who may be named as the copyright claimant, see Chapter 400.
- For a general overview of the applications that may be used to register a copyright claim, see Chapter 1400.
- For information on how to complete an application, see Chapter 600.
- For information regarding the options for registering multiple works with one application, see Chapter 1100.
- For information concerning the deposit requirements, see Chapter 1500.
- For information concerning the Copyright Office's practices and procedures for evaluating copyrightable authorship, see Chapter 300. For guidance concerning the practices and procedures relating to specific types of works, see the following chapters:
- For a discussion of literary works, see Chapter 700.

- For a discussion of works of the performing arts, see Chapter 800.
- For a discussion of visual art works, see Chapter 900.
- For a discussion of websites and website content, see Chapter 1000.
- For a discussion of mask works and vessel designs, see Chapters 1200 and 1300.

502 A Copyright Registration Covers a Claim in a Work of Original Authorship

The U.S. Copyright Office does not issue copyrights, but instead simply registers claims to copyright. *See* 17 U.S.C. § 408(a) (stating that "the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim" by submitting an appropriate application, filing fee, and deposit to the Copyright Office). The copyright in a work of authorship created or first published after January 1, 1978 is protected from the moment it is created, provided that the work is original and is fixed in a tangible medium of expression.17 U.S.C. §§ 102(a), 408(a). In other words, the copyright in a work of original authorship exists regardless of whether the work has been submitted for registration or whether the Office has issued a certificate of registration for that work. *See* 17 U.S.C. § 408(a) ("registration is not a condition of copyright protection").

A copyright "claim" is an "assertion of copyright [ownership in] . . . the work." Applications for Registration of Claim to Copyright Under Revised Copyright Act, 42 Fed. Reg. 48,944, 48,945 (Sept. 26, 1977). Thus, when an applicant files an application to register a work of authorship, the applicant is asserting a claim of ownership in the copyright in that work.

Although registration is optional, there are important benefits for registering a claim to copyright and for doing so in a timely manner. For a discussion of these benefits, see Chapter 200, Section 202.

503 Identifying the Original Authorship That the Applicant Intends to Register

A copyright claim is a claim in the original authorship that an author or authors contributed to the work. The applicant — not the U.S. Copyright Office — must identify the original authorship that the applicant intends to register. In making this determination, the applicant may find it helpful to consider the following questions:

- What is the work of authorship?
- Who is the author(s) of the work?
- What type(s) of authorship did the author or co-authors create?
- Who owns the copyright in that authorship?
- Does the work contain unclaimable material?

Each of these topics is discussed in Sections 503.1 through 503.5 below.

503.1 What Is the Work of Authorship?

503.1(A) Works of Authorship Distinguished from the Constituent Elements of the Work

The U.S. Copyright Office registers claims to copyright in works of authorship. As a general rule, the Office will issue one registration for each work that is submitted for registration.

The Office may examine the constituent elements or individual components of a work to determine if the work contains a sufficient amount of creative expression to warrant registration. But as a general rule, the Office will not issue separate registrations for the constituent elements or individual components of a work of authorship. Likewise, the Office will not issue separate registrations to each author who contributed copyrightable expression to a work of authorship (except as contributions to a collective work or derivative works).

503.1(B) Copyrightable Subject Matter

A work may be registered with the U.S. Copyright Office, provided that it falls within one or more of the categories of authorship set forth under Section 102(a) of the Copyright Act. Works that do not fall within one or more of these congressionally-established categories do not constitute copyrightable subject matter, and as such, cannot be registered.

Section 102(a) of the Copyright Act states that works of authorship include the following categories of works:

- Literary works.
- Musical works, including any accompanying words.
- Dramatic works, including any accompanying music.
- Pantomimes and choreographic works.
- Pictorial, graphic, and sculptural works.
- Motion pictures and other audiovisual works.
- Sound recordings.
- Architectural works.

The following chart provides representative examples of works that may be registered and the relevant category of authorship for each work.

Category of Authorship	Types of Works
Literary Works	Fiction, nonfiction, poetry, serial publications (*e.g.*, newspapers, magazines, etc.), articles, advertising copy, written communications (*e.g.*, letters, email messages), reference works, directories, catalogs, compilations of information, computer programs, databases, ebooks, audiobooks, online textual works (*e.g.*, blogs, website text), and similar types of textual works.
Pictorial Works	Paintings, drawings, photographs, prints, art reproductions, maps, technical drawings, diagrams, applied art (*i.e.*, two-dimensional pictorial artwork applied to a useful article), works of artistic craftsmanship (*e.g.*, stained glass, tapestry, wallpaper), online or digital artwork (*e.g.*, computer-aided artwork, digital imaging, pixel art), and similar types of pictorial works.
Graphic Works	Drawings, prints, art reproductions, maps, technical drawings, diagrams, architectural plans, architectural drawings, applied art (*i.e.*, two-dimensional graphic artwork applied to a useful article), works of artistic craftsmanship, online or digital artwork (*e.g.*, computer-aided artwork, digital imaging, pixel art), and similar types of graphic works.
Sculptural Works	Sculptures, globes, models, applied art (*i.e.*, three-dimensional artwork applied to a useful article), works of artistic craftsmanship, and similar types of sculptural works.
Musical Works	Songs, song lyrics, symphonies, concertos, advertising jingles, and similar types of musical works.
Dramatic Works	Plays, musicals, operas, scripts, screenplays, and similar types of dramatic works.
Choreographic Works	Ballet, modern dance, and similar types of complex dances.
Motion Pictures	Films, documentaries, television shows, cartoons, videos, online videos, motion picture soundtracks, and similar types of motion pictures.
Audiovisual Works	Videogames, slide presentations, online audiovisual works (*e.g.*, smartphone and tablet applications, online courses and tutorials, website content), and similar types of audiovisual works.

Category of Authorship	Types of Works
Sound Recordings	A recording of a song, a recording of a vocal performance, a recording of a musical performance, a recording of a literary work (*e.g.*, an audiobook), a digital file of a performance, and similar types of recordings.
Architectural Works	Buildings, architectural works, and architectural drawings.

503.1(C) Compilations and Derivative Works

The Copyright Act states that "[t]he subject matter of copyright as specified by section 102 includes compilations and derivative works." 17 U.S.C. § 103(a).

Compilations and derivative works constitute copyrightable subject matter, provided that the work falls within one or more of the categories of authorship set forth in Section 102(a) of the Act (*e.g.*, literary works, sound recordings, pictorial works, etc.). In other words, a compilation or derivative work may be copyrightable provided that it qualifies as a literary work, a musical work, a dramatic work, or one of the other congressionally-established categories of authorship. A compilation or derivative work that does not fall within one or more of the Section 102(a) categories is not registrable, such as a compilation of exercises or a new version of a useful article. Registration of Claims to Copyright, 77 Fed. Reg. 37,605, 37,606 (June 22, 2012).

For a definition and discussion of compilations and derivative works, see Sections 507 and 508.

503.1(D) Work of Authorship Distinguished from the Medium of Expression

A copyright registration covers the copyrightable authorship that the author contributed to the work, but it does not cover the medium in which the work has been fixed. *See* H.R. REP. NO. 94-1476, at 53 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5666; S. REP. NO. 94-473, at 52 (1975) (recognizing that there is "a fundamental distinction between the 'original work' which is the product of 'authorship' and the multitude of material objects in which it can be embodied."). Thus, when completing an application, the applicant should describe the copyrightable authorship that the author contributed to the work, rather than the medium that the author used to create that work. The U.S. Copyright Office cannot register a claim based solely on the method that the author used to create his or her expression or the medium in which the expression has been fixed.

The following chart provides representative examples of various types of works and the authorship they typically contain, as distinguished from the medium in which the authorship may be fixed. In these examples, the Office may register a claim to copyright in "2-D artwork," "music and lyrics," "sound recording," or other forms of original authorship, but not in the "canvas," "compact disc," "digital music file," or other medium that the author used to create the work.

Type of Work	Medium of Expression	Original Authorship
Short story	Paper, digital file, etc.	Text that qualifies as a literary work
Acrylic painting	Canvas	2-D Artwork
Song containing music and lyrics	Sheet music, compact disc, digital music file, etc.	Music and lyrics
Recording of a song	Compact disc, digital music file, etc.	Sound recording
Home video	DVD, digital video file, etc.	Motion picture

503.1(E) Copyrightable Authorship

When completing an application, the applicant should identify the copyrightable authorship that the author contributed to the work, but should not assert a claim in any aspect of the work that is not protected by copyright. For more information on what constitutes uncopyrightable authorship, see Chapter 300, Section 313.

The following chart provides representative examples of various types of works and the copyrightable authorship they typically contain, as distinguished from the uncopyrightable material that may appear in the work. In these examples, the Office may register a claim to copyright in the "text," "photographs," "artwork," or other forms of copyrightable authorship that the author contributed to the work, but not the "facts," "listing of ingredients," "process," "method," "name," "typeface," "typographic ornamentation," or other uncopyrightable material.

Type of Work	Copyrightable Authorship	Uncopyrightable Material
Newspaper	Text, photographs, illustrations	Facts
Cookbook	Text, artwork, photographs	Listings of ingredients; ideas, procedures, processes, or methods for cooking
Computer program	Source code, screen displays of pictorial or audiovisual authorship	Ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries
Product logo	Artwork	Name of the product; typeface or typographic ornamentation
Comic book	Artwork, text	Name of characters; idea for characters

Type of Work	Copyrightable Authorship	Uncopyrightable Material
Website	Text, artwork, photographs, audiovisual material	Format and layout; domain name

503.2 Who Is the Author of the Work?

The applicant should identify the author or co-authors who created the work that the applicant intends to register.

If the work qualifies as a joint work, the applicant should identify each author who contributed copyrightable authorship to that work. For a definition and discussion of joint works, see Section 505.

If the work was created as a work made for hire, the employer for hire should be identified as the author. For a definition and discussion of works made for hire, see Section 506.

The author or co-authors listed in the application are presumed to be the sole authors or joint authors of the expression claimed therein. Although the U.S. Copyright Office does not investigate the truth of the claims asserted in the application, it does verify that the asserted authorship facts are consistent with the facts contained in the deposit copy(ies) or elsewhere in the registration materials.

For guidance in identifying the author of a work, see Chapter 600, Sections 613.1 through 613.8. For guidance in completing the name of author field/space of the application, see Chapter 600, Section 613.9.

503.3 What Type of Authorship Did the Author Create?

The applicant should identify the copyrightable authorship that the author or co-authors contributed to the work.

The U.S. Copyright Office only examines the authorship that is explicitly claimed in the application. It does not examine any authorship that is not claimed in the application, and therefore, no *prima facie* presumption should apply to unclaimed authorship that appears in the work.

A copyrightable work may contain one or more types of authorship, but as discussed in Section 503.4, a registration only covers the authorship that is owned by the claimant or co-claimants who are named in the application. In some cases, the applicant may intend and may be entitled to register all of the authorship that appears in the work, while in other cases the applicant may intend or may be entitled to register only certain aspects of the work.

The following chart provides a representative example of a work that contains multiple types of authorship.

Work of Authorship	Authorship Created by Author A	Authorship Created by Author B
Song	Music	Lyrics

In this example, the song contains two types of authorship created by two different authors. If the claimant only owns the copyright in the music, the applicant should assert a claim in "music" and should name Author A in the application (but not Author B).

If the claimant only owns the copyright in the lyrics, the applicant should assert a claim in "lyrics" and should name Author B in the application (but not Author A).

By contrast, if the claimant owns the copyright in the music and lyrics, the applicant should assert a claim in both elements and should name Authors A and B in the application.

503.4 Who Owns the Copyright in the Authorship?

The applicant should identify the person or organization that owns the copyrightable authorship that the author or co-authors contributed to the work. For purposes of copyright registration, this person or organization is known as the "copyright claimant."

The copyright in a work of authorship initially belongs to the author or co-authors of that work, unless and until the author assigns the copyright to another party in a signed, written agreement or by operation of law. 17 U.S.C. §§ 201(a), 204(a). If the author no longer owns the copyright in the work, the applicant must provide a brief statement that explains "how the claimant obtained ownership of the copyright." 17 U.S.C. § 409(5). For guidance in completing these portions of the application, see Chapter 600, Sections 619 and 620.

As discussed in Section 503.3, works of authorship often contain different forms of expression. In some cases, the copyright claimant may own all of the authorship that appears in the work, while in other cases the claimant may own or may be entitled to register only certain aspects of the work. In all cases, the applicant should assert a claim only in the authorship that is owned by the claimant or co-claimants named in the application.

The following chart provides a representative example of a work that contains multiple types of authorship that is owned by multiple claimants.

Work of Authorship	Authorship Owned by Author A	Authorship Owned by Author B	Authorship Owned by Other Parties
Children's Book	Text	Illustrations	Text, artwork, and photographs on the cover

If the claimant owns the copyright in the text of the book (but does not own the illustrations or any of the content that appears on the cover), the applicant should identify the author(s) of the text, the applicant should assert a claim in "text," and the applicant should name A as the copyright claimant.

If the claimant owns the copyright in the illustrations (but does not own the text of the book or any of the content that appears on the cover), the applicant should identify the author(s) of those illustrations, the applicant should assert a claim in "2-D artwork," and the applicant should name B as the copyright claimant.

503.5 Does the Work Contain Unclaimable Material?

A copyright registration covers the new expression that the author created and contributed to the work, but it does not cover any unclaimable material that the work may contain. For purposes of registration, unclaimable material includes the following:

- Previously published material.
- Previously registered material (including material that has been submitted for registration but has not been registered yet).
- Material that is in the public domain.
- Copyrightable material that is owned by a third party (*i.e.*, an individual or legal entity other than the claimant who is named in the application).

For a definition and discussion of each type of unclaimable material, see Chapter 600, Sections 621.4 through 621.7.

If the work submitted for registration contains unclaimable material, the applicant should exclude that material from the claim by providing a brief description in the Material Excluded field in the online application or in space 6(a) of the paper application. However, the applicant does not need to complete this portion of the application if the work merely contains material that is uncopyrightable, such as words, letters, numbers, common symbols and shapes, and the like. Similarly, brief quotes, short phrases, and other *de minimis* uses of prior works do not need to be excluded from the claim.

For representative examples of works that contain unclaimable material, see Sections 503.5(A) through 503.5(D) below. For guidance in completing the Material Excluded

field and space 6(a) of the application, see Chapter 600, Sections 621.4 through 621.6, and Section 621.8(B).

503.5(A) Unclaimable Material: Previously Published Material

The following chart provides a representative example of a work that contains previously published material.

Work of Authorship	Excluded Material	New Authorship
Textbook (second edition)	Text, artwork, and photographs published in the first edition of this textbook	New text that the author created for the second edition of this textbook

In this example, the applicant may register the new text that the author contributed to the second edition of this textbook. The applicant should exclude the text, artwork, and other material that was published in the first edition of this work using the procedure described in Chapter 600, Section 621.8.

503.5(B) Unclaimable Material: Previously Registered Material

The following chart provides a representative example of a work that contains previously registered material.

Work of Authorship	Excluded Material	New Authorship
Feature film based on an unpublished screenplay	Unpublished screenplay (Reg. No. PAu 9-999-999)	Motion picture

In this example, the unpublished screenplay has been previously registered with the U.S. Copyright Office, but the feature film has not. The applicant may register the new authorship that the author contributed to the motion picture. The previously registered screenplay should be excluded from the claim using the procedure described in Chapter 600, Section 621.8(F).

503.5(C) Unclaimable Material: Public Domain Material

The following chart provides a representative example of a work that contains public domain material.

Work of Authorship	Excluded Material	New Authorship
Musical based on *The Confidence Man* by Herman Melville	*The Confidence Man* by Herman Melville	Music, lyrics, script

In this example, the musical is based on Herman Melville's novel *The Confidence Man*, which is in the public domain. The applicant may register the music, lyrics, and script that the author contributed to the musical. The applicant should exclude the story, characters, and other expression that the author borrowed from the novel using the procedure described in Chapter 600, Section 621.8.

503.5(D) Unclaimable Material: Copyrightable Material That Is Owned by a Third Party

The following chart provides a representative example of a work that contains copyrightable material that is owned by a third party.

Work of Authorship	Excluded Material	New Authorship
Coffee Table Book	Photographs owned by Photographer A, B, & C	Text owned by Company X

In this example, Company X owns the copyright in the text of the coffee table book, while Photographers A, B, and C own the copyright in the photographs that appear in the book. Company X may register the text that the author contributed to the book. The photographs should be excluded from the claim using the procedure described in Chapter 600, Section 621.8.

504 The Scope of a Registration for a Work of Original Authorship

As a general rule, a registration for a work of authorship covers the entire copyrightable content of the authorship that (i) is claimed in the application, (ii) is owned by the claimant, and (iii) is contained in the deposit copy(ies).

The applicant should assert a claim in this authorship in the online application by completing the Author Created field, and if appropriate, the New Material Included field. In the paper application, the applicant should assert a claim in this authorship by completing the Nature of Authorship space, and if appropriate, the Material Added to This Work space. Together, these fields and spaces provide important information about the scope of the claim of authorship in a work. Applicants are encouraged to be specific when completing these portions of the application. A clear description of the copyrightable expression that the applicant intends to register creates an accurate record of authorship and ownership for the benefit of the copyright owner, the courts, and the general public.

The fact that a work was submitted for registration and was registered by the U.S. Copyright Office does not necessarily mean that the registration covers all the authorship that appears in the work as a whole. As discussed in Sections 503.3 and 504.3, the Office examines and registers only the copyrightable authorship that is expressly claimed in the application and that is included in the deposit copy(ies). The Office does not examine any authorship that is not claimed or any authorship that has been disclaimed in the application, and the Office cannot examine any authorship that does not appear in the deposit copy(ies).

504.1 Copyrightable Authorship vs. Uncopyrightable Material

A registration covers the copyrightable authorship that the author or co-authors contributed to the work, but it does not cover any uncopyrightable material that appears in the work.

If the applicant expressly asserts a claim in uncopyrightable material, the registration specialist may communicate with the applicant. In the alternative, the specialist may remove the uncopyrightable term from the application and register the claim with an annotation indicating that the registration does not cover that material. *See* Chapter 600, Section 604. The annotation is intended to put the copyright owner, the courts, and the general public on notice concerning the extent of the claim. That said, a registration does not extend to uncopyrightable material that appears in a work of authorship, even if the registration does not contain an annotation or even if it contains ambiguous language that may refer to uncopyrightable material.

504.2 Authorship Contained in the Deposit Copy(ies)

Ordinarily, a registration for a work of authorship only covers the material that is included in the deposit copy(ies). It does not cover authorship that does not appear in the deposit copy(ies), even if the applicant expressly claims that authorship in the application.

There are two limited exceptions to this rule:

- In some cases, an applicant may register a work of authorship by submitting identifying portions of the work. For example, an applicant may register a computer program by submitting a portion of the source code for that work, rather than a complete copy of the entire program.

- In exceptional cases, the U.S. Copyright Office may grant special relief from the deposit requirements for a particular work.

A work of authorship that is registered with identifying material or based on a grant of special relief may cover the entire copyrightable content of the work, notwithstanding the fact that the applicant did not submit a copy of the entire work. For a discussion of special relief and examples of other works that may be registered with identifying material, see Chapter 1500, Sections 1506 and 1508.8.

504.3 Multiple Versions of the Same Work

A registration only covers the specific version of the work that is submitted for registration. The U.S. Copyright Office does not offer so-called "blanket registrations" that cover prior versions or derivative versions of the same work. For example, a registration for a published website covers the text, photographs, or other copyrightable content that appeared on that website on the date(s) claimed in the application and specified in the deposit copy(ies), but it does not cover any future version of that website. Similarly, a registration for version 1.30 of a computer program does not cover version 1.20 or any previously published or previously registered content that appears in the later version of that program. For the same reason, a registration for a comic book that depicts or describes a particular character covers the expression set forth in that issue, but it does not cover the character *per se* or any other issue or other work that features the same character.

For additional guidance in registering multiple versions of the same work, see Section 512.

505 Joint Works

This Section provides the definition and a general discussion concerning joint works. For specific guidance in preparing an application to register a joint work, see Chapter 600, Sections 613.5 and 620.5.

505.1 What Is a Joint Work?

The Copyright Act defines a joint work as a work "prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." 17 U.S.C. § 101.

A work of authorship is considered a joint work "if the authors collaborated with each other, or if each of the authors prepared his or her contribution with the knowledge and intention that it would be merged with the contributions of other authors as 'inseparable or interdependent parts of a unitary whole.'" H.R. REP. NO. 94-1476, at 120, *reprinted in* 1976 U.S.C.C.A.N. 5659, 5736; S. REP. NO. 94-473, at 103-04. The key requirement "is the intention, at the time the writing is done, that the parts be absorbed or combined into an integrated unit." H.R. REP. NO. 94-1476, at 120, *reprinted in* 1976 U.S.C.C.A.N. at 5736.

A contribution to a joint work is considered "inseparable" if the work contains a single form of authorship, such as a novel or painting, and it is considered "interdependent" if the work contains multiple forms of authorship, such as motion picture, opera, or the music and lyrics of a song. *Id.*; S. REP. NO. 94-473, at 103-04.

505.2 Determining Whether the Work Is a Joint Work

The applicant — not the U.S. Copyright Office — must determine whether a work qualifies as a joint work, and as the legislative history explains, this determination should be based on the facts that existed when the work was created. *See* H.R. REP. NO. 94-1476, at 120, *reprinted in* 1976 U.S.C.C.A.N. at 5736; S. REP. NO. 94-473, at 103.

When examining a joint work, the Office applies U.S. copyright law, even if the work was created in a foreign country, created by a citizen, domiciliary, or habitual resident of a foreign country, or first published in a foreign country. The U.S. Copyright Act is the exclusive source of copyright protection in the United States, and all applicants — both foreign and domestic — must demonstrate that a work satisfies the requirements of U.S. copyright law in order to register a work with the Office.

Upon request, the Office will provide the applicant with general information about the provisions of the Copyright Act, including the statutory definition for a joint work, and will explain the relevant practices and procedures for registering this type of work. However, the Office cannot provide specific legal advice on the rights of persons, issues involving a particular use of a copyrighted work, cases of alleged foreign or domestic copyright infringement, contracts between authors and publishers, or other matters of a similar nature. 37 C.F.R. § 201.2(a)(3).

When completing the application, the applicant should provide the name of each joint author who contributed copyrightable authorship to the joint work. The Office takes the position that each joint author must contribute a sufficient amount of original authorship to the work. An author who satisfies this requirement may be considered a joint author, even if his or her contribution to the work is smaller or less significant than the contributions made by another author. By contrast, a collaborator who merely contributes a *de minimis* amount of expression is not considered a joint author. *See* Chapter 300, Section 313.4(B).

As a general rule, the registration specialist will accept the applicant's representation that a work of authorship is a joint work, unless it is contradicted by information provided elsewhere in the registration materials or in the Office's records, or by information that is known to the specialist. If the claim appears implausible, the specialist may communicate with the applicant or may refuse registration. Examples of factors that may indicate that a work does not qualify as a joint work include the following:

- Evidence that one or more of the authors did not intend to merge their contributions into a unitary whole.
- A work containing a number of separate and independent works, such as a book of photographs by different authors.
- A work containing a major contribution from one author combined with a minor contribution by another author, such as a book containing hundreds of pages of text by one author and an introduction or a few illustrations by another author.

505.3 The Scope of the Copyright in a Joint Work

Determining whether a work of authorship is a joint work has important implications for the ownership of the copyright and the term of the copyright.

The authors of a joint work jointly own the copyright in each other's contributions and each author owns an undivided interest in the copyright for the work as a whole. 17

U.S.C. § 201(a). In other words, all the authors are "treated generally as tenants in common, with each co-owner having an independent right to use or license the use of a work, subject to a duty of accounting to the other co-owners for any profits." H.R. REP. NO. 94-1476, at 121, *reprinted in* 1976 U.S.C.C.A.N. at 5736; S. REP. NO. 94-473, at 104.

If the work of authorship was created by two or more individuals, the copyright in the joint work expires seventy years after the death of the last surviving author. 17 U.S.C. § 302(b). If the joint work was created by two or more authors as a work made for hire, an anonymous work, or a pseudonymous work, the copyright expires ninety-five years from the year of publication or 120 years from the year of creation (whichever is shorter). 17 U.S.C. § 302(c). The term "for an anonymous or pseudonymous work can be converted to the ordinary life-plus-[seventy] term if 'the identity of one or more of the [joint] authors . . . is revealed' in . . . records maintained for this purpose in the Copyright Office." H.R. REP. NO. 94-1476, at 137, *reprinted in* 1976 U.S.C.C.A.N. at 5753; S. REP. NO. 94-473, at 120. In this situation, the term of the copyright is "based on the life of the author or co-authors whose identity has been revealed." 17 U.S.C. § 302(c).

506 Works Made for Hire

This Section provides the definition and a general discussion concerning works made for hire. For guidance in preparing an application to register a work made for hire, see Chapter 600, Sections 613.4, 614.1, 616.1(A), and 617.3.

506.1 What Is a Work Made for Hire?

The term "work made for hire" is defined in Section 101 of the Copyright Act. This definition applies to works created on or after January 1, 1978. For works created prior to 1978, see Chapter 2100.

The statute defines a work made for hire as:

1. A work prepared by an employee within the scope of his or her employment;

or

2. A work that is specially ordered or commissioned, provided that the parties expressly agree in a written instrument signed by them that the work shall be considered a "work made for hire," and provided that the work is specially ordered or commissioned for use as:

    - A contribution to a collective work;
    - A part of a motion picture or other audiovisual work;
    - A translation;
    - A compilation;
    - A test;

- Answer material for a test;
- An atlas;
- An instructional text, which is defined as a "literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities;" or
- A supplementary work, which is defined as "a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes."

17 U.S.C. § 101 (definition of "work made for hire").

506.2 Works Created by an Employee Within the Scope of His or Her Employment

The Copyright Act does not define the terms "employee," "employer," or "scope of employment." The Supreme Court has held that Congress intended these terms "to be understood in light of agency law" and that the courts should rely "on the general common law of agency, rather than on the law of any particular State, to give meaning to these terms." *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 740 (1989). Examples of factors that may be relevant to this inquiry include the following (although none of these factors is determinative):

- The skill required to create the work.
- The location where the work was created.
- The source of the instrumentalities and tools used to create the work.
- The duration of the relationship between the parties.
- Whether the hiring party has the right to assign additional projects to the hired party.
- The method of payment.
- The extent of the hired party's discretion over when and how long to work.
- The hired party's role in hiring and paying assistants.
- Whether the hiring party is in business.
- Whether the work is part of the regular business of the hiring party.
- Whether the hiring party provided employee benefits to the hired party.

- The tax treatment of the hired party.
- Whether the work is the type of work the hired party was authorized to perform.
- Whether the work occurs substantially within the authorized work hours and space limits of the hired party.
- Whether the work is actuated, at least in part, by a purpose to serve the hiring party.

See id. at 751-52 (citing Restatement (Second) of Agency § 220(2) (1958)); *U.S. Auto Parts Network, Inc. v. Parts Geek, LLC*, 692 F. 3d 1009, 1015 (9th Cir. 2012).

The following examples illustrate some of the factors that may indicate whether a work does or does not qualify as a work made for hire.

Work created by an employee

- Dave Muller is a full time chemist for Continental Chemicals. Dave created a computer program that evaluates the company's products. By eliminating the need to perform mathematical calculations by hand, the program improved the efficiency of the company's operations. Continental subsequently asked Dave to develop similar programs for its other products. Dave wrote and tested these programs at home using his personal computer. He did not receive overtime or any additional pay for creating these programs. Each program is considered a work made for hire. Although Dave was not hired as a computer programmer, he was employed by Continental when he wrote these programs and he wrote the programs, at least in part, to further the company's interests. Developing these programs was incidental to his responsibilities because they improved the quality control of the company's operations. Dave specifically created the programs for the company's products and it is unlikely that he would do this type of work on his own. In the application to register the program, Continental Chemicals should be named as the author and the work made for hire box should be checked "yes."

Work created by an employee acting within the scope of his or her employment

- Lois Lang has worked part time for the *Georgetown Gazette* for five years. She is expected to write at least five articles per week and she does most of her work at the paper's office. She is paid on a monthly basis and income taxes, social security, and medicare are withheld from her paycheck. The *Gazette* reimburses Lois for her driving expenses, but she receives no direct employee benefits. Lois's contributions to the paper are considered works made for hire. In the application to register Lois's contributions, the publisher of the *Georgetown Gazette* should be named as the author and the work made for hire box should be checked "yes."
- Kir Royale Records is in the business of producing classical music recordings. Stefan Brooks is a sound engineer who works for Kir Royale from time to time. Stefan performs all of his work at the company's studio using the company's sound mixing equipment. His supervisor closely monitors his job performance and evaluates the quality of his work. Stefan is paid an hourly wage and he receives no employee

benefits. The recordings that he produces for Kir Royale Records are considered works made for hire. In the application to register these sound recordings, Kir Royale Records should be named as the author of the recordings and the work made for hire box should be checked "yes."

- Jack Thomas is a full time programmer for Creative Computer Corporation. His job responsibilities include writing source code, designing user interfaces, and preparing program documentation. Jack creates a subroutine for a new program called Utopolis. The routine is considered a work made for hire, because Jack created this work while acting within the scope of his duties as an employee of Creative Computer Corporation. In the application to register Utopolis, Creative Computer Corporation should be named as the author and the work made for hire box should be checked "yes."

Work created by an individual who was not acting within the scope of his or her employment

- John Bellevue is a staff composer for SoundTrax, Inc., a company that produces music for motion picture studios. While on a leave of absence, John wrote a song called "Saturdays Are the Best" to celebrate his son's birthday. Although John is a fulltime employee of SoundTrax, he did not create this song as part of his regular duties. Therefore, the song is not a work made for hire. In the application to register "Saturdays Are the Best," John should be named as the author of the song and the work made for hire box should be checked "no."

- Ryan Jennings created a compilation of pharmaceutical statistics while in graduate school. When he graduated, Ryan formed Prescription Financial LLP, assigned the copyright in this compilation to the company, and appointed himself President and CEO. The compilation is not a work made for hire, because Ryan was not an employee of Prescription Financial when he created this work. In the application to register the index, Ryan should be named as the author and the work made for hire box should be checked "no."

Work created by an individual who is not an employee

- WMFH-FM asked Aaron Washington to create a jingle for the station. The station told Aaron that the jingle should be thirty seconds long and that it should include the sound of a helicopter. Aaron wrote the jingle at home using his own equipment and he did most of his work in the middle of the night. Aaron was paid a flat fee for this assignment. The jingle is not a work made for hire because Aaron was not an employee of WMFH. In the application to register this jingle, Aaron should be named as the author and the work made for hire box should be checked "no."

- Julianne Ziegler prepared the first draft for a screenplay titled "Princesses vs. Zombies." After completing the first draft, Zombieflix LLC asked Julianne to prepare a shooting script based on her screenplay. The first draft of this screenplay is not a work made for hire, because Julianne completed the draft before she was hired by Zombieflix LLC. In the application to register the first draft, Julianne should be named as the author and the work made for hire box should be checked "no."

- Marilyn Chariott works for an accounting firm. She wrote a song titled "Buy the Numbers" in her spare time and someday she hopes to be hired as a singer/songwriter. Marilyn's song is not a work made for hire, because she did not write this song for her current employer. In the application to register "Buy the Numbers," Marilyn should be named as the author and the work made for hire box should be checked "no."

506.3 Works Specially Ordered or Commissioned as a Work Made for Hire

A specially ordered or commissioned work is considered a work made for hire if it satisfies the following criteria:

- The work must fall within one or more of the nine categories of works listed in the statutory definition.
- There must be an express written agreement between the party that ordered or commissioned the work and the individual(s) that actually created the work.
- The agreement must state that the work shall be considered a work made for hire.
- The agreement must be signed by both parties.

If a work fails to satisfy *all* of these requirements, it does not qualify as a work made for hire.

The following examples illustrate some of the factors that may indicate whether a work does or does not qualify as a work made for hire under the second part of the statutory definition.

Works specially ordered or commissioned pursuant to a written agreement specifying that the work will be created as a work made for hire

- Lighthouse Books Inc. is the author of a textbook. The company hired Nous Traduisons Inc. to translate this work from English into French. Before Nous Traduisons began working on this project, the parties signed a written agreement stating that Nous Traduisons would translate the textbook for Lighthouse Books as a work made for hire. The work satisfies the second part of the statutory definition, because a translation is one of the nine categories of works that may be specially ordered or commissioned and because the parties signed a written agreement specifying that the work would be created for Lighthouse Books as a work made for hire. In the application to register this work, Lighthouse Books, Inc. should be named as the author of the translation and the work made for hire box should be checked "yes."

No written agreement between the parties specifying that the work will be created as a work made for hire

- Judy Smith works for a car dealership. During her lunch break, she created an atlas that depicts the cities and territories in an imaginary country. She hopes to sell her

work to a company that publishes fantasy books. Judy's atlas fails the first part of the statutory definition because she did not create this work for her employer while acting within the scope of her employment. Although an atlas is one of the nine categories of works that may be created as a work made for hire, Judy's atlas does not satisfy the second part of the statutory definition because she has not signed a written agreement specifying that she would create this atlas for another party as a work made for hire. In the application to register this atlas, Judy should be named as the author and the work made for hire box should be checked "no."

Work does not fall within the nine categories of works listed in the statutory definition that may be specially ordered or commissioned as a work made for hire

- Monkey Business Inc. hired Heath Liszewski to create the design for a new line of wallpaper. The work does not satisfy the first part of the statutory definition because Heath is an independent contractor and he was paid a flat fee for his work on this assignment. Therefore, he is not an employee of Monkey Business. Although the parties signed a written agreement specifying that Heath would create this work for Monkey Business, it does not satisfy the second part of the definition because two-dimensional artwork is not one of the nine categories of works that may be specially ordered or commissioned as a work made for hire. In the application to register this work, Heath should be named as the author and the work made for hire box should be checked "no."

506.4 Determining whether the Work is a Work Made for Hire

506.4(A) Applicant Makes the Determination

The applicant—not the U.S. Copyright Office—must determine whether the work is a work is made for hire, and this determination should be based on the facts that exist at the time when the work was created.

When examining a work made for hire the Office applies U.S. copyright law, even if the work was created in a foreign country, created by a citizen, domiciliary, or habitual resident of a foreign country, or first published in a foreign country. The U.S. Copyright Act is the exclusive source of copyright protection in the United States, and all applicants—both foreign and domestic—must demonstrate that a work satisfies the requirements of U.S. copyright law in order to register a work with the Office.

As a general rule, the registration specialist will accept the applicant's representation that a work is a work made for hire, unless it is contradicted by information provided elsewhere in the registration materials or in the Office's records or by information that is known to the specialist. If the claim appears unusual or implausible, the specialist may communicate with the applicant or may refuse registration.

506.4(B) Work Made for Hire Questionnaire

Upon request, the U.S. Copyright Office will provide the applicant with general information about the provisions of the Copyright Act, including the statutory definition

of a work made for hire, and will explain the relevant practices and procedures for registering the work.

The Office cannot provide specific legal advice on the rights of persons, issues involving a particular use of a copyrighted work, cases of alleged foreign or domestic copyright infringement, contracts between authors and publishers, or other matters of a similar nature. 37 C.F.R. § 201.2(a)(3). However, the Office has developed a questionnaire that may be useful to applicants in determining whether a particular work fits within the statutory definition of a work made for hire.

NOTE: This questionnaire is only intended for use in connection with works created on or after January 1, 1978.

Question 1: Was the work created by an employee?

NOTE: The fact that someone was hired or paid to create a work does not necessarily mean that that person is an employee. For guidance on whether a person may be considered an employee, see Section 506.2.

If the answer to Question 1 is "yes," proceed to Question 2. If the answer is "no," proceed to Question 3.

Question 2: Did the employee create the work while acting within the scope of his or her employment?

If the answer to Question 2 is "yes," the work is a work made for hire. For guidance in completing an application to register a work made for hire, see Chapter 600, Section 614.1.

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

Question 3: Is there a written agreement between the party that ordered or commissioned the work and the party who created the work?

If the answer is "no," the work is not a work made for hire.

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

Question 4: Was the written agreement signed by the party that ordered or commissioned the work and the party who created the work?

If the answer is "no," the work is not a work made for hire.

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

Question 5: Did the parties expressly agree in the written agreement that the work shall be considered a work made for hire?

If the answer is "no," the work is not a work made for hire.

If the answer is "yes," proceed to Question 6.

Question 6: Was the work specially ordered or commissioned for use in one or more of the following types of works?

- An atlas.
- A test.
- Answer material for a test.
- A translation.
- As part of a motion picture or other audiovisual work.
- A compilation.
- A contribution to a collective work.
- A supplementary work.
- An instructional text.

If the answer is "no," the work is not a work made for hire.

If the answer is "yes," the work is a work made for hire. For guidance in completing an application to register a work made for hire, see Chapter 600, Section 614.1.

506.5 The Scope of the Copyright in a Work Made for Hire

Determining whether a work is a work made for hire has important implications for the term of the copyright, the ownership of the copyright, and the ability to terminate a transfer or license involving the copyright. *See Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989) ("Classifying a work as 'made for hire' determines not only the initial ownership of its copyright, but also the copyright's duration . . . [and] termination rights."). Therefore, the U.S. Copyright Office encourages applicants to exercise judgment when answering the work made for hire portion of the application.

- *Copyright Term.* The copyright in a work made for hire expires ninety-five years from the year of publication or one hundred twenty years from the year of creation (whichever is shorter). 17 U.S.C. § 302(c).
- *Copyright Ownership*. The copyright in a work made for hire initially belongs to the employer or the party that ordered or commissioned the work (rather than the individual who actually created the work). In other words, if the work was created by an employee acting within the scope of his or her employment, the employer owns the copyright in that work (not the employee). If the work was specially ordered or commissioned as a work made for hire, the person or organization that

ordered or commissioned owns the copyright in that work (rather than the individual who actually created the work). 17 U.S.C. § 201(b).

- *Termination.* Under certain circumstances, an author or his or her heirs may terminate an exclusive or nonexclusive transfer or license of the copyright in the author's work by exercising the author's right to terminate a grant under Sections 203, 304(c), and 304(d) of the Copyright Act. However, these termination provisions do not apply to grants involving the copyright in a work made for hire. For a general discussion of termination, see Chapter 2300, Section 2310.

507 Derivative Works

This Section provides the definition and a general discussion concerning derivative works. For information concerning the Office's practices and procedures for evaluating the copyrightability of derivative works, see Chapter 300, Section 311. For guidance in completing an application to register a derivative work, see Chapter 600, Sections 613.6, 617.5, 618.5, 620.7, and 621.

507.1 What Is a Derivative Work?

The Copyright Act defines a derivative work as "a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted." The statute also states that "[a] work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a 'derivative work.'" 17 U.S.C. § 101.

Creating a derivative work requires "a process of recasting, transforming, or adapting 'one or more preexisting works.'" H.R. REP. NO. 94-1476 at 57, *reprinted in* 1976 U.S.C.C.A.N. 5659, 5670; S. REP. NO. 94-473 at 55. Thus, derivative works contain two distinct forms of authorship:

- The authorship in the preexisting work(s) that has been recast, transformed, or adapted within the derivative work, and

- The new authorship involved in recasting, transforming, or adapting the preexisting work(s).

The new authorship that the author contributed to the derivative work may be registered, provided that it contains a sufficient amount of original authorship.

As the legislative history explains, derivative works include "every copyrightable work that employs preexisting material . . . of any kind," regardless of whether the preexisting material is protected by copyright or whether the copyright in that material has expired. H.R. REP. NO. 94-1476 at 57, *reprinted in* 1976 U.S.C.C.A.N. at 5670; S. REP. NO. 94-473 at 55. Typically, a derivative work is a new version of a preexisting work or a work that is based on or derived from a preexisting work.

Examples:

- A motion picture based on a novel or a play.
- An English translation of a novel written in Spanish.
- A sculpture based on a drawing.
- A drawing based on a photograph.
- A lithograph based on a painting.
- A musical arrangement of a preexisting musical work.
- A drama based on the letters and sermons of Cotton Mather.

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

Examples:

- A revision of a previously published book.
- A revision of the artwork and text on a website.
- A new version of an existing computer program.
- A new version of a doll or stuffed animal.

507.2 The Scope of the Copyright in a Derivative Work

The copyright for a derivative work only covers the new material that the author contributed to that work. It does not cover any of the preexisting material that appears in the derivative work. *See* H.R. REP. NO. 94-1476, at 57, *reprinted in* 1976 U.S.C.C.A.N. at 5670; S. REP. NO. 94-473, at 55 ("[C]opyright in a 'new version' covers only the material added by the later author, and has no effect one way or the other on the copyright or public domain status of the preexisting material."). Likewise, a registration for a derivative work does not cover any previously published material, previously registered material, public domain material, or third party material that appears in the work. In other words, the copyright in a derivative work is "independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material." 17 U.S.C. § 103(b).

Derivative works often contain previously published material, previously registered material, public domain material, or material owned by a third party because by definition they are based upon one or more preexisting works. If a derivative work contains an appreciable amount of unclaimable material, the applicant generally should limit the claim to the new material that the author contributed to the work, and the

unclaimable material should be excluded from the claim. For guidance on this procedure, see Chapter 600, Section 621.8. By contrast, there is generally no need to limit the claim if the derivative work is solely based on or derived from unpublished material, unregistered material, or copyrightable material that is owned by the claimant named in the application.

The author of a derivative work may claim copyright in a work that recasts, transforms, or adapts a preexisting work, provided that the preexisting material has been used in a lawful manner. Section 103(a) of the Copyright Act states that the copyright in a derivative work "does not extend to any part of the work" that "unlawfully" uses preexisting material. 17 U.S.C. § 103(a). As discussed in Chapter 300, Section 313.6(B), this provision is intended to prevent "an infringer from benefiting, through copyright protection, from committing an unlawful act." H.R. REP. NO. 94-1476, at 57, *reprinted in* 1976 U.S.C.C.A.N. at 5671. The unlawful use of preexisting material may also infringe the right of reproduction and/or the right to prepare derivative works based upon that material.

508 Compilations

This Section provides the definition and a general discussion concerning compilations. For information concerning the Office's practices and procedures for evaluating the copyrightability of compilations, see Chapter 300, Section 312. For guidance in preparing an application to register a compilation see Chapter 600, Sections 613.7, 617.5, 618.6, 620.7, and 621.8(C).

508.1 What Is a Compilation?

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

As the legislative history explains, "[a] 'compilation' results from a process of selecting, bringing together, organizing, and arranging previously existing material of all kinds, regardless of whether the individual items in the material have been or ever could have been subject to copyright." H.R. REP. NO. 94-1476, at 57, *reprinted in* 1976 U.S.C.C.A.N. at 5670; S. REP. NO. 94-473, at 55.

Examples:

- A directory of services for a particular region.
- A list of the best short stories of 2014.
- A collection of the best sound recordings of 1985.

The statute states that "[t]he term 'compilation' includes collective works," which are discussed in more detail in Section 509 below. 17 U.S.C. § 101. Creating a collective work also "involve[s] the selection, assembly, and arrangement of 'a number of contributions,"

because this type of work "is a species of 'compilation.'" H.R. REP. NO. 94-1476, at 122, *reprinted in* 1976 U.S.C.C.A.N. at 5737; S. REP. NO. 94-473, at 105.

Examples:

- A book of news photos.
- An academic journal containing articles on a particular topic.
- A newspaper comprised of articles by different journalists.

508.2 The Scope of the Copyright in a Compilation

The fact that a compilation has been registered with the U.S. Copyright Office does not necessarily mean that every element of the work is protected by copyright. A claim to copyright in a compilation "extends only to the material contributed by the author of such work" and does not "imply any exclusive right in the preexisting material." 17 U.S.C. § 103(b). The data, facts, or other uncopyrightable material that appears in a compilation is not protected by the copyright in that work. *See Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 360 (1991) (stating that "the copyright in a compilation does not extend to the facts it contains"). A registration for a compilation does not cover any of the preexisting material or data that appears in the compilation unless that material or data is expressly claimed in the registration. Likewise, a registration for a compilation does not cover any previously published material, previously registered material, public domain material, or third party material that appears in the compilation. "This inevitably means that the copyright in a factual compilation is thin. Notwithstanding a valid copyright, a subsequent compiler remains free to use the facts contained in another's publication to aid in preparing a competing work, so long as the competing work does not feature the same selection and arrangement." *Id*. 499 U.S. at 349.

When registering a compilation, the applicant should identify the preexisting material or data that the author selected, coordinated, and/or arranged. If the compilation contains an appreciable amount of previously published material, previously registered material, public domain material, or material owned by a third party, the applicant generally should limit the claim to the new material that the author contributed to the work and the unclaimable material should be excluded from the claim. For guidance on this procedure, see Chapter 600, Section 621.8(E).

The author of a compilation may claim copyright in an original selection, coordination, and/or arrangement of preexisting material, provided that the material has been used in a lawful manner. Section 103(a) of the Copyright Act states that the copyright in a compilation "does not extend to any part of the work" that "unlawfully" uses preexisting material. As discussed in Chapter 300, Section 313.6(B), this provision is intended to prevent "an infringer from benefiting, through copyright protection, from committing an unlawful act." H.R. REP. NO. 94-1476, at 57, *reprinted in* 1976 U.S.C.C.A.N. at 5671.

509 Collective Works and Contributions to Collective Works

This Section provides the definition and a general discussion of collective works and contributions to collective works. For information concerning the Office's practices and procedures for evaluating the copyrightability of collective works, see Chapter 300, Section 312. For guidance in preparing an application to register a collective work or a contribution to a collective work, see Chapter 600, Sections 610.4, 613.8, 618.7, 620.8, and 621.8(D). For guidance in registering a catalog as a collective work, see Chapter 900, Section 915.

509.1 What Is a Collective Work?

A collective work is a type of compilation. The Copyright Act defines a collective work as "a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole." 17 U.S.C. § 101. The statute also states that "[t]he term 'compilation' includes collective works." *Id*. (definition of "compilation"). Thus, collective works are subject to the statutory requirements for compilations: There must be a sufficiently creative selection, coordination, or arrangement of the component works to establish a collective work.

Creating a collective work requires the "assemblage or gathering of 'separate and independent works . . . into a collective whole.'" H.R. REP. NO. 94-1476, at 120, *reprinted in* 1976 U.S.C.C.A.N. 5659, 5736; S. REP. NO. 94-473, at 104 (omission in original). In other words, collective works contain two distinct forms of authorship:

- The compilation authorship in creating the collective work, which involves selecting, coordinating, and/or arranging a number of separate and independent works and assembling them into a collective whole; and

- The authorship in the separate and independent works included within the collective work, such as an article that appears in a periodical issue or a poem that appears in an anthology.

An applicant may register a collective work together with the separate and independent works contained therein (i) if the copyright in the collective work and the component works are owned by the same claimant, and (ii) if the component works have not been previously published, previously registered, and are not in the public domain.

By definition, a collective work must contain "a number of contributions." A work that contains "relatively few separate elements" does not satisfy this requirement, such as a work containing a single contribution, a composition that merely consists of words and music, a publication that merely combines a single work with illustrations or front matter, or a publication that merely contains three one-act plays. H.R. REP. NO. 94-1476, at 122, *reprinted in* 1976 U.S.C.C.A.N. at 5737; S. REP. NO. 94-473, at 105.

As a general rule, a contribution that is "incorporated in a 'collective work' must itself constitute a 'separate and independent' work." H.R. REP. NO. 94-1476, at 122, *reprinted in* 1976 U.S.C.C.A.N. at 5737; S. REP. NO. 94-473, at 105. In other words, a contribution must be an original work of authorship that is eligible for copyright protection under Section

102(a) of the Copyright Act, regardless of whether that contribution is currently protected or whether the copyright in that contribution has expired.

509.2 The Scope of the Copyright in a Collective Work

The "[c]opyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole." 17 U.S.C. § 201(c).

The "[c]opyright in the separate contribution 'vests initially in the author of the contribution.'" *New York Times Co. v. Tasini,* 533 U.S. 483, 494 (2001) (quoting 17 U.S.C. § 201(c)). The "[c]opyright in the collective work vests in the collective author" and it "extends only to the creative material contributed by that author, not to 'the preexisting material employed in the work.'" *Id*. at 494 (quoting 17 U.S.C. § 103(b)). Specifically, the copyright in the collective work "extend[s] to the elements of compilation and editing that went into [creating] the collective work as a whole." H.R. REP. NO. 94-1476, at 122, *reprinted in* 1976 U.S.C.C.A.N. at 5738; S. REP. NO. 94-473, at 106. In addition, it extends to "the contributions that were written for hire by employees of the owner of the collective work, and those copyrighted contributions that have been transferred in writing to the owner by their authors." H.R. REP. NO. 94-1476, at 122, *reprinted in* 1976 U.S.C.C.A.N. at 5738; S. REP. NO. 94-473, at 106.

An applicant may register a collective work together with the contributions contained therein (i) if the contributions and the collective work were created by the same author, or (ii) if the copyright in the contributions and the collective work are owned by the same claimant, (iii) provided that the contributions and the collective work have not been previously published or previously registered, and provided that they are not in the public domain. If the owner of the collective work does not own all rights in the copyright for a particular contribution, that party cannot register a claim to copyright in that contribution. Instead, the contribution must be registered individually by or on behalf of the author of the contribution or the party that owns the copyright in that work. *See Morris v. Business Concepts, Inc*., 259 F.3d 65, 71 (2d Cir. 2001) ("Unless the copyright owner of a collective work also owns all the rights in a constituent part, a collective work registration will not extend to the constituent part."), *abrogated on other grounds by Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 160 (2010).

Collective works often contain previously published material, previously registered material, public domain material, or material owned by a third party. If a collective work contains an appreciable amount of unclaimable material, the applicant generally should limit the claim to the new material that the author contributed to the work and the unclaimable material should be excluded from the claim. For guidance on this procedure, see Chapter 600, Section 621.8(D).

The author of a collective work may claim copyright in an original selection, coordination, and/or arrangement of preexisting material, provided that the material has been used in a lawful manner. Section 103(a) of the Copyright Act states that the copyright in a compilation "does not extend to any part of the work" that "unlawfully" uses preexisting material, and as discussed above, the term "compilation" includes collective works. As discussed in Chapter 300, Section 313.6(B), this provision is intended to prevent "an infringer from benefiting, through copyright protection, from

committing an unlawful act." H.R. REP. NO. 94-1476, at 57, *reprinted in* 1976 U.S.C.C.A.N. at 5671.

510 One Registration Per Work

As a general rule, the U.S. Copyright Office will issue only one basic registration for each work. 37 C.F.R. § 202.3(b)(11); H.R. REP. NO. 94-1476, at 155, *reprinted in* 1976 U.S.C.C.A.N. at 5771; S. REP. NO. 94-473, at 138 (recognizing that there is a "general rule against allowing more than one registration (i.e., basic registration) for the same work").

Allowing multiple registrations for the same work confuses the public record. Therefore, the Office will not knowingly issue multiple registrations for the same version of a particular work, and the Office generally will decline to issue additional registrations once a basic registration has been made. *See* Part 202–Registration of Claims to Copyright, 43 Fed. Reg. 965, 965-66 (Jan. 5, 1978); Applications for Registration of Claim to Copyright Under Revised Copyright Act, 42 Fed. Reg. 48,944, 48,945 (Sept. 26, 1977).

There are three limited exceptions to this rule, which are discussed in Sections 510.1 through 510.3.

510.1 Unpublished Works vs. Published Works

If the U.S. Copyright Office issued a registration for an unpublished work and if that work was published sometime thereafter, the Office will accept another application to register the first published edition of the work (even if the unpublished version and the published version are substantially the same). 17 U.S.C. § 408(e); 37 C.F.R. § 202.3(b)(11)(i).

When completing the application for the first published edition, the applicant should provide the registration number of the unpublished version using the procedure described in Chapter 600, Section 621.8(F). If the application for the first published edition is approved, the registration for that edition will exist alongside the registration for the unpublished version.

510.2 Naming the Author as the Copyright Claimant

An author may seek a registration naming himself or herself as the copyright claimant, even if the Office previously issued a registration that named a different individual or legal entity as the claimant for that work. *See* 37 C.F.R. § 202.3(b)(11)(ii). Likewise, a joint author may seek a registration naming himself or herself as the claimant, even if the joint work was previously registered by or on behalf of the other authors. *See id.* n.2. When completing the application, the applicant should provide the registration number for the previous registration using the procedure described in Chapter 600, Section 621.8(F).

In some cases, the author of a collective work may register that work without identifying the authors of the component works contained therein. The author of a component work may register that work in his or her own name in this situation, even if the Office previously registered the component work together with the collective work as a whole.

Allowing an author to register a work in his or her own name is consistent "with the fundamental thrust of the [Copyright Act of 1976] in identifying copyright, and the origin of all rights comprised in a copyright, with the author." Applications for Registration of Claim to Copyright Under Revised Copyright Act, 42 Fed. Reg. 48,944, 48,946 (Sept. 26, 1977). This may be useful where the author retains a reversionary interest in a contribution to a collective work and wants "to reflect his or her retained or continued legal or beneficial ownership of certain rights" in the copyright after it has been transferred to another party. *Id.* at 48,945.

This exception does not apply in cases where a third party previously registered the work and named the author as the copyright claimant.

This exception does not apply in cases involving a work made for hire. If the Office issued a registration that named the employer or other hiring party as the copyright claimant, the individual who actually created the work cannot obtain another registration in his or her own name unless the applicant is asserting an adverse claim. 37 C.F.R. § 202.3(b)(11)(ii) n.2. For information concerning adverse claims, see Section 510.3.

Likewise, this exception does not apply if the work was registered before January 1, 1978. If the work was registered before that date and if another party was named as the copyright claimant, the Office will not issue another registration naming the author as the claimant. For more information on this issue, see Chapter 2100, Section 2130, 2131, and 2134.

510.3 Adverse Claims

If the Office issued a registration for a work of authorship and another applicant subsequently alleges that the registration is unauthorized or legally invalid, the applicant may seek another registration for that same work. 37 C.F.R. § 202.3(b)(11)(iii). In this situation, the applicant should prepare a new application using the procedure described in Chapter 1800, Section 1807.

511 One Work Per Registration

As a general rule, a registration covers one individual work, and an applicant should prepare a separate application, filing fee, and deposit for each work that is submitted for registration. *See* 17 U.S.C. §§ 408(a), 409 (authorizing the U.S. Copyright Office to register a single "work").

Although the Office generally allows only one work per application, there are some limited exceptions to this rule. In the following cases, it may be possible to register multiple works with one application, one filing fee, and one set of deposit copy(ies):

- A collective work may be registered together with the separate and independent works contained therein (i) if the copyright in the collective work and the component works are owned by the same claimant, and (ii) if the component works have not been previously published, previously registered, and are not in the public domain. This option is discussed in Section 509.1 and Chapter 600, Sections 610.4, 613.8, 618.7, 620.8, and 621.8(D).

- A number of published works may be registered using the unit of publication option, which is discussed in Chapter 1100, Section 1103.

- A sound recording may be registered together with a literary work, musical work, or dramatic work, provided that (i) the sound recording and the recorded literary work, musical work, or dramatic work are embodied in the same phonorecord, (ii) the claimant for both works is the same person or organization, (iii) the applicant selects Sound Recording from the Type of Work field when completing an online application or uses Form SR when completing a paper application, and (iv) the applicant submits a phonorecord that contains both the sound recording and the recorded literary work, musical work, or dramatic work.

- A group of related works may be registered using a group registration option. The Office currently offers group registration options for the following types of works:

  - Unpublished works.
  - Serials
  - Newspapers
  - Newsletters
  - Short online literary works
  - Contributions to periodicals
  - Published photographs
  - Unpublished photographs
  - Database updates
  - Questions, answers, and other test items that have been prepared for use in a secure test.

For information concerning these group registration options, see Chapter 1100, Sections 1105 through 1114.

512 Multiple Versions of the Same Work

The Copyright Act states that "a work is 'created' when it is fixed in a copy or phonorecord for the first time." 17 U.S.C. § 101 (definition of "created"). The statute states that "where a work is prepared over a period of time, the portion of [the work] that has been fixed at any particular time constitutes the work as of that time." *Id.* It also states that "where the work has been prepared in different versions, each version constitutes a separate work." *Id*.

The copyright law protects each version of a work from the moment it is fixed in a copy or phonorecord, provided that the author contributed a sufficient amount of original expression to that version. 17 U.S.C. § 102(a). For example, copyright protects each draft of a literary work from the moment it is written on paper, saved in a data file, or inscribed in any other medium of expression. Likewise, it protects each take of a motion picture from the moment it is captured on film, videotape, or any other audiovisual medium.

Although the copyright law generally protects each version of a work, it may not be necessary to register each version with the U.S. Copyright Office, depending on whether the work is published or unpublished. These issues are discussed in Sections 512.1 and 512.2 below.

512.1 Unpublished Versions of the Same Work

If the work is unpublished, there is generally no need to register each version of that work. In most cases, the applicant may submit the most recent or the most complete version.

For example, if the author prepared multiple drafts for an unpublished screenplay, a registration for the most recent version will cover all of the copyrightable material that appears in the deposit copy, including any unpublished expression that has been incorporated from prior versions of the same work. Likewise, if the applicant intends to register an unpublished website that has been updated, modified, or revised from time to time, the registration will cover all of the copyrightable material that is submitted for registration, including any unpublished text, photographs, or other content that has been incorporated from prior iterations of the same website.

If the deposit copy contains copyrightable material that appeared in previous versions of the same work there is generally no need to exclude that preexisting material from the application unless that material has been previously published or previously registered or unless that material is in the public domain or is owned by a third party.

512.2 Published Versions of the Same Work

If the versions have been published, the applicant generally should submit a separate application, a separate filing fee, and a separate set of deposit copies for each version.

For example, if the author published multiple editions of a textbook, the applicant should submit a separate application for each edition. In each case, the registration will cover the new material that the author contributed to each edition, including any copyrightable changes, revisions, additions, or other modifications that appear in the deposit copies for that edition. Likewise, if the applicant intends to register a published website that has been updated, modified, or revised from time to time, the applicant should prepare a separate application for each version of that site. In each case, the registration will cover the text, photographs, or other copyrightable content that appeared on the website on the date specified in the application and the deposit copies.

The Office will register multiple versions of a published work, provided that each version contains a sufficient amount of copyrightable authorship that does not appear in

the other versions. When submitting multiple versions of a published work for registration, the applicant should notify the Office by providing the title for each version, and if possible, the case number / service request number that has been assigned to each claim. In addition, the applicant should confirm in writing that the version specified in the application contains copyrightable authorship that does not appear in other versions. When filing an online application this information should be provided in the Note to Copyright Office field. When filing a paper application this information should be provided in a cover letter. This improves the efficiency of the examination process and produces more consistent registration decisions.

The applicant—not the U.S. Copyright Office—should identify the specific version or versions that the applicant intends to register. In making this determination, it may be helpful to consider the following questions:

- Does one version contain all of the copyrightable material that appears in the other versions of the same work?
- Were the versions published on the same date or on different dates?

These topics are discussed in Sections 512.2(A) through 512.2(C) below.

512.2(A) Registering Multiple Versions of a Published Work: More Complete Version Published First

If one version contains all the copyrightable material that appears in other versions of the same work and if that version was published first, the applicant should submit the most complete version. In this situation, the applicant should not submit an application to register other versions of the same work.

Example:

- The Elmwood Avenue Press published two versions of an elementary school textbook. The teacher's edition contains all the text and artwork that appears in the student's edition, plus additional instructions, questions, answers, and commentary. The teacher's edition was published on January 22, 2010 and the student's edition was published on February 1, 2010. The publisher may register the teacher's edition, but should not submit an application for the student's edition.

512.2(B) Registering Multiple Versions of a Published Work: Less Complete Version Published First

If one version contains some—but not all—of the copyrightable material that appears in other versions of the same work and if that version was published first, the applicant may register any or all of those versions. When completing the application for the more complete version(s) the applicant should exclude any material that appeared in the previously published versions of the same work using the procedure described in Chapter 600, Section 621.8.

Example:

- The Block Island Press published a calendar on June 1, 2011 that contains a number of photographs. On June 15, 2011, the company published a coffee table book containing the same photographs and some additional sketches. The publisher may submit a separate application for the calendar and the book. When completing the application for the calendar, the publisher should assert a claim in the photographs. When completing an application for the book, the publisher should assert a claim in the artwork, and should exclude the previously published photographs from the claim.

512.2(C) Registering Multiple Versions of a Published Work: Multiple Versions Published on the Same Date

If one version contains all the copyrightable material that appears in other versions of the same work and if all the versions were published on the same date, the applicant should submit the most complete version.

Example:

- Dice Drugs published two versions of a user manual on August 15, 2012. One version is written in English; the other version contains the same text written in English and Spanish. The publisher should submit an application to register the English/Spanish version.

If each version contains copyrightable material that does not appear in other versions of the same work and if all the versions were published on the same date, the applicant may submit a separate application for each version.

Example:

- On September 15, 2013 Coffee Cabinet LLC submits two applications for two versions of a novel which were published on September 1, 2013. One version is intended for British readers, while the other is an Americanized version that is intended for readers in the United States. In both cases, the applicant asserts a claim in text. The registration specialist will register both claims.

NOTE: When all of the versions are published on the same date there is no need to exclude any overlapping material that appears in each version because simultaneously published material is not considered previously published material for purposes of registration.

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Examination Practices

601 What This Chapter Covers

This Chapter sets forth the U.S. Copyright Office's practices and procedures for examining claims submitted with the Standard Application or a paper application.

This Chapter does not discuss claims that may be submitted with the Single Application. Likewise, it does not discuss (i) group registrations; (ii) renewal registrations; (iii) supplementary registrations; (iv) GATT registrations for certain foreign works; or (v) preregistrations.

For examining practices specific to the following types of works or registrations, see the following chapters:

- For literary works, see Chapter 700.
- For works of the performing arts, see Chapter 800.
- For visual arts works, see Chapter 900.
- For websites and website content, see Chapter 1000.
- For information concerning the Single Application, see Chapter 1400, Section 1405.
- For group registrations, see Chapter 1100.
- For mask works and vessel designs, see Chapter 1200 and Chapter 1300.
- For supplementary registrations, adverse claims, and other post-registration procedures, see Chapter 1800.
- For registration of certain foreign works that may be registered as "GATT" works (*i.e.*, works that did not comply with certain formalities in U.S. law prior to March 1, 1989 or sound recordings fixed prior to February 15, 1972), see Chapter 2000, Section 2007.
- For renewal registrations, see Chapter 2100.

602 General U.S. Copyright Office Examination Practices

When the U.S. Copyright Office determines that the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of U.S. copyright law have been met, it will register the claim and send the applicant a certificate of registration under the seal of the U.S. Copyright Office. 17 U.S.C. § 410(a). The Office has certain general policies it employs when an application is unclear on its face, when there are ambiguities in the application, and/or contradictions between the

statements provided in the application and the information contained in the deposit copy(ies), when required information is missing, or when the deposit copy(ies) are incomplete or otherwise fail to meet the applicable requirements. Each of these topics is discussed below.

602.1 Completion of the Application

Applicants are encouraged to complete applications accurately and completely. Establishing a full, accurate record has a number of benefits: it serves the public interest by creating a more useful public record, it provides potential licensees with more accurate information, and it decreases the cost of copyright litigation by minimizing potential disputes about the work(s) that the registration covers. Where an applicant seeks assistance from the U.S. Copyright Office in preparing an application, the Office will instruct the applicant to complete the application in a clear and accurate manner.

602.2 Statutorily Required Information in the Application

Section 409 of the Copyright Act sets forth the required information for an application for copyright registration:

1. The name and address of the copyright claimant.

2. In the case of a work other than an anonymous or pseudonymous work, the name and nationality or domicile of the author or authors, and, if one or more of the authors is dead, the dates of their deaths.

3. If the work is anonymous or pseudonymous, the nationality or domicile of the author or authors.

4. In the case of a work made for hire, a statement to this effect (*i.e.*, a "work made for hire statement").

5. If the copyright claimant is not the author, a brief statement of how the claimant obtained ownership of the copyright (*i.e.*, a "transfer statement").

6. The title of the work, together with any previous or alternative titles under which the work can be identified.

7. The year in which creation of the work was completed.

8. If the work has been published, the date and nation of its first publication.

9. In the case of a compilation, or derivative work, an identification of any preexisting work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered.

17 U.S.C. § 409.

602.3 Requirements for Registration of a Basic Claim

The essential issues that should be resolved before the U.S. Copyright Office may complete a registration include the following:

- Is the subject matter of the work protected by copyright, *i.e.*, does it fall under one or more of the categories of authorship set forth in Section 102(a) of the Copyright Act?
- Is the work original, and is the authorship being claimed sufficiently creative to be copyrightable?
- Is the work eligible for copyright protection in the United States, *i.e.*, does it satisfy one or more of the requirements set forth in Chapter 2000, Section 2003.
- Has the correct author been named (assuming the work is not anonymous)?
- Does the claimant appear to have the right to claim copyright in the work?
- Have the relevant deposit requirements been met?
- Has the required filing fee been paid?
- In the case of a work published prior to March 1, 1989, have the notice requirements been met?
- Is the extent of the claim clear?
- Has the basic information required by Section 409 of the law been provided?
- Has the application been certified?

The Office will issue a registration if all of these questions are answered in the affirmative, if there are no other issues in the registration materials that might raise questions concerning the claim, and if all of the other legal and formal requirements have been met.

602.4 General Standards for Examination of an Application

602.4(A) The Examination Process

The examination process involves the examination of the application, the deposit copy(ies), the filing fee, all other material that has been submitted to the U.S. Copyright Office, and all communications between the applicant and the Office relating to the registration of the claim. Together, these materials are collectively known as the "registration materials."

602.4(B) Scope of the Examination

The U.S. Copyright Office examines the registration materials to determine:

- Whether the work constitutes copyrightable subject matter; and
- Whether the other legal and formal requirements have been met, including those set forth in the Copyright Act, the U.S. Copyright Office's regulations, and the *Compendium of U.S. Copyright Office Practices, Third Edition*.

As a general rule, the Office will register a claim to copyright where the work contains copyrightable subject matter, where the application is acceptable on its face, and where the facts stated therein are not contradicted by each other or by information in the deposit copy(ies) or elsewhere in the registration materials.

602.4(C) Factual Determinations and Administrative Notice

As a general rule, the U.S. Copyright Office accepts the facts stated in the registration materials, unless they are contradicted by information provided elsewhere in the registration materials or in the Office's records. Knowingly making a false representation of a material fact in an application for copyright registration, or in any written statement filed in connection with an application, is a crime that is punishable under 17 U.S.C. § 506(e).

Ordinarily, the Office does not conduct investigations or make findings of fact to confirm the truth of any statement made in an application, such as whether a work has been published or not. However, the Office may take administrative notice of facts or matters that are known by the Office or the general public, and may use that knowledge to question an application that appears to contain or be based upon inaccurate or erroneous information.

602.4(D) No Searches or Comparison of Works

When examining a claim to copyright, the U.S. Copyright Office generally does not compare deposit copy(ies) to determine whether the work for which registration is sought is substantially similar to another work. Likewise, the Office generally does not conduct searches to determine whether the work has been previously registered.

602.4(E) Duplicate Claims

As a general rule, the U.S. Copyright Office will not knowingly issue multiple registrations for the same claim, because this would confuse the public record.

If the Office discovers that an applicant submitted a claim that is an exact duplicate of another claim, the registration specialist may communicate with the applicant or may refuse to register the duplicate claim. The status of the prior claim is irrelevant to this determination. The Office will not knowingly register a duplicate claim, regardless of whether the prior claim is pending or whether it has been registered or refused. Likewise, if the Office refused registration and if the applicant submitted a request for reconsideration, the Office will not knowingly register a duplicate claim, regardless of whether the request is pending or whether the refusal has been upheld on substantive or procedural grounds.

NOTE: There are three limited exceptions to this rule, which are discussed in Chapter 500, Sections 510.1 through 510.3. The Office may also accept a duplicate claim if the initial claim was closed as a "no reply" because the applicant failed to respond to the registration specialist in a timely manner. For more information, see Section 605.7.

602.5 General Practices for Processing Information Provided in a Paper Application

To the extent possible, the information provided in a paper application will be scanned and uploaded into the U.S. Copyright Office's electronic registration system. In some cases, it may not be possible or practical to enter all of the information into the registration record. In all cases, the Office will retain a physical copy or an electronic copy of the paper form.

602.6 General Policy Regarding Location of Information

The information that the applicant provides to the U.S. Copyright Office should be provided in the appropriate field of the online application or space of the paper application.

If the applicant provides the required information in the application, but the information does not appear in the correct field or space, the registration specialist may register the claim, provided that the claim is clear. In the alternative, the specialist may correct the application by placing the information in the appropriate field or space, provided it is clear what information belongs in what field or space.

As a general rule, the specialist will not annotate the registration record if information appears in the wrong field or space of the application, but may do so if the required information appears elsewhere in the registration materials (*i.e.*, in the deposit copy(ies) but not in the application). For a discussion regarding annotations, see Section 604 below.

Examples:

- Denero Poe submits an online application for a t-shirt design, which is based on a previous design that was registered in 2004. The registration number for the previous design should be provided in the Previous Registration field, but the applicant provided that information in the New Material Included field. The registration specialist may move the previous registration number to the correct field without communicating with the applicant.

- A paper application is submitted for a work titled *Without a Doubt – The Worst Day of My Life.* In a cover letter the applicant states that the work was published on January 26, 2012. The Date of First Publication field has been left blank. If there is no evidence to suggest that the date provided in the cover letter is incorrect, the registration specialist will add that information to the Date of Publication field and will insert an annotation, such

as: "Regarding publication: Publication date added from cover letter."

602.7 General Practices Regarding Missing Information

Where any required information is missing from the application but is clearly provided in other registration materials, including the deposit copy(ies), an email, cover letter, Note to Copyright Office, a continuation sheet, in an application for a related work which was submitted at the same time, or in other written or oral communications with the applicant, the registration specialist may include that information in the appropriate field or space of the registration record and may annotate the registration record to indicate the source of the added information. (For a discussion of annotations, see Section 604.) If the required information is not clearly provided elsewhere in the registration materials, the registration specialist will communicate with the applicant.

Examples:

- Laura Langley submits a paper application for a short story, but does not provide a Year of Completion. In a cover letter Laura explains that she has been working on the story for 15 years and that she finished it in 2011. The registration specialist will add 2011 to the Year of Completion field and register the claim with an annotation, such as: "Regarding year of completion: Added by Copyright Office from cover letter provided by applicant."

- The Hodge Podge Press submits an online application for a 2009 trade paperback, along with two copies of the work. The application states that the work is unpublished. The registration specialist knows that the work has been distributed to the public, because she has seen the work sold in bookstores. The registration specialist will ask the applicant to provide the date and nation of first authorized publication.

602.8 General Policy Regarding Extraneous Information

If the information provided in a field or space is clearly extraneous and in no way affects the claim, the registration specialist may remove that information or may allow it to remain in the registration record. Ordinarily, the specialist will not make an annotation in the registration record when extraneous information has been removed.

602.9 General Policy Regarding Social Security Numbers, Driver's License Numbers, Credit Card Numbers, and Bank Account Numbers

The applicant should not provide any private or confidential information in the application that is not required for registration. The information that is provided in the application may be included in the certificate of registration and the online public record.

When submitting an online application through the electronic registration system, the applicant may pay the filing fee by providing a credit card number or bank account number on the Online Payment screen. The applicant should not provide this type of information in any other portion of the application.

If the registration specialist discovers a social security number, driver's license number, credit card number, or bank account number in the application, he or she will remove that information from the record. If the number is not discovered during the examination process and subsequently appears in the certificate of registration or the online public record, the author, the claimant, or their respective representatives may submit a written request to the Office to remove this information from the registration record. *See* 37 C.F.R. § 201.2(f).

For information concerning this procedure and a general discussion of privacy issues, see Chapter 200, Section 205.

602.10 General Practices Regarding Cataloging Information

If information is missing from the application but is clearly provided elsewhere in the registration materials, the registration specialist may add that information to the online public record if it is likely that a person searching the U.S. Copyright Office's records may use that information to locate the work.

Example:

- The Office receives an application to register a claim in "spoken text," along with a compact disc containing a sound recording. The application names "Florence Markic" as the author of the work, but the cover of the CD identifies the author as "Irene Gregor." The liner notes explain that Florence Markic is professionally known as Irene Gregor. The registration specialist will register the claim without communicating with the applicant, and the specialist may add the author's professional name to the online public record as a searchable term.

603 Variances

The U.S. Copyright Office uses the term "variance" to refer to any instance where conflicting information is present in or among the registration materials submitted by the applicant. The Office has certain practices for addressing variances, depending on the nature of the conflicting information.

There are four general categories of variances:

(i) Immaterial variances;

(ii) Material variances that are resolvable on review of the registration materials as a whole;

(iii) Material variances that may be resolvable by communicating with the applicant; and

(iv) Material variances that do not appear to be resolvable.

If the registration specialist discovers a variance in the registration materials, the actions that he or she may take include: (i) disregarding the variance if it is immaterial, (ii) adding a note to the online public record; (iii) adding an annotation to the certificate of registration and the online public record to identify a correction made by the specialist or to clarify information provided elsewhere in the registration materials; (iv) corresponding with the applicant to obtain the correct information; (v) returning the application and instructing the applicant to correct the variance and resubmit the claim, or (vi) refusing registration in exceptional cases.

These actions and the circumstances when they may be taken are discussed in Sections 603.1 and 603.2 below. For a discussion of the Office's general policies regarding annotations, see Section 604.

603.1 Immaterial Variances

An immaterial variance is a variance that does not affect the required information that should be included in an application, or any of the essential issues that should be resolved before the U.S. Copyright Office may complete a registration, or where an ordinary person would be able to discern the correct information from the application and would recognize the variance as a mere discrepancy, such as a misspelling or typographical error. As a general rule, the registration specialist will disregard immaterial variances and will register the claim without annotating or communicating with the applicant, but may note the variance in the online public record.

Examples:

- John Thomas submits an online application for a musical work. The title provided in the application is *Born in the Phillipines*, but the phonorecords submitted with the application give the title as *Born in the Philippines*. If the application is otherwise acceptable, the registration specialist will register the claim without communicating with the applicant, but may include the alternative spelling in the online public record in the field marked Title.

- Eva Villagros Gutierrez submits an online application for a screenplay, providing her full name in the Name of Author field. The deposit copy identifies the author as "Eva Villagros." The registration specialist will register the claim without communicating with the applicant, but may include the shortened form of the author's name in the online public record.

- An online application names "Small World Fabrics Inc." as the author of a fabric design. The deposit copy identifies the author as "Small World Fabrics Incorporated." The registration specialist will register the claim without communicating with the applicant or annotating the registration record.

603.2 Material Variances

A material variance is a variance that substantially affects the required information that should be included in the application, or any of the essential issues that should be resolved before the U.S. Copyright Office may complete a registration.

603.2(A) Material Variances That May Be Resolved by Amending the Registration Record without Annotating

If a material variance may be clearly resolved by reviewing the registration materials as a whole or by reviewing other U.S. Copyright Office records, the registration specialist may amend the information in the registration record without communicating with the applicant. As a general rule, if all of the required information appears in the application itself (as opposed to elsewhere in the registration materials, including the deposit copy(ies), a cover letter, or the Note to Copyright Office field), the specialist will not annotate the registration record to indicate that the application was revised.

Examples:

- The Office receives applications to register ten fabric designs. The application for "Design No. 8" names Chelsea's Fabric Hose as the author and claimant. The name Chelsea's Fabric House appears in all the other applications, in the cover letter, and the address where the certificates of registration should be sent. The registration specialist may correct the typographical error in the name given in the application for Design No. 8 without giving an annotation.

- Eric Kressler and Carla McCloud submit an application to register a song titled "Friday Afternoon Blues," naming themselves as co-authors of the work. The deposit copy states that the song was written by "Erica Kessler and Carl MacCloud." In a cover letter Eric and Carla explain that their names were misprinted on the copy and that the names given on the application are correct. The registration specialist will register the claim without annotation, but a note will be added to the

certificate of registration and the online public record indicating the presence of correspondence in the file.

603.2(B) Material Variances That May Be Resolved by Amending and Annotating the Registration Record

If a material variance may be clearly resolved by reviewing the registration materials as a whole or by reviewing other U.S. Copyright Office records, the registration specialist may amend the information in the registration record without communicating with the applicant. As a general rule, if the required information does not appear in the application itself, and it is necessary to refer to information found elsewhere in the registration materials, such as the deposit copy(ies), a cover letter, the Note to Copyright Office field, or in other Office records, the registration specialist will annotate the registration record to indicate that the record was amended and will identify the source of the information.

Example:

- An online application is submitted for a work titled *Money: For What It's Worth*. The title that appears on the deposit copy indicates that this is the third edition of this work, but the Limitation of Claim field has not been completed. The registration specialist may amend the title field to indicate that this is the third edition of this work, and may add an annotation, such as: "Regarding title information: Edition statement added by Copyright Office from the deposit copy."

603.2(C) Material Variances That Cannot Be Resolved by Amending or Annotating the Registration Record

When the U.S. Copyright Office discovers a material variance in the registration materials, and the correct information cannot be ascertained based on the information provided in the registration materials as a whole or in the Office's records, the registration specialist may communicate with the applicant and attempt to resolve the discrepancy. (For a discussion of the Office's general policies regarding communications, see Section 605.) In such cases, any changes agreed to by the applicant will be reflected in the registration record, and the corrected information will appear on the certificate of registration and in the online public record.

Examples:

- The title on the deposit copy reads *Haiku for the Illiterati –Third Edition,* but the application identifies the title as *Haiku for the Illiterati – Fifth Edition*. The registration specialist will communicate with the applicant to determine whether the applicant intends to register the third or the fifth edition and whether the Office received the correct deposit copy. Depending on the applicant's response, the specialist may amend the registration record to provide relevant information about the

third edition or may request appropriate deposit copies for the fifth edition.

- An online application identifies Wilhelmina Puckett as both the author and claimant for an atlas, but the deposit copy identifies the author as Cassandra Smyth. The registration specialist will communicate with the applicant to determine if the correct author has been named on the application. The applicant explains that Wilhelmina Puckett hired Cassandra Smyth to create this work. With the applicant's permission, the specialist will check the box indicating that the atlas is a work made for hire. The explanation for this change will be included in the registration record.

In some cases, there may be numerous variances in the registration materials. If an unreasonable number of actions would be needed to address these variances, the specialist may return the application, and instruct the applicant to correct and resubmit the claim.

Example:

- The National Association of Gastroenterologists submits an application to register a textbook. The application names 20 individuals as the co-authors of the work, but in each case, the author's first name is listed as "Humphrey," rather than the name that actually appears on the deposit copies. The registration specialist will return the application to the applicant, identify the problem that needs to be fixed, and instruct the applicant to resubmit the claim once the corrections have been made.

In exceptional cases, the specialist may refuse registration if he or she determines that the variance cannot be resolved through correspondence.

Examples:

- A law firm submits an online application to register a painting, along with an exhibition catalog that contains a complete copy of the work. The application states that the work is unpublished, but the deposit states that copies of the catalog were distributed to the public in 1977. The registration specialist will refuse registration, explain that the work may be eligible for a renewal registration, and instruct the applicant to submit a new application on Form RE/Addendum, along with a new deposit and the correct filing fee.

- The Warwick University Press publishes books written by professional scholars. The publisher routinely submits applications naming the author as the copyright claimant, but

fails to provide the claimant's address, which is required by law. The Office routinely writes to request the missing information, but the publisher repeatedly makes the same mistake in subsequent submissions. The Office will notify the publisher that if it fails to provide the claimant's address in the future, the registration specialist will refuse registration without attempting to correct the variance.

604 Annotations

An annotation is a statement that the U.S. Copyright Office adds to the registration record to clarify the facts underlying the claim or to identify legal limitations on the claim. The registration specialist may annotate an application without communicating with the applicant if the annotation does not cast doubt on or raise a question concerning the validity of the registration. As discussed in Sections 604.1 through 604.4, annotations may be made for a number of different reasons.

An annotation adds substantive information to the registration itself and is considered part of the certificate of registration, as compared to a note or change in the registration record that is made by the registration specialist as part of his or her cataloging responsibilities (such as adding a note or an index term to the online public record).

604.1 Addressing Variances in the Registration Materials

As discussed in Section 603, the registration specialist may annotate the registration record to address certain variances in the application.

Example:

- Leslie Steward writes a screenplay titled *High Heels and a Pickup Truck*, which is based on her previously published novel of the same name. In the Note to Copyright Office field Leslie states: "This screenplay is adapted from my novel *High Heels and a Pickup Truck,* published in 2009," but the Limitation of Claim screen has been left blank. The specialist may insert this statement in the relevant fields on the Limitation of Claim screen, and may add an annotation to the registration record, such as: "Regarding limitation of claim: Statement added by Copyright Office from Note to Copyright Office."

604.2 Adding Comments to the Registration Record

An annotation may be used to add comments to the registration record. For example, the registration specialist may use an annotation to note the presence of an antedated copyright notice, to note overlapping claims, to note references to previous registrations, to note references to cover letters or other communications from the applicant, to note grants of special relief, to clarify the nature of the deposit copy(ies), or to identify uncopyrightable elements specifically claimed in the application.

Example:

- An online application is submitted for a song that was first published in 1997. In the Note to Copyright Office field the applicant explains that the CD is no longer available for sale and the applicant has only one archival copy. The applicant submits a written request for special relief from the deposit copy requirement for a published song. If the Office agrees to accept an mp3 file in lieu of the published CD, the registration specialist will add an annotation to the registration record, such as: "Regarding deposit: Special Relief granted under 37 CFR 202.20(d)."

604.3 Adding Missing Information to the Registration Record

As discussed in Section 603.2(B), an annotation may be used to explain that required information was missing from the application and that the registration specialist obtained that information from elsewhere in the registration materials, such as a cover letter or the deposit copy(ies).

Example:

- The registration specialist receives two applications for a children's book titled *Learn to Box Young*. In both cases, the applicant submitted two copies of the book. One application asserts a claim in the text by Caleb Rose while the other asserts a claim in the illustrations by Mario Ali. The application for Caleb states that the work was published on August 1, 2008, but the application for Mario does not provide a date of publication. The specialist will insert "August 1, 2008" in Mario's application and will add an annotation, such as: "Regarding publication: Publication date added by Copyright Office from application submitted simultaneously."

604.4 Documenting Communications with the Applicant

In certain appropriate circumstances, the registration specialist may use an annotation to document that the applicant authorized the specialist to amend the registration record or to clarify the facts in the record.

Example:

- Ralph Carson submits an application for a published work titled "Punish the Producers." The copyright notice contains multiple year dates, but the applicant failed to complete the Material Excluded field. The registration specialist may communicate with the applicant to determine if the work contains any previously published material. If the work is entirely new, the specialist may add an annotation to the registration record, such as: "Regarding publication information: Multiple year

dates in notice. Work is all new, confirmed by phone call with Ralph Carson on February 15, 2012."

604.5 Placement of the Annotation

Annotations should be accurate, they should clearly identify information that was provided by the U.S. Copyright Office, they should cite the authority for any amendments or deletions that have been made, and they should identify the general topic or the specific field or space of the registration record that has been annotated (*e.g.*, "Regarding Author Information," "Regarding Limitation of Claim," "Regarding Deposit," etc.).

Annotations appear on the certificate of registration, generally under the heading "Copyright Office Notes." They appear in the online public record under the heading "CO Annotation."

604.6 Annotations Are Part of the Registration Record

An annotation is part of the registration record and a correct annotation generally will not be removed from the registration record once a registration has been made.

The U.S. Copyright Office will retain supporting documentation for an annotation (or amendment), such as an email, cover letter, fax, or note regarding a phone call. Both the certificate of registration and the online public record will indicate that correspondence relating to the claim is in the file.

605 Communications Between the Applicant and the Registration Specialist

Communication between the U.S. Copyright Office and the applicant regarding an application may take many different forms. This Section describes the ways in which an applicant may communicate with the Office and the means by which the Office communicates with the applicant in the course of examining an application.

605.1 General Policies

Legal advice not provided. Communications involving the examination of an application should be limited to issues concerning registration and related matters. The U.S. Copyright Office's staff will not offer legal opinions or advice on other matters, such as the rights of persons in connection with contracts, infringement disputes, or matters of a similar nature. 37 C.F.R. § 201.2(a)(3). Likewise, the Office's staff will not offer or undertake to resolve disputes concerning conflicting claims to copyright. If there is a dispute between two or more parties involving a claim to copyright, it is the responsibility of each party to pursue their claims in an appropriate forum.

Communications to be clear, concise, and polite. All communications from the Office should be clear in meaning, concise in statement, and polite in tone. As a general rule, the Office will consider all oral or written communications from the applicant, but will not consider or respond to any abusive, offensive, or scurrilous communications directed to the Office or any of its staff. Similarly, the Office's staff will terminate any conversation, correspondence, or interview, if the applicant makes abusive or scurrilous

statements or engages in threatening or otherwise inappropriate behavior. 37 C.F.R. § 201.2(c)(4).

Business conducted in the English language. Written communications to the Office should be in English. Communications from the Office are written in English, and as a general rule, oral communications with the Office are conducted in English. In limited circumstances and on special request, the Office may be able to examine applications or respond to communications that are written in languages other than English. The Office may provide this service as a courtesy, but it is under no obligation to do so and may ask the applicant to submit an English translation of statements that appear in the registration materials or in a communication from the applicant before it takes any action.

Communicating with persons with disabilities. The Office will make accommodations for persons with disabilities upon request.

605.2 Communicating with the U.S. Copyright Office

An applicant may communicate with the U.S. Copyright Office by any of the means described in Sections 605.2(A) through 605.2(C).

When providing an email address or other contact information in the online application, the applicant must ensure that this information is entered correctly. When completing a paper application, the applicant must ensure that this information is both correct and legible. In all cases, the applicant must keep this information up-to-date while the claim is pending. If there are any changes, the applicant should notify the Office by contacting the registration specialist assigned to the claim, or by contacting the Public Information Office by phone or by email using the form provided on the Office's website.

If the applicant provides an email address in the application, the Office will use that address as the primary means for communicating with the applicant, even if the applicant also provides a telephone number, fax number, or other contact information. The Office cannot verify email addresses provided by applicants, and registration specialists do not receive an error message when they attempt to send an email to an incorrect or invalid address. Therefore, applicants must ensure that their email address has been entered correctly. If an applicant provides an inaccurate or invalid address, the file may be closed for failure to reply to a communication from the registration specialist. When a file is closed, the filing fee will not be refunded and the deposit copy(ies) will not be returned.

605.2(A) Note to Copyright Office

When an applicant prepares an online application, the applicant may provide additional information that is relevant to the examination process, such as explaining apparent discrepancies in the application or requesting special relief. This information may be provided in the online application in the field marked Note to Copyright Office, which appears on the Certification screen. Currently, the total amount of text that may be provided in this field is limited to 2,000 characters.

The statements provided in the Note to Copyright Office field will not appear on the certificate of registration or the online public record. The U.S. Copyright Office will

maintain a copy of the note in the registration record. If the note contains material information, the specialist may add that information to the registration record with an annotation, or may add a note to the certificate of registration and the online public record indicating that there is correspondence in the file.

605.2(B) Cover Letters

An applicant may submit a cover letter with an application or with the deposit copy(ies). A cover letter may provide additional information that is relevant to the examination process, such as explaining apparent discrepancies in the application or justifying the applicant's request for special handling or special relief

When filing an online application, the applicant may upload a cover letter as part of the deposit, provided that the letter and the deposit are submitted as separate files. To submit a cover letter with a paper application, the applicant may attach it to the application.

A cover letter will not be returned to the applicant or attached as an exhibit to the certificate of registration. However, the U.S. Copyright Office will retain a copy of the letter in the registration record. If the letter was uploaded to the electronic registration system, the letter will be marked as "correspondence."

If the letter contains material information, the registration specialist may add that information to the registration record with an annotation, or may add a note to the certificate of registration and the online public record indicating that there is correspondence in the file. If there is a material variance between the information contained in the letter and elsewhere in the registration materials, the specialist may communicate with the applicant, which will delay the examination of the claim.

605.2(C) Calling or Emailing the U.S. Copyright Office

Applicants are strongly encouraged to refer to the *Compendium of U.S. Copyright Office Practices, Third Edition*, and to the circulars and other materials provided on the U.S. Copyright Office's website for information regarding an application. If the applicant still has questions regarding the processes and procedures for preparing or filing an application, the applicant may contact the Public Information Office by phone or by email using the form provided on the Office's website. For more information on contacting the Records, Research and Certification section, see Chapter 2400, Section 2403.

605.3 Communications from the U.S. Copyright Office

The registration specialist assigned to the claim will communicate with the applicant if he or she has questions regarding the registration materials.

The specialist may communicate by email, phone, fax, or letter. However, if the applicant provided an email address in the application, the specialist will use that address as the primary means for his or her communication.

In all cases, the specialist will provide the applicant with appropriate contact information for responding to his or her communication.

605.3(A) The U.S. Copyright Office's Email Addresses

When communicating with an applicant by email, the U.S. Copyright Office will use one or more of the email addresses listed below.

Once an application has been filed, the applicant should routinely monitor his or her "in box" for messages sent from these addresses.

When a message arrives in the applicant's in box, it may or may not be accompanied by the label "Copyright Office." The applicant should ensure that the "spam filter" for his or her account does not block messages sent from the email addresses listed below. Likewise, the applicant should monitor his or her "spam," "junk," and/or "trash" folders for messages sent from these addresses.

- *noreply@loc.gov*: When an applicant successfully submits an application and filing fee through the electronic registration system, the system will generate an automated message confirming that the application and filing fee were received. If the Office does not receive the deposit copy(ies) within ninety days thereafter (either uploaded through the electronic registration system or sent to the Office by mail), the system will generate an automated message notifying the applicant that the deposit has not been received. As the term "no reply" suggests, the applicant should not reply to these automated messages. The Office will not read or respond to any email that is sent to this address.

- *cot-rc@loc.gov*: When an applicant successfully uploads a deposit copy(ies) through the electronic registration system, the system will generate an automated message confirming that the deposit was received. The applicant should not reply to this automated message. The Office will not read or respond to any email that is sent to this address.

- *cop-ad@loc.gov*: When a registration specialist communicates with an applicant by email, the message will be sent from this address. In all cases, the applicant should respond to the specialist's message by opening the message and selecting the "reply" or "reply all" option. As discussed in Section 605.4, the THREAD ID that appears in the specialist's message must be included in the body of the applicant's reply message (not the subject line). Doing so will ensure that the response is connected with the appropriate registration record.

605.3(B) When the U.S. Copyright Office Will Communicate with the Applicant

Whenever possible the registration specialist will examine an application without communicating with the applicant. As a general rule, the specialist will communicate with the applicant if he or she discovers that the applicant failed to provide sufficient information in a particular field or space of the application or elsewhere in the registration materials, or if the applicant otherwise failed to meet the registration requirements. For example, the specialist will communicate with the applicant if the application is ambiguous, substantially incomplete, in conflict with other information in

the registration materials or the U.S. Copyright Office's records, in conflict with other information that is known to the Office, or indicates that the applicant misunderstands the registration requirements. By contrast, the specialist generally will not communicate with the applicant if he or she determines that the required information is clearly presented elsewhere in the registration materials.

605.3(C) Records Concerning U.S. Copyright Office Communications

If the registration specialist communicates with the applicant, either orally or in writing, the U.S. Copyright Office will retain a copy of the written communication or the specialist's written notes concerning his or her conversation with the applicant. The registration record will indicate that there is correspondence in the file concerning the registration.

When the specialist adds information to or amends information within the registration record based on a communication with the applicant, the specialist will add a note containing the full name of the person who supplied the information, the organization or individual(s) that the person represents (if any), and the date the information was supplied. If the relationship between the person and the organization is clear from the information provided in the application, the name of the organization may be omitted from the note.

605.3(D) Communication from the U.S. Copyright Office May Address Multiple Issues

As a general rule, when the registration specialist communicates with the applicant, he or she may identify all of the issues involving the application or the other registration materials, even if those issues standing alone would not normally prompt a communication from the U.S. Copyright Office. In some cases, multiple communications from the specialist may be required. The fact that the specialist did not mention a particular issue in his or her initial communication does not prevent that specialist or another specialist from raising that issue or other issues in a subsequent communication. In some cases, the applicant's response may resolve the issue(s) and no further communication is needed, or conversely the applicant's response may raise other issues that may require additional communication from the specialist.

If the registration specialist discovers similar issues in multiple applications, he or she may discuss those applications in a single communication, instead of issuing a separate communication for each one.

If there are numerous variances in the registration materials, the specialist may simply return the claim to the applicant, provide links to the *Compendium* or other informational materials, and instruct the applicant to correct and resubmit the claim.

605.3(E) Oral Communications

If the registration specialist has questions concerning the registration materials, he or she may attempt to resolve the issue by telephone. If so, the specialist will attempt to contact the person specified in the Correspondent field/space of the application using the telephone number provided in the application.

Before speaking with an individual who is not listed in the application, the specialist will confirm that the individual has been authorized to discuss the claim by the correspondent and/or the copyright claimant.

In all cases, the specialist will document the conversation by adding a note to the registration record identifying the name of the individual that he or she spoke with and the date of the conversation. If the specialist adds information to or amends information within the registration record based on an oral communication, the note should contain a brief summary of what was discussed and a brief explanation for any changes reflected in the registration record. The note should identify the date that the information was provided and the name of the party that the individual represents (if any). If the relationship between the individual and the party is clear from the information provided in the application, the name of the party may be omitted from the note.

A note should document any amendments made to the registration record, and is imperative when the amendment appears to be questionable on its face, but is clearly justified by the information provided in the telephone conversation. The U.S. Copyright Office will retain any such note in the registration record, and the record will indicate that there is correspondence in the file.

In some situations the specialist may ask for written confirmation authorizing the Office to make a change to the registration record, either by email, fax, or letter. The Office will retain this written confirmation, and the registration record will show that there is correspondence in the file.

If the specialist leaves a message on the applicant's voicemail or answering machine, but does not receive a response within a reasonable amount of time, the specialist will call again or will follow up with a written communication.

605.3(F) Written Communications

The registration specialist may communicate with an applicant in writing, particularly if the issue is not appropriate for resolution in a telephone conversation.

Example:

- An application is submitted for a painting titled "Level One." The application lists Anthony Muller as the author and Rob Onbeana as the copyright claimant, but no transfer statement has been provided. The registration specialist may communicate with the applicant in writing to verify that the correct copyright claimant has been named and to determine if Anthony transferred the copyright in the painting to Rob.

Written communications will be sent to the person specified in the Correspondent field/space of the application. A communication may be sent by email, fax, or letter, but if the applicant provided an email address in the application, the specialist will use that address as the primary means for his or her communications.

The specialist will send his or her communication to the email address, fax number, or other address provided in the Correspondent field/space of the application. When completing this portion of the online application, the applicant must enter this information correctly. When completing a paper application, the applicant must ensure that this information is both correct and legible. In all cases, the applicant must keep this information up-to-date while the claim is pending. If there are any changes, the applicant should notify the Office using the procedure specified in Section 605.2.

605.4 Case Numbers, Service Request Numbers, THREAD ID Numbers, and Correspondence Identification Numbers

The U.S. Copyright Office assigns a specific number to each application that it receives, such as "1-929700001." This number is known as a case number or service request number ("SR Number"). The Office uses these numbers to keep track of the claim in the electronic registration system.

When a registration specialist sends an email concerning an application, the Office will assign a THREAD ID to that communication, such as "THREAD ID: 1-CKF1YO." The THREAD ID appears at the end of the specialist's email. The Office uses this number to connect the specialist's email – and the applicant's response to that message (if any) – to the appropriate registration record.

When a specialist sends a letter concerning an application, the Office will assign a correspondence identification number to that communication, such as "Correspondence ID: 1-GHKVFR." This number will appear on the reply sheet that is attached to the letter. The Office uses these numbers to keep track of written correspondence, and to connect the applicant's response (if any) with the appropriate registration record.

If the specialist communicates with the applicant by email, the specialist will provide specific instructions for responding to the message, such as:

> "Please respond to the questions below within 45 days and include the [THREAD ID], using the brackets, as part of your response. The [THREAD-ID] is located below the Examiner's signature block. The [THREAD ID] must be in the body of your response, NOT the subject line. If you put the [THREAD ID] in the subject line, we will not get your message."

The THREAD ID that appears at the end of the specialist's email must be included in the body of the applicant's reply – preferably at the beginning of the reply message. This will allow the Office to connect the reply with the appropriate registration record.

IMPORTANT NOTE: Do not include the THREAD ID in the subject line of your reply message. If you do so, the system will not be able to connect the reply with the relevant registration record. Likewise, the reply will not be connected with the registration record if you fail to include the THREAD ID in the body of the reply, or if you include the THREAD ID in both the body and subject line of the reply. In such cases, the reply message will not be sent to the registration specialist, and the claim will be closed for failure to respond in a timely manner.

If the specialist communicates with the applicant by letter, the applicant may respond by phone, email, fax, or letter. If the applicant responds by email, the applicant should include the case number/service request number and correspondence identification number in the response. If the applicant responds by letter or by fax, the applicant should include the case number/service request number, correspondence identification number, and a copy of the reply sheet in the response.

605.5 Applicant's Internal Tracking Number

The applicant may assign an internal tracking number to an online application by completing the field marked Applicant's Internal Tracking Number on the Certification screen. Providing a tracking number is optional and this feature is intended solely for the applicant's convenience. The U.S. Copyright Office does not use these numbers to keep track of pending applications or in its communications with applicants.

605.6 Deadlines for Responding to Communications from the U.S. Copyright Office

605.6(A) Oral Communications

If the registration specialist asks the applicant to provide additional information in a telephone conversation, but does not receive a response during the conversation or within a reasonable amount of time thereafter, he or she will send an email, fax, or letter specifying that a phone call was held on a specific date and briefly summarizing the substance of the conversation. If the specialist does not receive a response to his or her written communication, the file will be closed within the time periods discussed in Sections 605.6(B) through 605.6(D).

605.6(B) Email

As a general rule, the deadline for responding to an email from a registration specialist is forty-five calendar days. This deadline is calculated from the date the email was sent to the person specified in the Correspondent field/space of the application (or other designated party, if any).

The Correspondent listed in the application is solely responsible for providing a correct email address in the Correspondent field/space, and solely responsible for monitoring that address for communications from the U.S. Copyright Office. If the specialist does not receive a response to his or her email, the specialist will not follow-up with the applicant except in exceptional circumstances.

As discussed in Section 605.4, the THREAD ID that appears at the end of the specialist's email must be included in the body of the applicant's reply message (not the subject line). If the applicant fails to follow these instructions, or merely includes the case number/service request number in body or subject line of the message, the system will not be able to connect the reply with the registration record, and as a result, the claim will be closed for failure to respond within a timely manner.

For a discussion of the deadline for responding to an email requesting the deposit copy(ies), see Section 605.6(C).

605.6(C) Email Requests for Deposit Copy(ies)

When an applicant successfully submits an application and filing fee through the electronic registration system, the system will generate an automated message confirming that the application and filing fee were received.

If the U.S. Copyright Office does not receive the deposit copy(ies) within ninety calendar days, the system will generate an automated message notifying the applicant that the deposit copy has not been received. (For more information on Communications from the U.S. Copyright Office, see Section 605.3.) The applicant should submit the copy(ies) by uploading them through the electronic registration system (provided the copies are not subject to best edition requirements), or by sending the copy(ies) to the Office by mail together with the shipping slip. For information concerning these procedures, see Chapter 200, Section 204.3 and Chapter 1500, Section 1508.

The deadline for submitting the deposit copy(ies) is forty-five calendar days. This deadline is calculated from the date that the automated message was sent to the person specified in the Correspondent field/space of the application.

If a registration specialist communicates with the applicant by email and asks the applicant to submit the deposit copy(ies), the deadline for responding to that communication is forty-five calendar days. This deadline is calculated from the date the email is sent to the person specified in the Correspondent field/space of the application.

If the specialist does not receive a response to his or her email, the specialist will not follow-up with the applicant except in exceptional circumstances.

605.6(D) Letters

The deadline for responding to a letter from a registration specialist is forty-five calendar days. This deadline is calculated from the date set forth in the reply sheet that is enclosed with the letter.

If the specialist does not receive a response to his or her letter, the specialist will not follow-up with the applicant except in exceptional circumstances.

605.7 File Closed Following a Failure to Respond to a Written Communication from the U.S. Copyright Office

When the U.S. Copyright Office communicates with an applicant in writing, the applicant must respond before the deadlines specified in Section 605.6, depending upon the nature of the communication. The Office may consider and grant a reasonable request for an extension of time if the request is received in writing prior to the original deadline.

As a general rule, the registration specialist will not follow-up with the applicant if the applicant fails to respond in a timely manner. And as a general rule, the specialist will close the file as a “no reply” if the Office does not receive a response to an email or other written communication within the time allowed.

If the applicant wishes to proceed with a claim after the file has been closed, the applicant must reapply for registration by submitting a new application, filing fee, and deposit copy(ies). The effective date of registration will be based on the date that the new submission is received by the Office.

When an applicant fails to respond to a written communication, the Office will not inform the applicant that the file has been closed. Likewise, the Office will not refund the filing fee and will not return the deposit copy(ies).

If the applicant uploaded an electronic copy or phonorecord of a work through the electronic registration system, the deposit copy(ies) will remain in the registration record. If the applicant submitted a physical copy or phonorecord of a published work, the Library of Congress may select the copy(ies) for its collections. If the Library does not select the work for use in its collection, the deposit copy(ies) may be offered to another agency, library, or nonprofit institution, or they may be retained by the Office for a scheduled period of time.

605.8 Procedure for Reopening a Closed Application

If the applicant failed to respond to a written communication from the U.S. Copyright Office in a timely manner, and if the failure was caused by extraordinary circumstances, the Office may, in appropriate cases and at its sole discretion, grant a request to reopen the file, provided that (i) the request is made in writing and within a reasonable amount of time after the original deadline; (ii) a showing of good cause is made; and (iii) the Office has the deposit copy(ies) in its possession, or replacement deposit copy(ies) are submitted with a written declaration confirming that the replacement is identical to the deposit copy(ies) that were submitted with the application, including the copyright notice (if appropriate).

By way of example, the Office will not reopen a closed file if the applicant provided an incorrect email address or out-of-date contact information in the application. Likewise, the Office will not reopen a closed file if the applicant failed to monitor his or her "in box" or "spam," "junk," or "trash" folders for messages from the Office, or failed to ensure that the "spam filter" for his or her account does not block messages sent from the email addresses listed in Section 605.3(A).

A request to reopen should be submitted using the form provided on the Office's website. An appropriate official from the Registration Program will determine whether the Office will reopen the file and will notify the applicant in writing of the Office's decision. The Office will not consider multiple requests to reopen a claim that was closed for failure to respond in a timely manner.

605.9 Withdrawing an Application

An applicant may submit a request to withdraw a pending application at any time before the U.S. Copyright Office has issued a certificate of registration, has refused to register the claim, or has closed the claim for failure to reply to a written communication from the Office. For information concerning this procedure, see Chapter 200, Section 208.

606 Warnings

If the U.S. Copyright Office determines that the deposit copy(ies) for an otherwise registrable work include some material that constitutes uncopyrightable subject matter, the Office may register the claim without corresponding with the applicant. However, the Office may send the applicant a written communication warning that the registration does not extend to the uncopyrightable subject matter. Communications will be sent to the person specified in the Correspondent field/space of the application (or other designated party, if any). The registration specialist will place a copy of the communication in the registration record, and the certificate of registration and the online public record will indicate the presence of correspondence in the file.

Warnings are intended to put the applicant, the claimant, the courts, and the general public on notice that the registration does not necessarily cover every element of the work. They may also indicate that the Office did not necessarily examine each element of the work for copyrightable authorship. The absence of a warning letter does not necessarily mean that every aspect of the work is copyrightable.

607 Registration Made Under the Rule of Doubt

The U.S. Copyright Office has the exclusive authority to issue certificates of registration establishing the *prima facie* validity of the facts stated in the certificate. 17 U.S.C. § 410(a), (c). On occasion, the Office may register a claim to copyright, even though the Office has reasonable doubt as to whether the material submitted for registration constitutes copyrightable subject matter or whether the other legal and formal requirements of the statute have been met. This practice is known as the Rule of Doubt.

The Rule of Doubt notifies the claimant, the courts, and the general public that the Office is unwilling to grant a presumption of validity to certain aspects of the claim. As a general rule, the Office will apply the Rule of Doubt only in the following situations.

The Office may register a claim under the Rule of Doubt if the registration specialist is unable to examine the deposit copy(ies) to determine if the work contains copyrightable authorship. For example, the Office will apply the Rule of Doubt if the applicant submits an application to register a computer program with a deposit copy consisting of fifty pages of object code and ten or more consecutive pages of source code. *See* 37 C.F.R. § 202.20(c)(2)(vii)(A)*(2)*, (B). Likewise, the Office may apply the Rule of Doubt at its discretion if the applicant submits a redacted deposit copy under a grant of special relief in order to protect trade secret material that appears in the work. (For a discussion of the procedure for requesting special relief or the practices and procedures for registering a computer program with a deposit containing object code, see Chapter 1500, Sections 1508.8 and 1509.1(F)(4)(b).)

In exceptional cases, the Office may apply the Rule of Doubt if the Office has not taken a position on a legal issue that is directly relevant to whether the work constitutes copyrightable subject matter or whether the other legal and formal requirements of the statute have been met. The Office will not register a claim under the Rule of Doubt simply because there is some uncertainty as to how that issue may be decided by a particular court.

In all cases, the Office will add an annotation to the certificate of registration and the online public record indicating that the work was registered under the Rule of Doubt. The Office also may send a letter to the applicant stating the reasons for its decision and a copy of the letter will be placed in the registration record. Both the certificate of registration and the online public record will indicate that correspondence relating to the claim is in the file.

608 Refusal to Register

In the event the U.S. Copyright Office determines that the claim does not meet certain requirements for registration based on the registration materials submitted, the registration specialist will refuse to register the work. A refusal to register the entire work will be made in a written communication signed or initialed by the registration specialist or supervisor assigned to the claim. The communication will be mailed to the address provided in the Correspondent field/space of the application. Examples of situations where the Office will refuse to register a claim include:

- The applicant has not met the legal or formal requirements for registration (*e.g.*, completed application, complete filing fee, complete deposit copy(ies), etc.).
- The applicant has asserted a claim to copyright in a type of work that is not covered by U.S. copyright law. *See, e.g.,* 17 U.S.C. §§ 102(a), 102(b), 105.
- The work is not fixed in a tangible medium of expression.
- The work lacks human authorship.
- The work was not independently created.
- The work does not contain the minimum level of creative authorship to support a copyright claim.
- The work is in the public domain.
- The work is a U.S. sound recording that was fixed before February 15, 1972 (*i.e.,* the date U.S. sound recordings became eligible for federal copyright protection).
    - **NOTE:** The Orrin G. Hatch – Bob Goodlatte Music Modernization Act ("MMA") provides owners of pre-1972 sound recordings with certain protections and remedies for copyright infringement if their recordings are used without authorization. To exercise these remedies, owners typically must file schedules with the U.S. Copyright Office listing their sound recordings and specifying the name of the rights owner, title, and featured artist for each recording. 17 U.S.C. § 1401(f)(5)(A). Additional information concerning the MMA and instructions on how to file a schedule is available on the Office's website.
- The work is an architectural work created before December 1, 1990 (*i.e.*, the date architectural works became eligible for federal copyright protection) or the

application to register the architectural work does not otherwise meet the requirements set forth in Copyright Office regulations. *See* 37 C.F.R. § 202.11.

- The work is not eligible for copyright protection in the United States based on the author's citizenship or domicile, based on the nation of first publication, or any other factor set forth in Section 104 of the Copyright Act.
- The work does not meet the eligibility requirements for a particular registration option.
- The applicant is not authorized to register a claim in the work.
- The claimant named in the application is not a proper copyright claimant.
- The work unlawfully employs preexisting material that is under copyright protection. 17 U.S.C. § 103(a).

If the applicant disagrees with the Office's determination, the applicant may appeal that decision within the Office. This is an administrative procedure known as a request for reconsideration. For information concerning this procedure, see Chapter 1700.

609 Identifying the Work That the Applicant Intends to Register

The U.S. Copyright Office has specified various administrative classes of works for registration and deposit purposes as authorized pursuant to Section 408(c)(1) of the Copyright Act. These classes are:

- Literary Works.
- Works of the Visual Arts.
- Works of the Performing Arts.
- Sound Recordings.
- Serials.

37 C.F.R. § 202.3(b). These classes or types of work are merely an administrative classification and do not affect the subject matter of copyright or the exclusive rights in a work. Nevertheless, the applicant should exercise judgment and care when selecting the Type of Work in the online application or selecting the appropriate form for a paper application. The selection should correspond to the predominant copyrightable authorship being claimed in the application. The initial selection may dictate the options for describing the authorship that the applicant intends to register and/or the deposit that is required. And it will determine the registration number that the Office ultimately issues. If the applicant chooses the wrong Type of Work or uses the wrong form for certain types of works, the registration specialist may change the Type of Work to the appropriate classification without communicating with the applicant.

For works that contain multiple types of authorship, see Section 609.3 below.

609.1 Online Application

When completing an online application the applicant should select the category of work that is most appropriate for the work that the applicant intends to register and the authorship that appears in the work. These categories are listed under a drop down menu marked Type of Work. Once a selection has been made, the system will provide a brief description and representative examples of the types of works that fall within each category.

Once the applicant has selected the most appropriate classification for the work that will be submitted, the applicant must check the box that appears next to the following statement: "Click the box to confirm you have read the above description and selected the most appropriate type of work." If the applicant fails to check this box the application will not be accepted by the electronic registration system.

Once a selection has been made, the Type of Work field cannot be changed. If the applicant makes a selection that is not appropriate for the work that is submitted, the registration specialist may communicate with the applicant, change the Type of Work field without communicating with the applicant, or register the claim with an annotation. If the work cannot be registered with the selected form, the specialist may refuse registration.

- Select *Literary Work* if the work is a nondramatic literary work, such as fiction, nonfiction, poetry, a textbook, a reference work, a directory, a catalog, advertising copy, a compilation of information, a computer program, a textual work made available online, or a database. This category may be used to register an individual article or other textual contribution to a serial publication, or an entire issue of a serial that has not been published before.

- Select *Work of the Visual Arts* if the work is a pictorial, graphic, or sculptural work, including a two-dimensional or a three-dimensional work of fine, graphic, or applied art, a photograph, a print, an art reproduction, a map, a technical drawing, or an architectural work.

- Select *Work of the Performing Arts* if the work is a musical work (either with or without lyrics), a dramatic work (such as a screenplay, play, or other script), a pantomime, or a choreographic work.

- Select *Sounding Recording* if the work contains sound recording authorship *and* if the applicant intends to register that element of the work (even if the work also contains other types of authorship, such as music or lyrics). Likewise, the applicant should select this option if the applicant intends to register a sound recording and the underlying works embodied in that recording, provided that the claimant owns all of the rights in those works. If the applicant does not intend to register sound recording authorship, the applicant should *not* select this option (even if the work happens to contain one or more sound recordings). Likewise, the applicant should

not select this option if the applicant intends to register the sounds accompanying a motion picture or other audiovisual work.

- Select *Motion Picture/Audiovisual Work* if the work is a feature film, documentary film, animated film, television show, video, videogame, or other audiovisual work, such as a slide presentation. Likewise, this option is appropriate if the applicant intends to register the sounds accompanying a motion picture or other audiovisual work.

- Select *Single Serial Issue* if the applicant intends to register a single issue of a serial publication. A serial is a work that is issued in successive parts bearing numerical or chronological designations and is intended to be continued indefinitely. Examples include a single issue of a newspaper, magazine, bulletin, newsletter, annual, journal, and other similar works. Examples of works that do not fall within this category include episodes of a television series, a series of online videos, a collection of musical works, a group of manuscripts, an assortment of poetry, or a set of advertising copies.

  NOTE: The online application for a single serial issue may only be used to register an issue that qualifies as a collective work, and it may only be used to register an issue that has been published. To register an issue that does not satisfy these requirements, the applicant should select the online application for "Literary Work."

  The online application for a single serial issue may be used to register the issue as a whole. It also may be used to register the individual contributions that were first published within that issue, provided that (i) the claimant owns the copyright in the individual contributions and the issue as a whole, and (ii) if the contributions have not been previously published or previously registered. In no case may the claimant register a contribution that is in the public domain.

  To register an article, photograph, or other contribution that is not owned by the claimant for the issue as a whole, or to register a contribution that was previously published in another medium, the applicant should prepare a separate application for each contribution, and should select the appropriate form of authorship for that work. For example, if the contribution is an article, the applicant should select Literary Work; if the contribution is a photograph, the applicant should select Work of the Visual Arts.

  NOTE: It is also possible to register a group of serials or a group of contributions to a periodical with one application, one filing fee, and deposit copy(ies). For a discussion of these group registration options, see Chapter 1100, Sections 1107 and 1110.

609.2 Paper Applications

Identifying the type of work that will be submitted to the U.S. Copyright Office is the first step in completing a paper application. The Office has prescribed five basic classes of works that may be registered with a paper application, and each of these classes has its own paper form. The applicant should select the form that is most appropriate for the work that the applicant intends to register and the authorship that appears in the work.

- Use *Form TX* if the work is a nondramatic literary work, such as fiction, nonfiction, poetry, a textbook, a reference work, a directory, a catalog, advertising copy, a compilation of information, a computer program, a textual work made available online, or a database. This form may be used to register an individual article or other textual contribution to a serial publication, or an entire issue of a serial that has not been published before.

- Use *Form VA* if the work is a pictorial, graphic, or sculptural work, including a two-dimensional or three-dimensional work of fine, graphic, or applied art, a photograph, a print or art reproduction, a map, or a technical drawing.

  NOTE: A paper application may not be used to register an architectural work. To register this type of work, applicants must use the online application.

- Use *Form PA* if the work is a musical work (either with or without lyrics), a dramatic work (such as a screenplay, play or other script), a pantomime, a choreographic work, or an audiovisual work (such as a feature film, documentary film, animated film, television show, video, or videogame).

- Use *Form SR* if the applicant intends to register sound recording authorship (even if the work contains additional types of authorship, such as music or lyrics). If the applicant does not intend to register a sound recording, Form SR should not be used (even if the work contains one or more sound recordings). Likewise, Form SR is inappropriate if the applicant intends to register the sounds accompanying a motion picture or other audiovisual work.

- Use *Form SE* if the applicant intends to register a single issue of a serial publication (*e.g.*, a magazine, journal, etc.). For a definition of the term "serial" and representative examples of such works, see Section 609.1.

  NOTE: Form SE may only be used to register an issue that qualifies as a collective work, and it may only be used to register an issue that has been published. To register an issue that does not satisfy these requirements, the applicant should use Form TX.

  Form SE may be used to register the issue as a whole. It also may be used to register the individual contributions, provided that (i) the claimant owns the copyright in the individual contributions and the issue as a whole, and (ii) if the contributions have not been previously published or previously registered. In no case may the claimant register a contribution that is in the public domain.

  To register an article, photograph, or other contribution that is not owned by the claimant for the issue as a whole, or to register a contribution that was previously published in another medium, the applicant should prepare a separate application for each contribution using the appropriate form for that type of work. For example, if the contribution is an article, the applicant should use Form TX; if the contribution is an illustration, the applicant should use Form VA.

NOTE: It is also possible to register a group of serials or a group of contributions to a periodical with one application, one filing fee, and deposit copy(ies). For a discussion of these group registration options, see Chapter 1100, Sections 1107 and 1110.

609.3 Works Containing Multiple Forms of Authorship

If the work contains more than one type of authorship, the applicant should select the type of work or the paper application that corresponds to the predominant form of copyrightable authorship in that work. For example, if the work is a website that contains a substantial amount of text combined with a few photographs, the applicant should select Literary Work (in the case of an online application) or Form TX (in the case of a paper application). If the website mostly contains photographs with a small amount of text, the applicant should select Work of the Visual Arts for an online application or Form VA for a paper application. If the types of authorship are roughly equal, the applicant may use either option that would be appropriate. However, there is an exception to this rule for claims that include any sound recording authorship. In this case, the applicant must select Sound Recording (in the case of an online application) or use Form SR (in the case of a paper application), regardless of whether sound recording is the predominant form of authorship in the work. *See* 37 C.F.R. § 202.3(b)(2)(iii).

610 Title of the Work

The application for copyright registration must specify the title(s) of the work(s) the applicant wishes to register. The application also should include any previous or alternative titles by which the work may be identified. 17 U.S.C. § 409(6). If the work being registered is part of a larger work or a series of works, the applicant may provide the title of the larger work or the title of the series. If the work being registered contains separate and independent works owned by the claimant and if those works are included in the claim, the applicant is strongly encouraged to provide the titles of those works in the Contents Title(s) field.

The title of the work will appear in the certificate of registration under the heading Title of Work, and it will appear in the online public record under the heading Application Title. The title that appears on the deposit copy(ies) will appear in the online public record under the heading Title. If there is no title on the deposit copy(ies), the title given in the application will appear in the online public record in both the Title field and the Application Title field.

610.1 Title Types

When completing an online application, the applicant generally may provide five types of titles. These title types are listed on the Title screen under the drop down menu marked Title Type. The options include:

- Title of work being registered.
- Previous or alternative title.
- Title of larger work.

- Contents title(s).
- Series title.

When completing a paper application, the applicant may provide five types of titles. These title types are listed in space 1 of the application. The options include:

- Title of this work (Forms TX, VA, PA, SR, SE).
- Title of this serial (Form SE only).
- Previous or alternative title (Forms TX, VA, PA, SR, SE).
- Publication as a contribution/title of collective work (Forms TX and VA only).
- Contents title(s) (Form SR only).

Each of these title types is discussed in Sections 610.2 through 610.5 below.

610.2 Title of Work Being Registered / Title of this Work

When completing an online application, the applicant should begin by selecting Title of Work Being Registered and entering the primary title for the work in that field (including any subtitles). If the applicant fails to provide this information, the application will not be accepted by the electronic registration system.

If the work contains a number of separate and independent works, such as an anthology, periodical, serial, or the like, and if the applicant intends to register the entire collective work, the title for that collective work should be provided as the Title of Work Being Registered.

If the applicant instead intends to register a contribution that has been included in a collective work, such as an article, a photograph, or the like, but does not intend to register the larger work as a whole (for instance, because the claimant does not own the copyright in the collective work), the title for the contribution should be provided as the Title of Work Being Registered. In all cases, the applicant should only provide titles for a contribution if the copyright claimant owns all of the rights in that contribution.

If the applicant intends to register a number of works with the unit of publication option, the applicant should provide a title for the unit as a whole, as well as the title for each component work that will be submitted for registration. For a discussion of the unit of publication option, see Chapter 1100, Section 1103.

When completing a paper application, the applicant should enter the title of the work in space 1 of the application under the heading Title of This Work. As the name suggests, the Title of This Work is the primary title of the work that the applicant intends to register (including any subtitles). If the applicant fails to provide this information, the application may be questioned, which may delay the examination of the application. Form SE also directs the applicant to provide the Title of This Serial. This space does not

appear in the online application or other paper applications. As the name suggests, the Title of This Serial is the primary title of the serial that the applicant intends to register (including any subtitles). Additionally, the applicant should provide the volume and number for the specific issue that will be submitted for registration, the issue date that appears on the deposit copies (*e.g.*, January 15, 2010; Spring 2012, etc.), and the frequency of publication for the specific serial.

Examples:

- The applicant intends to register a novel titled *The Sun Also Sets*. The applicant should provide that title as the Title of Work Being Registered.

- The claimant wishes to register a song titled, "Midnight," which was published in an album titled *All My Blues*. The claimant does not own the copyright in the other songs and did not create the album as a whole. The applicant should provide "Midnight" as the Title of Work Being Registered. (*All My Blues* should be provided in the Title of Larger Work field, as described in Section 610.4(B) below.)

- The applicant intends to register the episode "Tina Goes Home" from the television series *All My Grandchildren*. The applicant should provide "Tina Goes Home" as the Title of Work Being Registered. (The title of the television series should be provided as the Series Title as described in Section 610.5 below.)

- The applicant intends to register a book titled *Mozart*. The subtitle for the book is *A Heavenly Voice for the Ages*. This is the third book in a series titled *The Great Composers*. The applicant should provide *Mozart: A Heavenly Voice for the Ages* as the Title of Work Being Registered. (The applicant should provide *The Great Composers* as the Series Title, as described in Section 610.5 below.)

610.3 Previous or Alternative Title

When completing an online application, the applicant should complete the field marked Previous or Alternative Title if the work:

- Was previously published under a different title.

- Is known by a different title or by a title that is written in a different language.

- Is likely to be searched in the U.S. Copyright Office's records under a different title.

When completing a paper application, the applicant should enter these types of titles on space 1 under the heading Previous or Alternative Titles.

As a general rule, a subtitle is not considered a Previous or Alternative Title.

Examples:

- An application is submitted for a painting titled "My Old Ohio Home." The work is commonly known as "Take Me Back To Cincinnati" among art aficionados. The applicant should provide "My Old Ohio Home" as the Title of Work Being Registered and "Take Me Back to Cincinnati" as the Previous or Alternative Title.

- An application is submitted for a novel titled *The Black and the Red*, which has been translated from the French novel, *Le Noir et Le Rouge*. The applicant should provide *The Black and the Red* as the Title of Work Being Registered, and *Le Noir et Le Rouge* as the Previous or Alternative Title.

- An application is submitted for a work with the title *The United States of America! (The Book)* and a subtitle that reads *A Guide to Our Democracy*. The applicant should provide the Title of Work Being Registered as *The United States of America! (The Book): A Guide to Our Democracy*.

610.4 Works Containing Separate and Independent Works: Units of Publication, Collective Works, and Contributions to Collective Works

In the case of a unit of publication, a collective work that contains a number of separate and independent works (such as an anthology that contains a number of poems or a periodical that contains a number of articles and photographs), or a contribution to a collective work, the applicant should complete the field marked Title of Work Being Registered, which is discussed in Section 610.2 above. In addition, the applicant should complete the Contents Title field and/or the Title of Larger Work field. These fields are discussed in Sections 610.4(A) and 610.4(B) below.

610.4(A) Contents Title: Titles of Separate and Independent Works Included in a Larger Work

If the applicant intends to register any of the separate and independent works that appear in a collective work or a unit of publication the applicant should enter the titles of each contribution in the field marked Contents Title. These titles will appear in the online public record and certificate of registration under the heading Contents Title. Listing the content titles (*i.e.*, the titles of separate and independent works that are owned by the copyright claimant) is beneficial for various reasons: (i) it provides a clear record of what the larger work contains; (ii) it clearly describes what the registration covers; and (iii) it makes these titles accessible as searchable terms in the online public record.

The total number of characters that may be provided in the Title of Work Being Registered field and the number of characters that may be provided in each Contents Title field is limited. Applicants are strongly encouraged to provide one title in the

relevant field, then click the Save button, and then repeat this process in order to prevent loss of data due to space limitations.

The registration specialist generally will not communicate with the applicant if the titles given in the Title of Work Being Registered field and the Contents Title field are the same, unless it is unclear whether the applicant intends to register the larger work or one of the separate and independent works that appears within the larger work.

Examples:

- The applicant intends to register an album published under the title, *Britney Shields: The Debut Album*, as well as the musical works "Young At Last," "Serenade," "Dance All Night," and "Love At First Sight," which were released on this album. Britney created each of these songs and she produced the album as a whole. To register the album as a whole, the applicant should provide *Britney Shields: The Debut Album* in the Title of Work Being Registered field. To register the songs that appear on this album, the applicant should provide the title of each song in the application. Because the author of the album and the author of the songs are the same, the applicant is strongly encouraged to provide the titles "Young At Last," "Serenade," "Dance All Night," and "Love At First Sight" in the Contents Title field.

- Railroad Publishers is the author of a work titled, *Trackplans and Benchwork*, which contains a dozen articles by Jack Armstrong. Jack assigned the copyright in these articles to the publisher, and the publisher intends to register *Trackplans and Benchwork* and all of the articles that it contains. To register the work as a whole, the applicant should provide *Trackplans and Benchwork* in the Title of Work Being Registered field. In addition, the applicant is strongly encouraged to provide the title of each article in the Contents Title field.

- The applicant intends to register a textbook titled *Practical Physics*. The book contains twelve chapters and all of the chapters are written and owned by the same person. The applicant should provide *Practical Physics* as the Title of work being registered. There is no need to provide the title for each chapter.

NOTE: The only paper application that specifically requests contents titles is Form SR. Space 1 of this application should be used to list the titles of any separate and independent sound recordings contained in the larger work that the applicant intends to register. In the alternative, the applicant may use one or more continuation sheets submitted on Form CON to list the titles of any separate and independent works included in the larger work. As is true for the online application, the applicant should only provide the titles of the individual sound recordings or other works that are owned by the copyright claimant.

610.4(B) Title of Larger Work

If the applicant wishes to register a contribution to a larger work, such as an article that has been published in a newspaper, or a recording of a song that has been released on an album, the applicant should use the Title of Larger Work field to identify the larger work in which the contribution appears. When completing an online application the applicant should provide any volume number, issue date, or similar designation that may be used to identify the larger work, and, if applicable, the page number(s) within the larger work where the contribution appears.

If it appears that the applicant intends to register a separate and independent work that has been included in another work, and if the applicant fails to provide the title of the larger work, the registration specialist may add the missing title if it appears in the deposit copy(ies) or elsewhere in the registration materials. If the title of the larger work is not specified in the deposit copy(ies) or elsewhere in the registration materials, the registration specialist may communicate with the applicant. Generally, the registration specialist will communicate when it is unclear whether the applicant intends to register the larger work as a whole, or a separate and independent work that appears within the larger work.

Examples:

- Melody Meyers submits an application for a song titled "Melody in G," which was included in an album titled *Enchanted Melodies*. The rest of the songs on this album are owned by other parties. *Enchanted Melodies* should be entered as the Title of Larger Work and "Melody in G" should be provided as the Title of Work Being Registered.

- An application is submitted for an article titled "Running a Marathon," which appeared on pages 45-46 of *Field & Track* magazine (Vol. 22, April 13, 2004). "Running a Marathon" should be entered as the Title of Work Being Registered, while the Title of Larger Work should be identified as "*Field & Track* (Volume 22, April 13, 2004, on pages 45-46)."

- Alexandra Rodriguez submits a Form TX to register her story "Why I Live at the A&P," which was published on pages 238-260 of the anthology *Stories by American Women*. The title of her story "Why I Live at the A&P" should be entered on space 1, Title of This Work. The title of the anthology should be entered on space 1 under Publication as a Contribution, Title of Collective Work. Alexandra also should give the page numbers 238-260 in the On Pages section of space 1.

- Nikhil Shah is the author of the story "Living on Top of the World," which appeared on pages 10-20 of *Katmandu Comics* (Vol. 32, No. 28, June 14, 2011). Nikhil provided the title of his story, but failed to identify the larger work where the story appeared. The registration specialist may add the missing

information (title of the larger work, volume and issue number, issue date, and page numbers) to the Title of Larger Work field, and may add an annotation, such as: "Regarding title: Title of larger work added by Copyright Office from the copy."

NOTE: Space 1 of paper Forms TX and VA state that "If this work was published as a contribution to a periodical, serial, or collection, give the information about the collective work in which the contribution appeared." This space does not appear in the online application or other paper applications. If the applicant wishes to register a contribution to a larger work (but does not intend to register the larger work as a whole), the applicant should enter the title of that contribution in the space marked Title of this work. The title of the periodical, serial, or other collective work where the applicant's contribution appeared should be entered in the space marked Title of Collective Work.

610.5 Series Title

If the applicant intends to register an episode or installment from a series of works, the applicant should provide the title of that episode or installment along with the title of the series. The Series Title is the main title by which the series is known.

Specifically, the applicant should list the title of the episode or installment as the Title of Work Being Registered, along with any number or other alphanumeric designation that has been assigned to that episode or installment (*e.g.*, "Episode 217," "Fourth Installment," etc.). The applicant should enter the title of the series as the Series Title.

A registration for a particular episode or installment from a series of works covers the specific episode or installment that has been submitted for registration. The U.S. Copyright Office does not offer "blanket registrations" that cover future episodes or installments in the same series.

As a general rule, it is not possible to register an entire series with one application, because the individual episodes and installments in a series are typically published on different dates. Consequently, the registration specialist will communicate with the applicant if the applicant provides the title for the entire series as the Title of Work Being Registered, or if it appears that the applicant is attempting to register separately published episodes or installments from a series of works with one application.

Examples:

- The applicant intends to register one of the episodes from his podcast. The podcast is known as *The Mike O'Leary Show*. The episode in question is titled "Enjoy the Boat." It is the 687th episode of this podcast. The applicant should provide "Enjoy the Boat (Episode 687)" as the Title of Work Being Registered, and *The Mike O'Leary Show* as the Series Title.

- The applicant intends to register the pilot for a television series titled *Star Track*. The pilot is titled "The Synod Syndrome." The

applicant should provide "The Synod Syndrome (Pilot)" as the Title of Work Being Registered and *Star Track* as the Series Title.

- The applicant intends to register a book titled *Double Trouble.* This is the 56th book in a series of books for teenage girls known as *Harper Valley High School*. The applicant should provide *Double Trouble, No. 56* as the Title of Work Being Registered and *Harper Valley High School* as the Series Title.

- The applicant submits an application for nine separate books on the planets. The application states that *Space Almanac* is both the Title of Work Being Registered and the Series Title. The application will be questioned if it appears that the nine books were published separately.

610.6 Examination Guidelines: Title of Work

As a general rule, the title that is specified in the application will be accepted without question. The registration specialist may change or correct any apparent spelling, capitalization, or punctuation mistakes in the title, but only if the misspelling or incorrect use of capital letters or punctuation appears to be unintentional. The specialist will use his or her judgment to determine whether an error was intentional or a typographical mistake.

Examples:

- The applicant submits an application for a rap song. The title on the online application is given as "Let US LeaVe hiM hEre." The title will appear in the registration record exactly as it appears on the application.

- The applicant files an application to register a multimedia work. The title listed on the application is *Boook of Jonah*; the title on the copy is *Book of Jonah*. The registration specialist may correct the spelling of the title that appears on the application to conform to the title on the deposit copy.

610.6(A) Untitled Works

The applicant should not provide "Untitled," "No Title," "Working Title," "No title yet," or the like as the title of the work. It may be extremely difficult to find a work that has been registered under a generic title.

If the work is unpublished and if the author has not selected a title for the work as of the date that the application is submitted, the applicant should provide a descriptive title that identifies the author of the work, the general subject matter of the work, the type of work submitted for registration, or any other relevant information that a person searching the U.S. Copyright Office's records would likely include in his or her search request.

Examples:

- Sculpture of a Green Frog, Preliminary Study in Clay by Quang Ha (Spring 2008).
- Painting on Illustration Board by Imran Latif (2010).
- Photo Taken at Sand Hill Cove, Narragansett, Rhode Island by Ann McKenna (2012).
- Working Title: Zuzu's Petals.

If the author decides to change the title after the work has been registered, the applicant may file an application for a supplementary registration to add the new title in the online public record. For guidance on this procedure, see Chapter 1800, Section 1802. If a previously registered, unpublished work is later published with a new title, the applicant may choose to reflect the new title by filing an application for a new basic registration for the first published edition of the work. (This is permissible even if the published edition is exactly the same as the previously registered, unpublished edition.) For information concerning this practice, see Chapter 500, Section 510.1.

610.6(B) Descriptive Titles That Appear to Be Incorrect

If the applicant provides a descriptive title that does not appear to describe the work that has been submitted for registration (such as "Study in Red" for a painting that is black and white), the registration specialist generally will accept the title specified in the application. However, the specialist may communicate with the applicant or register the claim with an annotation if there is a material variance between the title provided in the application and the title that appears on the deposit copy(ies). For examples of a material variance, see Section 610.6(D)(4).

610.6(C) Titles Consisting of Roman Letters and Arabic Numerals

The U.S. Copyright Office's electronic registration system only accepts titles consisting of Roman letters and/or Arabic numerals. It does not accept titles consisting of other types of letters, numerals, or characters, such as Cyrillic or Mandarin. Nor does it accept diacritical marks used in Spanish, French, German, or other foreign languages, such as ç, à, ñ, or ü.

The system will accept titles written in a foreign language, provided that the title consists of Roman letters and/or Arabic numerals. The title will appear on both the certificate of registration and the online public record, but without any diacritical marks.

The Office will accept a title consisting solely of numbers and/or letters, such as "L-1011," "24601," or "MX."

610.6(D) Title of the Work: Variances

610.6(D)(1) Variances between the Title Provided in the Application and the Title That Appears on the Deposit Copy(ies)

If there is a material variance between the title given in the application and the deposit copy(ies), and it is clear that both titles refer to the same work, the registration specialist may add the title that appears on the deposit copy(ies) to the title field of the online public record and/or the specialist may add an annotation to the registration record, such as: "Regarding title: Title on the deposit copy is _____."

The title may be taken from the cover, title page, spine, or any other place where a title may be found. If the deposit copy(ies) are submitted in electronic form, the title may be taken from the file name for the document (excluding extensions indicating the format of the document, such as .doc, .pdf, .mp3, etc.).

Examples:

- The title on the deposit copy(ies) reads: *The Quest for Rest Among Insomniacs*. The title given on the application reads: *The Quest for Rest*. The registration specialist will register the claim without communicating with the applicant. The title that appears on the deposit copy(ies) may be added to the title field in the online public record.

- The title on the deposit copy(ies) is *Rest Quest*. The title on the application reads: *The Quest for Rest Among Insomniacs*. The application will be accepted. The title that appears on the copies will be added to the title field in the online public record. In addition, Rest Quest may be added to the registration record with an annotation, such as: "Regarding deposit: Title appears on copy as 'Rest Quest.'"

- The applicant submits a paper application on Form PA for an unpublished screenplay. The application lists *A Miracle* as the title of the work, but the deposit copy gives the title as *One More Miracle*. The application will be accepted. The title given on the deposit copy will be added to the previous or alternative title field in the online public record. Additionally, *One More Miracle* may be added to the registration record with an annotation.

610.6(D)(2) Title That Appears on the Deposit Copy(ies) is More Complete Than the Title Provided in the Application

Where the title provided in the application is a generic title, such as "story," "symphony," "picture," or the like, and the title on the deposit copy(ies) substantially adds to the identity of the work, the registration specialist may add the additional information to the online public record.

Example:

- The title on the application is "Ballade," while the title on deposit copies is "Ballade No. 6 in E Minor." The application will be accepted. The title that appears on the deposit copies will be added to the online public record.

610.6(D)(3) Edition Number, Version Number, or Other Identifying Information Not Provided

The registration specialist may amend the title provided in the application to indicate that the copy or phonorecord submitted to the U.S. Copyright Office is a specific version or a particular edition of the work, particularly if the applicant failed to exclude the prior versions or previous editions from the scope of the claim.

Example:

- The title on the application is *Applied Genetics*. The deposit copy indicates that this is the second edition of this work. If the applicant expressly limited the claim to the "new and additional text" contained in the second edition, the application will be accepted. If the claim has not been limited to the new material, the specialist may amend the title to read *Applied Genetics (2nd Edition*) and may add an annotation to the certificate of registration, such as: "Regarding title information: Edition statement added by Copyright Office from copy."

610.6(D)(4) Material Variances Between the Title Provided in the Application and the Title That Appears on the Deposit Copy(ies)

The applicant is solely responsible for ensuring that the work described in the application matches the copy or phonorecord that is submitted to the U.S. Copyright Office.

If there is a material variance between the title given in the application and the deposit copy(ies) and if it is unclear whether the application and deposit copy(ies) refer to the same work, the registration specialist may communicate with the applicant. Alternatively, the specialist may register the claim with an annotation that identifies the title appearing on the deposit.

Examples:

- The title given in the application is *Davidson's Biology for Preparatory Study*. The title given on the deposit copies is *Poems for Shona and Liletha*. The registration specialist may communicate with the applicant to determine whether the correct deposit copies have been submitted or whether the title field should be revised.

- The title provided in the application is *Ten Frontier Women and the Founding of Carson City*, and the title given on the deposit copies is *Eight Frontier Men and the Founding of Calico*. The registration specialist may register the claim with an annotation, such as: "Regarding title information: Title on the deposit copy is 'Eight Frontier Men and the Founding of Calico.'"

611 Year of Completion / Year in Which Creation of This Work Was Completed

To register a work of authorship with the U.S. Copyright Office, the applicant must identify the year that the work was created. 17 U.S.C. § 409(7). A work is considered created when it is fixed in a copy or phonorecord for the first time. If the work was prepared over a period of time, the portion or portions of the work that existed in a fixed form on a particular date constitute the work that has been created as of that date. 17 U.S.C. § 101 (definition of "created"). The year of creation is particularly important in the case of a work made for hire, an anonymous work, or a pseudonymous work, because this date may be used to calculate the term of the copyright. 17 U.S.C. § 302(c).

611.1 Completing the Application: Year of Completion / Year in Which Creation of this Work Was Completed

When completing an online application, the applicant should identify the year that the work was completed on the Publication/Completion screen in the field marked Year of Completion (Year of Creation). The year of completion must be provided in four numeric digits.

When completing a paper application, the applicant should identify the year that the author completed the work on space 3(a) under the heading Year in Which Creation of This Work was Completed. The specific month and day that the author completed the work need not be provided.

611.1(A) Year of Completion for an Unpublished Work Created Over a Period of Time

If the work is unpublished and if the author created the work over an extended period of time, the applicant should provide the year of completion for the most recent iteration of the work. If the applicant provides a year of completion for each iteration of the work (*e.g.,* a cover letter explaining that the author completed the first draft in 2006, the second draft in 2007, and the final draft in 2008), the registration specialist will replace that information with the year of completion for the most recent iteration, and will add an annotation to the registration record specifying the source of that information, such as: "Regarding year of completion: Corrected by Copyright Office from cover letter."

611.1(B) Year of Completion for Multiple Versions of the Same Work

If the author created multiple versions of the same work, each version is considered a separate work. 17 U.S.C. § 101 (definition of "created"). As a general rule, the applicant must submit a separate application and filing fee for each of those versions. *See* 17 U.S.C. §§ 408(a), 409. In preparing each application, the applicant should provide the year of completion for the specific version that is being registered.

Example:

- An application is submitted for a French translation of an English novel. The application states that the work was completed in 2007, but the deposit copies state, "English edition published 2007; French translation © 2011." The registration specialist will ask the applicant to provide the year of completion for the French translation.

In some cases it may be possible to register multiple versions of the same work with one application, provided that the works qualify for a group registration option. For information concerning these options, see Chapter 1100.

611.2 Examination Guidelines: Year of Completion / Year in Which Creation of this Work Was Completed

611.2(A) Year of Completion Apparently Incorrect

The registration specialist may communicate with the applicant if the year of completion is inconsistent with or contradicted by other dates that appear in the registration materials.

For instance, the year of completion cannot be later than the date of publication specified in the application. If the date of publication predates the year of completion in an online application, the application will not be accepted by the electronic registration system. If the date of publication precedes the year of completion in a paper application, the specialist will communicate with the applicant to determine the correct completion and publication dates.

Moreover, the year of completion cannot be later than the date that the application is certified or the date that the application is received in the U.S. Copyright Office. The electronic registration system will not accept an online application if the date of receipt precedes the year of completion. If the date of certification or the date of receipt precedes the year of completion in a paper application, the specialist will communicate with the applicant to determine the correct completion date.

If the year of completion specified in the deposit copy(ies) is later than the year of completion specified in the application, the specialist may communicate with the applicant to determine the correct date. If the year of completion is clearly provided in the deposit copy(ies) or elsewhere in the registration materials, the specialist may amend the date provided in the application, and may add an annotation to the registration record, such as: "Regarding year of completion: Corrected by Copyright Office from statement on copy."

Examples:

- An online application states that the author died in 1980, but gives the year of completion as 1982. The registration specialist

will ask the applicant if the year of death is correct, and if so, to explain the discrepancy with the year of completion.

- An online application is submitted for a musical work titled "Eau de Joy." The application states that the work was completed in 2005, but a statement on the phonorecord indicates that the work was written for the inauguration of President Obama in 2009. The registration specialist will ask the applicant to verify the year of completion.

- A paper application is certified and submitted on December 31, 2008. The application states that the work was completed in 2009. The registration specialist will communicate with the applicant to determine the correct year of completion.

611.2(B) Year of Completion Omitted

If the applicant fails to provide a year of completion in an online application, the application will not be accepted by the electronic registration system.

As a general rule, if the applicant fails to provide a year of completion in a paper application, the registration specialist may communicate with the applicant. If the year of completion is provided elsewhere in the registration materials, the specialist will add the missing information and provide an annotation, such as: "Regarding year of completion: Added by Copyright Office from cover letter."

611.2(C) Year of Completion Unknown

If the applicant cannot determine the exact year of completion, the applicant may provide a qualifying statement, such as "approximately," "on or about," "on or before," or the like. In the case of an online application, this statement may be provided in the Note to Copyright Office field. On a paper application, this statement may be provided on the application itself or in a cover letter. The registration specialist will add the statement to the certificate of registration and the online public record with an annotation. In addition, the specialist will add a note to the record indicating that there is correspondence in the file.

612 Date of Publication

This Section discusses the U.S. Copyright Office's practices and procedures regarding the date and nation of first publication for a work of authorship (if any).

For a general discussion of publication, see Chapter 1900.

612.1 General Policy

If the work described in the application has been published, the applicant must specify the date of publication and nation of first publication for that work. 17 U.S.C. § 409(8).

612.2 What Constitutes Publication?

For purposes of U.S. copyright law, "[p]ublication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending." 17 U.S.C. § 101 (definition of "publication").

For instance, a book is published when copies of the work are distributed online or in bookstores. A newspaper is distributed when copies are sold at newsstands or delivered to subscribers' doorsteps. A song is distributed when print copies or phonorecords are sold (*e.g.*, on sheet music or in mp3 format). Software is distributed when copies are distributed by purchase or license, whether in CD-ROM format or online (provided that the copies are actually downloaded and not merely accessed online). On the other hand, a draft dissertation or other manuscript that is sent to a dozen people for peer review with a note stating that the copy should not be shared with other parties is not considered publication.

Likewise, "offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication." *Id*. For example, when a motion picture distribution company offers copies of a motion picture to movie theaters for public showing in the theater, the movie is published.

"A public performance or display of a work does not of itself constitute publication." *Id.* This is true regardless of the number of people who viewed the performance or display.

As a general rule, the U.S. Copyright Office will accept the applicant's determination that a work has been published.

For a general discussion of publication and for specific guidance on determining whether a particular work has been published, see Chapter 1900.

612.3 Determining whether the Work Is Published or Unpublished

The applicant — not the U.S. Copyright Office — must determine whether the work is published or unpublished. This determination should be based on the facts that exist at the time the application is filed with the Office, and it should be based on the definition of publication under U.S. copyright law, even if the work was created or published in another country.

As a general rule, the Office will accept the applicant's representation that the work is published or unpublished, unless that statement is implausible or is contradicted by information provided elsewhere in the registration materials or in the Office's records or by information that is known to the registration specialist.

Upon request, the registration specialist will provide the applicant with general information about the provisions of the Copyright Act, including the statutory definition of publication, and will identify the relevant practices and procedures for registering a work with the Office. However, the Office will not give specific legal advice on whether a particular work has or has not been published or make that determination for the applicant.

612.4 What Is the Date of First Publication?

The date of first publication is the date that copies or phonorecords of the work were first published with the authorization of the copyright owner.

612.5 What Is the Nation of First Publication?

The nation of first publication is the country where copies or phonorecords of the work were first published with the authorization of the copyright owner. The U.S. Copyright Office may use this information to determine whether the work is eligible for copyright protection under U.S. copyright law.

For information concerning the eligibility requirements, see Chapter 2000, Section 2003. For information concerning works published in more than one country either simultaneously or within thirty days of each other, see Section 612.7(J).

612.6 Completing the Application: Date and Nation of First Publication

612.6(A) Date of First Publication

When completing an online application, the applicant should indicate whether the work is published or unpublished. The applicant will be asked to provide this information on the Publication / Completion screen by selecting "yes" or "no" in the drop down menu marked "Has this work been published?"

If the work has been published, the applicant should provide the specific month, day, and year that copies or phonorecords of the work were distributed for the first time or were offered to a group of persons for further distribution, public performance, or public display for the first time. This information should be provided in the field marked Date of First Publication.

If the applicant indicates that the work has been published, but fails to provide the specific month, day, and year that publication occurred, the application will be not be accepted by the Office's electronic registration system.

When completing a paper application, the applicant should enter the month, day, and year of first publication on space 3(b) under the heading Date and Nation of First Publication of This Particular Work. If the work has not been published, space 3(b) should be left blank.

612.6(B) Nation of First Publication

When completing an online application the applicant should identify the country in which the work was first published by selecting one of the countries listed in the drop down menu marked Nation of first publication. If the applicant indicates that the work has been published, but fails to provide a nation of first publication, the application will be not be accepted by the electronic registration system.

For a paper application, the nation of first publication should be listed on space 3(b) in the space marked Nation. If the work has not been published, space 3(b) should be left blank.

612.6(C) ISBN, ISSN, and Other Standard Numbers

If an ISBN, ISSN, or other standard number has been assigned to the work, the applicant is strongly encouraged to include that number in the application. If this information is provided in the appropriate field it will appear on the certificate of registration, and in the case of an ISBN or ISSN, the number also will appear in the online public record for that work. This will assist in the identification of the work and may facilitate licensing.

The following standard numbers are currently available in the online application:

- International Standard Book Number ("ISBN").
- International Standard Serial Number ("ISSN").
- International Standard Audiovisual Number ("ISAN").
- International Standard Music Number ("ISMN").
- International Standard Musical Work Code ("ISWC").
- International Standard Recording Code ("ISRC").
- International Standard Text Code ("ISTC").
- Entertainment Identifier Registry ("EIDR").

When completing the Publication / Completion screen in the online application, the applicant should select the appropriate prefix from the drop down menu marked "International Standard Number Type," and provide the relevant number in the field marked "International Standard Number." Forms TX, PA, VA, SR, and SE do not contain a specific space for providing a standard number, but this information may be provided in space 1.

The U.S. Copyright Office will not review the standard number to determine if it matches any number(s) appearing on the deposit copy(ies). Therefore, applicants should confirm that the number has been entered correctly.

The Office does not assign standard numbers for works of authorship. In the United States, ISBNs, ISSNs, and other standard numbers are administered by the following organizations:

- ISBN: R.R. Bowker LLC (www.bowker.com).
- ISSN: The Library of Congress (www.loc.gov/issn).

- ISAN: ARIBSAN US (www.aribsan.com).
- ISMN: The Library of Congress (www.loc.gov/ismn).
- ISWC: ASCAP (www.ascap.com).
- ISRC: The Recording Industry Association of America (www.usisrc.org).
- ISTC: International ISTC Agency (www.istc-international.org).
- EIDR: Entertainment Identifier Registry (www.eidr.org)

612.7 Examination Guidelines: Date and Nation of First Publication

This Section discusses the U.S. Copyright Office's practices and procedures for examining the Date and Nation of first publication field/space in an online application or a paper application.

As a general rule, if the applicant fails to complete the Date and Nation of first publication space in a paper application, the work will be registered as an unpublished work. The registration specialist may communicate with the applicant if information provided elsewhere in the registration materials clearly suggests that publication has occurred or if the specialist knows that the work has been published, such as a well-known novel or film.

612.7(A) Claim in a Published Work Contradicted by Information Provided Elsewhere in the Registration Materials

As a general rule, if the applicant asserts that the work has been published, the work will be registered as a published work, unless the registration specialist discovers evidence to the contrary elsewhere in the registration materials.

The specialist may communicate with the applicant if the deposit copy(ies) or other information in the registration materials suggests that the work is unpublished or if it appears that the applicant provided a date and nation of first publication by mistake. For instance, the specialist may question whether publication has in fact occurred in cases such as the following:

- The applicant gives a publication date on her application and states that she "recited this poem at a poetry slam," or "played this song at church," or "performed this dance on cable access television," or otherwise indicates that the work was "performed" or "broadcast." In such cases, the registration specialist may communicate with the applicant, and explain that a public performance of a work, in and of itself, does not constitute publication under U.S. copyright law.
- The applicant states that a painting or sculpture was "exhibited in a gallery," "shown in a museum," or otherwise indicates that the work was publicly displayed. The registration specialist may communicate with the applicant and explain that a public display, in and of itself, does not constitute publication under U.S. copyright law.

612.7(B) Claim in an Unpublished Work Contradicted by Information Provided Elsewhere in the Registration Materials

As a general rule, if the applicant affirmatively states that the work is unpublished (in the case of an online application) or if the applicant does not complete the date and nation of first publication space (in the case of a paper application), the work will be registered as an unpublished work, unless the information provided elsewhere in the registration materials clearly suggest that publication has occurred.

If the applicant claims that the work is unpublished, the registration specialist may communicate with the applicant if the deposit copy(ies) or other information in the registration materials suggests that the work has been published. For example, the registration specialist may communicate with the applicant in cases such as the following:

- The applicant submits two professionally printed copies or phonorecords of the work and there is other evidence in the registration materials of publication.
- The applicant submits an application to register a serial or a contribution to a serial more than one month after the date that appears in the deposit copies.
- The applicant submits an application to register a jewelry design along with a catalog where the work has been advertised for sale.
- The applicant submits a musical score bearing the legend "for rental only."
- The applicant submits an application to register multiple episodes of a television series that are known to be in syndication.
- The cover for a compact disc states that the works are "from the album _____" and the registration specialist is aware that the album has been advertised in a trade publication.
- The applicant submits an application for a novel and the registration specialist is aware that the work has appeared on a best seller list.
- The applicant submits multiple applications for similar types of works, and provides a date of publication on all but one of the applications.

612.7(C) Nation of Publication Given in a Paper Application without a Date of Publication

If the applicant provides a nation of first publication on a paper application, but fails to provide a date of first publication, the registration specialist may remove the country name from the registration record and register the work as unpublished (provided that the work appears to be unpublished). In such cases, the specialist will add an annotation to the registration record to document this change.

Example:

- The U.S. Copyright Office receives a paper application, along with one copy or phonorecord of the work. The applicant states that the work was published in the United States, but fails to provide a date of publication. The deposit copy is handwritten or homemade (such as a CDR deposited for a claim in music and sound recording). The registration specialist may register the claim without communicating with the applicant. In this situation, the specialist will remove the nation of first publication from the application, and will add an annotation, such as: "Regarding publication: Application gives nation of publication but no publication date; registered as unpublished."

612.7(D) Extraneous Statements Concerning Publication

As a general rule, there is no need to explain the basis for the applicant's statement that the work is published or unpublished. The registration specialist will not communicate with the applicant if such extraneous statements are provided, unless they are contradicted by information found in the deposit copy(ies), elsewhere in the registration materials, or other materials.

Examples:

- An application is submitted for a recording of a live sporting event. In the Note to Copyright Office field the applicant states that the event was "televised on New Year's Day," but the applicant does not provide a date or nation of publication. The statement is considered superfluous, because a public performance does not constitute publication under U.S. copyright law.

- The applicant submits an application for a motion picture and provides a date of first publication. In the Note to Copyright Office field the applicant states that the work was released in theaters on December 31, 2008. The statement is considered superfluous, because the release of a motion picture to theaters constitutes publication under U.S. copyright law.

- The applicant provides a date of first publication for a musical work. In the Note to Copyright Office field, the applicant explains that he "gave CDs to the audience at my concert." The statement is considered superfluous, because the distribution of copies constitutes publication.

612.7(E) Month, Day, and Year Required for the Date of First Publication

The applicant should provide the month, day, and year that the work was published for the first time. The application will not be accepted by the electronic registration system if the applicant selects "yes" in response to the question "has this work been published,"

but does not provide the month, day, and year of publication. If the applicant fails to provide the month, day, and year of publication on a paper application, or states that the date of first publication is "unknown," the registration specialist will communicate with the applicant, unless this information is provided elsewhere in the registration materials.

Examples:

- An applicant submits a paper application that lists the date of publication as "January, 1980." The registration specialist will ask the applicant to provide the day that the work was published for the first time.

- An applicant submits a paper application stating that the work was first published in 2013. The registration specialist will ask the applicant to provide the month and day that the work was first published.

612.7(F) Exact Date of Publication Unknown

Applicants are strongly encouraged to provide a specific date of first publication. If the applicant cannot determine the exact date of first publication, the date may be qualified by "approximately," "thereabouts," "on or about," "on or before," "not later than," or similar statements. In the case of an online application, a qualifying statement regarding the date of publication may be provided in the Note to Copyright Office field. In the case of a paper application, this statement may be provided on the application itself or in a cover letter. In such cases, the registration specialist will add an annotation to the certificate of registration and the online public record, such as: "Regarding publication: Applicant states 'On or about May 15, 1981.'"

612.7(G) Multiple Dates of Publication

As a general rule, the applicant should provide only one date of publication, namely, the date that the work was published for the first time. In the case of a derivative work, the applicant should provide the date of publication for the new derivative authorship being registered.

If the applicant provides multiple publication dates, the registration specialist will communicate with the applicant to determine the date of first publication for the work described in the application.

By contrast, the applicant may be asked to provide a range of dates when completing an application for a group registration, such as a group of published photographs. For a discussion of group registration options, see Chapter 1100.

612.7(H) Future Date of Publication

As a general rule, the date of first publication cannot be later than the date that an online application is certified or the date that the application is received by the U.S. Copyright Office. The electronic registration system will not accept an online application where the

submission date precedes the date of publication. If the applicant provides a future date of publication in a paper application, the registration specialist will communicate with the applicant to determine whether the work has been published, and if so, whether publication occurred on the date specified in the application.

Example:

- On January 1st, the applicant submits a paper application and states that the work will be published on February 1st. The registration specialist examines the application on June 1st. The specialist will communicate with the applicant to determine if the work was, in fact, published on the date specified in the application.

612.7(I) Impossible, Impractical, or Implausible Date of Publication

If the applicant provides a date of publication that does not exist, or a date that is impossible or impractical based on information provided elsewhere in the registration materials, the registration specialist will ask the applicant to explain the discrepancy.

Examples:

- The date of first publication given on the application is September 31, 2010.
- The date of first publication is earlier than the year of the author's birth specified in the application.
- The date of first publication is earlier than the year of completion specified in the application.

612.7(J) Nation of First Publication: Works Published in Multiple Countries

If the work was first published in the United States and another country on the same date, the applicant should provide United States as the nation of first publication. Likewise, the applicant should provide United States as the nation of first publication if the work was first published in a foreign country that has entered into a copyright treaty with the United States and if the work was subsequently published in the United States within thirty days thereafter. 17 U.S.C. § 104(b).

If the work was first published in two or more countries on the same date or within thirty days of each other, the applicant may provide the name of each country where the work was published. In the case of an online application, the applicant may provide the name of one country on the Publication/Completion screen in the field marked Nation of First Publication. The names of the other countries may be provided in the Note to Copyright Office field. In the case of a paper application the name of each country may be provided on the application itself, on a continuation sheet, or in a cover letter. The names of the additional countries may be added to the registration record with an annotation, such as: "Regarding publication: Applicant states simultaneously published in Nigeria and Ghana."

If the applicant lists two or more countries in the application, the registration specialist will assume that the work was published in each country on the same day or within thirty days of each other, absent conflicting information in the deposit copy(ies) or elsewhere in the registration materials.

612.7(K) Nation of First Publication Unclear

If the applicant provides the name of a city, state, and country in the Nation of First Publication field/space, the registration specialist may include the name of the state and/or country, but will remove the name of the city from the registration record.

If the applicant provides the name of a state, territory, city, or other political subdivision, rather than the name of a country, the application will be accepted if the nation of first publication is obvious or if there is another basis for establishing that the work is eligible for copyright protection under U.S. copyright law. For example, the specialist will accept an application if the applicant states that the work was first published in "Quebec" or "Wales," although "Canada" or the "United Kingdom" would be preferable.

As a general rule, statements made on a paper application, such as "published on the internet" or "published online" are not acceptable. If the applicant identifies the nation of first publication as the "internet," "online," the "world wide web," or the like, the specialist may ask the applicant to provide the name of a specific country from which the work is uploaded. If the work is eligible for copyright protection in the United States based on the information provided in the application, such as the author's citizenship or domicile, the specialist may register the claim without communicating with the applicant. In this situation, the specialist will add an annotation, such as: "Regarding publication: Application states 'internet' as the nation of publication."

612.7(L) Nation of First Publication Unknown

If the nation of first publication is unknown, the applicant may select "not known" from the drop down menu of the online application. When completing a paper application, the applicant may leave space 3(b) blank or may state "not known."

If the applicant fails to identify the nation of first publication, the application may be accepted if that information is provided elsewhere in the registration materials or if the registration specialist determines that the work is eligible for copyright protection under U.S. copyright law based on the author's citizenship or domicile. 17 U.S.C. § 104(b).

If there appears to be no other basis for establishing eligibility for copyright protection, the specialist will communicate with the applicant. If the nation of first publication is the only basis for establishing that the work is eligible for copyright protection, registration may be refused.

Examples:

- The applicant states that the nation of first publication is "not known," but states that the author is a citizen of France. The application will be accepted.

- The applicant states that the nation of first publication is "not known" and states that the author is a citizen of Eritrea and a domiciliary of Ethiopia. The registration specialist will communicate with the applicant, because it is unclear whether the work is eligible for copyright protection in the United States based on the information provided.

- The U.S. Copyright Office receives an online application which states that both the nation of first publication and the author's citizenship and domicile are "not known." The registration specialist will communicate with the applicant, because it is not clear whether the work is eligible for copyright protection in the United States based on the information provided.

613 Name of Author(s)

This Section describes the U.S. Copyright Office's practices and procedures for identifying the author of a work.

613.1 Who Is the Author?

To register a work with the U.S. Copyright Office, the applicant must identify the author or authors of the work submitted for registration, unless the work is anonymous or pseudonymous. 17 U.S.C. § 409(2). Generally, the author is the person (or persons) who actually created the material that the applicant intends to register. *See, e.g., Community for Creative Non-Violence v. Reid,* 490 U.S. 730, 737 (1989) ("As a general rule, the author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection."); *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884) (describing the author as the person "to whom anything owes its origin; originator; maker; one who completes a work of science or literature"). There is an exception to this rule if the work is a work made for hire. The author of a work made for hire is not the individual who actually created the work, but "the employer or other person for whom the work was prepared." *Community for Creative Non-Violence*, 490 U.S. at 737; *see also U.S. Auto Parts Network, Inc. v. Parts Geek LLC,* 692 F. 3d 1009, 1015 (9th Cir. 2012). For a definition and discussion of works made for hire, see Chapter 500, Section 506.

613.2 When Authorship Is Determined

A work is protected by copyright from the moment that it has been fixed in a tangible medium of expression. 17 U.S.C. § 102(a). As soon as a work is written down on paper, captured on film, recorded in an audio file, saved onto an electronic storage device, or set in any other tangible medium of expression, the copyright immediately becomes the property of the author or authors who created the work (or in the case of a work made for hire, the employer of the person who created the work or the party that commissioned the work). 17 U.S.C. § 201(a), (b). Thus, the author of a work is determined when the work is created.

Examples:

- Joseph Andrews wrote a biography titled *Finding Henry Fielding*. Andrews assigned the copyright in this work to Oxbridge University but died before the work was published. Oxbridge subsequently submits an application to register the work, naming itself as the copyright claimant for the work. Andrews should be named as the author, even though he died before the application was filed.

- Friend Filter LLC submits an application for a computer program naming itself as the author of the work. In the Note to Copyright Office field the applicant explains that Jay Rothenberg is the president of the company, that he wrote the program in 2005, and that he assigned the copyright to Friend Filter when the company was formed in 2007. The registration specialist will communicate with the applicant and explain that Jay should be named as the author of the work, not the company.

613.3 Identifying the Authors Who Should Be Named in the Application

When completing an application, the applicant should only provide the name(s) of the author(s) who created the copyrightable material that the applicant intends to register. Likewise, the applicant should only identify the author(s) who created the copyrightable material that is owned by the individual or entity who is named in the application as the copyright claimant.

The applicant should not provide the name of any person(s) who created material that is not owned by the copyright claimant or material that will not be submitted for registration. Likewise, there is no need to provide the name of any person(s) who created material that is *de minimis* or uncopyrightable.

613.4 Identifying the Authors of a Work Made for Hire

A work of authorship is considered a work made for hire (i) if the work was "prepared by an employee within the scope of his or her employment," or (ii) if the work was "specially ordered or commissioned." 17 U.S.C. § 101 (definition of "work made for hire").

For guidance in identifying the author of a work made for hire, see Chapter 500, Section 506.

613.5 Identifying the Authors of a Joint Work

A joint work is a work "prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." 17 U.S.C. § 101. If the work submitted for registration is a joint work the applicant should provide the name of each author who contributed copyrightable authorship to the work that the applicant intends to register. If the applicant fails to name all the joint authors who are named in the deposit copy(ies), the registration specialist will communicate with the applicant.

Examples:

- An application is submitted for a children's book containing equal amounts of text and artwork on each page. The applicant names John Kinnadee as the author of "text" and George Sand as the author of "2-dimensional artwork." A statement on the deposit copies reads "Text by John Kinnadee; Illustrations by George Sands" and the copyright notice reads "Text © John Kinnadee; Illustrations © George Sands." The statements given in the application and the content of the work indicate that this may be a joint work. The registration specialist will register the claim.

- An application for a scientific article names Dr. Pankaj Patel, Dr. Shilpa Shah, and Dr. Aziz Haniff as co-authors of the "text." A statement on the deposit copy reads "By Drs. Patel, Shah, and Haniff," which suggests that this may be a joint work. The registration specialist will register the claim.

- An application for an essay names Darryl Oshey and Ruben Israel as co-authors of the work, but a statement on the deposit copy reads "By D. Oshey, R. Israel, and C. Cabbage." The registration specialist will communicate with the applicant. The essay appears to be a joint work, but the applicant failed to identify all of the authors who are named on the deposit copy.

For a general discussion of joint works, see Chapter 500, Section 505.

613.6 Identifying the Author of a Derivative Work

A derivative work is a work that is "based upon one or more preexisting works." 17 U.S.C. § 101. Typically, a derivative work is a new version of a preexisting work or an entirely new work that combines material from a preexisting work with an appreciable amount of new material.

If the applicant intends to register a derivative work, the applicant should provide the name of the author or authors who created the new or revised material submitted for registration.

As a general rule, the applicant should not provide the name of the author(s) who created any preexisting material that appears in the derivative work. If the author of the preexisting material is named in the application, the registration specialist may register the claim if this information is provided in the Material Excluded field (in the case of an online application) or the Preexisting Material space (in the case of a paper application).

Examples:

- An online application for a sound recording names Molly Moe as the author of the work. The recording contains Molly's

performance of a song which was written by Samuel Brackett. The applicant excludes the music from the claim by completing the Limitation of Claim screen, but does not provide Samuel's name in the Name of Author field. The registration specialist will register the claim.

- An online application is submitted for a short story that contains extensive quotes from William Shakespeare's *Macbeth*. April Pearly is named as the sole author of the work. The applicant excludes the passages from *Macbeth* from the claim by completing the Limitation of Claim screen, but does not provide Shakespeare's name in the Name of Author field. The registration specialist will register the claim.

- A paper application names George Milo as the author of a lithograph. The applicant checks the box indicating that the work is "a reproduction of a work of art," but does not name the author of the preexisting work of art. The registration specialist will register the claim.

- An online application for a dramatic work names Michael Kelly as the author of the work. The New Material Included field asserts a claim in "text." The Material Excluded field explains that the work is "based on letters and journal entries by Samuel Chase." The registration specialist will register the claim without communicating with the applicant.

- Prudhoe Sellars wrote a novel, which was translated into Spanish by John Puff. The applicant submits an application naming Prudhoe as the author of the work. In the New Material Included field the applicant asserts a claim in "translation" and in the Material Excluded field he excludes "Original novel by Prudhoe Sellars" from the claim. The registration specialist will communicate with the applicant. The applicant clearly intends to register the Spanish translation, rather than the original novel. Therefore, John should be listed in the Name of Author field, rather than Prudhoe.

For a general discussion of derivative works, see Chapter 500, Section 507. For guidance in completing the Material Excluded/New Material Included fields in the online application and spaces 6(a) and 6(b) in the paper application, see Section 621.

613.7 Identifying the Author of a Compilation

A compilation "is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship." 17 U.S.C. § 101. A compilation may contain several forms of authorship:

- The selection authorship involved in choosing the preexisting material or data that will be included in the compilation.

- The coordination authorship involved in classifying, categorizing, ordering, or grouping the preexisting material or data.

- The arrangement authorship involved in determining the placement or arrangement of the preexisting material or data within the compilation as a whole.

If the applicant intends to register a compilation, the applicant should provide the name(s) of the author(s) who created the selection, coordination, and/or arrangement that the applicant intends to register.

An applicant may register a compilation together with the material contained therein, provided that (i) the material is copyrightable and (ii) the compilation and the material therein were created by the same author, and/or (iii) the copyright in the compilation and the material therein is owned by the copyright claimant. If so, the applicant should provide the name(s) of the author(s) who created the material that is included in the claim.

Examples:

- Empirical Asset Management created the *Copperhead 500*, which is a financial index that tracks the performance of the copper industry. Empirical developed the criteria for determining whether a particular company should be included in the index and each year it updates the selection of companies that meet these parameters. Empirical should be named as the author of the selection of companies that are included in the *Copperhead Index*.

- Finite Financial publishes *The Final Word,* which is a database that contains the closing price for securities that are traded on various exchanges. Finite creatively selects the securities that are included within the database, organizes them into various original categories, and creatively arranges the closing price for each security in manner that facilitates searching and sorting of the information. Finite should be named as the author of the selection and coordination of the securities, as well as the author of the arrangement of the closing prices. Finite should not be named as the author of the actual prices that are listed in *The Final Word*, because they are mere facts that are not eligible for copyright protection.

613.8 Identifying the Author of a Collective Work or a Contribution to a Collective Work

The Copyright Act defines a collective work as "a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole." 17 U.S.C. §

101. Collective works are a subset of compilations. *Id*. (definition of "compilation"). Therefore, for the collective whole to be registrable, the separate and independent works must be selected, coordinated, and/or arranged in such a way that "the resulting work as a whole constitutes an original work of authorship." *Id*.

A contribution to a collective work is a separate and independent work that has been included within a collective work, such as an article that has been included within a periodical or an essay that has been included within an anthology.

A collective work contains two different types of authorship:

- The authorship in the collective work as a whole, which involves selecting, coordinating, and/or arranging the various contributions within the collective work as a whole; and

- The authorship in the separate and independent works that have been included in the collective work.

An applicant may register a collective work together with the separate and independent works contained therein (i) if the copyright in the collective work and the contributions are owned by the same claimant, and (ii) if the component works have not been previously published, previously registered, and are not in the public domain.

If the applicant intends to register the copyright in the collective work as a whole, the applicant should identify the individual(s) or entity that selected, coordinated, and/or arranged the contributions and assembled them into a collective whole.

If the applicant intends to register a collective work together with the contributions that appear in that work and if the contributions were created by a person(s) who transferred his or her copyright to the claimant, the applicant should provide the name(s) of those author(s) in the Name of Author field/space.

If the applicant intends to register a contribution that appeared in the collective work, but does not intend to register the collective work as a whole, the applicant should identify the author of the contribution in the Name of Author field/space.

In all cases, the applicant should provide the name(s) of the author(s) who created the material that is owned by the copyright claimant and for which registration is sought. The applicant should not include the name(s) of author(s) who created any material that is not owned by the copyright claimant or any material that the applicant does not intend to register.

Examples:

- Health Publishing Company submits an application for a publication containing hundreds of articles on remedies for common health problems. The company selected the articles that have been included in the publication and categorized them by subject matter. Half of the articles were written by the

company's employees. The others were written by freelance writers, but only two of those writers assigned the copyright in their contributions to the publisher. Health Publishing Company should be named as the author of the collective work as a whole, and the author of the articles written by its employees. The publisher also should provide the names of the two freelance authors who assigned their copyrights to the company. The remainder of the freelance authors should not be mentioned in the application, because the company does not own the copyright in their contributions.

- Smart Curriculum, Inc. submits an application to register a package of materials for an educational seminar. The package includes a motion picture, instructional text, and various printed materials containing charts depicting the company's worldwide sales. The application names Smart Curriculum, Inc. as the author of the collective work. In addition, it names Advanced Educational Productions, Inc. as the author of the motion picture and several individuals as the authors of the instructional text. The transfer statement indicates that Smart Curriculum acquired the copyright in these elements by written agreement. The registration specialist will register the claim, because it is clear that the applicant intends to register both the collective work as well as the contributions that have been identified in the application.

- Santiago Thomas took a photograph which was published in the May 2012 edition of *Modern Driver* magazine. Santiago submits an application naming himself as the author and claimant of this photograph, but does not mention any of the other material that appears in the magazine. The registration specialist will register the claim without communicating with the applicant, because it is clear that the applicant intends to register his photograph but does not intend to register the collective work as a whole.

For a discussion of the procedure for asserting a claim to copyright in a collective work and/or a contribution to a collective work, see Section 618.7. For a general discussion of collective works and contributions to collective works, see Chapter 500, Section 509.

613.9 Completing the Application: Name of Author

When completing an online application, the applicant should provide the full name of each author who created the copyrightable material that the applicant intends to register.

If the copyrightable material was created by an individual, the applicant should provide the author's first and last name on the Authors screen in the field marked Individual. If the copyrightable material was created by or on behalf of a corporation, company, organization, or other legal entity, the applicant should provide the name of the entity in the field marked Organization.

When completing a paper application, the applicant should enter the author's full name on space 2(a) of the application in the space marked Name of Author. If the work was created by two or more authors, the applicant may provide the names of up to three authors on spaces 2(a), 2(b), and 2(c) of the application (or the names of up to two authors in the case of an application submitted on Form VA). The applicant may add the names of additional authors by completing and submitting as many continuation sheets as necessary.

As a general rule, the applicant should provide the name of the actual individual or entity that created the material that the applicant intends to register. However, there are three exceptions to this rule:

- If the work is a work made for hire, the applicant should list the name of the employer or the name of the party that ordered or commissioned the work (rather than the name of the individual or entity that actually created the work). For a definition and discussion of works made for hire, see Chapter 500, Section 506.

- If the work is an anonymous work, the applicant is not required to provide the author's full name in the application. Instead, the applicant may state "Anonymous" in the Name of Author field/space or may leave that portion of the application blank, provided that the applicant checks the box marked Anonymous. For a definition and discussion of anonymous works, see Section 615.1.

- If the work is a pseudonymous work, the applicant is not required to provide the author's full name in the application. Instead, the applicant may insert the author's pseudonym in the Name of Author field/space, provided that the applicant checks the box marked Pseudonymous. For a definition and discussion of pseudonymous works, see Section 615.2.

613.10 Examination Guidelines: Name of Author

This Section discusses the U.S. Copyright Office's practices and procedures for examining the Name of Author field/space.

For a discussion of the Office's practices and procedures for examining the Name of Author field/space in an application to register a work made for hire, an anonymous work, or a pseudonymous work, see Sections 614.2, 615.1, and 615.2.

613.10(A) Name of Author Unclear

The author(s) of the copyrightable material that the applicant intends to register should be clearly identified in the application. As a general rule, the registration specialist will accept the information contained in the application unless it is contradicted by the information found elsewhere in the registration materials or information that is known to the U.S. Copyright Office.

The specialist will communicate with the applicant if it is unclear whether the person named in the application is the author of the work that has been submitted for registration. For example, the specialist may communicate if the applicant indicates that the work was created by a project manager, project coordinator, project head, financier,

underwriter, researcher, reviewer, commentator, printer, artistic consultant, or any other term that suggests that the person named in the application may not be the actual author of the work. For the same reason, the specialist may communicate if the applicant indicates that the person named in the application merely reviewed, or transcribed the work, or merely suggested revisions or edits without contributing copyrightable authorship.

613.10(B) Name of Author: Variances

As a general rule, the person(s) named in the application as the author(s) of the work should be consistent with the information that appears on the deposit copy(ies) or elsewhere in the registration materials. Ordinarily, the registration specialist will give greater weight to the information that appears in the application. If appropriate, the registration specialist may add an annotation to the registration record, or a note to the online public record to clarify the information given in the application, or to add information that appears in the deposit copy(ies) or elsewhere in the registration materials. As discussed in Section 603.2(C), the specialist may communicate with the applicant if there is a material variance between the information provided in the application and the information that appears on the deposit copy(ies) or elsewhere in the registration materials.

613.10(B)(1) Variances Between the Name Provided in the Application and the Name Provided in the Deposit Copy(ies)

613.10(B)(1)(a) Minor Variances

If there is a minor variance between the name listed in the application and the name found on the deposit copy(ies), and if both names clearly refer to the same person, the registration specialist may register the claim without communicating with the applicant and without annotating the certificate of registration. The name that appears on the deposit copy(ies) may be added to the online public record if it is likely that a person searching the U.S. Copyright Office's records may use that name to locate the work.

Examples:

- An application for a painting names "Margaret Duncan" as the author, but the name that appears on the canvas is "Peggy Duncan." The registration specialist will register the claim without communicating with the applicant, and may add the name that appears on the deposit to the online public record.

- Liliana Sophia Monroe submits an application to register a poem. Liliana names herself as the author, but the deposit copy states that the work was "written by Lily Monroe." The registration specialist will register the claim without communicating with the applicant, and may add the name that appears on the deposit to the online public record.

- John Smith submits an application to register a mash-up video and names himself as the author, but the deposit copy states that the work was "produced by Johnny Smythe." The registration specialist will register the claim without communicating with the applicant, and may add the name that appears on the deposit to the online public record.

- Bob Walters submits an application to register a song. Bob names himself as the author, but the deposit copy states that the work is "a Buck Walters ballad." The registration specialist will register the claim because Buck Walters appears to be the author's nickname. In addition, the specialist may add the name that appears on the copy to the online public record.

613.10(B)(1)(b) Material Variances

If there is a material variance between the name given in the application and the name given on the deposit copy(ies), the registration specialist may register the claim if it is clear that both names refer to the same person. The name that appears on the deposit copy(ies) may be added to the online public record, and it may be added to the registration record with an annotation.

Examples:

- Sally Burnham-Jones submits an application to register an app. The deposit copy names "Sally Jones" as the author. The application names "Sally Burnham" as the author and claimant, and the application is certified by "Sally Burnham-Jones." The registration specialist will register the claim, because Sally Jones appears to be the author's married name. The specialist may add an annotation to the registration record, such as: "Regarding author information: Name appears on copy as Sally Jones." The specialist also may add that name to the online public record.

- The U.S. Copyright Office receives an application to register a song. The application names Lawrence Mitchell, Janet Carlyle, and Robert Thomas as the authors of the music and lyrics. The liner notes state that the authors of the work are Yard Dog, Metal Head, and The Enforcer. The registration specialist will register the claim. The names that appear on the deposit copy may be added to the online public record, because they appear to be pseudonyms for the individuals named in the application.

- Jason Brown submits an application to register a song on Form PA. The application names Jason Brown as the author of "lyrics" and Cathy Unger as the author of "music." The deposit copy states "written by the Marvels." The registration specialist will register the claim because "the Marvels" appears to be the name

of Jason and Cathy's performing group. The name that appears on the deposit copy may be added to the online public record.

If there is a material variance between the name listed in the application and the name given on the deposit copy(ies), and if it is unclear whether the names given in the application and the deposit copy(ies) refer to the same person, the registration specialist will communicate with the applicant. If the applicant confirms that the name in the application is incorrect, the specialist will add the correct name to the registration record. If the applicant states that the name given in the application is correct, the specialist will register the claim. In addition, the specialist will add the name that appears on the deposit copy(ies) to the online public record, and will place a note in the registration record indicating that there is correspondence in the file.

Examples:

- The Office receives an online application for an instrumental track titled "Zippy Beat." The application names Jason Herbert and Cynthia Schmidt as the authors of the work. The file name for the deposit copy reads, "Zippybeat2012byJasonandDavid.mp3." The registration specialist will communicate with the applicant, because there is a material variance between the names entered in the application and the names from the deposit copy.

- An application for a musical work names Randy Potemkin as the author, but the deposit copy states "music by Mary Jones." The registration specialist will communicate with the applicant. The applicant confirms that the work was created by Mary (rather than Randy). The specialist will replace the name given in the application with the name given on the deposit.

- An application for an article names Randolph Smith and Jason McCombs as co-authors of the work and the pseudonymous box is checked "no." The deposit copy states that the work was "written by Randolph Smith and George Bilford." The registration specialist will communicate with the applicant. The applicant confirms that the work was created by Randolph, Jason, and George. The specialist will add George's name to the registration record and register the claim. The specialist will add a note to the registration record indicating that the file contains correspondence.

613.10(B)(2) Variance Between the Number of Authors Named in the Application and the Number of Authors Named in the Deposit Copy(ies)

If the authors named in the application are more numerous than the authors named in the deposit copy(ies), the registration specialist may register the claim if the information specified on the deposit copy(ies) appears to be incomplete, provided that the application has been certified by or on behalf of one of the authors who is named in both the application and the deposit copy(ies). If the application has been certified by an

author who is named in the application but not the deposit copy(ies), the specialist will communicate with the applicant.

Examples:

- Melissa Monet submits an application to register a song. The application names Melissa Monet and Robert Dearborn as the author of "music and lyrics," but a statement on the deposit copy reads, "music and lyrics by Melissa Monet." The registration specialist may register the claim if he or she determines that the song was created by Melissa and Robert and that the statement on the deposit copy is incomplete.

- Thomas Truxton submits an application to register the manuscript for a children's book. The application lists Tom Truxton and Bobbie Park as the authors of the "text" and Cindy Cove as the author of the "artwork." A statement on the cover of the manuscript reads, "Story by Tom Truxton; Illustrations by Cindy Cove." The registration specialist may register the claim as a joint work if he or she determines that the work was created by Tom, Bobbie, and Cindy, and that the statement on the cover of the manuscript is incomplete. In addition, the specialist may add an annotation to the certificate, such as: "Basis for registration: Joint authorship of all authors named on the application."

- An application for a multimedia work names Reba McKenzie, Suzie Jones, and Billy Jones as the co-authors of the work. Billy signed the certification. A statement on the deposit copy reads "By Reba McKenzie and Suzie Jones." Because Billy's name does not appear on the deposit, the registration specialist will communicate with the applicant to determine if Billy is, in fact, an author of this work.

If the authors named in the deposit copy(ies) outnumber the authors named in the application and if it is clear that the unnamed authors created the copyrightable material that the applicant intends to register, the registration specialist will communicate with the applicant.

Examples:

- An application is submitted for a book that contains text and photographs. The application names John Hously as the author of the "text." A statement on the deposit copies reads "Written by John Hously; Photographs by Larry Fogley." The registration specialist will register the claim without communicating with the applicant. The applicant asserted a claim in the text (rather than the photographs), the author of the text is named in the application, and there is no conflict between the name that

appears in the application and the name that appears in the deposit copies.

- An application for a song titled "Running Up the Down Escalator" names Mark Richards and David Anderson as the authors of the work. The liner notes state that the song was written by Mark Richards, David Anderson, and Stephen Davis. In the Note to Copyright Office field the applicant confirms that Mark and David are the sole authors of this work and that the statement on the deposit copy is incorrect. The specialist will register the claim, and will add a note to the registration record indicating that there is correspondence in the file.

- Catherine Jones submits an online application for a screenplay titled *Systemic Collapse*. The application names Catherine as the author for the "text," but the screenplay states "Systemic Collapse by Catherine Jones and Howard Finkelman." The registration specialist will communicate with the applicant to determine whether Howard's name should be added to the application as a co-author of the text.

- An application is submitted for a CD naming Cathy Gardner as the author of music, lyrics, and artwork. However, the deposit copy names Cathy as the author of the music and lyrics and James Holmes as the author of the artwork. The registration specialist will communicate with the applicant to determine if James should be added to the application as the author of the artwork.

613.10(C) Name of Author Not Required

As discussed in Section 613.3 the applicant should not provide the name of any person who created material that is not owned by the copyright claimant or material that the applicant does not intend to register. Likewise, the applicant should not provide the name of any person who created material that is *de minimis* or uncopyrightable.

As a general rule, if the applicant fails to mention an author who is named in the deposit copy(ies) or elsewhere in the registration materials, the registration specialist will not communicate with the applicant if it is clear that the claimant does not own the copyright in that author's contribution or if it is clear that the applicant does not intend to register that contribution. In making this determination, the specialist may consider the title of the work, the copyright notice, or any other information given in the deposit copy(ies) or elsewhere in the registration materials. If appropriate, the registration specialist may add an annotation to the registration record to clarify the information given in the application or to add information that appears in the deposit copy(ies) or elsewhere in the registration materials.

Examples:

- Technology Law Guides, Inc. submits an application to register a textbook titled *Software and Internet Law (Second Edition)*. The application names Maria Scott as the author of "text." A statement on the title page reads, "Second Edition Editor in Chief: Maria Scott, Contributing Editors Terry Johnson, Belinda Boswell, et al." The registration specialist will register the claim if he or she determines that the applicant only intends to register the new material that appears in the second edition, that Maria is the author of the new material, and that Terry and Belinda did not contribute copyrightable authorship to the second edition.

- An application is submitted for a 500 page biography of Charles de Gaul. The deposit copies name Pierre Lafayette as the author of the work and Laurent Etienne as the author of the foreword that appears at the beginning of the book. The applicant names Pierre as the author of "text," but does not mention the author of the foreword. The registration specialist will register the claim because it appears that the applicant only intends to register the text of the biography, rather than the text of the foreword.

- An application names Terrawn Dooley and Jessica Brown as co-authors of a travel brochure. The copy contains text and artwork, along with the statement "Written by T. Dooley and J. Brown. Artwork by Kyle Ritz." The registration specialist will register the claim because the text and the artwork appear to be separately owned and the applicant appears to be asserting a claim in the text, but not the artwork. To clarify the scope of the claim, the specialist may add an annotation, such as: "Regarding author information: Statements on deposit copy indicate text by Terrawn Dooley and Jessica Brown."

If the applicant fails to mention an author who is named in the deposit copy(ies) or elsewhere in the registration materials, the registration specialist will not communicate with the applicant if the author's contribution appears to be *de minimis* or uncopyrightable.

Examples:

- Darryl Cooper submits an application for a screenplay titled *Better Safe Than Sorry*. Both the application and the deposit copy name Darryl as the author of the work. In the Note to Copyright Office field, the applicant explains that his friend Tom Klein came up with the title for the work. Because titles are uncopyrightable and because the applicant did not claim the

title in the application, the registration specialist will register the claim without communicating with the applicant.

- An application is submitted for a photograph that contains an image of a fashion model together with the phrase "Not to be outdone." The application names Jordan Johnson as the author of the photograph. The deposit copy names Jordan as the author of the "photograph" and Marci Adams as the author of the "text." Because the text is a short phrase that is uncopyrightable and because that applicant did not claim the text in the application, the registration specialist will register the claim without communicating with the applicant.

613.10(D) Name of Author Unknown

The registration specialist will communicate with the applicant if the applicant states that the author of the work is "unknown," "not known," or the like, because this type of statement suggests that the applicant and/or the claimant may not be entitled to register the work.

613.10(E) Name of the Author Omitted: Works Created by a Single Author

If the work was created by a single author, the applicant should identify the author of that work (unless the applicant has checked the box indicating that the work is an anonymous or pseudonymous work). For guidance in identifying the author of the work and completing the fields for an anonymous or pseudonymous work, see Sections 613.9, 615.1(B), and 615.2(B).

If the applicant fails to identify the author in an online application, the application will not be accepted by the electronic registration system.

If the applicant fails to identify the author in a paper application, the registration specialist will communicate with the applicant.

613.10(F) Name of an Author Omitted: Works Created by Large Numbers of Authors

If the work was created by a large number of authors, the applicant is encouraged to provide the name of each author in the application where it is feasible. Likewise, if the work contains or consists of separate and independent works created by a large number of authors and if the claimant owns the copyright in each of those contributions, the applicant is encouraged to identify the author of each contribution.

The Office will accept an application that provides representative names and identifies the number of additional authors included in the claim (*e.g.*, "John Jones, Will Smith, Fred Johnson, and thirty-five other contributors"). However, the registration specialist will not add missing names to the application, even if the authors' contributions are clearly specified in the deposit copy(ies) or elsewhere in the registration materials.

See Sohm v. Scholastic Inc., 959 F.3d 39, 52-53 (2d Cir. 2020) (a registration for a collective work may cover the constituent elements of that work even if the authors of

those elements are not specified in the registration); *Alaska Stock, LLC v. Houghton Mifflin Harcourt Publishing Co.*, 747 F.3d 673, 685 (9th Cir. 2014) (same); *Bean v. Pearson Education, Inc.*, 585 Fed. Appx. 461, 462 (9th Cir. 2014); *Bean v. Houghton Mifflin Harcourt Publishing Co.*, 585 Fed. Appx. 322, 322 (9th Cir. 2014) (same); *Metropolitan Regional Information Systems Inc. v. American Home Realty Network, LLC*, 722 F.3d 591, 599-600 (4th Cir. 2013) (same).

614 Works Made for Hire

614.1 Completing the Application: Works Made for Hire

This Section provides guidance on completing an application to register a work made for hire. For a definition of works made for hire, see Chapter 500, Section 506. For guidance in determining whether a particular work qualifies as a work made for hire, see Chapter 500, Section 506.4.

A work made for hire may be registered with an online application or with a paper application submitted on Forms TX, VA, PA, SR, or SE.

614.1(A) Year of Completion and Date of Publication

The term for a work made for hire is based on the year that the work was created or the date that the work was published. Therefore, the applicant must provide this information when completing an online application or a paper application. For guidance on completing this portion of the application, see Sections 611 and 612.

614.1(B) Identifying the Author of a Work Made for Hire

When completing an application the employer or the party that ordered or commissioned the work should be named as the author (rather than the individual who actually created the work). In other words, if the work was created by an employee acting within the scope of his or her employment, the employer should be identified as the author (not the employee). If the work was specially ordered or commissioned as a work made for hire, the person or organization that ordered or commissioned the work should be listed as the author (rather than the individual who actually created the work). *See* 17 U.S.C. § 201(b).

If the employer or the party who ordered or commissioned the work is an individual, the applicant should enter that individual's first and last name in the field marked Individual Author. If the employer or the party that ordered or commissioned the work is an organization, the applicant should provide the full name of that organization in the field marked Organization Name. In both cases, the applicant should choose "yes" in response to the question "Is this author's contribution a work made for hire?"

NOTE: If an organization is named as the author of the work, the box marked "Is this author's contribution a work made for hire?" must be checked "yes." If the applicant provides the name of an organization and checks the "no" box, the application will not be accepted by the electronic registration system.

When completing a paper application, the applicant should list the name of the employer or the party that ordered or commissioned the work on line 2(a) of the application in the space marked Name of Author. Additionally, the applicant should choose "yes" in response to the question "Is this author's contribution a work made for hire?"

614.1(C) Identifying the Citizenship and / or Domicile of the Author

If the work was created by an employee acting within the scope of his or her employment and if the employer is an individual, the applicant should identify the employer's country of citizenship and domicile (rather than the employee's citizenship or domicile). Likewise, if the work was specially ordered or commissioned as a work made for hire and if the hiring party is an individual, the applicant should provide citizenship and domicile information for the party that ordered or commissioned the work (rather than the individual who actually created the work). By contrast, if the work was created for a company, organization, or other legal entity, the applicant should identify the country where the entity is domiciled, but need not provide a country of citizenship for that entity.

When completing an online application, the applicant should provide this information by selecting one of the countries listed in the drop down menus that appear under the headings Citizenship and/or Domicile. When completing a paper application the applicant should insert this information on space 2. If the employer or the party that ordered or commissioned the work is a citizen of or domiciled in more than one country, the applicant may specify any of the countries that establish that the work is eligible for copyright protection under U.S. copyright law. For additional guidance on completing this portion of the application, see Section 617.

614.1(D) Year of Birth and Death Not Required for Works Made for Hire

When completing an online or paper application, the applicant will be asked to identify the year that the author was born and the year that the author died. If the work is a work made for hire, this portion of the application should be left blank, even if the author is an individual, rather than a company or organization. The year of the author's birth and death is not required in this situation, because the term of copyright for a work made for hire is based on the year the work was created or the year the work was published, rather than the author's year of death. 17 U.S.C. § 302(c).

614.1(E) Registering a Work Made for Hire as an Anonymous or Pseudonymous Work

A work is considered an "anonymous work" if "no natural person is identified as author" on the copies or phonorecords of the work. 17 U.S.C. § 101. A work is considered a "pseudonymous work" if "the author is identified under a fictitious name" on the copies or phonorecords of the work. *Id*. If the author's name appears on the copies or phonorecords, the work is not an anonymous or pseudonymous work, even if the author does not wish to reveal his or her identity in the registration record.

The statute implies that anonymous works and pseudonymous works are limited to works created by natural persons. *Compare id.* (definitions of "anonymous" and "pseudonymous" works) *with* 17 U.S.C. § 302(c) (indicating that the term for anonymous and pseudonymous works may be based on the life of the author if his or her identity is

revealed before the copyright expires). If the applicant checks the box indicating that the work is a work made for hire and checks the box marked Anonymous or Pseudonymous and/or leaves the Name of Author field/space blank, the registration specialist may communicate with the applicant. In such cases, the specialist will explain that a work made for hire cannot be registered as an anonymous or pseudonymous work and that the author's full name should be provided in the registration record.

Examples:

- An application is submitted for a "tell all" book about a famous celebrity. Both the application and the deposit copies state that the author of this work is "Anonymous." The Tattletale Press, LLC is named as the copyright claimant. The work made for hire box is checked "yes" and no transfer statement has been provided. The registration specialist may communicate with the applicant, and explain that if the work is actually a work made for hire it cannot be registered as an anonymous work. In this case, the specialist will ask authorization to give the author's full name in the registration record and answer "no" to the anonymous question. By contrast, if the work made for hire question was answered "yes" by mistake and the work truly is anonymous (*i.e.*, not a work made for hire and no natural person is named on the deposit copies), then the specialist will request authorization to answer "no" to the work made for hire question, and to add a transfer statement to the registration record.

- An online application is submitted for a photograph and names Global Icons as the author and claimant for the work. The pseudonymous question is answered "yes." In the Pseudonym field, the applicant entered the name "Photograph My World." The registration specialist may communicate with the applicant to explain that a work authored by a company or other legal entity cannot be registered as pseudonymous. If it is determined that the company uses both names (Global Icons and Photograph My World), the specialist also may request that the relationship between the names be identified in the registration record using terms such as: "Global Icons doing business as Photograph My World" or "Global Icons also known as Photograph My World."

For a general discussion of anonymous and pseudonymous works, see Section 615.

614.1(F) Identifying the Claimant for a Work Made for Hire

When completing an online application or paper application, the applicant will be asked to identify the full name and address of the claimant. For purposes of copyright registration, the claimant for a work made for hire is either the author of the work (*i.e.*, employer or the party that ordered or commissioned the work) or a person or

organization that obtained ownership of all the exclusive rights under copyright act by legal or written transfer. 37 C.F.R. § 202.3(a)(3). If the person(s) or organization(s) named in the application as the author and copyright claimant are not the same, the applicant should provide a brief statement explaining how the claimant obtained ownership of the copyright. 17 U.S.C. § 409(5). For guidance on completing this portion of the application, see Sections 619 and 620.

614.2 Examination Guidelines: Works Made for Hire

This Section discusses the U.S. Copyright Office's practices and procedures for examining the work made for hire field/space in an online application or paper application.

614.2(A) Identifying the Work as a Work Made for Hire

If the work described in the application is a work made for hire, the box marked "Is this author's contribution a work made for hire?" should be checked "yes."

If the applicant indicates that the work is a work made for hire, and it appears the statutory definition has been met, the registration specialist generally will accept the applicant's assertion.

If the applicant checks the box marked "yes," but the application, deposit copy(ies), or other registration materials indicate that the work does not meet the statutory definition for a work made for hire, the registration specialist may communicate with the applicant. Likewise, if the work appears to be a work made for hire the specialist may communicate with the applicant if the applicant checks the box marked "no" or fails to complete this portion of the application.

614.2(B) Identifying the Author of a Work Made for Hire

614.2(B)(1) Was the Work Created by an Employee Acting within the Scope of His or Her Duties?

As discussed in Chapter 500, Section 506.4, the applicant—not the U.S. Copyright Office—must determine whether a work meets the statutory definition of a work made for hire. The registration specialist generally will accept the applicant's assertion regarding whether the work is a work made for hire, unless there is evidence to the contrary in the registration materials. As a general rule, the registration specialist will not ask the applicant to confirm that the work was created by an employee acting within the scope of his or her employment.

Examples:

- An application is submitted for a photograph naming "Briana Johnson, photographer for Sonic Company" as the author of the work. The work made for hire boxes are blank and Sonic Company has been named as the claimant. The registration specialist will communicate with the applicant. If Briana is an employee of Sonic Company, the company should be named as

the author, the work made for hire box should be checked "yes," and Briana's name should be removed from the application. If Briana is not an employee, the applicant should provide a transfer statement explaining how the company obtained the copyright in this work.

- An application names Hopkins Financial Services LLP as the author and copyright claimant for a short story. The work made for hire box is checked "yes" and the application is signed "Roland Hopkins III, President & CEO, Hopkins Financial Services." A statement on the deposit copies reads "By Roland Hopkins III." The registration specialist will communicate with the applicant if it seems unlikely that Roland created this work as part of his regular duties and responsibilities for this company.

614.2(B)(2) Was the Work Specially Ordered or Commissioned as a Work Made for Hire?

If the applicant checks the work made for hire box or affirmatively states that the work was specially ordered or commissioned, the registration specialist will accept that assertion, unless there is evidence to the contrary in the registration materials. Ordinarily, the specialist will not ask the applicant to verify that there is a signed written agreement between the parties designating the work as a work made for hire or to submit a copy of that agreement. However, the application may be questioned if the work does not appear to fall within one or more of the nine categories of works listed in the statutory definition of works made for hire.

Examples:

- An application for a travel guide names Mary Rimbaud as the author of the text and the work made for hire question is answered "no." Jason Berta is listed as author of the illustrations and the work made for hire question is answered "yes." The copyright notice reads "Text and Illustrations © 2011 Mary Rimbaud." The registration specialist will communicate with the applicant. The copyright notice indicates that this may not be a joint work and that Mary may have hired or commissioned Jason to create the illustrations. If so, Mary should be named as the author of both the text and illustrations, rather than Jason.

- Katherine Chen submits an application to register a song. Katherine is named as the author and the work made for hire box has been checked "yes." The transfer statement reads "I paid my sister Alice to write this song for me, but we don't have a contract or anything since she's a member of the family." The registration specialist will communicate with the applicant. The work does not appear to satisfy the first part of the statutory definition, because it is unlikely that Alice is Katherine's employee. The work does not satisfy the second part of the

definition, because a song is not one of the nine categories of works that may be specially ordered or commissioned.

For more information about works made for hire see Chapter 500, Section 506.1.

614.2(B)(3) Naming the Employee or the Individual Who Actually Created the Work as the Author of a Work Made for Hire

If the work is a work made for hire, the employer or the party that ordered or commissioned the work should be named as the author. In other words, if the work made for hire was created by an employee acting within the scope of his or her employment, the employer should be identified as the author of the work, not the employee. Similarly, if the work made for hire was specially ordered or commissioned, the party that ordered or commissioned the work should be identified as the author of the work, not the individual who actually created the work. If it appears that the applicant has named an employee as the author of a work made for hire, the registration specialist will communicate with the applicant.

Examples:

- An application for an advertising brochure names Susanne Taylor as the author of "text and photographs." The work made for hire question is answered "yes." Argonne, Inc. is named as copyright claimant and the transfer statement reads "Susanne Taylor is Owner, President, and CEO of Argonne, Inc." The brochure describes the company's services and the copyright notice reads "© 2012 Argonne, Inc." The registration specialist will communicate with the applicant. The specialist will explain that senior officers or owners of organizations may be considered employees if they prepared a work while acting within the scope of their duties. If the applicant confirms that Susanne created the work on behalf of Argonne, Inc., the company should be named as the author, the work made for hire box should be checked "yes," and Susanne's name should be removed from the application.

- An application is submitted for a screenplay, naming a screenwriter as the author and a production company as the copyright claimant. The work made for hire question has not been answered and no transfer statement has been provided. The registration specialist will communicate with the applicant to determine whether the production company hired the screenwriter to create this screenplay as a work made for hire or acquired copyright in this work through a written agreement with the screenwriter.

- An application names Jeremy Roe as author of "text, photographs." The work made for hire question is answered "no." Berger & Berger, LLC is named as claimant and the transfer statement reads "for hire agreement." The registration

specialist will communicate with the applicant. The application indicates that Berger & Berger hired Jeremy to create this work as a work made for hire. Therefore, the company should be listed as the author, the work made for hire question should be answered "yes," and Jeremy's name should be removed from the application.

The U.S. Copyright Office will accept an application that names the individual who actually created a work made for hire, provided that the employer or the party that ordered or commissioned the work is identified as the author and the relationship between the employer and the employee, or the relationship between the person or organization that ordered or commissioned the work and the individual who actually created the work, is clearly indicated.

Example:

- Lawrence Jeffries is a staff copywriter for Freemont Enterprises, Inc. Lawrence prepared a brochure that describes the company's newest product. The brochure is a work made for hire, because Jeffries prepared this work within the scope of his employment. Freemont Enterprises, Inc. should be named as the author of the work and the work made for hire box should be checked "yes." Although there is no need to provide Lawrence's name, the application will be accepted if it identifies the author as "Freemont Enterprises, Inc. employer of Lawrence Jeffries."

614.2(B)(4) Volunteer Created Work Made for Hire

A work created by an individual volunteer(s) may or may not be considered a work made for hire, depending on the facts and circumstances of the case. If the application names an organization or company as the author, and if the work made for hire question has been answered "yes," the U.S. Copyright Office will not communicate with the applicant if it appears that the work was created by a volunteer.

Example:

- An application names Faith Church as the author of a sound recording and the work made for hire box is checked "yes." In the Note to Copyright Office field, the applicant states that the recording was created by the members of the church choir. The registration specialist will register the claim without communicating with the applicant.

614.2(B)(5) Organization Named as the Author of a Work Made for Hire

If a legal entity, such as a corporation, limited liability company, limited partnership, limited liability partnership, foundation, university, or trust is named as the author of the work, the registration specialist will assume that the work is a work made for hire. This is due to the fact that an organization may be named as an author only if the work was created by the employees of that organization or if the organization specially

ordered or commissioned the work as a work made for hire. In this situation the box marked "Is this author's contribution a work made for hire?" should be checked "yes." The application will be questioned if the box is checked "no."

Examples: Application acceptable

- An online application names Legal Beagle Publishing, Inc. as author of "revisions and additional text." The work made for hire question is answered "yes." The application will be accepted.

- A paper application names The University of Perth-Amboy as author. The work made for hire question should be checked "yes," but this portion of the application has been left blank. The registration specialist will register the claim on the assumption that the work was created for the University as a work made for hire.

- An application is submitted for a teleplay. The deposit copy identifies Maryam Zamindar as the author of the work, but the application names Maryam LLC as the author and claimant. The work made for hire field has been checked "yes," and Maryam certifies the application as an authorized representative of Maryam LLC. The registration specialist will register the claim on the assumption that Maryam is an employee of Maryam LLC.

Examples: Application questioned

- The application names the author as First Baptist Church and the work made for hire question is answered "no." The registration specialist will communicate with the applicant.

- The application names the author as Art Corp. and the work made for hire question is answered "no." The registration specialist will communicate with the applicant. Likewise, the application would be questioned if the work made for hire question is answered "no" and the application identified the author as Art Inc., Art LLC, Art LLP, Art S.A., Art plc, Art A.G., Art GmbH, or the like.

614.2(B)(6) Individual Named as Author of a Work Made for Hire

When an applicant names an individual as the author (rather than a legal entity) and answers the work made for hire question "yes," the registration specialist may communicate with the applicant if it appears unlikely that the work is a work made for hire, based on the Office's experience or based on the information set forth in the deposit copy(ies) or elsewhere in the registration materials.

If the information in the registration materials suggests that the individual is the employer of another person, the specialist will assume that the work was created by the individual's employee(s) while acting within the scope of their employment. If it appears that the individual may have commissioned the work, the specialist will assume that the work was specially ordered or commissioned by that individual, provided that the work falls within one or more of the nine categories of works listed in the statutory definition of works made for hire.

Examples: Application acceptable

- An application for a travel book containing text and illustrations names Roland Fingers as the author of the "text" and the work made for hire question is not answered. The application also names Roland as author of "illustrations" with the work made for hire question answered "yes." Roland Fingers is listed in the deposit copy as the author of the text, but Jason Foote is named as the author of the illustrations. The registration specialist will register the claim without communicating with the applicant. The illustrations are considered a supplementary work, which is one of the nine categories of works that may be specially ordered or commissioned. Therefore, the specialist will assume that Roland and Jason signed a written agreement specifically stating that Jason would create the illustrations for Roland as a work made for hire.

- An application is submitted along with a published compact disc. The applicant names the performing artist Tammy Conklin as the author of the sound recordings that appear on the CD. The applicant also names Tammy as the author of the photograph that appears on the cover with the work made for hire box checked "yes." The photograph appears to be a photo of the performing artist, and a statement on the CD identifies Donald Blake as the author of the photograph. The photograph could be considered a supplementary work, which is one of the nine categories of works that may be specially ordered or commissioned. Therefore, the registration specialist will assume that Tammy and Donald signed a written agreement specifically stating that Donald would take the photograph as a work made for hire. The registration specialist will register the claim with an annotation, such as "Basis for registration: Unit of publication containing collective work and other component elements."

- An application for a documentary names Tim Berger as the sole author of the work. The work made for hire question is answered "yes." The credits at the end of the documentary name Tim as the sole producer and director of the work, along with other individuals who apparently contributed camerawork, writing, animation, and other forms of authorship. The registration specialist will register the claim without

communicating with the applicant. Because a work created as part of a motion picture is one of the nine categories of works that may be specially ordered or commissioned, the specialist will assume that Tim signed a written agreement with the other individuals specifying that their contributions would be considered a work made for hire.

Examples: Application questioned

- Elsa Frankfurter is named as the author of an architectural work with the work made for hire box checked "yes." The deposit copy contains a copyright notice stating "© 2011 Achtung GmbH." Because a corporation is named in the copyright notice and the work made for hire box is checked "yes," the registration specialist may ask the applicant if Elsa created this work as an employee of Achtung GmbH. If so, the specialist will ask for permission to remove Elsa's name from the application and to add the corporation's name as the author and claimant.

- An application is submitted for a comic book. Josh Willoughby is named as the sole author of the work and the work made for hire box is checked "yes." The copy names Josh as the author of the "text" and Harley Quince as the author of the "illustrations." The registration specialist will communicate with the applicant. It appears that Josh hired Harley to create the illustrations pursuant to a work made for hire agreement, and that Josh is the sole author of the text. If that is the case, Josh should be named on the application as both the author of the text (work made for hire answered "no") and the author of the illustrations (work made for hire answered "yes").

For more information on works made for hire see Chapter 500, Section 506.1.

614.2(B)(7) Individual and Incorporated Organization Named Together as the Authors of a Work Made for Hire

If an individual and an incorporated entity (*e.g.*, a corporation, a professional corporation, a limited liability company, etc.) are named together as the authors of the work, the registration specialist will conclude that the organization is a separate legal entity, rather than an assumed name or trade name for the individual (regardless of how the work made for hire question is answered).

As a general rule, the specialist will communicate with the applicant when both an individual and an incorporated entity are named together in the Name of Author field/space, because the identity of the author is unclear. Likewise, the specialist generally will communicate if the application indicates that an individual is "doing business as" or "trading as" a corporation. Ordinarily, the specialist will not communicate if it is clear from the registration materials as a whole that the incorporated entity is the author and that the relationship between the individual and the entity is merely descriptive.

Example: Application acceptable

- An application names the author as "Faux-Mink, Inc., employer for hire of Abner Hess." The work made for hire question is not answered. The registration specialist may register the claim without communicating with the applicant. The work appears to be a work made for hire, Faux-Mink, Inc. appears to be the author, and the reference to Abner Hess is merely descriptive.

Examples: Application questioned

- An application for a computer program names "Han Sung (dba GoferBroke, LLC)" as the author. The work made for hire box is not checked. The deposit copy contains redacted source code and the Note to Copyright Office states that the code contains trade secrets belonging to GoferBroke LLC. The registration specialist will communicate with the applicant to determine whether Han Sung prepared this work for GoferBroke as a work made for hire. If so, GoferBroke should be listed as the author of the work and the work made for hire box should be checked "yes."

- Aristide Micheals submits an application for a webinar. The application names "Aristide of HTCommunication LLP" as the author and the certification indicates that Aristide is the president of this company. The videos contain a copyright notice in the name of HTCommunications LLP. The registration specialist will ask Aristide to clarify whether he prepared these works for HTCommunications as a work made for hire. If so, the company should be listed as the author of the work and the work made for hire box should be checked "yes."

- An application names the author as "Richard Smith/Smith Publishing Company, Inc.," and the work made for hire question has not been answered. The registration specialist will communicate with the applicant to clarify whether the work is a work made for hire and whether the author is Richard Smith or Smith Publishing Company, Inc.

614.2(B)(8) Individual and Unincorporated Organization Named Together as the Authors of a Work Made for Hire

In some cases, an individual author uses an unincorporated organization to conduct his or her business (*e.g.*, "Jackson Charles doing business as Charles Photography," "Sophia Tomasco d/b/a Tomasco Studios," "Lucas Fleming trading as Fleming Designs"). In such cases, the Office considers the individual and the organization to be the same legal entity. If the individual author created the work on behalf of his or her own unincorporated organization, the individual should be named as the author of the work and the work made for hire box should be checked "no."

Example:

- Pamela Bethel is a songwriter who does business under the name "Patti Bell Music." She submits an application naming Pamela Bethel as the author of "music" and she responds to the work made for hire question by checking the box marked "no." The registration specialist will register the claim.

As a general rule, the name of the author's d.b.a. should not be provided in the Name of Author field/space. If the applicant wishes to include this information in the registration record, the d.b.a. should be provided in the Note to Copyright Office field. The registration specialist will add the name of the author's d.b.a. to the certificate of registration and the online public record. In addition, the d.b.a. may be added as an index term if it is likely that users may use that term to search for the author's works.

Example:

- Iskandar Hussain submits an application for a documentary. Iskandar names himself as the author with the work made for hire question answered "no." In the Note to Copyright Office field he states: "Iskandar Hussain, d/b/a I Can Do It Productions." Iskandar appears to be the author and the organization named in the Note to Copyright Office field appears to be his unincorporated business. The registration specialist will add the name "I Can Do It Productions" to the registration record along with an annotation, such as: "Regarding author information: dba added from Note to Copyright Office."

If an individual and an unincorporated organization are named together in the Name of Author field, the registration specialist may communicate with the applicant unless the application clearly states that the individual is "doing business as" (dba) or "trading as" the organization or that the unincorporated organization is "solely owned by" the individual.

Examples:

- An application is submitted for a video with "Arvo Robinson d.b.a. ActiviTEE" named as the author of this work and the work made for hire box checked "no." The name that appears in the copyright notice is "ActiviTEE Films." The registration specialist may register the claim, although the name of the d.b.a. should have been provided in the Note to Copyright Office field rather than the Name of Author field.

- An application names "Associated Designs (Virginia McDonald)" as the author of a fabric design. The work made for hire question is answered "yes." A statement on the deposit copy reads "All designs created by Virginia McDonald." The

registration specialist may communicate with the applicant, because it is unclear whether the author is Virginia McDonald or Associated Designs.

615 Anonymous and Pseudonymous Works

615.1 Anonymous Works

615.1(A) What Is an Anonymous Work?

A work is considered an anonymous work if "no natural person is identified as author" on the copies or phonorecords of the work. 17 U.S.C. § 101. If the author's name appears on the copies or phonorecords, the work is not an anonymous work, even if the author does not wish to reveal his or her identity in the registration record. In such cases, the applicant should provide the author's real name in the application and the Anonymous box should not be checked. Likewise, a work does not qualify as an anonymous work based solely on the fact that the applicant cannot identify the person or persons who created the work.

The statute implies that anonymous works are limited to works created by natural persons. *Compare id.* (defining an "anonymous work" as "a work on the copies or phonorecords of which no natural person is identified as author") *with* 17 U.S.C. § 302(c) (indicating that the term for an anonymous work may be based on the life of the author if his or her identity is revealed before the copyright expires). Therefore, the applicant should check the Anonymous box only if the author is a human being. If the author is a corporation, limited liability company, partnership, or other legal entity, the author's full name should be provided in the Name of Author field/space. If the applicant checks the Anonymous box or asserts that the author wishes to remain anonymous, the application may be questioned if the author appears to be a legal entity.

615.1(B) Completing the Application: Anonymous Works

Applicants are encouraged to provide the author's name in the application, even if the author's name does not appear on the copies or phonorecords of the work. Providing the author's name creates a clear record of authorship and ownership of the copyright, and it may extend or reduce the term of the copyright, depending on the circumstances. Ordinarily, the copyright for an anonymous work endures for a term of 95 years from the year of publication or 120 years from the year of creation, whichever expires first. 17 U.S.C. § 302(c). If the author's identity is revealed in the registration record, the copyright will endure until 70 years after the author's death. *Id.; see also* H.R. REP. NO. 94-1476, at 137 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5753.

If the applicant provides the author's name in the application, the registration specialist will assume that the applicant intended to reveal the author's identity. Generally, the specialist will not ask the applicant to check the box marked "Anonymous," even if the work satisfies the statutory definition for an anonymous work.

If the author's name does not appear on the copies or phonorecords of the work, the applicant is not required to provide the author's name in the application. Instead, the

applicant may leave the Name of the Author field/space blank and check the box marked "Anonymous." (If the applicant fails to provide the author's name and fails to check the Anonymous box in an online application, the application will not be accepted by the electronic registration system.)

If the applicant does not provide the author's name, the applicant should identify the year that the work was created, and if the work has been published, the applicant should provide the date of publication. In addition, the applicant should provide the author's nation of citizenship and/or nation of domicile, even if the author's name has not been disclosed. The Office may use this information to determine if the work is eligible for copyright protection in the United States. If the applicant fails to provide this information, the application may be questioned.

The statute states that the application shall include "the name . . . of the copyright claimant." 17 U.S.C. §§ 409(1), (3). But Congress also intended to give authors the ability to register their works anonymously. Allowing applicants to state "anonymous" in one part of the application, while requiring them to disclose the author's real name in the other, would undermine that objective and discourage anonymous authors from registering their works with the Office.

As described in Section 615.3 below, the information provided on the application becomes part of the public record. Therefore, if the work satisfies the statutory definition of an anonymous work, and if the author does not wish to disclose his or her real name anywhere in the application, the applicant may state "Anonymous" in the fields/spaces marked Name of Author, Name of Claimant, Rights and Permissions, Correspondent, and Certification, instead of providing the author's real name.

Example:

- Joseph Cline is the author of a literary work titled *Prime Color*. Cline's name did not appear on the first edition of the work. Instead, the first edition stated that the work was written "By Anonymous." The U.S. Copyright Office will register the first edition as an anonymous work if the applicant identifies the author as "Anonymous" and/or checks the Anonymous box. In the alternative, the Office would accept an application that names Joseph Cline as the author (regardless of whether the Anonymous box has or has not been checked).

615.2 Pseudonymous Works

615.2(A) What Is a Pseudonymous Work?

A work is considered a pseudonymous work if "the author is identified under a fictitious name" on the copies or phonorecords of the work. 17 U.S.C. § 101.

The statute implies that pseudonymous works are limited to works created by an individual. *Compare id.* (definition of "pseudonymous work") *with* 17 U.S.C. § 302(c) (indicating that the term for a pseudonymous work may be based on the life of the

author if his or her identity is revealed before the copyright expires). Therefore, the applicant should check the Pseudonymous box only if the author is a human being. If the author is a corporation, limited liability company, partnership, or other legal entity, the author's full name should be provided in the Name of Author field/space. If the applicant checks the Pseudonymous box, the application may be questioned if the author appears to be a legal entity.

A pseudonym must be a name. The U.S. Copyright Office will not accept a number or symbol as a pseudonym.

The name of a performing group is not a pseudonym and should not be provided in the Name of Author field/space. Instead, applicants should provide the names of the individuals who created or performed the work described in the application, even if the copies or phonorecords of the work indicate that the work was created or performed by a performing group as a whole. Providing the names of the individual members of the performing group creates a clear record of authorship, given that the members of the performing group may change over time. For additional information concerning this issue, see Chapter 800, Section 802.8(D) and 803.8(C).

Similarly, the name of the author's d.b.a. ("doing business as") designation is not a pseudonym and should not be provided in the Name of Author field/space.

If the applicant would like to include the name of a performing group or the name of the author's d.b.a. in the registration record, that name should be provided in the Note to Copyright Office field or in a cover letter. The registration specialist will add the name of the author's performing group to the record as an index term. The specialist will include the name of the author's d.b.a. on the certificate of registration and the online public record, and will add that name as an index term if it is likely that members of the public may use the d.b.a. to search for the author's works.

Example:

- An application is submitted to register a musical work. The authors are named on the application as Jerobi Manor, Brett Chargon, and Alaina Kraft. The pseudonymous box has not been checked. In the Note to Copyright Office field the applicant states: "Jerobi, Brett, and Alaina are members of the performing group "Three Times the Charm." The registration specialist will add the name "Three Times the Charm" to the record as an index term.

615.2(B) Completing the Application: Pseudonymous Works

If the author's real name appears anywhere on the copies or phonorecords (including the copyright notice), the work is not a pseudonymous work, even if the author does not wish to reveal his or her identity in the registration record and even if the author is generally known by his or her pseudonym. 17 U.S.C. § 101 (definition of "pseudonymous work"). In this case, the applicant should provide the author's real name in the application and the Pseudonymous box should not be checked. Likewise, a work does

not qualify as a pseudonymous work based solely on the fact that the applicant cannot identify the person or persons who created the work.

Applicants are encouraged to provide the author's real name in the application, even if the author's name does not appear on the copies or phonorecords of the work. In the alternative, the applicant may provide the author's full name and the author's pseudonym, provided that the application clearly indicates which is the real name and which is the pseudonym (*e.g.,* "Samuel Clemens, whose pseudonym is Mark Twain").

Providing the author's real name creates a clear record of authorship and ownership of the copyright, and it may extend or reduce the term of the copyright, depending on the circumstances. Ordinarily, the copyright for pseudonymous work endures for a term of 95 years from the year of publication or 120 years from the year of creation, whichever expires first. 17 U.S.C. § 302(c). However, if the author of the work is a natural person and if the identity of the author is revealed in the registration record, the copyright will endure until 70 years after the author's death. *Id.*; *see also*, H.R. REP. NO. 94-1476, at 137 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5753.

If the applicant provides the author's real name in the application (even though it does not appear anywhere on the deposit copy(ies)), the registration specialist will assume that the applicant intended to reveal the author's identity. In this situation, the specialist will not ask the applicant to check the box marked "Pseudonymous," even if the work satisfies the statutory definition for a pseudonymous work.

If a fictitious name appears on the copies or phonorecords of the work, the applicant is not required to provide the author's real name in the application. Instead, the applicant may provide the author's pseudonym in the field marked Pseudonym (in the case of an online application) or in the Name of the Author field/space (in the case of an online or paper application). In such cases, the applicant should check the box marked "Pseudonymous" to indicate that the applicant intends to register a pseudonymous work. (If the applicant fails to complete the Pseudonym field, and fails to check the Pseudonymous box in an online application, the application will not be accepted by the electronic registration system.)

Although the statute states that the application shall include "the name . . . of the copyright claimant," Congress clearly intended to give authors the ability to register their works under an assumed name. 17 U.S.C. §§ 409(1), (3). Allowing applicants to provide a fictitious name in one part of the application, while requiring them to disclose the author's real name in the other, would undermine that objective and discourage pseudonymous authors from registering their works with the Office.

As described in Section 615.3 below, the information provided on the application will become part of the public record. Therefore, if the work satisfies the statutory definition of a pseudonymous work, and if the author does not wish to disclose his or her real name, the applicant may provide the author's pseudonym in the fields/spaces marked Name of Author, Name of Claimant, Rights and Permissions, Correspondent, and/or Certification, instead of providing the author's real name.

Examples:

- Steven Kingsley is the author of a literary work titled *Running Woman*, which was published by New American Library. Kingsley's name did not appear on this edition of the work. Instead, the author was identified as "Rick Buchman." The applicant names Rick Buchman as the author and claimant, and checks the Pseudonymous box. The Office will register the work as a pseudonymous work. In the alternative, the Office would accept an application that named the author as "Steven Kingsley, whose pseudonym is Rick Buchman" (regardless of whether the Pseudonymous box has or has not been checked).

- An application is submitted for a poster containing artwork and text. The applicant named "Deacon of Chocolate City" as the author of the work and checked the Pseudonymous box. Dennis Rickman is named as the copyright claimant. Because the applicant did not provide a transfer statement, the registration specialist will assume that Dennis Rickman is the author of this work, that he created this work under his pseudonym, and that the applicant intended to reveal the author's identity in the registration record.

615.2(C) Name of the Author Omitted

As a general rule, if the applicant checks the Pseudonymous box but fails to provide the author's pseudonym or the author's real name in the Name of Author field/space, the registration specialist will communicate with the applicant. In the alternative, the specialist may add the name that appears on the deposit copy(ies) if that name is clearly identified as the author's pseudonym.

615.3 Privacy Concerns

Because registration records are open to the public, an applicant should not disclose the author's real name or address in an application for an anonymous or pseudonymous work if the author does not wish to make that information public. If the applicant discloses the author's identity or the author's address on the application, that information will appear on the certificate of registration. In addition, this information will appear in the online public record for the work, which may be accessed by anyone who searches for the work on the Office's website.

Once a certificate of registration has been issued, the Office cannot remove the author's name from the registration record or replace it with a pseudonym. The author, claimant, or their respective representatives may submit a written request to the Office to substitute the author's current legal name for the name shown in the online public record (but not the offline public record). To do so, the requesting party must submit an affidavit together with a court order granting the legal name change, and must pay the appropriate fee for this service. For more information on this procedure, see Chapter 1800, Section 1805.

For a general discussion of privacy issues, see Chapter 200, Section 205.

616 Year of Author's Birth and Death

616.1 The Author's Year of Birth

When completing an application to register a work with the U.S. Copyright Office, the applicant will be asked to identify the year that the author was born. This information may be useful in identifying the author of the work. Providing the author's year of birth is optional and an application will be accepted even if this portion of the application is left blank.

If the applicant provides the author's year of birth, the registration specialist will not question that date unless it is obviously wrong (*e.g.*, the date of birth provided is the current year).

616.1(A) Year of Birth Not Required for Works Made for Hire

As discussed in Section 614.1(D), the author's year of birth should not be provided if the work was created as a work made for hire.

616.1(B) Privacy Concerns

Because registration records are open to the public, an applicant should not disclose the author's year of birth on the application if the author does not wish to make that information public. If the applicant discloses the author's date of birth on the application, the year of birth will appear on the certificate of registration, which will be made available to the public upon request. In addition, the author's year of birth will appear in the online public record for the work, which may be accessed by anyone who searches for the work on the Office's website.

For a general discussion of privacy issues, see Chapter 200, Section 205.

616.2 The Author's Year of Death

When completing an application to register a work with the U.S. Copyright Office, the applicant will be asked if the author of the work is deceased. The applicant should provide a year of death if the work was created by a natural person who is deceased as of the date that the application is filed. If the work was created by two or more authors, the applicant should provide a year of death for each individual who is deceased. 17 U.S.C. § 409(2). The author's year of death is required because the term of copyright for certain unpublished works created before 1978 and for all works created after 1978 is based on the year that the author died (unless the work is a work made for hire, an anonymous work, or a pseudonymous work). 17 U.S.C. §§ 302(a), (b); 303(a).

As a general rule, the registration specialist will not question a year of death unless it is obviously wrong (*e.g.*, a year of death occurring before the year that the work was created).

If the applicant fails to provide a year of death in the application and if the information in the deposit copy(ies) or elsewhere in the registration materials indicate that the author may be deceased, the registration specialist may communicate with the applicant if that information could be used to determine the term of copyright.

Examples:

- An application is submitted for a photograph. Jane Freeman is named as the author and The Estate of Jane Freeman is named as the copyright claimant. Because the author appears to be deceased, the registration specialist will ask the applicant to provide the author's year of death.

- An application for an autobiography titled *Out of Australia* names Georgette Firth as the author and states that the work was published in 2013. A statement on the deposit copies indicates that the author died in 2009. The registration specialist may communicate with the applicant to request the author's year of death.

- An application is submitted for a book of cartoons featuring Charlie Brown, Snoopy, and other characters from the "Peanuts" comic strip. The application names Charles Schulz as the author of the work and states that the work was published in 2013. The registration specialist is aware that Mr. Schulz is deceased. Therefore, he or she will communicate with the applicant to request the author's year of death.

Applicants are strongly encouraged to provide the author's year of death if the work was created by a human being and if the work is being registered as an anonymous or pseudonymous work. The Office will accept an application if the applicant fails to provide this information, because the term of copyright for an anonymous or pseudonymous work may be calculated based on the year the work was created or the year the work was published. 17 U.S.C. § 302(c). Providing the author's year of death is useful, because if the author's real name is revealed in records maintained by the Office, the term of copyright will be calculated based on the year of the author's death, rather than the year of creation or publication. *Id.; see also*, H.R. REP. NO. 94-1476, at 137 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5753.

By contrast, the applicant should not provide the author's year of death if the work is being registered as a work made for hire. The year of death is not required in this situation, because the term of copyright for a work made for hire is based on the year the work was created or the year the work was published.

For a definition and discussion of anonymous works and pseudonymous works, see Sections 615.1 and 615.2. For a definition and discussion of works made for hire, see Chapter 500, Section 506.

616.3 Completing the Application: Author's Year of Birth and Death

If the applicant chooses to provide the author's year of birth in an online application, the applicant should provide only the author's birth year. The online system will not accept an entry that contains the month, day, and year that the author was born. Likewise, if the author is deceased, the applicant should list only the year the author died, rather than the month, day, and year of the author's death.

If the applicant chooses to provide the author's year of birth in a paper application, the applicant should enter only the author's birth year in the space marked Year Born. If the applicant gives the month, day, and year of birth, the certificate of registration and online record will reflect only the year of birth. If the author is deceased, the applicant should list only the author's year of death in the space marked Year Died. If the applicant gives the month, day, and year of death, the certificate of registration and online record will reflect only the year of death.

If the applicant cannot determine the exact year of birth and/or death, the applicant may provide a good faith estimate qualified by the phrase "on or about," "approximately," or the like. When completing an online application, this statement may be provided in the Note to Copyright Office field. In a paper application this statement may be provided on the application itself or in a cover letter. In both cases, the registration specialist will add an annotation to the registration record, such as: "Regarding author information: Applicant states author's year of birth is 'approximately 1952.'"

617 Citizenship and Domicile of the Author

617.1 What Is the Author's Citizenship and Domicile?

The application should identify the citizenship and/or domicile of the author, regardless of whether the work described in the application is an anonymous work or a pseudonymous work, or whether the work was created by a natural person or a corporation, a limited liability company, a limited partnership, or a similar legal entity. 17 U.S.C. § 409(2), (3). This information may be used to determine whether the work is eligible for copyright protection under U.S. copyright law.

Unpublished works are eligible for copyright protection in the United States, but published works may not be eligible if they are first published in, or by authors of, countries that have not entered into a copyright treaty with the United States. 17 U.S.C. § 104(a), (b). For information concerning these eligibility requirements, see Chapter 2000, Section 2003.

The terms "citizenship" and "nationality" mean the same thing. Specifically, they mean that the author is a citizen of a particular country, or that the author owes permanent allegiance to a particular country, even though he or she is not a citizen of that nation.

The author's domicile is the country where the author has a fixed and permanent residence, where the author intends to maintain his or her residence for an unlimited time, and whenever absent, where the author intends to return. Mere residence is not the equivalent of domicile and does not provide a basis for establishing eligibility.

617.2 Determining the Author's Citizenship or Domicile for a Published Work

If the work has been published, the applicant should provide the author's citizenship and domicile as of the date that the work was first published. The fact that the author's citizenship and/or domicile may have changed after the work was first published is irrelevant. For example, if the author was a Tunisian citizen when the work was first published and subsequently became a French citizen, the applicant should identify the author's country of citizenship as "Tunisia" rather than "France."

617.3 Determining the Author's Citizenship or Domicile for a Work Made for Hire

If the work is a work made for hire the applicant should indicate the citizenship and/or domicile of the employer or the person or entity that ordered or commissioned the work. For example, if the work was created by an employee acting within the scope of his or her employment and the employer is a legal entity, the applicant should identify the nation in which the employer entity is domiciled (rather than the employee's country of citizenship or domicile). If the work was specially ordered or commissioned as a work made for hire, the applicant should provide citizenship or domicile information for the party that ordered or commissioned the work (rather than the individual who actually created the work).

For questions regarding nationality of a legal entity, see Chapter 2000, Section 2005.5. For a definition and discussion of works made for hire, see Chapter 500, Section 506.

617.4 Determining the Author's Citizenship or Domicile for Anonymous and Pseudonymous Works

The applicant should provide the author's citizenship or domicile, even if the author's real name is not provided in the application and does not appear on copies or phonorecords of the work.

If the applicant fails to provide this information in an online application, the application will not be accepted by the electronic registration system. If the applicant fails to provide this information on a paper application, the application will be questioned if there is no other basis for establishing that the work is eligible for copyright protection under U.S. copyright law.

For a discussion of anonymous and pseudonymous works, see Sections 615.1 and 615.2.

617.5 Determining the Author's Citizenship or Domicile for Compilations and Derivative Works

If the work described in the application is a derivative work, the applicant should provide the citizenship and/or domicile of the author or authors who created the new material and/or revised material that appears in the derivative work. If the work described in the application is a compilation, the applicant should list the citizenship and/or domicile of the author or authors who selected, coordinated, and/or arranged the preexisting material or data that appears in the compilation.

As a general rule, the applicant need not provide citizenship or domicile information for the author or authors who created any preexisting material or data that may appear in a derivative work or a compilation.

For a general discussion of derivative works and compilations, see Chapter 500, Sections 507 and 508.

617.6 Completing the Application: Citizenship and Domicile

When completing the Authors screen in the online application the applicant should identify the nation of citizenship and domicile for each author named in the application. Specifically, the applicant should select one of the countries listed in the drop down menu under the headings Citizenship and Domicile. If the applicant fails to complete this portion of the application, the application will not be accepted by the electronic registration system.

When completing a paper application, the citizenship and domicile for each author named in the application should be entered in space 2 in the spaces marked "Citizen of _____" and "Domiciled in _____."

If the author is a citizen of or domiciled in more than one country, the applicant may provide the name of each country where the author is a citizen or is domiciled. In the case of an online application, the applicant may provide the name of one country on the Author screen and the names of the other countries may be provided in the Note to Copyright Office field. In the case of a paper application, the name of each country may be provided on the application itself, on a continuation sheet, or in a cover letter. In the alternative, the applicant may provide the name of any country that establishes that the work is eligible for copyright protection under U.S. copyright law.

If the author is a stateless person, the applicant may select "no place" from the drop down menu in the online application or state "no place" or "stateless" in the paper application.

If the citizenship and domicile for the author is unknown, the applicant may select "not known" from the drop down menu in the online application. When completing a paper application, the applicant may leave this portion of the application blank or may state "not known."

617.7 Examination Guidelines: Citizenship and Domicile

This Section discusses the U.S. Copyright Office's practices and procedures for examining the Citizenship and Domicile field/space in an online application or a paper application.

617.7(A) Citizenship and Domicile Unclear

As a general rule, the registration specialist will accept a statement concerning the author's citizenship or domicile, unless it is clearly inconsistent with the facts set forth in the registration materials or other information known to the U.S. Copyright Office.

Examples:

- The application states that the author John Germaine is a U.S. citizen and that the work has been published, but fails to provide a nation of first publication. In the Note to Copyright Office field the applicant explains that the author has applied for citizenship, but has not been naturalized. The registration specialist will communicate with the applicant to determine if there is a basis for establishing that the work is eligible for copyright protection under U.S. law.

- An application for a work by a prominent European politician states that the author is domiciled in the United States. The application also states that the work has been published, but fails to identify the nation of first publication. Because the author does not appear to be domiciled in the United States, the registration specialist will communicate with the applicant to determine if there is a basis for establishing that the work is eligible for copyright protection under U.S. law.

If the applicant provides the name of a city, state, and country in the Citizenship or Domicile field/space, the registration specialist may include the name of the state and/or country but will remove the name of the city from the registration record.

If the applicant provides the name of a city, state, territory, or other political subdivision rather than the name of a country, the application will be accepted if the author's nation of citizenship or domicile is obvious or if there is another basis for establishing that the work is eligible for copyright protection under U.S. copyright law. For example, if the applicant states that the author is a citizen of "Puerto Rico" or "Scotland," the specialist will accept the application, although "United States" or the "United Kingdom" would be preferable.

617.7(B) Citizenship and Domicile in Multiple Countries

If the application indicates that the author is a citizen of or domiciled in multiple countries, the names of the additional countries may be added to the registration record with an annotation, such as: "Regarding citizenship/domicile: Application states Trinidad and the United States."

617.7(C) Stateless Persons

If the application states "no place" in the Citizenship or Domicile field/space, the registration specialist will register the claim without communicating with the applicant on the assumption that the author is a stateless person. 17 U.S.C. § 104(b)(1).

617.7(D) Citizenship and Domicile Unknown

If the applicant states that the author's citizenship or domicile is "not known" or fails to complete this portion of the application, the application may be accepted if that information is provided elsewhere in the registration materials or if the registration

specialist determines that the work is otherwise eligible for copyright protection under U.S. copyright law.

Examples:

- An application is submitted on Form PA for a musical work titled "Do You See What I See?" The application states that the work has been published in New Zealand, states that Beth McFarlane is the author of the work, and states that the author's citizenship and domicile is "not known." The registration specialist will register the claim without communicating with the applicant. Although the applicant failed to specify the author's nation of citizenship or domicile, the work is eligible for copyright protection under U.S. law because it was published in a country that has entered into a copyright treaty with the United States. 17 U.S.C. § 104(b)(2).

- An application is submitted on Form VA for an unpublished work titled "I See You." The application names Stu Millbrook as the author and claimant, but no information is given for the author's domicile and citizenship. The registration specialist will register the claim without communicating with the applicant. Although the applicant failed to specify the author's citizenship or domicile, the work is eligible for copyright protection under U.S. law because the work is unpublished. 17 U.S.C. § 104(a).

If there appears to be no basis for establishing eligibility, the specialist will communicate with the applicant. If the applicant is unable to identify the author's citizenship and domicile, registration may be refused if that is the only basis for establishing that the work is eligible for copyright protection under U.S. law.

Examples:

- The applicant fails to identify the author's citizenship or domicile, but states that the work was first published in Afghanistan. The registration specialist will communicate with the applicant, because a work first published in that country may be ineligible for copyright protection in the United States.

- The application states that the author's citizenship and domicile and the nation of first publication are "not known." The registration specialist will communicate with the applicant, because it is unclear whether the work is eligible for copyright protection in the United States based on the information provided.

618 Author Created / Nature of Authorship

This Section discusses the procedure for asserting a claim to copyright in a work of authorship.

618.1 Asserting a Claim to Copyright

To register a work of authorship the applicant must file an application that clearly identifies the copyrightable authorship that the applicant intends to register, and the applicant must assert a claim to copyright in that authorship. The information provided in the application defines the claim that is being registered, rather than the information provided in the deposit copy(ies) or elsewhere in the registration materials.

When completing an online application, the applicant should identify the copyrightable authorship that the applicant intends to register on the Authors screen in the field marked Author Created. When completing a paper application, the applicant should provide this information on space 2 of the application under the heading Nature of Authorship. For guidance on completing this portion of the application, see Section 618.4.

The U.S. Copyright Office registers claims to copyright in works of authorship. As a general rule, the Office will issue one registration for each work that is submitted for registration. The registration specialist may examine the individual elements or components of a work to determine if the work as a whole contains a sufficient amount of creative expression to warrant registration. However, the Office will not issue separate registrations for the constituent elements or components of a work of authorship. Likewise, the Office will not issue separate registrations to each author who contributed copyrightable expression to a work of authorship (except as contributions to a collective work or derivative works).

As a general rule, the specialist will register a claim to copyright if the claim is clearly supported by the information provided in the application and the deposit copy(ies), and if the other formal and legal requirements have been met. If the Author Created field or the Nature of Authorship space is completed incorrectly, the registration specialist may register the claim with an annotation if the specialist determines that the claim is clear from the registration materials as a whole. As a general rule, the registration specialist will communicate with the applicant if the claim is unclear and if the issue cannot be addressed with an annotation.

The information provided in the Author Created field or the Nature of Authorship space will appear on the certificate of registration in a space marked Author Created and in the online public record in the field marked Authorship (regardless of whether the applicant submits an online application or a paper application).

See Corrections and Amplifications of Copyright Registrations; Applications for Supplementary Registration, 63 Fed. Reg. 59,235 (Nov. 3, 1998) ("The Copyright Office follows the general policy of requiring all authors and copyright claimants to supply information, consistent with 17 U.S.C. § 409, concerning the authorship being claimed in the application for registration.").

618.2 Limiting the Claim to Copyright

A registration only covers the new material that the author contributed to the work. As explained in Section 621, a registration does not extend to any unclaimable material that may appear in the work, namely:

- Previously published material.
- Previously registered material (including material that has been submitted for registration but has not been registered yet).
- Material that is in the public domain.
- Copyrightable material that is owned by another party (*i.e.*, an individual or entity other than the copyright claimant).

If the work contains an appreciable amount of unclaimable material, the applicant must exclude that material from the claim and limit the application to the new copyrightable material that the author contributed to the work. When completing an online application the applicant should provide this information on the Limitation of Claim screen; when completing a paper application, the applicant should provide this information in spaces 5 and/or 6(a) and 6(b) of the application.

For a discussion of the U.S. Copyright Office's practices and procedures for limiting a claim to copyright, see Section 621.

618.3 The Relationship Between the Author Created / Limitation of Claim Fields in the Online Application and the Relationship Between Spaces 2, 5, 6(a), and 6(b) in the Paper Application

As a general rule, a claim to copyright is defined by the information provided in the Author Created field (in the case of an online application) or in the Nature of Authorship space (in the case of a paper application). Therefore, all of the copyrightable material that the applicant intends to register should be identified in these fields/spaces.

When an applicant excludes material from the claim and limits the application to the new copyrightable material that the author contributed to the work, the claim to copyright is defined by the information provided in the New Material Included field of the online application or the information provided in space 6(b) of the paper application as modified by the material excluded field/space. Therefore, all of the new copyrightable material that the applicant intends to register should be described in the New Material Included field or in space 6(b), as applicable.

618.4 Completing the Application: Author Created / Nature of Authorship

This Section provides guidance on completing the Author Created field in the online application and the Nature of Authorship space in the paper application. For guidance on completing an application to register a derivative work, a compilation, or a collective work, see Sections 618.5, 618.6, and 618.7. For guidance on completing an application to

register specific types of literary works, works of the performing arts, and visual art works, see Chapters 700, 800, and 900.

618.4(A) The Online Application: Author Created Field

When completing an online application, the applicant should identify the authorship that the applicant intends to register on the Authors screen by checking one or more of the boxes in the Author Created field that accurately describe the authorship that is owned by the copyright claimant.

The options for each type of work are listed below:

Literary Works
- Text
- Computer program
- Photograph(s)
- Artwork

Works of the Visual Arts
- Photograph
- 2-Dimensional artwork
- Jewelry design
- Sculpture
- Map
- Architectural Work
- Technical Drawing

Works of the Performing Arts
- Music
- Lyrics
- Other text (includes script, screenplay, dramatic work)
- Musical Arrangement

Sound Recordings
- Sound Recording

Motion Pictures and Audiovisual Works
- Entire motion picture
- Production
- Cinematography
- Direction
- Editing
- Script/Screenplay

Single Issue of a Serial Publication
- Collective work authorship
- Collective work authorship and component work(s) authored or fully owned by the Collective Work Author

For a definition and discussion of these terms, see Section 618.4(C). For representative examples that demonstrate how to complete the Author Created field, see Section 618.4(D).

As a general rule, the U.S. Copyright Office will accept any of these terms or any combination of these terms, provided that they accurately describe the copyrightable authorship being claimed. If the information provided in the Author Created field is contradicted by the information provided elsewhere in the registration materials, and if the issue cannot be addressed with an annotation, the registration specialist will communicate with the applicant.

The applicant should check the boxes that describe the authorship created by the author(s) named in the application that is owned by the individual(s) or entity(ies) who are named in the application as the copyright claimant(s). The applicant should not assert a claim in material created by authors who are not named in the application, material that is not owned by the copyright claimant, material that will not be submitted for registration, or material that does not appear in the work. Likewise, the applicant should not assert a claim in any material that is uncopyrightable or *de minimis*. For information concerning claims in uncopyrightable or *de minimis* material, see Sections 618.8(C) and 618.8(D).

Example:

- An application is submitted for a multimedia work that contains artwork, photographs, and a map. The copyright claimant owns the copyright in the artwork, but does not own copyright in the other material that appears in the work. In the Author Created field the applicant should check the box for "2-D artwork," but should not check the boxes for "photograph" or "map." Instead, the applicant should exclude that material from the claim using the procedure described in Section 621.8.

The applicant should check the boxes that identify the specific type of authorship that the applicant intends to register. For example, if the applicant intends to register a screenplay or a computer program, the applicant should check the boxes marked "script/screenplay" or "computer program," rather than the boxes marked "editing" or "text." Likewise, if the applicant intends to register an atlas or a necklace, the applicant should check the boxes marked "map" or "jewelry design," rather than the boxes marked "sculpture" or "2-D artwork."

If the terms provided in the checkboxes do not fully describe the copyrightable authorship that the applicant intends to register, the applicant should provide a more specific description in the "Other" field.

Examples:

- The applicant intends to register the introduction to a travel guide. The applicant may assert a claim to copyright in this authorship by checking the box marked "text" in the Author

Created field or by stating "text of introduction" in the Author Created / Other field.

- The applicant intends to register a short story which was published on pages 59–77 of an anthology. The applicant may assert a claim to copyright in this authorship by checking the box marked "text" in the Author Created field or by stating "text of story appearing on pages 59–77" in the Author Created / Other field.

- The applicant intends to register a fabric design. The applicant may assert a claim to copyright in this authorship by checking the box marked "2-D artwork" in the Author Created field or by stating "fabric design" in the Author Created / Other field.

- The applicant intends to register the artwork that appears on the surface of a handbag. The applicant may assert a claim to copyright in this authorship by checking the box marked "2-D artwork" in the Author Created field or by stating "artwork applied to handbag" in the Author Created / Other field.

- The applicant intends to register a collective work, including the text and some of the photographs that appear in the book. The applicant may assert a claim to copyright in this authorship by stating "collective work" in the Author/Created Other field and checking the boxes marked "text" and "photograph(s)."

- The applicant intends to register a comedy sketch. The applicant may assert a claim to copyright in this authorship by checking the box marked "script/screenplay" or by stating "comedy sketch" in the Author Created / Other field.

- The applicant intends to register a ballet. The applicant may assert a claim to copyright in this authorship by stating "choreographic work" in the Author Created / Other field.

Currently, the total amount of text that may be provided in the Author Created / Other field is limited to 100 characters. If more space is required, the applicant should provide the additional information in the Note to Copyright Office field.

618.4(B) Paper Applications: Nature of Authorship Space

When completing a paper application, the applicant should identify the authorship that is owned by the copyright claimant that the applicant intends to register. The applicant should not assert a claim in material that is not owned by the copyright claimant, material that was not created by the author(s) named in the application, material that will not be submitted for registration, or material that does not appear in the work. Likewise, the applicant should not assert a claim in any material that is uncopyrightable

or *de minimis*. For information concerning claims in uncopyrightable or *de minimis* material, see Sections 618.8(C) and 618.8(D).

When completing a paper application using Form VA, the applicant should check one or more of the boxes in space 2 that accurately describe the authorship that the applicant intends to register. When completing a paper application using Forms TX, PA, SR, or SE, the applicant should provide a brief statement that accurately describes the authorship that will be submitted for registration. This statement should be provided in space 2 of the application under the heading Nature of Authorship. If the applicant needs more space to provide a complete and accurate description of the claim, the applicant should complete and submit as many continuation sheets as necessary.

The U.S. Copyright Office may accept any of the terms listed below or any combination of those terms that are not redundant or duplicative (*e.g.,* "text" and "computer program" when support for each term is nonexistent), provided that they accurately describe the copyrightable authorship being claimed. In some cases, the Office may accept variant forms of these terms. If the statement provided in the Nature of Authorship space is contradicted by the information provided in the deposit copy(ies) or elsewhere in the registration materials, the registration specialist will communicate with the applicant.

For a definition and discussion of the following terms, see Section 618.4(C). For representative examples that demonstrate how to complete the Nature of Authorship space, see Section 618.4(D).

Literary Works / Form TX

- Text
- Photograph(s)
- Artwork
- Computer program

Works of the Visual Arts / Form VA. When completing a paper application using Form VA, the applicant should check one or more of the boxes in space 2 that accurately describe the authorship that the applicant intends to register. The options include:

- 2-dimensional artwork
- Photograph
- 3-dimensional sculpture
- Jewelry design
- Map
- Technical drawing
- Reproduction of work of art
- Text

Works of the Performing Arts / Form PA

- Music
- Lyrics
- Text
- Musical arrangement
- Choreographic work

- Pantomime

Sound Recordings / Form SR
- Sound recording

Motion Pictures or Audiovisual Works / Form PA
- Entire motion picture
- Production
- Cinematography
- Direction
- Script
- Screenplay
- Audiovisual material

Single Serial Issue (i.e., a single issue of a serial publication) / Form SE
- Collective work authorship
- Collective work authorship and component work(s) authored or fully owned by the Collective Work Author

618.4(C) Recommended Terminology for Asserting a Claim to Copyright

This Section provides a definition and discussion of the various terms that may be used to assert a claim to copyright in the Author Created field or the Nature of Authorship space.

- *Architectural work*. This term may be used to describe a work consisting of the design of a building, including the overall form as well as the arrangement and composition of spaces and elements in the design. By contrast, the blueprints or architectural plans for an architectural work should be described as a technical drawing. A technical drawing can be used to support either (i) an architectural work, or (ii) pictorial or graphic authorship in a technical drawing (*i.e.*, the design or plans themselves as distinct from the architectural work). For a discussion of the specific practices and procedures for registering technical drawings and architectural works, see Chapter 900, Sections 922 and926.

- *2-D artwork, 2-dimensional artwork*. This term may be used to describe the authorship in a pictorial or graphic work. For example, it may be used to describe two-dimensional artwork appearing in paintings, drawings, collages, stencils, patterns, posters, calendars, games, commercial prints, labels, logos, packaging, and greeting cards. It may be used to describe unanimated drawings and graphics that appear on a website or computer screen. (If the drawings or graphics are animated, the applicant should use the term audiovisual work to describe the work.) The term 2-D artwork may be used to describe two-dimensional drawings or artwork that create the illusion of three-dimensions through the use of shading and perspective. The term 2-D artwork also may be used to describe two-dimensional artwork that has been applied to a useful article, such as a car, chair, car, or plate, provided that the artwork is separable from the useful article. For a discussion of the practices and procedures for registering specific types of pictorial and graphic works, see Chapter 900, Sections 908 through 924. For a discussion of the practices and procedures for

registering separable artwork that has been incorporated into a useful article, see Chapter 900, Section 925.

- *Artwork.* This term may be used to describe the authorship in a pictorial or graphic work. Specifically, the term may be used to describe two-dimensional artwork, including illustrative matter, such as drawings or other pictorial representations. Likewise, this term may be used to describe a chart, table, or graph, provided that the work contains a sufficient amount of pictorial or graphic authorship.

- *Cinematography.* This term may be used to describe the authorship in a motion picture or other audiovisual work. Specifically, it may be used to describe the creative contribution to a joint work or a work made for hire of the individual or entity who composes the shots for a motion picture or other audiovisual work, operates the camera during filming or videotaping, and/or supervises any of the foregoing activities. For a discussion of the specific practices and procedures for registering motion pictures and other audiovisual works, see Chapter 800, Sections 807 and 808.

- *Compilation / Compilation of _____*. For a discussion of these terms and the specific practices and procedures for registering a compilation, see Section 618.6.

- *Computer program*. This term may be used to describe source code, object code, or other statements or instructions that are used in a computer to bring about a certain result, including both executable code and nonexecuting comments that may be included within the program. For a discussion of the specific practices and procedures for registering a computer program, see Chapter 700, Section 721.

- *Collective work.* For a discussion of this term and the procedures for registering a collective work, see Sections 618.7 and 618.7(A).

- *Contribution(s) to a collective work.* For a discussion of this term and the procedures for registering a contribution to a collective work, see Section 618.7(B).

- *Collective work authorship / Collective work authorship and component work(s) authored or fully owned by the Collective Work Author*. These terms appear in the application for registering a single issue of a serial publication. For a discussion of these terms and the procedure for registering this type of work, see Section 618.7(C).

- *Direction.* This term may be used to describe the authorship in a motion picture or audiovisual work. Specifically, the term direction may be used to describe the creative contribution of the individual or entity that supervises and directs the entire cast and crew for a motion picture or an audiovisual work, including all technical and artistic aspects of the work. For a discussion of the specific practices and procedures for registering, dramatic works, audiovisual works, and motion pictures see Chapter 800, Sections 804, 807, and 808.

- *Editing.* The term editing may be used to describe the authorship in a motion picture or other audiovisual work. Specifically, it may be used to describe the creative

contribution to a joint work, a work made for hire, or a derivative work of the individual or entity who selects the takes and shots from a motion picture or other audiovisual work, and splices them into sequences to achieve continuity and a desired dramatic, comedic, and/or thematic effect. For a discussion of the specific practices and procedures for registering motion pictures and other audiovisual works, see Chapter 800, Section 807 and 808.

For information concerning editorial revisions in a literary work, see Chapter 700, Section 709.4. For editing involving a musical work, see Chapter 800, Section 802.6(I). For digital editing in photography, see Chapter 900, Section 909.3(A).

- *Entire motion picture.* This term may be used to describe the direction, production, editing, music, script, and cinematography in a motion picture. For a discussion of the specific practices and procedures for registering motion pictures, see Chapter 800, Section 808.

- *Jewelry design*. This term may be used to describe two-dimensional or three-dimensional designs that have been applied to rings, pendants, earrings, necklaces, and the like. For a discussion of the specific practices and procedures for registering jewelry designs, see Chapter 900, Section 908.

- *Lyrics*. This term may be used to describe the words in a song or other musical composition. For a discussion of the specific practices and procedures for registering lyrics, see Chapter 800, Section 802.9. If the lyrics have been combined with music written by another author, the work must be registered as a musical composition naming the composer and lyricist as joint authors of the work as a whole.

- *Map*. This term may be used to describe a cartographic representation of a geographic area, including atlases, marine charts, relief maps, and globes. For a discussion of the specific practices and procedures for registering maps, see Chapter 900, Section 919.

- *Music*. This term may be used to describe the melody, rhythm, and/or harmony of a musical composition. For a discussion of the specific practices and procedures for registering music, see Chapter 800, Section 802. If the music has been combined with lyrics written by another author, the work must be registered as a musical composition naming the composer and lyricist as joint authors of the work as a whole.

- *Musical arrangement*. This term may be used to describe new or revised harmony that has been added to a preexisting melody or song. In such cases, the work must be registered as a derivative work.

- *Musical composition*. This term may be used to describe the melody, rhythm, and/or harmony of a musical composition.

- *Photograph(s)*. This term may be used to describe photographic images, photographic illustrations, photographic prints, and photographic slides. It also may

be used to describe holograms. For a discussion of the specific practices and procedures for registering photographs, see Chapter 900, Section 909.

- *Production*. This term may be used to describe the authorship in a motion picture or other audiovisual work. A motion picture generally embodies the contributions of many persons whose efforts are brought together to make a cinematographic work of authorship. The term production may be used to describe the contribution of an individual or entity that plays a direct, creative role in planning, organizing, and controlling the various stages of the creation of a motion picture. For a discussion of the specific practices and procedures for registering motion pictures and other audiovisual works, see Chapter 800, Sections 807 and 808.

- *Reproduction of a work of art*. This term may be used to describe a copyrightable reproduction of a preexisting pictorial, graphic, or sculptural work of art that has been produced through lithography, photoengraving, etching, molding, sculpting, or other creative processes. A reproduction of a work of art is a derivative work, and as such, the applicant should exclude any preexisting material from the claim. For a discussion of the specific practices and procedures for registering a reproduction of a work of art, see Chapter 900, Section 917.

- *Script / screenplay*. These terms may be used to describe the authorship in a work of the performing arts. Specifically, they may be used to describe a written text that is used in the production or performance of a work that is presented on stage, screen, television, radio, the internet, or any other performance medium. As a general rule, these terms should not be used to describe a brief synopsis of a play, script, or screenplay or a treatment for a motion picture (*i.e.*, a written description of a motion picture that is typically created before the creation of the shooting script). Instead, the term "synopsis" or "treatment" should be used to describe these types of works.

- *Sculpture, 3-dimensional sculpture*. These terms may be used to describe the authorship in a work of fine art or any other three-dimensional sculptural work. The term "sculpture" or "soft sculpture" may be used to describe the authorship in toys, dolls, stuffed animals, and puppets.

  The term "sculpture" or "3-dimensional sculpture" may be used to describe three-dimensional artwork that has been incorporated into a useful article, provided that the sculpture can be separated from the useful article. For a discussion of the specific practices and procedures for registering a separable sculpture that has been applied to a useful article, see Chapter 900, Section 924.

- *Sound recording*. This term may be used to describe a series of sounds that have been recorded in a particular medium, such as a recording of musical sounds that have been captured in a compact disc or mp3 file. Specifically, the term sound recording may be used to describe the creative contribution of an individual who performed the sounds that are fixed in a particular recording. If more than one performance is fixed in the sound recording, the claim must be for joint authorship or a work made for hire. Likewise, the term sound recording may be used to describe the creative contribution of the producer or sound engineer who recorded the sounds. A sound recording is separate and distinct from any work that may be

embodied in the recording. For example, a song that is captured in a sound recording is a separate work from the recording of that song and a book that is captured in an audiobook is a separate work from the recording of that book. For a discussion of the specific practices and procedures for registering a sound recording, see Chapter 800, Section 803.

- *Technical drawing*. This term may be used to describe diagrams illustrating scientific or technical information in linear form, such as architectural blueprints or mechanical drawings. For a discussion of the specific practices and procedures for registering technical drawings, see Chapter 900, Section 922.

- *Text*. This term may be used to describe books, manuscripts, stories, poetry, or other nondramatic literary works. It may be used to describe textual material that accompanies a pictorial, graphic, or sculptural work, such as comic strips, greeting cards, maps, commercial prints or labels, or the rules for a game. It also may be used to describe a play, a script, a screenplay, or a treatment for a motion picture, an audiovisual work, or other works of the performing arts.

618.4(D) Examples for Completing the Author Created Field and the Nature of Authorship Space

This Section provides representative examples for completing the Author Created field in the online application, as well as the Nature of Authorship space in the paper application.

- Online application for a novella.
  Author Created: text.

- Online application for a travel book containing photographs and written descriptions of tourist attractions.
  Author Created: text, photograph(s).

- Online application for a slide presentation containing text and photographs.
  Author Created: text, photograph(s).
  Author Created/Other: Audiovisual material.

- Online application for a graphic novel.
  Author Created: 2-D artwork.
  Author Created/Other: Text.

- Online application for etched and raised design on the surface of a pocket knife.
  Author Created/Other: Etched and sculptural authorship applied to pocket knife.

- Online application for a blueprint that depicts the specifications for a new product.
  Author Created: Technical drawing.

- Online application for the design of a house.
  Author Created: Architectural work.

- Online application for a sound recording released on a CD containing liner notes, drawings, and photographs.
  Author Created: sound recording.
  Author Created/Other: text of liner notes, artwork, photographs (and possibly compilation of sound recordings).

- Online application for a musical.
  Author Created: music, lyrics.
  Author Created/Other: script.

- Online application for a multimedia kit containing text, illustrations, multiple sound recordings, and a video presentation.
  Author Created: sound recording.
  Author Created/Other: text, artwork, audiovisual material.

- Paper application for a treatment for a documentary.
  Nature of Authorship: treatment.

- Paper application for an educational workbook containing lessons, illustrations, and photographs.
  Nature of Authorship: text, artwork, and photographs.

- Paper application for a stuffed animal.
  Nature of Authorship: 3-dimensional sculpture.

618.5 Derivative Works

A derivative work "is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted." 17 U.S.C. § 101.

To register a claim to copyright in a derivative work the applicant should identify the new material that the author contributed to the work, as well as "any preexisting work or works that it is based on or incorporates." 17 U.S.C. § 409(9). By definition, a derivative work contains two types of authorship:

- The authorship in the preexisting work(s) that have been recast, transformed, or adapted within the derivative work; and

- The new authorship involved in recasting, transforming, or adapting the preexisting work(s).

When completing an online application, the applicant should identify the new authorship that the applicant intends to register on the Authors screen. Specifically, the

applicant should check one or more of the boxes that appear under the heading Author Created that accurately describe the new copyrightable material that will be submitted for registration. If none of these terms fully describe the new material that the applicant intends to register, the applicant should provide a more specific description in the field marked Other. For guidance on completing this portion of the application, see Section 618.4(A).

When completing a paper application, the applicant should provide this information in space 2 under the heading Nature of Authorship. For guidance on completing this portion of the application, see Section 618.4(B).

Derivative works often contain previously published material, previously registered material, public domain material, or material owned by a third party, because by definition, they are based upon one or more preexisting works. 17 U.S.C. § 101 (definition of "derivative work"). If a derivative work contains an appreciable amount of unclaimable material, the applicant should limit the claim to the new copyrightable material that the author contributed to the work using the procedure described in Section 621.8.

For representative examples that demonstrate how to complete the Author Created field and the Nature of Authorship space in an application to register a derivative work, see Section 621.8(E).

618.6 Compilations

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

A compilation may contain several distinct forms of authorship. There may be *selection* authorship involved in choosing the material or data that will be included in the compilation. There may be *coordination* authorship involved in classifying, categorizing, ordering, or grouping the material or data. In addition, there may be *arrangement* authorship involved in determining the placement or arrangement of the material or data within the compilation as a whole. A registration for a compilation may cover each type of authorship if that authorship is sufficiently creative, but it does not cover any preexisting material or data that appears within the compilation unless that material (i) is copyrightable, (ii) is owned by the copyright claimant, and (iii) is specifically claimed in the application. Likewise, it does not cover any preexisting material or data that has been previously published or previously registered, or any material that is in the public domain. 17 U.S.C. § 103(b).

To register a claim to copyright in a compilation the applicant should identify the new material that the author contributed to the work and should specify the preexisting material or data that was selected, coordinated, and/or arranged (*e.g.*, "selection and arrangement of data" or "compilation of sound recordings"). 17 U.S.C. § 409(9).

When completing an online application, the applicant should provide this information on the Authors screen in the field marked Other. Specifically, the applicant should

provide a brief statement that (i) identifies the preexisting material or data that appears in the compilation and (ii) specifies whether the author selected, coordinated, and/or arranged that material or data.

Currently, the total amount of text that may be provided in the Author Created / Other field is limited to 100 characters. If more space is required, the applicant should provide the additional information in the Note to Copyright Office field.

When completing a paper application, the applicant should provide a brief statement in space 2 under the heading Nature of Authorship that identifies the authorship that the applicant intends to register.

As a general rule, if the applicant states "compilation of _____" and specifies the preexisting material or data that appears in the work, the registration specialist may register the claim, provided that the selection, coordination, and/or arrangement authorship that the applicant intends to register is clearly evident from the deposit copy(ies).

Examples:

- Online application for a literary work containing a selection of thirty-five poems by William Butler Yeats written between 1896 and 1916 and coordinated based on theme, symbolism, and meter.

  Author Created/Other: Compilation of poems by W.B. Yeats.

- Online application for a sound recording containing a selection of fifty big band recordings produced in Chicago and coordinated based on performing group, featured artist, instruments, and recording medium.

  Author Created/Other: Compilation of big band sound recordings.

- Online application for a literary work containing a selection of 10,000 statistics from the 1995-2000 major league baseball seasons, coordination of statistics by team, player, and position, and arrangement of statistics in charts, tables, and graphs.

  Author Created/Other: Compilation of major league baseball statistics.

If the selection, coordination, and/or arrangement authorship is not demonstrated in the deposit copy(ies), the registration specialist may communicate with the applicant, which will delay the examination of the claim. In such cases, the specialist may ask the applicant to provide a more specific authorship statement, such as:

- Selection of [specify the preexisting material or data that has been selected and specify the criteria used to select the material or data].

- Coordination of [specify the preexisting material or data that has been coordinated and specify the criteria used to classify, categorize, organize, or group the material data].

- Arrangement of [specify the preexisting material or data that has been arranged and specify the manner in which the material or data has been arranged].

As discussed above, a claim to copyright in a compilation may cover the preexisting material that appears in that work, provided it (i) is sufficiently creative and copyrightable, (ii) is owned by the copyright claimant, (iii) is specifically claimed in the application, and (iv) has not been previously published or previously registered. In no case may the claimant register material or data that is in the public domain. 17 U.S.C. §103(b).

Compilations often contain unclaimable material, such as a selection of data that has been previously registered, a coordination of data that has been previously published, or an arrangement of data that is owned by a third party. If a compilation contains an appreciable amount of unclaimable material, the applicant should exclude that material from the claim using the procedure described in Section 621.8.

618.7 Collective Works

A collective work "is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole." 17 U.S.C. § 101.

To register a claim in a collective work and/or a contribution to a collective work, the applicant should identify the authorship that the applicant intends to register. By definition, a collective work contains two types of authorship:

- The compilation authorship in the collective work, which typically involves selecting, coordinating, and/or arranging a number of separate and independent works and assembling them into a collective whole; and

- The authorship in the separate and independent works included within the collective work, such as an article that appears in a periodical issue, a poem that appears in an anthology, or a sound recording that appears on an album.

An applicant may register both forms of authorship (i) if the author created both the component works and the collective work authorship (*i.e.*, the creative selection, coordination, and/or arrangement of the component works), and/or (ii) if the claimant fully owns the copyright in the contributions and the collective work at the time the claim is submitted, and (iii) if the component works have not been previously published, previously registered, and are not in the public domain.

Example:

- Elizabeth Barrett wrote a short story, which was published in an anthology containing twelve stories by different authors. Alfred Pennington compiled the stories that appear in this anthology. Alfred obtained the right to use each story in the anthology, but he did not acquire the copyright in any of these contributions. Alfred may register the anthology as a collective work, but he is not entitled to register the copyright in any of the stories. Elizabeth may register the copyright in her story as a contribution to a collective work, but cannot register the copyright in the anthology as a whole.

Collective works often contain unclaimable material, such as contributions that are not owned by the copyright claimant or contributions that were previously registered or previously published. If a collective work contains an appreciable amount of unclaimable material, the applicant should exclude that material from the claim using the procedure described in Section 621.8. For guidance in registering a catalog as a collective work, see Chapter 900, Section 915.

618.7(A) Asserting a Claim to Copyright in a Collective Work

If the applicant intends to register the compilation authorship involved in creating the collective work as a whole, the applicant should describe that authorship on the Authors screen in the field marked Author Created/Other. Currently, the total amount of text that may be provided in the Author Created/Other field is limited to 100 characters. If more space is required, the applicant should provide the additional information in the Note to Copyright Office field.

When completing a paper application, the applicant should provide a brief statement in space 2 under the heading marked Nature of Authorship that describes the compilation authorship that the applicant intends to register.

As a general rule, if the applicant states "collective work" the registration specialist may register the claim. The specialist may register the claim if the applicant states "compilation," provided that the selection, coordination, and/or arrangement authorship that the applicant intends to register is clearly evident from the deposit copy(ies). The specialist also may register the claim if the applicant states "compilation of _____" and specifies the type of contributions that appear within the collective work.

Example:

- Online application for a journal containing dozens of articles, photographs, and illustrations.

  Author Created/Other: Compilation of articles, photographs, and illustrations.

If the selection, coordination, and/or arrangement authorship is not clear from the deposit copy(ies), the registration specialist may communicate with the applicant. In such cases, the specialist may ask the applicant to provide a more specific authorship statement using the guidelines set forth in Section 618.6.

For representative examples that demonstrate how to complete the Author Created field and the Nature of Authorship space in an application to register a collective work, see Section 618.7(D).

618.7(B) Asserting a Claim to Copyright in a Contribution to a Collective Work

618.7(B)(1) Registering a Contribution without Registering the Collective Work as a Whole

If the applicant intends to register a contribution to a collective work, but does not intend to register the collective work as a whole, the applicant should provide the title of the contribution in the Title of Work Being Registered field. The applicant should provide the title of the collective work in which the contribution appears in the Title of Larger Work field. For guidance on completing these fields on the Titles screen, see Sections 610.2 and 610.4(B). The applicant should assert a claim in that contribution by checking one or more of the boxes in the Author Created field that accurately describes that contribution. For guidance on completing this field, see Section 618.4(A).

To register a contribution to a collective work with a paper application, the applicant should identify the authorship that the applicant intends to register in space 2 under the heading Nature of Authorship.

For representative examples that demonstrate how to complete the Author Created field and the Nature of Authorship space in an application to register a contribution to a collective work, see Section 618.7(D).

NOTE: If the claimant owns the copyright in the individual contribution(s) that appear within a collective work, but does not own the copyright in the collective work as a whole, the applicant generally must submit a separate application for each contribution. In some cases, it may be possible to register multiple contributions using the group option for contributions to periodicals, the group option for unpublished works, or the group option for published or unpublished photographs. For information concerning these options, see Chapter 1100, Sections 1106, 1110, and 1114.

618.7(B)(2) Registering a Collective Work and a Contribution to a Collective Work

If the claimant owns the copyright in the collective work as a whole, and owns the copyright in one or more of the contributions that appear within that work, the applicant may register those contributions together with the collective work – but only if those contributions have not been previously published or previously registered. In no case may the claimant register a contribution that is in the public domain.

If the author of the collective work created the contributions that appear within the collective work, the applicant may register the contributions together with the collective work by providing the following information in the online application:

- The applicant should provide the title of the collective work as the "Title of work being registered." For guidance on completing this portion of the Titles screen, see Section 610.2.

- The applicant should assert a claim in the collective work as a whole using the procedure described in Section 618.7(A).

- The applicant should assert a claim in the contribution(s) by checking one or more of the boxes in the Author Created field that accurately describe the contribution(s) that the applicant intends to register. For guidance on completing this portion of the application, see Section 618.4(A).

The applicant may provide the titles of the contributions that were created by the author of the collective work, although this is optional. Specifically, the applicant may provide this information in the Contents Title field. For guidance on completing this portion of the Titles screen, see Section 610.4. Alternatively, the applicant may identify the contributions that were created by the author of the collective work by providing the titles of those works in the New Material Included field and by disclaiming "all other contributions" in the Material Excluded field. Alternatively, the applicant may identify the contributions that are not owned by the claimant (if any) by providing the titles of those works in the Material Excluded field and by stating "all other contributions" in the New Material Included field. For guidance on completing this portion of the application, see Section 621.8(D).

If the claimant owns the copyright in the collective work and the individual contributions – but is not the author of those contributions – the applicant may register the contributions together with the collective work by providing the following information in the online application:

- The applicant should provide the title of the collective work as the "Title of work being registered." For guidance on completing the Titles screen, see Section 610.2.

- The applicant should assert a claim in the collective work as a whole using the procedure described in Section 618.7(A).

- On the Authors screen the applicant may provide the name of the individual or entity that created the contribution in the field marked Individual Author or Organization, although this is optional. For guidance on completing this portion of the application, see Section 613.9.

- On the Claimants screen the applicant should provide an appropriate transfer statement in the Transfer field that explains how the claimant obtained the copyright in the contribution, such as "by written agreement with each contributor," "by written agreement(s) with individual contributors not named on the application/certificate," or the like. For additional guidance on providing a transfer statement, see Section 620.9.

- The applicant may provide the titles of the contributions that have been transferred to the copyright claimant, although this is optional. Specifically, the applicant may

provide this information on the Authors screen in the field marked Author Created/Other. Currently, the total amount of text that may be provided in the Author Created/Other field is limited to 100 characters. If more space is required, the applicant may provide additional information in the Note to Copyright Office field. Alternatively, the applicant may identify the contributions that are not owned by the copyright claimant by disclaiming those titles in the Material Excluded field, and by stating "all other contributions" in the New Material Included field. For guidance on completing this portion of the application, see Section 621.8(D).

If the work contains contributions created by other authors, the applicant should repeat the process set forth in the bullets immediately above for each contribution that the applicant intends to register.

To register a collective work and/or a contribution to a collective work with a paper application, the applicant should identify the authorship that the applicant intends to register in space 2 under the heading Nature of Authorship.

For representative examples that demonstrate how to complete the Author Created field and the Nature of Authorship space in an application to register a contribution to a collective work, see Section 618.7(D). For guidance in registering a catalog as a collective work, see Chapter 900, Section 915.

618.7(C) Asserting a Claim to Copyright in a Serial Publication

This Section discusses the procedure for asserting a claim to copyright in a single issue of a serial publication. A serial publication is a work that is published or intended to be published at regular or stated intervals on an indefinite basis where each issue is numbered or dated consecutively, such as a newspaper, magazine, or newsletter. 37 C.F.R. § 202.3(b)(1)(v).

If the applicant intends to register a single issue of a serial publication, then as discussed in Section 609.1, the applicant should select Single Serial Issue from the drop down menu on the Type of Work screen. When completing a paper application, the applicant should use Form SE, as discussed in Section 609.2

NOTE: These applications may only be used to register an issue that has been published, and they may only be used to register an issue that qualifies as a collective work. If the issue does not satisfy these requirements, then as discussed in Sections 609.1 and 609.2, the applicant should use Form TX or the online application for a "Literary Work."

If the applicant intends to register the authorship involved in selecting, coordinating, and/or arranging the content that appears within the issue as a whole, the applicant should check the box marked "Collective Work Authorship."

If the applicant intends to register the authorship involved in creating the issue as a whole, and one or more of the contribution(s) that were first published in that issue, the applicant should check the box marked "Collective Work Authorship and Component Work(s) authored or fully owned by the Collective Work Author." Specifically, this box may be used to register the authorship involved in selecting, coordinating, and/or

arranging the content that appears within the issue as well as the individual contributions within the issue, (i) if the copyright in the contributions and the collective work are owned by the same claimant, and (ii) if the component works have not been previously published, previously registered, and are not in the public domain.

For representative examples that demonstrate how to complete the Author Created field and the Nature of Authorship space in an application to register a single serial issue together with the contributions that appear within that issue, see Section 618.7(D).

NOTE: As a general rule, if the claimant owns the copyright in the individual contribution(s), but does not own the copyright in the issue as a whole, the applicant must submit a separate application for each contribution. In some cases, it may be possible to register multiple contributions using the group registration options for contributions to periodicals or published or unpublished photographs. For information concerning these options, and the group registration options for serials, newspapers, and newsletters, see Chapter 1100, Sections 1107, 1108, 1109, 1110, and 1114.

618.7(D) Examples for Asserting a Claim to Copyright in a Collective Work and / or a Contribution to a Collective Work

This Section provides representative examples for completing the Author Created field in an online application for a collective work and/or a contribution to a collective work (including a single issue of a serial publication).

Examples:

- *Claim in collective work*. An application is submitted for an anthology titled *Fierce*. Pride Publishers intends to register the authorship involved in selecting, coordinating, and arranging the text, photographs, artwork, and other contributions that appear in this anthology, but does not intend to register the contributions themselves.

  Type of work: Literary work.
  Title of work being registered: Fierce.
  Name of Author: Pride Publishers.
  Work made for hire: Yes.
  Author Created/Other: Compilation of text, photographs, and artwork.

- *Claim in collective work and contributions to the collective work*. HealthNet, Inc., created the newest issue of a journal titled *Fitness*, which contains hundreds of articles. HealthNet's employees created all of the content that appears in this journal. The company intends to register the collective work authorship involved in creating the journal as a whole, as well as the individual articles contained therein.

  Type of work: Single serial issue.
  Title of work being registered: Fitness, Vol. 7, No. 77, Spring

2014.
Name of Author: HealthNet, Inc.
Work made for hire: Yes.
Author Created: Collective Work Authorship and Component Work(s) authored or fully owned by the Collective Work Author.

- *Claim in collective work and contributions to the collective work*. American Wildlife published a coffee table book titled *Fauna* that contains text, photographs, and maps. American Wildlife LLC selected and arranged all of the content that appears in the book. Most of the content was created by the company's employees. The rest of the content was created by freelancers who assigned the copyright in their respective contributions to the company. American Wildlife submits an application to register the coffee table book as a whole, together with the individual contributions created by its employees and the freelancers.

  Content created by American Wildlife employees:

  Type of work: Literary work.
  Title of work being registered: Fauna.
  Contents Title (Optional): [Titles of contributions created by American Wildlife's employees].
  Name of Author: American Wildlife LLC
  Work made for hire: Yes.
  Author Created: Text, photograph(s)
  Author Created/Other: Maps, compilation of text, photographs, and maps.
  Name of Claimant: American Wildlife LLC.
  Content created by freelance writers:

  Name of Author (Optional): [Name of freelance writer].

  Work made for hire: No.
  Author Created/Other (Optional): [Title of the contribution created by the freelance writer; repeat for contributions created by other freelance writers].
  Name of Claimant: American Wildlife LLC.
  Transfer statement: "By written agreement with all contributors," "by written agreement(s) with individual contributors not named on the application/certificate," or the like.

- *Claim in a single issue of a serial publication (including both the collective work and the contributions to the collective work)*. McCallister & Co. publishes *Driven* magazine four times a year. The publisher intends to register the authorship involved in

selecting, coordinating, and arranging the content that appears in the latest issue. It also intends to register the individual articles, photographs, and other content created by its employees. The publisher does not intend to register content created and owned by third parties, such as the advertisements or content by freelance writers or photographers.

Type of work: Single serial issue.
Title of work being registered: Driven, Vol. 12, Issue 2, Winter 2012.
Name of Author: McCallister & Co.

Work made for hire: Yes.
Author Created: Collective Work Authorship and Component Work(s) authored or fully owned by the Collective Work Author.

Limitation of Claim / Material Excluded / Other: Content created and owned by third parties.

Limitation of Claim / New Material Included / Other: Collective Work Authorship and Component Work(s) authored or fully owned by the Collective Work Author.

- *Claim in a single issue of a serial publication (including both the collective work and the contributions to the collective work)*. Horologiste S.A. publishes a monthly magazine titled *Chronometrics*. The publisher's employees create most of the articles, photographs, and other content that appears within each issue, as well as the coordination and arrangement of the issue as a whole. The March 2016 issue contains articles by a several freelance writers who assigned the copyright in their respective contributions to the publisher. Horologiste intends to register the compilation authorship involved in creating the March 2016 issue, as well as the individual contributions created by its employees and the freelance writers.

  Content created by Horologiste employees:

  Type of work: Single serial issue.
  Title of work being registered: Chronometrics.
  Issue date on copies: March 2016
  Name of Author: Horologiste S.A.
  Work made for hire: Yes.
  Author Created: Collective Work Authorship and Component Work(s) authored or fully owned by the Collective Work Author

  Name of Claimant: Horologiste S.A.

Content created by freelance writers:

Author Created: Collective Work Authorship and Component Work(s) authored or fully owned by the Collective Work Author
Name of Claimant: Horologiste S.A.
Transfer statement: By written agreement(s) with individual contributors not named on the application/certificate.

- *Claim in a contribution to a collective work*. Al Thomas intends to register his article "A Sneak Peek at the Breitling Navitimer," which was published on page 16 of the March 2016 issue of *Chronometrics* magazine. He does not intend to register the magazine as a whole.

  Type of work: Literary work.
  Title of work being registered: "A Sneak Peek at the Breitling Navitimer"
  Title of larger work: Chronometrics (March 2016, p. 16).
  Name of Author: Al Thomas.
  Work made for hire: No.
  Author Created: Text.

618.8 Examination Guidelines: Author Created / Nature of Authorship

This Section discusses the U.S. Copyright Office's practices and procedures for examining the Author Created field in an online application and the Nature of Authorship space in a paper application.

618.8(A) Authorship Unclear

The authorship that the applicant intends to register should be clearly identified in the application and the claim to copyright in that authorship should be clearly stated.

As a general rule, the U.S. Copyright Office will accept any of the terms set forth in Section 618.4(C), any of the terms set forth in Sections 618.6 or 618.7 (in the case of an application to register a compilation, a collective work, or a contribution to a collective work), or any combination of those terms, unless the information provided in the Author Created field or the Nature of Authorship space fails to describe the authorship that the applicant intends to register, fails to describe copyrightable authorship, or is contradicted by information provided elsewhere in the registration materials.

The Office recognizes that many applicants are not familiar with the correct terms for completing an application or may make a mistake in completing the Author Created field or the Nature of Authorship space. As a general rule, "[a]ny substantive editing of authorship and/or new matter statements and/or material excluded from claim statements, will be done only after contacting the applicant for permission to amend the information" set forth in that portion of the application. Online Registration of Claims to Copyright, 72 Fed. Reg. 36,883, 36,887 (July 6, 2007). In some cases, the registration specialist may add an annotation to the record to clarify the copyrightable material that the author contributed to the work. As a general rule, the registration specialist will

communicate with the applicant if the information provided in the Author Created field or the Nature of Authorship space is unclear and the issue cannot be addressed with an annotation.

Examples of unclear terms that should be avoided in the application are discussed in Sections 618.8(A)(1) through 618.8(A)(11) below.

618.8(A)(1) Design

As a general rule, the terms "2-D artwork" or "sculpture" should be used to describe the copyrightable authorship in a pictorial, graphic, or sculptural work, while the term "computer program" should be used to describe the copyrightable authorship in a computer program.

The term "design" should not be used in the Author Created field or the Nature of Authorship space, because it suggests that the applicant may be asserting a claim in an idea, procedure, process, system, method of operation, concept, principle, or discovery.

Example:

- An application is submitted for a book titled *Redesign Your Backyard*. The deposit copies contain text and two-dimensional artwork depicting landscape designs. The application states that the author created "text" and "2-D artwork." The registration specialist will register the claim.

If an applicant uses the term "design" in the Author Created field or the Nature of Authorship space for a pictorial or graphic work, the registration specialist may register the claim, if that term is clearly being used to describe copyrightable artwork.

Example:

- An application is submitted for a book titled *How to Make Stained Glass Windows*. The deposit copies contain text and two-dimensional artwork depicting stained glass windows. The application states that the author created "text and designs." The registration specialist may register the claim, because the term "designs" apparently refers to the two-dimensional artwork embodied in the stained glass windows (although the term "2-D artwork" would be a more appropriate authorship statement).

If the applicant appears to be asserting a claim in the ideas, concepts, or methods embodied in the work or the plan, scheme, layout, or format of the work, the registration specialist may communicate with the applicant. Alternatively, the specialist may add an annotation to the registration record, provided that the work contains a sufficient amount of copyrightable authorship to warrant registration.

Examples:

- An application is submitted for a computer program. In the Author Created/Other field the applicant states that the author created "source code and design for high speed retrieval tasks." The registration specialist will ask for permission to remove the phrase "design for high speed retrieval tasks," because it suggests that the applicant is attempting to register the ideas, concepts, or methods embodied in the program.

- An application is submitted for a motion picture. The applicant asserts a claim in "script, cinematography, set design." The registration specialist may register the claim if the backdrops for the set contain copyrightable artwork. If the set merely consists of furniture and other physical props, the specialist will ask for permission to remove the term "set design," because it suggests that the applicant is asserting a claim in the arrangement or layout of props.

- An application is submitted for a sound recording. The cover of the CD contains a photograph and a list of credits, but no artwork. The applicant asserts a claim in "sound recording, photography, and CD design." The registration specialist will ask for permission to remove the term "CD design," because it suggests that the applicant is asserting a claim in the layout or format of the CD cover.

- An application is submitted for a book containing text, but no illustrations. The applicant asserts a claim in "text, design." The term "design" suggests that the applicant is attempting to register the overall format, layout, or appearance of the pages in the book. The registration specialist may ask the applicant for permission to remove the term "design" or may register the claim with an annotation, such as: "Regarding authorship information: Layout and format not copyrightable. Compendium 313.3(E)."

As a general rule, the specialist will communicate with the applicant if the applicant appears to be using the term "design" to assert a claim in a useful article, a typeface, mere variations of typographic ornamentation, or other *de minimis* or uncopyrightable material. If the work is not separable from the useful article, or if it does not contain a sufficient amount of copyrightable authorship, the specialist will refuse registration.

Examples:

- An application is submitted for a bowl with a flower painted on the surface. The applicant asserts a claim in "pottery design." The term "design" suggests that the applicant is asserting a claim in the shape of the bowl, rather than the image of the

flower. The registration specialist will ask the applicant for permission to remove this term from the application and replace it with an appropriate authorship statement, such as "2-D artwork."

- An application is submitted for a book containing text and photographs explaining how to knit hats. The applicant asserts a claim in "knitting designs." The term "design" suggests that the applicant is asserting a claim in the hats themselves, rather than the text and photographs. The registration specialist will ask the applicant for permission to remove this term from the application and replace it with an appropriate authorship statement, such as "text, photographs."

- An application is submitted for a motion picture. The applicant asserts a claim in "script, direction, cinematography, and title design." The registration specialist will ask for permission to remove the term "title design" because it suggests that the applicant is asserting a claim in typeface or typographic ornamentation.

618.8(A)(2) Game

As a general rule, "text" should be used to describe the copyrightable authorship in a literary work, and "2-D artwork" or "sculpture" should be used to describe the copyrightable authorship in a pictorial, graphic, or sculptural work. To describe the copyrightable authorship in a videogame, the applicant should use the term "audiovisual material" or "computer program" depending upon what is being registered. For information concerning the practices and procedures for registering videogames and board games, see Chapter 800, Section 807.7(A) and Chapter 900, Section 910.

The term "game" should not be used in the Author Created field or the Nature of Authorship space, because it is not a form of copyrightable authorship. It also suggests that the applicant may be asserting a claim in the idea for a game or the method or procedures for playing a game.

Example:

- An application is submitted for a card game titled *The Cow Jumped Over the Moon*. Victor Fuentes is named as the author of "text" and "artwork." The deck of cards contains copyrightable artwork, as well as the instruction for playing the game. The registration specialist will register the claim.

If the applicant uses the term "game" to describe an audiovisual work, the registration specialist will ask the applicant to provide a more specific authorship statement, such as "audiovisual material."

If the applicant uses the term "game" to describe a literary work and/or a pictorial or graphic work, the registration specialist may register the claim if the work contains a sufficient amount of copyrightable authorship to warrant registration. In this situation, the specialist may add an annotation indicating that the registration does not cover the uncopyrightable elements of the game.

Examples:

- An application is submitted for a work titled *Geometry Puzzle*, naming MB & Company as the author of a "board game." The deposit copy contains copyrightable artwork. The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Idea for, and procedure or method of operation used in, game not copyrightable. 17 USC 102(b). Registration extends to artwork deposited."

- An application is submitted for a work titled *Word Search*, naming Jill and Michael Thomas as co-authors of a "spelling game and instructional text." The deposit copy contains copyrightable text on flash cards. The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Registration does not extend to uncopyrightable elements or aspects of game (idea for, and procedure or method of operation used in, game). 17 USC 102(b)."

- An application is submitted for a videogame naming KuraSonix as the author of a "game." The registration specialist will ask the applicant to provide a more specific description of the author's contribution to this work, such as "audiovisual material" (if the applicant intends to register the audiovisual elements of the work) or "computer program" (if the applicant intends to register the source code that generates the videogame).

- An application is submitted for a work naming MindStretch as the author of "game." The deposit copy consists of a single Sudoku puzzle. The registration specialist will refuse to register the claim because a single Sudoku puzzle contains no copyrightable expression.

618.8(A)(3) Packaging

As a general rule, "text," "2-D artwork," and/or "photograph(s)" should be used to describe the copyrightable authorship that appears on product packaging.

The term "packaging" should not be used in the Author Created field or the Nature of Authorship space, because the packaging for a work — in and of itself — does not constitute copyrightable subject matter.

Example:

- An application is submitted for a CD and asserts a claim in "music, lyrics, text of liner notes, and photographs." The CD insert contains publicity photographs and a short biography for each member of the band. The registration specialist will register the claim.

If the applicant uses the term "packaging" alone, the registration specialist will communicate with the applicant to request a more appropriate authorship statement. If the copyrightable authorship on the packaging is stated in terms such as "text and artwork on packaging," the specialist will register the claim. However, if the work does not contain a sufficient amount of copyrightable authorship to warrant registration, the specialist will refuse to register the claim.

Examples:

- An application is submitted to register the "packaging" for a toaster. The packaging contains a photograph and a brief description of the product. The registration specialist will ask for permission to remove the term "packaging" and replace it with a more appropriate authorship statement, such as "text, photograph."

- An application is submitted for a CD. The claim is stated as "sound recording and packaging." The CD insert contains the title of each track and a list of credits, but no artwork or text. The registration specialist will ask for permission to remove the term "packaging," because the CD insert does not contain artwork or text to support a copyright claim.

- An application is submitted to register the "packaging" for a candy bar. The packaging contains the name of the product and a list of the product's ingredients, but no artwork or text. The registration specialist will refuse to register the claim.

618.8(A)(4) Author, Artist, Writer, Songwriter, Editor, and Other Professional Designations

As a general rule, the applicant should use one or more of the terms set forth in Section 618.4(C) to describe the copyrightable authorship that the applicant intends to register.

A term that merely describes the author or the author's profession should not be used in the Author Created field or the Nature of Authorship space.

Example:

- Shane Banks is a professional songwriter. He submits an application for a ballad. In the Author Created field, he asserts a

claim in "music, lyrics." The registration specialist will register the claim.

If an applicant uses the term author, writer, songwriter, or the like in an application to register a literary work or a work of the performing arts, the registration specialist may register the claim if it is clear that the applicant is asserting a claim in text and/or lyrics. If the deposit copy(ies) contain another form of authorship, and if it is clear that the author(s) listed in the application created all of the copyrightable content that appears in the work, the specialist may add an annotation to clarify the content of the deposit.

Examples:

- An online application for a musical work is submitted naming Jody Silverman as the sole author of the work. The Author Created/Other field states "writer." A statement on the deposit copy reads "music and lyrics by Jody Silverman." Since the copy contains lyrics and an additional authorship element, the registration specialist may register the claim with an annotation to clarify the content of the deposit, such as: "Regarding authorship information: Copy states music and lyrics by Jody Silverman."

- A paper application is submitted on Form TX for an article naming Emily Gregor as the sole author of the work. The Nature of Authorship space reads "writer." The copy only contains text. The specialist may conclude that the applicant is asserting a claim in the text and register the claim.

618.8(A)(5) Story, Story Idea, Story Concept, Story Line

As a general rule, the applicant should use one or more of the terms set forth in Section 618.4(C) to describe the copyrightable authorship that the applicant intends to register.

The applicant should not use the terms "story," "story idea," "story concept," "story line," or the like in the Author Created field or the Nature of Authorship space, because these terms do not clearly describe copyrightable authorship.

Example:

- An application is submitted for a children's play that is based on the story of Hansel and Gretel. Harry Wheeler is named as the author of the "script." The registration specialist will register the claim.

If an applicant uses the term "story" in the application, the registration specialist may register the claim if he or she determines that the applicant is referring to the text that appears in the work (rather than the idea for the story).

Example:

- An application is submitted for a screenplay naming Johanna Eagen as the author of "story and dialog." The registration specialist may register the claim, because the applicant is clearly asserting a claim in the text of this work (although "script" or "screenplay" would be a more appropriate authorship statement).

If an applicant asserts a claim in a "story idea," "story concept," "storyline," or the like, and if it is clear from the information provided in the deposit copy(ies) or elsewhere in the registration materials that the author contributed copyrightable authorship to the work, the registration specialist may register the claim. In addition, the specialist may add an annotation to the record stating that ideas are not copyrightable.

Examples:

- An application is submitted for a play naming James Beck as the author of "story idea and play" and Bob Bobelli as the author of "play." The statement in the application indicates that James and Bob contributed copyrightable authorship to this work. The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Ideas not copyrightable. 17 USC 102(b)."

- An application is submitted to register a proposal for a new television series. The applicant names Sonny Capaldi as the author of "text and story concept." Sonny appears to be the author of all the authorship that appears in this work, because he is the only author named on the deposit copy. If the proposal contains a sufficient amount of copyrightable authorship to justify a claim in "text," the claim may be registered with an annotation, such as: "Regarding authorship information: Concept not copyrightable. 17 USC 102(b). Registration extends to text deposited."

If the applicant uses the term "story," "story idea," "story concept," "storyline," or the like in the Author Created field or the Nature of Authorship space, and if this is the author's sole contribution to the work, the specialist will communicate with the applicant if the author's contribution appears to be uncopyrightable or *de minimis*.

Examples:

- An application is submitted for a screenplay naming Evelyn Lauder as the author of "text." A statement on the deposit copy reads "screenplay by Evelyn Lauder, story by Charles Bogart." The statement in the application indicates that Evelyn contributed copyrightable authorship to this work. The statement on the deposit copy suggests that Charles merely

contributed the idea or concept for the story. Charles's contribution is uncopyrightable and therefore should not be claimed in the application. The registration specialist will register the claim without communicating with the applicant.

- An application is submitted for a play naming Samuel Loyer as the author of "story" and Pamela Judge as the author of "play." A statement on the deposit copy reads "play by Pam Judge, based on concept by Sam Loyer." The registration specialist will communicate with the applicant, because the statements given on the application and the deposit copy suggest that Samuel contributed only ideas or concepts to this work.

618.8(A)(6) Conceived, Conception

As a general rule, the applicant should use one or more of the terms set forth in Section 618.4(C) to describe the copyrightable authorship that the applicant intends to register.

The applicant should not use the term "conceived" or "conception" in the Author Created field or the Nature of Authorship space, because they suggest that the applicant may be asserting a claim in an idea, procedure, process, system, method of operation, concept, principle, or discovery.

Example:

- An application is submitted for a toy train that was conceived, designed, and produced by HTM Models. The applicant asserts a claim in "sculpture." The registration specialist will register the claim.

If an applicant uses the term "conceived," "conception," or the like to describe copyrightable authorship, the registration specialist may register the claim if it is clear that the term is being used as a synonym for "created" or "creation." By contrast, the specialist may communicate with the applicant or may register the claim with an annotation if the applicant appears to be asserting a claim in uncopyrightable subject matter.

Examples:

- An application is submitted for a musical work stating that the author "conceived words and music." The registration specialist may register the claim without communicating with the applicant, because the word "conceived" is clearly being used as a synonym for "created" (although "music" and "lyrics" would be a more appropriate authorship statement).

- An application is submitted for a website. Molly Callaghan is named as the author of "artwork" and Sally Mavory is named as the author of "conception and text." The statements in the

application clearly indicate that Molly and Sally contributed copyrightable text and artwork to this website. The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Concepts not copyrightable. 17 USC 102(b)."

- An application is submitted for a set of blueprints. Sloan Peterson is named as the author of a "technical drawing" and Cameron Rooney is named as the author of "conception." A statement on the deposit copy reads "by Sloan Peterson." The registration specialist will communicate with the applicant to determine if Cameron contributed copyrightable authorship to the work. If he contributed only ideas, concepts, or the like, the specialist will ask for permission to remove all of Cameron's information and the term "conception" from the registration record.

618.8(A)(7) Plot

As a general rule, the applicant should use one or more of the terms set forth in Section 618.4(C) to describe the copyrightable authorship that the applicant intends to register.

The applicant should not use the term "plot" in the Author Created field or the Nature of Authorship space, because it suggests that the applicant may be asserting a claim in the plan, scheme, or main idea for the work (which is not copyrightable), rather than the text, dialog, or other copyrightable expression that appears in the work.

Example:

- An application is submitted for a political thriller with a complicated plot. Tori Taylor is named as the author of the "text." The specialist will register the claim.

If the applicant uses the term "plot" together with another form of copyrightable authorship in the Author Created field or Nature of Authorship space, the registration specialist may register the claim without communicating with the applicant. In this situation, the specialist will add an annotation to the record stating that ideas are not copyrightable.

Example:

- An application is submitted for a script naming Patrick White as the author of "plot, text" and Jane Watson as the author of "text." The deposit copy states "teleplay by Patrick White and Jane Watson." The statement in the application indicates that Patrick and Jane contributed copyrightable text to this work. The specialist may register the claim with an annotation, such as: "Regarding authorship information: Ideas not copyrightable. 17 USC 102(b)."

If the applicant states that "plot" is the author's sole contribution to the work, the specialist may register the claim if it is clear from the deposit copy(ies) that the author contributed copyrightable authorship to the work. In this situation, the specialist will add an annotation stating that ideas are not copyrightable and describing the copyrightable material that appears in the work.

Examples:

- An application is submitted naming Gregory Putter as the author of a "screenplay" and Jackson Place as the author of the "plot." A statement on the deposit copy reads "screenplay by Gregory Putter and Jackson Place." The specialist may register the claim without communicating with the applicant, because the statement on the deposit copy indicates that Gregory and Jackson contributed copyrightable authorship to this work. In addition, the specialist will add an annotation, such as: "Regarding authorship information: Ideas not copyrightable. 17 USC 102(b). Copy states 'screenplay by Gregory Putter and Jackson Place.'"

- An application is submitted for a treatment for a motion picture naming Benjamin Barker as the author of "plot." The deposit copy states "by Ben Barker." Benjamin appears to be the author of all the authorship that appears in this work, because he is the only author named in the deposit copy. If the treatment contains a sufficient amount of copyrightable text, the claim may be registered with an annotation, such as: "Regarding authorship information: Ideas not copyrightable. 17 USC 102(b). Registration covers text deposited."

If the applicant names two or more authors in the application, and if the applicant asserts a claim in "plot," the specialist generally will ask for permission to remove that term from the application if it appears that one of the authors contributed only ideas to the work. If there appears to be no other basis for a valid copyright claim, the specialist will refuse registration.

Example:

- An application is submitted for a dramatic work naming Rosa Smith as the author of "drama" and Terry Jones as the author of the "plot." A statement on the deposit copy reads "by Rosa Smith." The registration specialist will communicate with the applicant, because the statements given on the application and the deposit copy suggest that Terry contributed only ideas to this work. If that is the case, the specialist will ask for permission to remove all of Terry's information and the term "plot" from the registration record.

618.8(A)(8) Character(s)

Although the copyright law does not protect the name or the general idea for a character, a work that describes, depicts, or embodies a particular character may be registered if it contains a sufficient amount of copyrightable authorship. As a general rule, the applicant should use one or more of the terms set forth in Section 618.4(C) to describe a work that describes, depicts, or embodies a particular character.

The applicant should not use the term "character(s)" in the Author Created field or the Nature of Authorship space, because it suggests that the applicant is asserting a claim in the idea for a character, rather than the text, artwork, or other copyrightable expression that appears in the work.

Example:

- An application is submitted for a graphic novel depicting a character named Ultra Man. Kent Clark is named as the author of "text, 2-D artwork." The registration specialist will register the claim.

If the applicant asserts a claim in a "character," and if it is clear that the author contributed copyrightable authorship, the registration specialist may register the claim with an annotation.

Examples:

- An application is submitted for a comic book depicting a character named the Arachnid. Parker Peters is named as the author of "2-D artwork, new character: super hero with spider powers." The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Registration based on deposited authorship describing, depicting, or embodying character(s). Compendium 313.4(H)."

- An application is submitted for a screenplay depicting a private detective. The applicant names Waylon Bruce as the author of "script / screenplay" and Grace Dickinson as the author of "character." The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Registration based on deposited authorship describing, depicting, or embodying character(s). Compendium 313.4(H)."

618.8(A)(9) Research

As a general rule, the applicant should use one or more of the terms set forth in Section 618.4(C) to describe the authorship that the applicant intends to register.

The term "research" should not be used in the Author Created field or the Nature of Authorship space, because it does not specify copyrightable authorship. It also suggests that the applicant may be asserting a claim in the facts that appear in the work or the

effort involved in collecting that information, rather than the expression that the author used to communicate facts or information.

Example:

- An application for a research paper on the Civil War is submitted naming Dr. Len Pittenger as the author of "text." The paper is based on the author's extensive research at the Library of Congress. The registration specialist will register the claim.

If the applicant asserts a claim in "research" together with another form of copyrightable authorship, such as "text," the registration specialist may register the claim with an annotation indicating that "research" is not copyrightable.

If the applicant mentions only "research" in the Author Created field or the Nature of Authorship space, the specialist may register the claim if it is clear from the deposit copy(ies) that the author contributed copyrightable authorship to the work. In this situation, the specialist will add an annotation stating that research is not copyrightable and identifying the copyrightable material that appears in the work.

Example:

- An application is submitted for a scientific paper. The applicant names Dr. Anthony Schleicher and Dr. Ron Ayotte as the authors of "research." A statement on the deposit copy reads "by Drs. Schleicher and Ayotte." If the work contains a sufficient amount of copyrightable text, the claim may be registered with an annotation such as: "Regarding authorship information: Research itself not copyrightable. Compendium 707.2. Registration extends to text deposited."

If the applicant uses the term "research" in the application, and if the applicant appears to be asserting a claim in the facts that appear in the work or the effort involved in collecting those facts, the specialist (i) may communicate with the applicant, (ii) may add an annotation stating that "research" (*i.e.*, the underlying facts, concepts, and ideas) is not copyrightable and identifying the copyrightable material that appears in the work, or (iii) may refuse to register the claim.

Examples:

- An application is submitted for a genealogy containing text and a list of various names and dates. The applicant states that the author "researched old courthouse records." It appears that the applicant may be asserting a claim in facts or the effort involved in locating those facts, rather than the text and compilation of information that appear in the work. The registration specialist may communicate with the applicant or may register the claim with an annotation such as: "Regarding authorship information:

Research itself not copyrightable. Compendium 707.2. Registration extends to text deposited."

- An application is submitted for a website containing old photographs with text explaining the significance of each image. The applicant states that Betsy Liu "researched photos and wrote explanation" and that Linda Chan "researched photos and provided information." The registration specialist will communicate with the applicant. Betsy apparently selected the photographs and wrote the text, but it is unclear whether Linda contributed any copyrightable authorship. The specialist will ask the applicant for permission to replace Betsy's authorship statement with a more appropriate term, such as "text and compilation of photographs." If Linda contributed only facts or research, the specialist will ask for permission to remove all of Linda's information from the registration record.

618.8(A)(10) Unclear Terms for Musical Works and Sound Recordings

As a general rule, the terms "music" and/or "lyrics" should be used to describe the authorship in a musical work, and the term "sound recording," should be used to describe the authorship in a sound recording. The applicant should avoid using the following terms in the Author Created field or the Nature of Authorship space, because they are unclear:

- Song
- Ballad
- Cancion
- Vocals
- Musical Instruments
- Equalization
- Remastering, reverberation, reprocessing, re-engineering
- Rap, Hip Hop, Beats, Loops
- Transcription, Narration, Spoken Words
- Sound Effects

For a discussion of U.S. Copyright Office's practices and procedures regarding these terms, see Chapter 800, Sections 802.9(E), 803.9(D), and 803.9(F)(3).

618.8(A)(11) Entire Work and Other Unspecific Terms

As a general rule, the applicant should use one or more of the terms set forth in Section 618.4(C) in the Author Created field or the Nature of Authorship space.

The applicant should not use the term "entire work," because it does not identify the specific form of authorship that the applicant intends to register. Instead, it suggests that the applicant may be asserting a claim in both the copyrightable and uncopyrightable elements of the work. It also suggests that the applicant may be asserting a claim in any previously published material, previously registered material, public domain material, or third party material that may be present in the work.

Example:

- An application is submitted for a textbook containing text, illustrations, photographs, as well as a CD insert containing videos and sound recordings. The publisher intends to register the entire copyrightable content of this work. The applicant states that the author created "text, 2-D artwork, photographs, sound recording, and audiovisual material." The registration specialist will register the claim.

If the applicant uses the term "entire work" or other unspecific description that is not listed in Sections 618.8(A)(1) through 618.8(A)(10), the registration specialist may ask the applicant to provide a more specific authorship statement. If the extent of the claim is clear from the deposit copy(ies) or the information provided elsewhere in the registration materials, the specialist may register the claim. In this situation, the specialist may add an annotation that describes the copyrightable content of the work or any relevant statements or information that appear in the deposit copy(ies).

Examples: Entire work

- An application is submitted for a sound recording naming Wrecked Records as the author of the "entire work." The registration specialist will ask the applicant to provide a more specific authorship statement using one or more of the terms set forth in Section 618.4(C).

- An application is submitted for a website, naming Magnetic Marketing as the author of the "entire work." The registration specialist will ask the applicant to provide a more specific authorship statement using one or more of the terms set forth in Section 618.4(C).

- An application is submitted for a computer program that generates typeface designs, naming Fontography as the author of the "entire work." The registration specialist will ask the applicant to provide a more specific authorship statement, such as "computer program."

- A law firm submits three applications to register a derivative work, a collective work, and a compilation on behalf of its clients. In each case, the application asserts a claim in the "entire work." The registration specialist will ask the applicant to provide a more specific authorship statement using one or more of the terms set forth in Section 618.4(C). In addition, the specialist may ask the applicant to complete the Limitation of Claim screen.

- An application is submitted for a script naming Oliver Spencer as the author of the "entire work." A statement on the deposit

copy reads "A play by Oliver Spencer." The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Copy states 'A play by Oliver Spencer.'"

Examples: Other unspecific authorship statements

- An application is submitted for a literary work, naming St. John Sinclair as the author of "everything." A statement on the deposit copy reads "text and artwork by St. John Sinclair." The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Copy states 'Text and artwork by St. John Sinclair.'"

- An application is submitted for a work of the performing arts, naming Albert Ferraro as the author of "entire project." The deposit copy contains music and a statement on the deposit reads "by Al Ferraro." The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Copy contains music."

- An application is submitted naming Patricia Feinstein as the author of a "website." The deposit copy contains text and two-dimensional artwork, and Patricia appears to be the sole author of this work. The registration specialist will ask the applicant to provide a more specific authorship statement, such as "text, 2-D artwork."

- An application is submitted for a work titled *Neurological Examination Simplified*. Jason Mackray is named as the author of "a guide to help neurologists conduct quick and simple assessments." A statement on the deposit copy reads "by Jason Mackray; illustrations by Susan Talbot." The registration specialist may communicate with the applicant to determine if Susan's name should be added to the application and to request a more specific authorship statement, such as "text" for Jason and "2-D artwork" for Susan.

618.8(B) Percentage of Authorship

The U.S. Copyright Office strongly discourages applicants from using numerical percentages to describe an author's contribution to a work, such as "music by Joe Goldie (50%); lyrics by Pepe Greenwald: (50%)." As discussed in Section 619, a copyright may be registered by or on behalf of the author of the work or a person or entity that owns all rights under the copyright that initially belonged to the author. 37 C.F.R. § 202.3(a)(3). Providing percentages in the Author Created field or the Nature of Authorship space may imply that the work is a joint work or it may raise a question as to whether the person or persons named in the application contributed copyrightable authorship to the work or whether the claimant owns all of the exclusive rights in the work.

If the applicant provides a percentage in the Author Created field or the Nature of Authorship space, the registration specialist may register the claim without communicating with the applicant if it is clear that the authors named in the application contributed copyrightable authorship to the work and if the work appears to be jointly owned. The percentage is considered superfluous in this situation, because it presumably refers to some allocation among the co-authors or co-owners of the copyright, rather than an allocation of the ownership in the copyright as a whole.

618.8(C) Uncopyrightable Material Claimed in the Author Created Field or the Nature of Authorship Space

The material described in the Author Created field or the Nature of Authorship space must be copyrightable. If the applicant asserts a claim in uncopyrightable material, the U.S. Copyright Office may ask for permission to remove that claim from the application, or in appropriate cases, may add an annotation to clarify that the registration does not cover that element. If the claim appears to be limited to the uncopyrightable material or if there appears to be no other basis for asserting a valid claim in the work, the Office will refuse registration.

For a general discussion of copyrightable and uncopyrightable authorship, see Chapter 300 (Copyrightable Authorship: What Can Be Registered).

618.8(C)(1) Deposit Copy(ies) Containing Copyrightable Authorship and Uncopyrightable Material; No Claim Asserted in Uncopyrightable Material

If the deposit copy(ies) contain copyrightable authorship as well as uncopyrightable material, the registration specialist may register the claim without communicating with the applicant, provided that the applicant does not claim the uncopyrightable material in the Author Created field or the Nature of Authorship space.

Example:

- An application is submitted for a work naming Judy Smith as the author of "2-D artwork." The deposit copy contains an illustration and a short slogan to describe the illustration. The registration specialist will register the claim because the applicant asserted a claim in the copyrightable artwork, but did not assert a claim in the uncopyrightable short phrase. The specialist may add an annotation to identify the uncopyrightable material, such as: "Regarding new material included: Slogan, typeface, typographic ornamentation not copyrightable. 37 CFR 202.1."

618.8(C)(2) Claim in Copyrightable Authorship and Uncopyrightable Material

If the applicant asserts a claim in copyrightable material as well as material that is uncopyrightable under the Copyright Act, Section 202.1 of the regulations, or this *Compendium*, the registration specialist may communicate with the applicant. In the alternative, the specialist may register the claim with an annotation indicating that the registration does not cover the uncopyrightable material. The annotation is intended to

put the applicant, the claimant, the courts, and the general public on notice concerning the extent of the claim to copyright.

Examples:

- *Claim in uncopyrightable material under Section 102(b).* An application is submitted for a scientific paper containing text, graphs, and mathematical equations. The applicant asserts a claim in "text, illustrations, theory." If the work contains a sufficient amount of copyrightable authorship to support a claim in text and illustrations, the registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Ideas not copyrightable. 17 USC 102(b)."

- *Claim in uncopyrightable material under 37 C.F.R. § 202.1*. An application is submitted for a banner advertisement. Brian Metcalf is named as the author of "artwork, slogan, typeface." If the work contains a sufficient amount of pictorial or graphic authorship to support a claim in artwork, the registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Slogan, typeface, typographic ornamentation not copyrightable. 37 CFR 202.1."

618.8(C)(3) Claim in Uncopyrightable Material: Deposit Copy(ies) Contain Copyrightable Authorship

If the deposit copy(ies) contain copyrightable material, and if the applicant asserts a claim in material that is uncopyrightable, the registration specialist may register the claim with an annotation indicating that the registration does not cover that material. Alternatively, the specialist may communicate with the applicant, which will delay the examination of the claim.

Examples:

- *Claim in uncopyrightable material under Section 102(b)*. Amanda Reeves submits for registration a DVD depicting a doctor performing surgery with a voice-over commentary. On the application, she describes the nature of authorship as "new process for suturing." The only credit on the footage reads "written, filmed and narrated by Dr. Amanda Reeves." Because the statement indicates that Amanda was the major author of the motion picture, the registration specialist may ask the applicant for permission to remove the reference to the suturing process and replace it with a more appropriate authorship statement. Alternatively, the specialist may register the claim with an annotation, such as: "Regarding authorship information: Process not copyrightable. 17 USC 102(b). Copy states 'written, filmed, and narrated by Dr. Amanda Reeves.'"

- *Claim in uncopyrightable material under 37 C.F.R. § 202.1*. An application is submitted for an album titled *The Hottest Hits from Tabasco & Tamale*. The application states that Chuck Tabasco created the "sound recording" and Janet Tamale created the "name of performing group." A statement on the deposit copy reads, "C. Tabasco: production; J. Tamale: vocals," which indicates that Chuck and Janet contributed copyrightable authorship to this work. The registration specialist may ask the applicant for permission to remove the claim in the name of the performing group. Alternatively, the specialist may register the claim with an annotation, such as: "Regarding authorship information: Name of performing group not copyrightable. 37 CFR 202.1. Copy states 'C. Tabasco: production; J. Tamale: vocals.'"

- *Claim in uncopyrightable material under the Compendium*. An application is submitted for a proposal for a home renovation. Candace Cooper is named as the author of "text" and William Wilkinson as the author of "interior design." A statement on the deposit copy reads "text by Candy Cooper; illustrations by Willy Wilkinson." The statement on the deposit copy indicates that William contributed copyrightable authorship to this work. The registration specialist may ask the applicant to revise the term "interior design" or may register the claim with an annotation, such as: "Regarding authorship information: Interior design not copyrightable. Compendium 923.2. Copy states 'Text by Candy Cooper; Illustrations by Willy Wilkinson.'"

618.8(C)(4) Claim in Uncopyrightable Material: Acceptable Authorship Statement Used to Describe Uncopyrightable Material

If the applicant uses a term in the Author Created field or the Nature of Authorship space that normally would be used to describe copyrightable authorship, such as "text" or "artwork," and if it appears that the applicant is using that term to describe material that is uncopyrightable under the Copyright Act, Section 202.1 of the regulations, or this *Compendium*, the specialist may communicate with the applicant or may register the claim with an annotation indicating that the registration does not cover the uncopyrightable material.

Examples:

- *Claim in uncopyrightable material under 37 C.F.R. § 202.1.* An application is submitted for an album. The applicant asserts a claim in "music and text." The only text that appears in the deposit copy is the title of each track and a list of credits. The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Liner notes consisting of a listing of titles and/or credits not copyrightable. 37 CFR 202.1."

- *Claim in uncopyrightable material under 37 C.F.R. § 202.1*. An application is submitted for a website. The applicant asserts a claim in "2-D artwork and text." The deposit copy contains copyrightable artwork, but the only text is a calendar and a football season schedule. The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Text is calendar and schedule of sporting events; not copyrightable. 37 CFR 202.1."

- *Claim in uncopyrightable material under the Compendium.* An application is submitted for an advertising brochure. The applicant asserts a claim in "2-D artwork, text, map." The deposit copy contains copyrightable artwork, text, and a simple outline of the state of Oregon. The registration specialist may communicate with the applicant to ask for permission to remove the reference to "map" or may register the claim with an annotation, such as: "Regarding authorship information: Map is outline map; not copyrightable. Compendium 918.2."

618.8(C)(5) Claim in Uncopyrightable Material: Works Created by Two or More Authors

If two or more authors are named in the application, and if it appears that one or more of the authors did not contribute copyrightable authorship to the work, the specialist will ask for permission to remove that author's name from the registration record.

Examples:

- *Claim in uncopyrightable material under Section 102(b).* An application is submitted for a screenplay naming Greg Lange as the author of a "teleplay for reality show" and Jennifer Lange as the author of the "reality show format." A statement on the deposit copy states "script by Greg Lange." The registration specialist will communicate with the applicant and explain that the format for a television show is not copyrightable. Therefore, the specialist will ask for permission to remove all of Jennifer's information and the reference to "reality show format" from the registration record.

- *Claim in uncopyrightable material under 37 C.F.R. § 202.1*. An application for a board game is submitted naming Mark Zwisler as the author of "2-D artwork" and Abacus LLC as the author of "text." The only text that appears in the work is a scorecard for recording information. The registration specialist will communicate with the applicant and explain that blank forms are not copyrightable. Therefore, the specialist will ask for permission to remove all of the company's information and the term "text" from the registration record.

- *Claim in uncopyrightable material under the Compendium*. An application is submitted for a medical textbook, naming, Dr. Arvind Desai as the author of "text" and MRI Associates as the author of "photographs." The photographs in the work are medical x-rays. The registration specialist will communicate with the applicant and explain that x-rays generally are not copyrightable. Therefore, the registration specialist will ask for permission to remove all of the company's information and the term "photographs" from the registration record.

618.8(C)(6) Claim in Uncopyrightable Material: Registration Refused

If the applicant asserts a claim in material that is uncopyrightable under the Copyright Act, Section 202.1, or this *Compendium*, the registration specialist will refuse registration if the claim appears to be limited to that material or if there appears to be no other basis for asserting a valid claim in the work.

Examples:

- *Claim in uncopyrightable material under the Copyright Act.* An application names two individuals as the authors of a work described as a "sculpture." The deposit copy is a photograph of a chair containing no separable pictorial, graphic, or sculptural authorship. The registration specialist will refuse registration, because the applicant is asserting a claim to copyright in a useful article.

- *Claim in uncopyrightable material under 37 C.F.R. § 202.1.* An application is submitted for a product label. The applicant asserts a claim in "text, 2-D artwork." The deposit copy merely contains the name of the product in a stylized typeface and a list of ingredients. The registration specialist will refuse registration, because the applicant is asserting a claim to copyright in mere words, mere variations of typographic ornamentation, and a mere listing of ingredients.

- *Claim in uncopyrightable material under this Compendium.* An application is submitted naming Tamlyn Jackson as the author of a "choreographic work." The deposit copy is a DVD depicting various football plays. The registration specialist will refuse registration, because football plays do not qualify as copyrightable choreographic subject matter.

618.8(D) *De Minimis* Material Claimed in the Author Created Field or the Nature of Authorship Space

The material described in the Author Created field or the Nature of Authorship space must be copyrightable. If the author's contribution to the work is *de minimis*, the U.S. Copyright Office may ask the applicant for permission to remove that claim from the application, or in appropriate cases, may add an annotation to clarify that the registration does not cover that element. If the claim appears to be limited to the *de minimis* material or if there appears to be no other basis for asserting a valid claim in the work, the Office will refuse registration.

618.8(D)(1) Deposit Copy(ies) Contain Copyrightable Authorship and *De Minimis* Material; No Claim Asserted in the *De Minimis* Material

If the deposit copy(ies) contain copyrightable material as well as *de minimis* material, the registration specialist may register the claim without communicating with the applicant, provided that the applicant does not claim the *de minimis* material in the Author Created field or the Nature of Authorship space.

Example:

- An application is submitted for a greeting card naming Salutations LLC as the author of "2-D artwork." The deposit copy contains a drawing of a panda and the phrase "FONZ Helps UNESCO. Won't You?" Because the applicant asserted a claim in the copyrightable artwork, but did not assert a claim in the *de minimis* text, the registration specialist will register the claim without communicating with the applicant.

618.8(D)(2) Claim in Copyrightable Authorship and *De Minimis* Material

If the applicant asserts a claim in copyrightable authorship as well as *de minimis* material, the registration specialist may register the claim with an annotation identifying the copyrightable material that has been submitted for registration.

Examples:

- An application is submitted naming Shirley Wonder as the author of "text, 2-D artwork." The deposit is a poster containing a drawing of Jackie Robinson, together with the word "Pioneer" and the phrase "Here's to You, Mr. Robinson." Because the text is *de minimis*, the registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Deposit only contains copyrightable 2-D artwork."

- An application is submitted for a musical work naming Susan Harris as the author of "words and arrangement." The deposit copy contains only lyrics and chord symbols. The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Deposit contains lyrics and

standard chord symbols. Standard chord symbols not registrable. Compendium 802.5(A)."

618.8(D)(3) Claim in *De Minimis* Material: Works Created by Two or More Authors

If two or more authors are named in the application, and if it appears that one of the authors contributed *de minimis* authorship to the work, the registration specialist will ask for permission to remove that author's information from the registration record.

Example:

- An application is submitted for a musical work, naming Bert Mendelson as the author of "music" and Alice Cambridge as the author of "lyrics." The lyrics consist of the words "I love you" repeated over and over again. The registration specialist will communicate with the applicant and explain that Alice's contribution to this work appears to be *de minimis*. If Alice did not contribute any other authorship to the work, the specialist will ask for permission to remove all of Alice's information and the term "lyrics" from the registration record.

- An application is submitted for a scientific article naming Jason Macro as the author of "text" and Erin Abrunzo as the author of "artwork." The work contains five pages of text with three figures containing *de minimis* authorship. Because the figures are *de minimis*, the registration specialist will ask the applicant for permission to remove all of Erin's information and the term "artwork" from the registration record.

- An application is submitted for a work naming Manuel Diego as the author of "technical drawing" and Marcia Mays as the author of "text." The text consists of three short sentences that describe the applicant's idea for a new invention. Because the text is *de minimis*, the registration specialist will ask the applicant for permission to remove all of Marcia's information and the term "text" from the registration record.

618.8(D)(4) Claim in *De Minimis* Material: Registration Refused

If the applicant asserts a claim in *de minimis* material, the registration specialist will refuse registration if the claim appears to be limited to that material or if there appears to be no other basis for asserting a valid claim in the work.

Example:

- An online application is submitted naming Jason Buck as author of "song lyrics." The lyrics consist of familiar, short, repetitious phrases, such as "Happy Birthday To You." The registration specialist will refuse registration.

For a general discussion of *de minimis* authorship, see Chapter 300, Section 313.4(B).

618.8(E) Variances Between the Information Provided in the Application and Elsewhere in the Registration Materials

As a general rule, the information provided in the Author Created field or the Nature of Authorship space should be consistent with the information that appears in the deposit copy(ies) or elsewhere in the registration materials. In some cases, the registration specialist may give greater weight to the information that appears in the application, if that information does not raise additional questions concerning the identity of the authors or the ownership of the copyright in the deposit copy(ies).

Example:

- An application is submitted for a musical work naming Sally Ember and Derek Thomas as the co-authors and describing each author's contribution as "music, lyrics." The deposit copy states "music by Derek Thomas; lyrics by Sally Ember." The registration specialist may register the claim without communicating with the applicant, because the variance between the application and the deposit copy does not affect the scope of the claim or the ownership of the copyright in the work.

The specialist may communicate with the applicant if there is a material variance between the information provided in the Author Created field or the Nature of Authorship space and the statements that appear on the deposit copy(ies) or elsewhere in the registration materials.

Examples:

- A paper application is submitted on Form VA for a sketching workbook naming Mary Hill as the author and claimant of "2-D artwork and some instructional text." The copyright notice on the workbook reads "© Professional Design, Inc." A statement on the deposit copy indicates Mary Hill is an employee of Professional Design, Inc. The registration specialist may communicate with the applicant, because there appears to be a material variance between the application and the statements given in the deposit copy and the copyright notice.

- Prendergast Jones submits an application for a book titled *Try Another Career*. The application states that Prendergast created the "text" and "photographs," but a statement on the deposit copies reads "text by Prendergast Jones, photographs by Aloicious Gadfly." The registration specialist may communicate with the applicant, because there appears to be a material variance between the application and the deposit copies.

618.8(F) Material Claimed in the Author Created Field or Nature of Authorship Space Not Found in the Deposit Copy(ies)

As discussed in Sections 618.4(A) and 618.4(B), the applicant should only assert a claim in the authorship that will be submitted for registration. The applicant should not assert a claim in material that will not be submitted for registration or material that does not appear in the work.

Example:

- An application is submitted for a videogame titled *Ant Farm*. The applicant intends to register the audiovisual material that appears on the CD-ROM, but does not intend to register the computer program embedded in the disc. In the Author Created field the applicant asserts a claim in "audiovisual material." The applicant does not assert a claim in the computer program and does not submit any of the source code for that program. The registration specialist will register the claim.

If the applicant asserts a claim in material that does not appear in the deposit copy(ies), the registration specialist may register the claim with an annotation identifying the material that appears in the deposit.

Examples:

- An application is submitted for a work consisting solely of text. The applicant has checked all of the boxes that appear in the Author Created field. The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Deposit only contains text."

- An application is submitted for a short story naming Ananeka Kanihl as the author of "text" and "illustrations," but the copy only contains text. The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Deposit only contains text."

- An application is submitted for a song titled *The Annunaki*. In the Author Created field the applicant asserts a claim in "music" and "lyrics." The deposit contains music but no lyrics. The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Deposit contains only music."

If the deposit copy appears to be incomplete, the specialist may communicate with the applicant.

Examples:

- An application is submitted for a twenty-page catalog. In the Author Created field the applicant asserts a claim to copyright in the "text, 2-dimensional artwork." The deposit copy contains text, but no artwork. The registration specialist may communicate with the applicant to determine if a complete copy of the work has been submitted. Alternatively, the specialist may register the claim with an annotation, such as: "Regarding authorship information: Deposit contains only text."

- An application is submitted for a computer program. In the Nature of Authorship space the applicant asserts a claim to copyright in "computer program and screen displays." The deposit copy contains C++ source code, but no screen displays. The registration specialist will communicate with the applicant and explain that registration for this computer program covers any copyrightable screen displays generated by the program. Because the applicant expressly asserted a claim in screen displays, the specialist will ask the applicant to submit a copy of the screen displays for examination, or in the alternative, the specialist will ask for permission to remove "screen displays" from the application.

618.8(G) Copyrightable Material in the Deposit Copy(ies) That Has Not Been Claimed in the Application

As discussed in Sections 618.4(A) and 618.4(B), the applicant should identify all of the copyrightable authorship that the applicant intends to register in the Author Created field or the Nature of Authorship space.

Example:

- Masai Designs intends to register a website containing articles, illustrations, photographs, and animated graphics. In the Author Created / Other field, the applicant asserts a claim in "text, 2-D artwork, photographs, and audiovisual material." The registration specialist will register the claim.

In the case of a collective work or a derivative work the registration specialist may register the claim without communicating with the applicant if the deposit copy(ies) contain a substantial amount of copyrightable material that is not mentioned in the application and if the author of that material is not specified in the deposit copy(ies). In this situation, the specialist will conclude that the applicant only intends to register the authorship that is specifically claimed in the application.

If the work was created by a single author, and if there is a specific statement on the deposit copy(ies) indicating that the author created all of the copyrightable material that appears in the work, the specialist may communicate with the applicant or may add

an annotation to the registration record if the copy(ies) contain a substantial amount of copyrightable material that has not been claimed in the application.

Example:

- An application is submitted for a musical work naming Greg Gardner as the author of "lyrics." A statement on the deposit copy reads "music, lyrics, and performance by Greg Gardner." The registration specialist may communicate with the applicant to determine whether the claim is intended to cover a musical work and a sound recording.

618.8(H) Nature of Authorship Statement Omitted from a Paper Application

If the applicant fails to complete the Nature of Authorship space in a paper application, the registration specialist may register the claim if the applicant completed spaces 6(a) and 6(b), provided that those spaces clearly identify the copyrightable material that the applicant intends to register and provided that the author named in the application appears to be the author of that material. In this situation, the claim to copyright is defined by the information provided in space 6(b) of the application.

If the applicant fails to complete the Nature of Authorship space on Form PA or Form VA, the specialist may register the claim if the applicant provided a statement that adequately describes the work being registered in the Nature of This Work space, and if the author named in the application appears to be the sole author of that material. In this situation, the specialist will add that statement to the Nature of Authorship space and add an annotation to the record, such as: "Regarding authorship information: Information added by Copyright Office from application."

In all other cases, the specialist will communicate with the applicant to request an appropriate authorship statement.

Examples:

- An application is submitted on Form PA for a motion picture. The Nature of Authorship space is blank. Space 6(a) indicates that "preexisting footage" has been excluded from the claim, while space 6(b) indicates that the claim is limited to "additional new footage." The registration specialist will register the claim because the applicant clearly intends to register the "new footage" described in space 6(b).

- An application is submitted on Form VA for a book of photographs. The Nature of Authorship space is blank. In space 6(a) the applicant lists the photographs that appear on pages 1, 5, 8, and 9. In space 6(b) the applicant lists the photographs that appear on pages 2, 3, 4, 6, 7, and 10. The registration specialist will register the claim because the applicant clearly intends to register the photographs listed in space 6(b).

- An application is submitted on Form PA for a song written by one individual. The Nature of Authorship space is blank, but the applicant described the Nature of This Work as "music and lyrics." The registration specialist will add this statement to the record and register the claim with an annotation, such as: "Regarding authorship information: Information added by Copyright Office from application."

- An application to register an article is submitted on Form TX. Archie Crab and Shellie Carmack are named as co-authors of the work, but the Nature of Authorship space and space 6(b) have been left blank. A statement on the deposit copy states "written and illustrated by Archie Crab and Shellie Carmack." The registration specialist will communicate with the applicant to request an appropriate authorship statement, such as "text, 2-D artwork."

618.8(I) Nature of This Work

This Section discusses the Nature of This Work space, which appears only in space 1 of Forms VA and PA. This space does not appear in the online application or other paper applications.

The U.S. Copyright Office added this space to Forms PA and VA, because these applications may be used to register different categories of works. The Nature of This Work space should be used to describe the physical nature of the deposit copy(ies) (*e.g.*, cartoon, model, globe, chart, puppet, hologram, etc.). It should not be used to describe the type of authorship that the author created. *See* Registration of Claims to Copyright, 65 Fed. Reg. 41,508, 41,508 (July 5, 2000). However, if the applicant failed to complete the Nature of Authorship space, and if the statement provided in the Nature of This Work space adequately describes the work being registered, the registration specialist may add that statement to space 2 of the application. For information concerning this procedure, see Section 618.8(H).

619 Name of Claimant

This Section discusses the practices and procedures for identifying the copyright claimant for a work being registered with the Standard Application or a paper application.

To identify the claimant for a work being registered with the Single Application, or an application for a group registration, a renewal registration, or a GATT registration, see the following chapters:

- For the Single Application, see Chapter 1400, Section 1405.

- For group registrations and the unit of publication option, see Chapter 1100, Sections 1103.4(G), 1106.1(E), 1107.7(F), 1108.7(G), 1109.7(B), 1110.7(E), 1111.7(J), 1112.8(E), and 1114.6(K).

- For renewal registrations, see Chapter 2100, Section 2115.2(E).
- For GATT registrations, see Chapter 2000, Section 2007.2(A)(4).

619.1 Who Is Eligible to Be a Copyright Claimant?

An application for registration must identify the name and address of the copyright claimant. 17 U.S.C. § 409(1). For purposes of copyright registration, the "claimant" is either the author of the work that has been submitted for registration, or a person or organization that owns all the rights under copyright that initially belonged to the author of that work. 37 C.F.R. § 202.3(a)(3).

A person or entity that owns one or more — but less than all — of the exclusive rights in a work is not eligible to claim ownership of the entire copyright in the records maintained by the U.S. Copyright Office. The Office will not knowingly allow a party that owns less than all the exclusive rights in a work to register the copyright in his or her own name, because this would create a misleading and inaccurate public record and it would subvert the purpose of the registration system. Registration of Claims to Copyright, 43 Fed. Reg. 965, 965 (Jan. 5, 1978).

619.2 The Claimant Must Be an Individual or a Legal Entity

The claimant named in an application must be a human being or a legal entity that is capable of owning property. As a general rule, the registration specialist will conclude that a legal entity is capable of owning property if that entity has been named as the copyright claimant, unless there is evidence to the contrary in the registration materials.

619.3 When Is an Individual or Legal Entity Eligible to Be a Copyright Claimant?

An application naming the author as the copyright claimant may be filed at any time before the copyright expires.

An individual or entity that owns all of the rights under copyright that initially belonged to the author may be named as the copyright claimant at any time during the life of the copyright, provided that the party owns all of the rights, whether by transfer, bequeath, or operation of law, as of the date that the application is received in the Office. If the copyright is owned jointly by two or more parties, all of the owners must be listed in the application.

619.4 Claimants Distinguished from the Owner of a Copy or Phonorecord of the Work

Ownership of the copyright in a work of authorship is distinct from ownership of the material object in which the work has been fixed. Ownership of a copy or phonorecord does not convey any rights in the copyright, nor does the transfer of ownership of the copyright convey property rights in any material object in which the work has been fixed (absent an agreement to that effect). 17 U.S.C. § 202.

619.5 Claimants Distinguished from the Applicant and the Correspondent

As discussed above, the author of the work or a person or entity that owns all of the rights in the copyright that initially belonged to the author are the only parties entitled to be named as a copyright claimant. However, an application to register a copyright claim may be filed by other parties. 37 C.F.R. § 202.3(a)(3), (c)(1).

The applicant is the party who certifies the application and submits it to the U.S. Copyright Office. An application to register a copyright may be certified and submitted by any of the following parties:

- The author of the work.
- An owner of all the rights under copyright that initially belonged to the author of the work.
- An owner of one or more — but less than all — of the exclusive rights in the work.
- A duly authorized agent of any of the foregoing parties.

No other parties are entitled to file an application for copyright registration. *See* 37 C.F.R. § 202.3(c)(1).

When completing an application, the applicant will be asked to provide the name, address, and other contact information for the person or persons who should be contacted if the registration specialist has questions or concerns regarding the application. This person is known as the correspondent. In most cases, the correspondent and the applicant are the same person, because the correspondent typically certifies and submits the application. In all cases, the correspondent must be one of the following parties:

- An author of the work.
- An owner of all the rights under copyright that initially belonged to the author of the work.
- An owner of one or more — but less than all — of the exclusive rights in the work.
- A duly authorized agent of any of the foregoing parties.

619.6 Naming the Author as Claimant

If the author owns all the rights under the copyright as of the date that the application is filed, the author must be named in the application as the copyright claimant. An application to register the copyright in the author's name may be certified and submitted by the author or by the author's duly authorized agent. In this situation, the author is considered the claimant and the author or the author's agent is considered the applicant (dependent upon who certified and submitted the application.)

619.7 The Author May Be Named as Claimant Even if the Author Has Transferred the Copyright to Another Party

The author may always be named as the copyright claimant, even if the author has transferred the copyright or one or more of the exclusive rights to another party, or even if the author does not own any of the rights under copyright when the application is filed. This is due to the fact that the author always retains a legal or equitable interest in the copyright, even if the copyright has been licensed or assigned to a third party. *See generally* Registration of Copyright: Definition of Claimant, 77 Fed. Reg. 29,257, 29,258 (May 17, 2012); Applications for Registration of Claim to Copyright Under Revised Copyright Act, 42 Fed. Reg. 48,944, 48,945 (Sept. 26, 1977).

If the author transferred rights to another party, an application to register the copyright in the author's name may be certified and submitted by any of the following parties:

- The author.
- An owner of all the rights under copyright that initially belonged to the author.
- An owner of one or more — but less than all — of the exclusive rights that initially belonged to the author.
- A duly authorized agent of any of the foregoing parties.

In this situation, the author is considered the claimant, and the party who certified and submitted the application is considered the applicant.

619.8 Naming a Transferee as Claimant

If a person or organization owns all the rights under copyright that initially belonged to the author, that party may be named in the application as the copyright claimant. An application to register the copyright in that party's name may be certified and submitted by the author, the transferee, or their respective agents. In this situation, the transferee is considered the claimant, and the author, the transferee, or their respective agents are considered the applicant (depending on who certified and submitted the application).

619.9 A Party That Owns One or More — but Less than All — of the Exclusive Rights May File an Application to Register a Copyright Claim, but Cannot Be Named as the Copyright Claimant

A party that owns one or more — but less than all — of the rights that initially belonged to the author cannot register the copyright in that party's own name (*i.e.*, naming itself as the claimant). However, that party may certify and submit an application to register the copyright in the author's name. In this situation, the author is considered the claimant, and the party that owns one or more of the exclusive rights is considered the applicant. *See* Registration of Copyright: Definition of Claimant, 77 Fed. Reg. at 29,258. Although that party cannot be named as the copyright claimant, it may identify itself in the public record by recording the transfer or other document pertaining to copyright that transferred the exclusive rights from the author or the author's successor(s) in interest to that party. *Id*. at n.1.

619.10 A Nonexclusive Licensee Cannot Be a Claimant

A nonexclusive licensee is not entitled to register a copyright in the licensee's own name, because by definition, a nonexclusive licensee does not own the entire copyright in the work.

As a general rule, a nonexclusive licensee is not entitled to file a copyright application, because a nonexclusive licensee is neither the "copyright owner or [an owner] of any exclusive right in the work." 17 U.S.C. § 408(a) (specifying the parties who "may obtain registration of the copyright claim"). A nonexclusive licensee may sign or submit an application to register the copyright only if the licensee is a duly authorized agent acting on behalf of the author or a person or entity that owns all the rights under copyright that initially belonged to the author.

619.11 One Registration Per Work

A registration that has been issued to an author of a work or a person or entity that owns all the rights that initially belonged to the author secures the statutory benefits of registration to any other author or any other person or entity that owns one or more of the exclusive rights in that work. Consequently, the U.S. Copyright Office will not knowingly issue more than one basic registration for the same work. 37 C.F.R. § 202.3(b)(11); Applications for Registration of Claim to Copyright under Revised Copyright Act, 42 Fed. Reg. at 48,945. However, there are three exceptions to this rule:

- If the work was previously registered as an unpublished work, the Office may issue another registration for the first published edition of that work, even if the published version "is substantially the same as the unpublished version." 17 U.S.C. § 408(e); 37 C.F.R. § 202.3(b)(11)(i).

- An author may seek a separate registration naming himself or herself as the copyright claimant, even though the Office has already issued another registration that names a different individual or legal entity as the copyright claimant for that work. This is because an author is always able to file as a copyright claimant. 37 C.F.R. § 202.3(b)(11)(ii).

- The Office may issue another registration for a work if an applicant alleges that an earlier registration for the same version of that work is unauthorized and legally invalid. 37 C.F.R. § 202.3(b)(11)(iii). For a discussion of adverse claims, see Chapter 1800, Section 1808.

For a general discussion of these exceptions, see Chapter 500, Sections 510.1 through 510.3.

619.12 Completing the Application: Name of Claimant

When completing an online application, the applicant should provide the claimant's name and address on the Claimants screen.

If the claimant is an individual, the applicant should provide the claimant's first and last name in the fields that appear under the heading Individual Claimant. If the claimant is a

legal entity, the applicant should provide the entity's name in the field marked Organization Name. The claimant's address should be provided in the fields marked Address 1, Address 2, City, State, Postal Code, Country. If the copyright is co-owned by two or more parties, the applicant should click "save," and then repeat this process to add the names of each additional claimant.

When completing a paper application on Forms TX, VA, PA, SR, or SE, the applicant should provide the claimant's name and address in space 4 of the application in the space marked Copyright Claimant(s). If the copyright is co-owned by two or more parties, the applicant should provide the names and addresses of each claimant on space 4. If additional space is needed, the applicant may provide the name and address of each claimant on a continuation sheet submitted on Form CON.

Applicants should provide the claimant's full legal name. Providing a full legal name creates a clear record concerning the ownership of the copyright, and it limits the potential for confusion among claimants with similar names.

The applicant may provide the claimant's home address, business address, or any other address where the claimant maintains a fixed and permanent residence or place of business. If the applicant prefers not to provide this information (for instance if the claimant does not want a home address or phone number to appear in the registration record), the applicant may provide a post office box number where the claimant receives correspondence or an address for a third party agent who is authorized to receive correspondence on the claimant's behalf. However, the registration specialist will communicate with the applicant if the applicant merely provides an email address or an online address rather than a physical address.

The name and address that the applicant provides on the application will appear on the certificate of registration, which will be made available to the public upon request. Likewise, the claimant's name and address will appear in the online public record for the work, which can be accessed by anyone who performs a search for the work on the U.S. Copyright Office's website.

Once a certificate of registration has been issued, the Office cannot remove the claimant's name from the registration record or replace it with a pseudonym. The author, claimant, or their respective representatives may submit a written request to the Office to substitute the claimant's current legal name for the name shown in the online public record (but not the offline public record). To do so, the requesting party must submit an affidavit together with a court order granting the legal name change, and must pay the appropriate fee for this service. For more information on this procedure, see Chapter 1800, Section 1805.

For a general discussion of privacy issues, see Chapter 200, Section 205.

619.13 Examination Guidelines: Name of Claimant

619.13(A) Nicknames, First Names, Last Names, and Abbreviated Versions of the Claimant's Name

If the applicant provides a nickname or an abbreviated version of the claimant's full name, the registration specialist may register the claim provided that the identity of the claimant is clear. If the claimant's full name appears in the Name of Author field/space, on the deposit copy(ies), or elsewhere in the registration materials, the registration specialist may add that information to the registration record with an annotation, such as: "Regarding copyright claimant: Claimant's full name added by Copyright Office from [Name of Author field, deposit copy, Note to Copyright Office, etc.]." The registration specialist will communicate with the applicant if the application merely provides the claimant's given name or surname.

Examples:

- An application names "Ian McCall a.k.a. Scooter McCall" as the author of music and lyrics. The Name of Claimant field reads "Scooter McCall." The registration specialist will register the claim without communicating with the applicant.

- An online application names "Mr. T" as the claimant for a sound recording. In the Note to Copyright Office field the applicant explains that the claimant's full name is Terry Thompson Tipley. The registration specialist will add the claimant's full name to the registration record and add an annotation, such as: "Regarding copyright claimant: Claimant's full name added by Copyright Office from Note to Copyright Office."

- A paper application names "Mr. Robin and Ms. McCall" as co-authors and co-claimants for a bird watching guide. The registration materials do not contain any information concerning the claimants' full names. The registration specialist will communicate with the applicant.

619.13(B) Initials

An application may be accepted if the applicant provides initials in lieu of the claimant's full name, provided that the claimant is known to the public by those initials or provided that the claimant's full name is clearly given elsewhere in the registration materials. If it is unclear whether the initials identify the claimant, the registration specialist may communicate with the applicant. If the claimant's full name appears elsewhere in the registration materials, the specialist may add that information to the application with an annotation, such as: "Regarding copyright claimant: Claimant's full name added by Copyright Office from copy."

Examples:

- An application is submitted for a technical manual published by the General Motors Corporation. The application names "GM" as the author and claimant. The application will be accepted.

- A publisher submits an application for a novel that names "J.K.J. Bowling" as the author and claimant. The application will be accepted.

- A paper application names "FIG" as the claimant. The cover letter explains that the claimant is currently doing business under the name "Fantastic Fruit Company," that the claimant is planning to change its name to the "Fruit Is Good Company," and that "FIG" will be used as the company's trade name. Because it is unclear whether the initials identify the claimant to the public, the registration specialist will add the full name to the registration record, and add an annotation, such as: "Regarding copyright claimant: Claimant's full name added by Copyright Office from cover letter."

619.13(C) Identifying the Author of a Pseudonymous Work as the Copyright Claimant

If the author's pseudonym appears on the copies or phonorecords of the work, then as mentioned above, the applicant is not required to provide his or her real name in the application. Instead, the applicant may provide the author's pseudonym in the field marked Pseudonym, and may leave the Name of the Author field/space blank.

If the author and the copyright claimant are the same individual, the applicant may provide the author's legal name in the Name of Claimant field/space. Alternatively, the applicant may provide the author's legal name together with the author's pseudonym in the Name of Claimant field/space, provided that the application clearly indicates which is the legal name and which is the pseudonym (*e.g.,* "Samuel Clemens, whose pseudonym is Mark Twain"). Providing the claimant's full legal name creates a clear record of ownership, and as discussed in Section 615.2(B), it may extend or reduce the term of the copyright. *See* 17 U.S.C. § 302(c).

If the author does not wish to provide his or her legal name anywhere in the application, the applicant may provide the author's pseudonym in the Name of Claimant field/space, provided that the author checks the Pseudonymous box on the application and provided that the work meets the statutory definition of a pseudonymous work.

The statute states that the application shall include "the name . . . of the copyright claimant." 17 U.S.C. §§ 409(1), (3). But Congress also intended to give authors the ability to register their works under an assumed name. Allowing applicants to provide a fictitious name in the author field, while requiring them to disclose the author's real name in the claimant field, would undermine that objective and discourage pseudonymous authors from registering their works with the Office.

For a detailed discussion of pseudonymous works, see Section 615.2.

619.13(D) Identifying the Author of an Anonymous Work as the Copyright Claimant

If the author's name does not appear on the copies or phonorecords of the work, then as mentioned above, the applicant is not required to provide the author's name in the application. Instead, the applicant may leave the Name of the Author field/space blank and check the box marked "Anonymous."

If the author and the copyright claimant are the same individual, the applicant may provide the author's legal name in the Name of Claimant field/space. However, doing so creates a clear record of ownership, and as discussed in Section 615.1(B), it may extend or reduce the term of the copyright. *See* 17 U.S.C. § 302(c).

If the author does not wish to provide his or her real name in the application, the applicant may state "anonymous" in the Name of Claimant field/space, provided that the author checks the Anonymous box on the application and provided that the work meets the statutory definition for an anonymous work.

Although the statute states that the application shall include "the name . . . of the copyright claimant," Congress clearly intended to give authors the ability to register their works anonymously. 17 U.S.C. §§ 409(1), (3). Allowing applicants to state "anonymous" in the author field, while requiring them to disclose the author's real name in the claimant field, would undermine that objective and discourage anonymous authors from registering their works with the Office.

Examples:

- An online application is submitted for a comedy sketch *The Errant Space Museum* by Anonymous. The applicant checked the box indicating that this is an anonymous work and stated "Anonymous" in the Name of Author and Name of Claimant fields. The registration specialist will register the claim without communicating with the applicant.

- An online application is submitted for the children's book *The Aaron Spates Museum* by Anonymous. The applicant checked the box indicating that this is an anonymous work and the Name of Author field has been left blank. The Name of Claimant identifies the claimant as "Natalie Whitcomb." No transfer statement has been provided. The registration specialist will register the claim without communicating with the applicant, based on the assumption that Natalie Whitcomb is the author of this work, and that she intended to reveal her identity in the registration record.

For a detailed discussion of anonymous works, see Section 615.1.

619.13(E) Two or More Names Provided in the Name of Claimant Field / Space

If the copyright is owned by two or more co-claimants, the applicant should provide the name and address for each claimant.

When completing an online application, the applicant should enter the name of one claimant in the appropriate fields, click "save," and then repeat this process for the other claimant(s).

When completing a paper application, the applicant should provide the name of each claimant on space 4 of the application. If additional space is needed, the applicant may use a continuation sheet submitted on Form CON. The name of each claimant should be separated from each other with the word "and" or by listing each name on a separate line.

If the applicant provides more than one name in the Name of Claimant field/space, the registration specialist will communicate with the applicant if the identity or number of the claimants or co-claimants is unclear.

619.13(E)(1) Applications Submitted on Behalf of the Copyright Claimant

As a general rule, the registration specialist will communicate with the applicant if the Name of Claimant field/space states that one party is asserting a copyright claim on behalf of another party.

Example:

- Roberta Timmons submits a paper application on Form VA to register a sculpture. Roberta is named as the author and the Name of Claimant space reads "Robinson Cruz, LLC on behalf of Roberta Timmons." The registration specialist will communicate with the applicant, because it is unclear whether Robinson Cruz, LLC is the copyright claimant or a duly authorized agent who is submitting the copyright claim for Roberta.

619.13(E)(2) Two or More Names Separated by Conjunctions or Punctuations Marks in a Paper Application

If the copyright is owned by two or more claimants, the applicant should use "and" between the claimants' names in a paper application, rather than "or" and rather than "and/or." The registration specialist will communicate with the applicant if two or more names are provided in the Name of Claimant space together with the conjunction "or" (*e.g.*, "John Smith or Jane Doe) or "and/or" (*e.g.*, "John Smith and/or Jane Doe").

Examples:

- An application is submitted on Form TX for a guide book on farmers' markets, naming "Miriam Burchard and The House of

Miriam, Inc." as co-claimants. The registration specialist will register the claim.

- An application is submitted on Form VA for a comic strip. The application names Nancy Spring as the author of "2-D artwork" and Mario Van San as the author of "text." The Name of Claimant space names "Nancy Spring and/or Mario Van San" as the claimant(s). The registration specialist will ask the applicant to identify the party(ies) who own the copyright in this work.

In the alternative, the name of each claimant may be separated by a comma, semicolon, or slash (*e.g.*, "John Smith, Jane Doe," "John Smith; Smith Publishing," "John Doe / Jane Smith"). The U.S. Copyright Office discourages applicants from using hyphens, dashes, parentheses, or other forms of punctuation in space 4 of the paper application (*e.g.*, "John Smith (Smith Publishing)," "John Smith—Jane Doe").

As a general rule, the registration specialist may register a claim if each name appears to be complete, and it is clear that each name refers to a separate individual or legal entity, or if each name clearly refers to an author who is named in the application or elsewhere in the registration materials. The registration specialist will communicate with the applicant if it is unclear whether each name refers to a separate claimant.

Examples:

- A paper application is submitted for a song containing music and lyrics. "John Dalton; Mary Keating" are named as the co-authors and co-claimants for this work. The application will be accepted.

- A paper application is submitted for a novel, naming an individual as the author of the work. The Name of Claimant space reads "Dole Publishing, Inc./Reynolds Corporation," and an appropriate transfer statement has been provided. The application will be accepted, because the co-claimants appear to be separate legal entities.

- A paper application is submitted for a book on how to apply to law school. "Martha Espinosa" is named as the author and "Martha Espinosa (Law School Solutions)" is named as the claimant. No transfer statement is given. The registration specialist will communicate with the applicant to determine whether Martha and Law School Solutions are separate legal entities and, if so, whether the company has the right to be named as a co-claimant.

619.13(E)(3) Individual Name Listed Above or Below the Name of a Legal Entity in a Paper Application

If the name of an individual appears above the name of an organization in a paper application and if there are no other ambiguities in the registration materials, the

registration specialist will conclude that the individual is the copyright claimant and that the name of the organization is part of the claimant's address, regardless of whether the address contains the terms "c/o," "in care of," "attention," or the like.

If the name of an unincorporated organization appears above the name of an individual in a paper application and if there are no other ambiguities, the specialist will conclude that the organization is the claimant, regardless of whether the organization appears to be a sole proprietorship or whether the individual appears to be doing business under the name of that organization. Likewise, if the name of an incorporated organization appears above the name of an individual in a paper application and if there are no other ambiguities, the specialist will conclude that the organization is the claimant and that the name of the individual is simply part of the claimant's mailing address.

Examples:

- A paper application names Joan Donnelly as the author of a technical drawing. The following information appears in the Name of Claimant space:

  Joan Donnelly
  Hoosier Designs
  456 Enterprise Avenue
  Gary, Indiana 46401

  The registration specialist will register the claim without communicating with the applicant, because it appears that Joan is the sole copyright claimant and the name of the company is part of her address.

- A paper application names Nancy Cross as the author of music and lyrics. The following information appears in the Name of Claimant space:

  Cross Music Publishing
  c/o Nancy Cross
  234 Elm Avenue
  Chicago, Illinois 60018

  The transfer statement indicates that the claimant obtained the copyright in this work "by written agreement." The registration specialist will register the claim, because it appears that the Cross Music Publishing is the sole copyright claimant and that the individual's name is part of the company's mailing address.

- A paper application names Alexis Consulting, Inc., as the author and the work made for hire box is checked "yes." The following information appears in the Name of Claimant space:

Alexis Consulting, Inc.
Robin Alexis
1001 Main Street
Parole, MD 21401

The registration specialist will register the claim, because it appears that Alexis Consulting, Inc. is the sole copyright claimant and that the individual's name is part of the company's mailing address.

619.13(F) Group of Individuals Provided in the Name of Claimant Field / Space

Applicants should provide the name(s) of the specific individual(s) or organization(s) that own the copyright in the work, even if the copyright is owned by a group of individuals.

Example:

- An application is submitted for a sound recording, naming George Baker, Michael Warner, and Nathan Pike as the co-authors and co-claimants for the work. A statement on the deposit copy reads "Performed by the Busboys. The Busboys are George Baker, Michael Warner, and Nathan Pike." The registration specialist will register the claim.

If the applicant names a group of individuals in the Name of Claimant fields/spaces (*e.g.*, "The 2014 Graduating Class of Summer Glen Elementary School"), the applicant also should provide the name of each individual in the group.

The registration specialist may register a claim without communicating with the applicant if the criteria for membership in the group are clearly defined, if the members of that group were clearly established as of the date that the application, deposit, and filing fee were received, and if the applicant provides the names of representative individuals in the application. If the membership of the group is vague or ambiguous, or if the applicant fails to provide the names of any individuals, the registration specialist will communicate with the applicant.

Examples:

- An application is submitted for a sound recording naming Derek Sable, Angelo Armstrong, and Kenneth Rainey as the co-authors of the work. "Between Extremes" is named as the copyright claimant, but no transfer statement is provided. The deposit copy reads "performed by Between Extremes." The registration specialist will communicate with the applicant, because the identity of the copyright claimant(s) is unclear.

- "The James Martin Family" is named as claimant for a genealogy. The registration specialist will communicate with

the applicant because "family" is an ambiguous term and the members of this group are not clearly defined.

- An application names "All Right Thinking People" as the claimant for an online message board. The registration specialist will communicate with the applicant, because it is impossible to identify the members of this group.

619.13(G) Individual and Unincorporated Business Organization Provided in the Name of Claimant Field / Space

If an individual and an unincorporated business organization are named together in the Name of Claimant field/space, the application may be accepted if it seems likely that the organization is merely a trade name or other assumed name for the individual. As a general rule, the registration specialist will conclude that an individual and an unincorporated organization are the same legal entity if the applicant clearly states that the individual is "trading as," "doing business as," or "also known as" the organization or that the unincorporated organization is "solely owned by" the individual.

Likewise, the specialist will conclude that an individual and an unincorporated organization are the same legal entity if there is a clear relationship between the name of the individual and the name of the organization (*e.g.*, John Smith/Smith Publishing Company).

The specialist will communicate with the applicant if the individual and the organization appear to be separate legal entities, if the organization appears to be a corporation, or if the relationship between the individual and the organization is unclear.

Examples:

- An online application names "Dear John Publishing Company" as the author of a directory. The claimant is identified as "John Deering d/b/a Dear John Publishing Company." The application will be accepted.

- An online application names "Ken Clark" as the author of a photograph. The applicant names "Ken Clark Studios, solely owned by Ken Clark" as the claimant. The application will be accepted.

- An online application names "Pauline Corelli" as the author of a jewelry design and "Corelli Designs" as the claimant. The registration specialist may register the claim without communicating with the applicant. The author and the organization appear to be the same legal entity, because they both contain the name "Corelli."

- A paper application names "George Jefferson" as the author of a sound recording and "George Jefferson (Bentley Sound)" as the

claimant. No transfer statement has been provided. The registration specialist will communicate with the applicant, because it is unclear whether George and Bentley Sound are the same legal entity.

619.13(H) Individual and Incorporated Organization Provided in the Name of Claimant Field / Space

If an individual and an incorporated organization are named together in the Name of Claimant field/space, and if a transfer statement is not provided or is unclear, the registration specialist will communicate with the applicant to determine whether the individual or the organization is the copyright claimant.

Examples of corporate designations and abbreviations that may trigger this inquiry include:

- Incorporated (Inc.)
- Corporation (Corp.)
- Limited (Ltd.)
- Professional Corporation (PC)
- Limited Liability Company (LLC)
- Limited Liability Partnership (LLP)
- Public Limited Company (plc)
- Aktiengesellschaft (AG)
- Aktibolag (AB)
- Aktieselskab or Aksjeselskap (A/S)
- Akciová spoločnosť or Akciová společnost (a.s.)
- Besloten Vennootschap (B.V.)
- Gesellschaft mit beschränkter Haftung (GmbH, GesmbH, or Ges.m.b.H.)
- Société Anonyme, Sociedad Anónima, or Sociedad por Acciones (S.A.)
- Sociedad Anónima de Capital Variable (S.A. de C.V.)
- Sociedad Anónima Bursátil de Capital Variable (S.A.B. de. C.V.)
- Sociedad de Responsabilidad Limitada de Capital Variable (S. de R. L. de C.V.)

Examples:

- An online application is submitted naming Joan Dolan as the author of a book of poetry for teenagers and naming "Joan Dolan (Dolan Publishing Company, Inc.)" as the copyright claimant. The transfer statement reads "author is sole owner of Dolan Publishing." Because an individual and a corporation are separate legal entities, the specialist will communicate with the applicant to determine whether Joan or Dolan Publishing own the copyright in this work.

- A paper application is submitted naming Adelaide Drescher as the author of "2-D artwork" and naming "Adelaide Drescher d.b.a. Adelaide Dree AG" as the copyright claimant. No transfer statement is provided. Because an individual and a corporate organization are separate legal entities, the registration specialist may communicate with the applicant to determine whether Adelaide or Adelaide Dree AG owns the copyright in this work.

619.13(I) Partnership Named as Claimant

Typically, a partnership is an unincorporated business that is owned by two or more individuals. A partnership necessarily requires a written agreement stipulating that the partners are co-owners of any property held by the partnership, and works created by one of the partners are often considered the property of the partnership as a whole. Therefore, if an application names a partnership as the claimant without providing a transfer statement explaining how the partnership obtained ownership of the copyright, the application may be accepted if it is clear that at least one of the authors is a member of that partnership.

Example:

- An application is submitted for a song that names Jim Chapman, Jake Brody, and Jessie Adams as co-authors of music and lyrics. The application names "The Three J's, a partnership" as the copyright claimant. The registration specialist may register the claim without communicating with the applicant, because it appears that the authors of this work are members of the partnership.

619.13(J) Trust or Estate Named as Claimant

The Office will accept an application that names a trust or estate as the copyright claimant if that entity is a legal or beneficial owner of the copyright.

If an individual and a trust or estate are named together in the Name of Claimant field/space, the application may be accepted if it seems likely that the individual is a beneficiary or duly authorized agent of the trust or estate. For example, the registration

specialist will accept an application that identifies an individual with one or more of the following terms:

- Administrator
- Administrator on behalf of _____
- Beneficiary
- Executor
- Fiduciary
- Personal Representative
- Trustee

If the applicant fails to provide a transfer statement explaining how the trust or estate obtained ownership of the copyright, the registration specialist may communicate with the applicant unless there is a clear relationship between the name of the author and the claimant.

Examples:

- An application is submitted for a screenplay naming "Riggins National Bank, Trustee" as the sole copyright claimant. Riggins National Bank holds the copyright in a motion picture screenplay in trust for the investors in a motion picture venture. The transfer statement indicates that the trustee obtained the copyright in this work "by contract." The registration specialist will register the claim.

- An application is submitted for a sculptural work naming Joan Mason as the author and stating that the author died in 2006. The application names "Brian Mason, Administrator" as the copyright claimant, and the transfer statement indicates that the claimant obtained the copyright "by court order." The registration specialist will register the claim.

- An application is submitted for a painting. The application names Jonathan Edwards as the author of this work and states that the author died in 2008. "The Estate of Jonathan Edwards" is named as the copyright claimant, but a transfer statement is not provided. The registration specialist may register the claim without communicating with the applicant. The claimant appears to be the owner of the work by inheritance, because there is a clear relationship between the name of the author and the claimant.

- An application is submitted for an autobiographical work, naming Roseanne Smith as the author and stating that the author died in 2010. "The Roseanne Smith Living Trust" is named as the claimant, and there is no transfer statement. The registration specialist will communicate with the applicant,

because it is unclear whether the trust still exists or whether it terminated upon the author's death.

- An application is submitted for a musical work naming Michael Stevens as the author and stating that the author died in 2012. "Hands Across the Oceans Trust" is named as the claimant, but no transfer statement is provided. The registration specialist will communicate with the applicant to request an appropriate transfer statement.

619.13(K) Variances Between the Name Provided in the Name of Claimant Field / Space and Elsewhere in the Registration Materials

As a general rule, the individual or legal entity that is identified in the application as the copyright claimant should be consistent with the ownership information that appears on the deposit copy(ies) or elsewhere in the registration materials. Ordinarily, the registration specialist will give greater weight to the information that appears in the Name of Claimant field/space. If appropriate, the specialist may add an annotation to the registration record to clarify the claimant's name or to add information that appears on the deposit copy(ies) or elsewhere in the registration materials. The specialist may communicate with the applicant if the variance between the name provided in the Name of Claimant field/space is inconsistent with the ownership statements that appear on the deposit copy(ies) or elsewhere in the registration materials.

Example:

- An application is submitted naming Maureen Hope Sullivan as the author and Maureen Sullivan Romagnoli as the copyright claimant. A statement on the deposit copies reads "by Maureen Romagnoli." The registration specialist may register the claim because Maureen Sullivan appears to be the author's maiden name or married name. The specialist may add an annotation to the record, such as: "Regarding author information: Name appears on deposit copy as Maureen Romagnoli."

619.13(L) Variance Between the Name Provided in the Name of Claimant Field / Space and the Copyright Notice

As a general rule, the registration specialist will not communicate with the applicant if the name provided in the Name of Claimant field/space does not match the name provided in a copyright notice, if any. (A proper copyright notice was required for works published in the United States before March 1, 1989, but this requirement does not apply to unpublished works, foreign works, or works published in the United States after that date.) However, the specialist may communicate, if the variance suggests that the individual or entity named in the application is not the correct copyright claimant.

Examples:

- An application for an unpublished work names Patrick Mink as the author and copyright claimant. The copy contains the

following copyright notice: "© 2003 Market Music Company." The registration specialist may register the claim without communicating with the applicant, because the name that appears in the notice could be an alternative name for the copyright claimant, such as a "doing business as" designation.

- An application for a published work names "Frank Music Company" as the author and copyright claimant. The deposit copies contain the following copyright notice: "© 2011 Excelsior Music." The registration specialist may register the claim without communicating with the applicant, because the name that appears in the notice could be an alternative name for the copyright claimant, such as an "also known as" designation.

- An application is submitted for a children's book. Gloria Nelson is named as the author of "text;" Frank Moore is named as the author of "illustrations." Gloria Nelson is named as the sole copyright claimant. No transfer statement is provided. The book contains a copyright notice that reads "text © Gloria Nelson; illustrations © Frank Moore." Because the claimant name on the application varies from the information provided in the copyright notice, the registration specialist may communicate with the applicant to determine who owns the copyright in the illustrations.

619.13(M) Statements Concerning the Claim to Copyright in the Name of Claimant Field / Space

To register a work of authorship, the applicant should identify the work that will be submitted for registration and the applicant should assert a claim to copyright in that material. As discussed in Sections 618 and 621, this information should be provided in the Author Created field, and if applicable, in the New Material Included field in the online application, or in space 2, and if applicable, in space 6(b) of the paper application. The Office strongly discourages applicants from providing this type of information in the Name of Claimant field/space or in the Transfer field/space. Statements such as "John Smith: wrote words; Jane Doe: wrote music" or "John Smith — owner of words; Jane Doe — owner of words" may raise a question as to whether the claimant is an owner or co-owner of the copyright in the entire work or whether the claimant merely owns the copyright in a specific element of a collective work or derivative work.

619.13(N) Percentage of Copyright Ownership in the Name of Claimant Field / Space

The U.S. Copyright Office strongly discourages applicants from providing percentages in the Name of Claimant field/space (*e.g.*, John Smith 50%; Jane Doe — one half share, etc.) because this may raise a question as to whether the claimant owns the entire copyright in the work.

619.13(O) Owner of Copyright for a Limited Term

The U.S. Copyright Office will accept an application stating that the claimant owns all the exclusive rights in the work for a limited term or a limited period of time, if it is clear that the claimant owned the rights as of the date that the Office received the application, deposit, and filing fee. If it appears that the claimant did not own all the rights when the claim was received or if the claim was filed after the period of ownership expired, the registration specialist will communicate with the applicant.

619.13(P) Future and Contingent Interests

An individual or legal entity that owns a future interest in the copyright cannot be named as a copyright claimant. Likewise, an individual or legal entity who may obtain all of the rights under the copyright based upon a future contingency cannot be named as a copyright claimant. In the following examples, the registration specialist would accept an application that names "John Doe" or "John Doe Company" as the copyright claimant, but would ask for permission to remove the name of the party with only a future interest from the Name of Claimant field/space.

Examples:

- "John Doe, or upon his death, Mary Doe."
- "John Doe, and by will, Mary Doe."
- "John Doe, and after ten years, Sam Doe."
- "John Doe, or if she survives, Mary Doe."
- "John Doe Company or, should its corporate headquarters move to Iowa, Howard Doe Company."

619.13(Q) Deceased Individual or Defunct Entity Named as a Claimant

As a general rule, the claimant named in the application must be an individual or legal entity capable of owning the copyright in the work.

If the author is the only party who is eligible to be named as the copyright claimant, and if the author is deceased or a defunct organization, the U.S. Copyright Office will accept an application that names the author as the copyright claimant. Likewise, the Office will accept an application that names a claimant who owns all of the rights that initially belonged to a deceased author, such as the author's estate, devisee, or heir. *See* Group Registration of Contributions to Periodicals, 81 Fed. Reg. 86,634, 86,641-42 (Dec. 1, 2016).

619.13(R) Identifying the Claimant by Referring to Other Records

The claimant's name and address should be clearly identified in the Name of Claimant field/space. If the claimant can be identified only by referring to documents or records

that have not been submitted with the registration materials, the registration specialist will communicate with the applicant.

Example:

- An application for a real estate map names the claimant as "Owner of Plat B, Square 464 on page 844 of Record Book 501, Office of the Recorder of Deeds, Mexia, Texas." The registration specialist will ask the applicant to provide the claimant's full name and address.

619.13(S) Name of Claimant Unknown

The registration specialist will communicate with the applicant if the applicant states that the claimant is "unknown" or otherwise fails to identify the claimant by name, and instead enters a number, symbol, or descriptive statement in the Name of Claimant field/space, such as "publishing designee" or "copyright control." If the applicant is unable to identify the individual or legal entity that owns all of the rights under the copyright, the applicant should provide the author's name in the Name of Claimant field/space, because as discussed in Section 619.7, the author may always be named as the copyright claimant even if the author has transferred the copyright to another party.

619.13(T) Name or Address of Claimant Omitted

If the applicant fails to provide the claimant's name and address in an online application, the application will not be accepted by the electronic registration system.

If the applicant fails to provide the claimant's name in a paper application, the registration specialist may add the author's name to the claimant space and register the claim with an annotation, such as: "Regarding claimant information: No name given on application. Claim registered in author's name(s) as claimant(s). 37 CFR 202.3(a)(3)(i)."

If the applicant fails to provide the claimant's address, and if the same individual or entity is named in the Claimant, Correspondent, and/or Mail Certificate spaces, the specialist may add the address provided in those spaces and register the claim with an annotation, such as: "Regarding claimant information: Address added by Copyright Office from application."

620 Transfer Statement

This Section discusses the U.S. Copyright Office's practices and procedures for providing a transfer statement for works created and/or first published on or after January 1, 1978.

A transfer statement is not required for works first published before January 1, 1978. For a detailed discussion of such works, see Chapter 2100 (Renewal Registration).

620.1 What Is a Transfer of Copyright Ownership?

The Copyright Act states that a transfer of ownership "is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or

of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect." 17 U.S.C. § 101 (definition of "transfer of copyright ownership"). It also states that a nonexclusive license is not a transfer of ownership. *Id*.

The copyright in a work initially belongs to the author or authors of that work. 17 U.S.C. § 201(a). Section 201(d) of the Copyright Act explains that "[t]he ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession." As a general rule, a transfer of copyright ownership must be made in writing, and it must be signed by the copyright owner conveying the copyright. Section 204(a) of the Copyright Act states that "a transfer of copyright ownership, other than by operation of law, is not valid unless an instrument or conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent."

620.2 What Is a Transfer Statement?

A transfer statement is a brief statement in the application that explains "how the claimant obtained ownership of the copyright." 17 U.S.C. § 409(5).

620.3 Transfer Statement Distinguished from an Instrument or Conveyance That Transfers the Copyright from One Party to Another

A transfer statement is distinct from a legal instrument, conveyance, or other document that transfers the copyright from one party to another. A transfer statement does not convey any rights in the copyright; it is merely a statement in the application affirming that the claimant has obtained all of the rights under copyright that initially belonged to the author and specifying the means by which the claimant obtained those rights.

620.4 When Is a Transfer Statement Required?

Generally, a transfer statement is required if the individual or organization named as claimant or co-claimant in the Name of Claimant field/space is not an author of the work. There are a few exceptions to this rule, which are discussed in Sections 620.10(D)(1) through 620.10(D)(2).

620.4(A) The Author and the Copyright Claimant Are the Same

If the work was created by a single author, and if the author is named in the application as the sole copyright claimant, there is no need to provide a transfer statement.

Example:

- An online application is submitted for a sculptural work. Alberto Bolero is named as the author and the sole copyright claimant. The work will be approved for registration; no transfer statement is required.

620.4(B) The Author and the Copyright Claimant Are Different

If an individual or organization other than the author(s) is named as a claimant or co-claimant, the applicant should provide a brief statement that explains how that party obtained ownership of the copyright. Specifically, the applicant should explain how the claimant acquired all of the rights that initially belonged to the author of that work. 17 U.S.C. § 409(5).

Examples:

- An online application is submitted for a literary work. Akira Yamato is named as the author; Koi Publishing Inc. is named as the sole copyright claimant. To explain how Koi Publishing Inc. obtained the copyright in this work, the applicant provides a transfer statement that reads "by written agreement." The registration specialist will register the claim.

- An online application is submitted for an audiovisual work. Pradeep Patel and Faiyaz Ahmed are named as co-authors; Pradeep Patel and Desi Studios LLC are named as co-claimants, but a transfer statement has not been provided. There is no need to provide a transfer statement for Pradeep, because he is one of the authors of the work. However, the registration specialist will ask the applicant to provide a transfer statement that explains how Desi Studios LLC obtained ownership of the copyright in this work.

- An online application is submitted for a graphic work. Franz Gruber is named as the author; Mark Gilbert is named as the sole copyright claimant. The work made for hire box is blank and no transfer statement has been provided. Because Gilbert is not the author of this work, the registration specialist will ask the applicant to provide a transfer statement explaining how he obtained ownership of the copyright.

For instructions on how to provide a transfer statement in an online application or a paper application, see Section 620.9 below.

620.5 Joint Works

If the work submitted for registration is a joint work, then as discussed in Section 613.5, the applicant should provide the name of each author who contributed copyrightable authorship to that work. In addition, the applicant should provide the name of the person who owns or co-owns the copyright in that work.

If the applicant names all the joint authors as co-claimants, there is no need to provide a transfer statement.

Example:

- An online application is submitted for a sound recording that appears to be a joint work. Maria Irantzu, Maria Ines, and Maria Imelda are named as co-authors and co-claimants of the performance embodied in this recording. The registration specialist may register the claim without communicating with the applicant.

Likewise, no transfer statement is required if all the joint authors are named as co-authors of the work, and if one or more – but less than all – of those joint authors are named as the claimant.

Example:

- An online application is submitted for a children's book that appears to be a joint work. Lucinda and Vanessa Perez are named as co-authors of this work. Lucinda is named as the sole copyright claimant, but no transfer statement has been provided. The registration specialist may register the claim without communicating with the applicant.

By contrast, if the applicant names a third party as the claimant for a joint work, the applicant should provide a transfer statement that explains how that party acquired the copyright in that work. If the claimant obtained the copyright from two or more joint authors using a different means for each transfer, the applicant should provide an appropriate transfer statement for each author.

Example:

- An online application is submitted for a technical drawing, naming Leon Katz and Wolfgang Fritz as co-authors of this work. Rumpelstiltskin LLC is named as the copyright claimant. In the Note to Copyright Office field the applicant explains that Katz assigned the copyright in this work to Rumpelstiltskin LLC through a bill of sale; Fritz assigned the copyright in this work to Rumpelstiltskin LLC through a trust agreement. The transfer statement reads "by written agreement." The registration specialist will register the claim; the transfer statement adequately explains how the claimant obtained the copyright from each author.

For a general discussion of joint works, see Chapter 500, Section 505.

620.6 Works by Two or More Authors That Do Not Meet the Statutory Definition of a Joint Work

If the work was created by two or more authors but does not meet the statutory definition of a joint work, the applicant should provide a brief statement explaining how the claimant obtained ownership of the work that the applicant intends to register.

Example:

- Katey Pitt is the author of a murder mystery titled *A Little Dog Laughed*; Mick Anders created the artwork that appears on the dust jacket. Katey and Mick assigned the copyright in their respective works to Pitfall Mystery Publishing. The publisher submits an online application naming Katey Pitt as author of "text," Mick as author of "artwork," and Pitfall Mystery Publishing, Inc., as the copyright claimant. The publisher provides a transfer statement explaining that it obtained the copyright in the text and artwork "by written agreement." The registration specialist will register the claim with an annotation, such as: "Basis for registration: Unit of publication."

620.7 Derivative Works and Compilations

If an individual or organization other than the author(s) is named as a claimant or co-claimant for a derivative work or a compilation, the applicant should provide a transfer statement explaining how that party obtained ownership of the copyright. In the case of a derivative work, the applicant should explain how the claimant acquired all of the rights that initially belonged to the individual or organization that created the new or revised material that appears in the work. In the case of a compilation, the transfer statement should explain how the claimant acquired all of the rights that initially belonged to the individual or organization that selected, coordinated, and/or arranged the preexisting materials or data that appear in the compilation.

Examples:

- An application is submitted for an English translation of a Spanish textbook. The application names Mary Fisher as the author of the translation and names Jones Publishing Company as the copyright claimant. The transfer statement indicates that the publisher obtained the copyright in the translation "by written agreement." The registration specialist will register the claim.

- An online application is submitted for a musical arrangement naming XYZ Enterprises, Inc. as the author and Jennifer Sunshine as the copyright claimant. Jennifer states "by written agreement" in the Transfer field to explain how she obtained the copyright in this work. In the Material Excluded field she states "music and lyrics were previously published" and in the New Material Included field she limits the claim to the "musical arrangement." The registration specialist will register the claim.

- An online application is submitted for a directory. The Association of Herpetologists is named as the copyright claimant, and the Serpentine Society is named as author of the "compilation of professional information." A transfer statement

is not provided. The registration specialist will communicate with the applicant to request an appropriate transfer statement.

620.8 Collective Works

A collective work and the separate and independent works that appear in the collective work may be registered with the same application, provided that the claimant owns the copyright in the individual contributions and the copyright in the collective work as a whole. If the claimant is not the author of the contributions or is not the author of the collective work as a whole, the applicant should provide a transfer statement explaining how the claimant obtained the copyright in that aspect of the work.

Examples:

- An online application is submitted for a book that contains letters written by veterans of the Iraq War. John Roberts is named as the author of the "introduction and the selection, coordination, and arrangement of letters," and ten individuals are named as the authors of the letters that appear in the book. John is named as the copyright claimant, and the transfer statement states that he obtained the copyright in each letter "by written agreement." The registration specialist will register the claim.

- An application is submitted for a cookbook titled *Backyard Grilling* which contains dozens of articles, recipes, photographs, and illustrations. The Brickyard Press is named as the author and copyright claimant; no transfer statement is provided. The registration specialist will register the claim. There is no need to provide a transfer statement, because the Brickyard Press appears to be the author of both the individual contributions and the collective work as a whole.

620.9 Completing the Application: Transfer Statement

This Section provides guidance on providing a transfer statement in an online application or a paper application.

620.9(A) Minimum Requirements for a Transfer Statement

If the claimant or co-claimant(s) is not the author of the work, the applicant should provide a brief statement that explains how each claimant obtained ownership of the copyright. (As discussed above, a transfer statement is not required if the claimant is the author of the work.)

The transfer statement should demonstrate that the copyright was transferred to the claimant by written agreement, by inheritance, or by operation of law. 17 U.S.C. § 201(d)(1). In addition, the statement should demonstrate that the claimant obtained all the rights under the copyright that initially belonged to the author.

When completing an online application the applicant should provide this information on the Claimants screen by selecting one of the options listed in the drop down menu marked Transfer Statement.

In the case of a literary work, a work of the visual arts, a work of the performing arts, a sound recording, or a motion picture/audiovisual work, the options include "By written agreement," "By inheritance," and "Other." If the claimant obtained the copyright through an assignment, contract, or other written agreement, the applicant should select "By written agreement." If the claimant obtained the copyright through a will, bequest, or other form of inheritance, the applicant should select "By inheritance."

When completing an online application for a single serial issue, the options include:

- By written agreement(s) with author(s) named on the application/certificate.
- By written agreement(s) with author(s) not named on the application/certificate.
- By written agreement(s) with author(s) named and contributors not named on the application/certificate.
- By written agreement.

If these options do not fully describe the transfer, the applicant may select "Other" from the drop down menu and provide a more specific transfer statement in the space marked Transfer Statement Other. Currently, the total amount of text that may be provided in the Transfer Statement Other field is limited to 100 characters.

When completing a paper application, the applicant should provide a transfer statement on space 4 of the application under the heading Transfer. For examples of acceptable transfer statements, see Section 620.9(B) below.

620.9(B) Acceptable Transfer Statements

As a general rule, the U.S. Copyright Office will accept any of the transfer statements set forth in Sections 620.9(B)(1) through 620.9(B)(4) below (regardless of whether the applicant submits an online application or a paper application), unless that statement is contradicted by other information in the registration materials. In most cases, the Office will accept variant forms of these transfer statements.

620.9(B)(1) Transfer by Written Agreement

The U.S. Copyright Office will accept a transfer statement that clearly states that the copyright was transferred to the claimant by a written agreement.

Examples:

- By acquisition, merger, merger agreement, merger transaction, or the like (provided that both the author and claimant are legal entities).

- By assignment.
- By assignment to the United States government.
- By assurance (a legal term meaning writing under seal).
- By bill of sale.
- By contract.
- By exclusive songwriter's agreement (provided that the claimant acquired all of the rights under the copyright, rather than the mere right to reproduce, distribute, perform, and/or display the work).
- By gift agreement.
- By memorandum confirming oral agreement.
- By mutual agreement.
- By note confirming oral agreement.
- By publishing agreement, by publishing contract, by agreement with publisher, publishing conveyance of copyright contract, or the like (provided that the claimant acquired all of the rights under the copyright, rather than the mere right to publish the work).
- By purchase agreement.
- By royalty agreement (provided that the claimant acquired all of the rights under the copyright, rather than the mere right to receive royalties from the use of the work).
- By settlement.
- By transfer of all rights.
- By transfer of all U.S. rights.
- By transfer of title.
- By trust agreement.
- By written agreement.
- By written assignment.

- By written consent.
- By written contract.

620.9(B)(2) Transfer by Written Instrument from a Third Party

The U.S. Copyright Office will accept a transfer statement that clearly states that the copyright was transferred to the claimant by a written transfer that was made by a third party.

Examples:

- By court order.
- By mortgage foreclosure.
- Deed from trustee in bankruptcy.
- From mortgagee after foreclosure.

620.9(B)(3) Transfer by Inheritance

The U.S. Copyright Office will accept a transfer statement that clearly states that the copyright was transferred to the claimant by will or by the applicable laws of intestate succession.

Examples:

- By descent.
- By inheritance.
- By intestate succession.
- By will.
- Heir of author.
- Heir under state law.
- Sole distributee of author who died intestate.

620.9(B)(4) Transfer by Operation of Law

The U.S. Copyright Office will accept a transfer statement that clearly states that the copyright was transferred to the claimant by operation of law.

Examples:

- By operation of state community property law.

- Community property state.
- Partnership agreement.
- [Author] is a partner in this partnership.

620.10 Examination Guidelines: Transfer Statement

The transfer statement provided in the application will appear on the certificate of registration and the online public record. Therefore, the statement should be as accurate and complete as possible in order to provide a reliable public record.

As a general rule, if the claimant named in the application is not an author or co-author of the work, the applicant should provide a transfer statement. The registration specialist will communicate with the applicant if the application fails to provide a transfer statement or if the transfer statement is unclear or contradicted by other information in the registration materials.

620.10(A) Transfer of Copyright Ownership or Other Documents Pertaining to Copyright Submitted with the Application

A transfer statement should be provided in the appropriate field/space of the application.

Submitting a copy of an agreement, conveyance, or other legal instrument is not an acceptable substitute for a transfer statement. If the applicant submits a legal document in lieu of providing a proper transfer statement, the registration specialist will communicate with the applicant.

The applicant need not and should not submit a copy of any agreement, conveyance, or other legal instrument that may be referenced in the transfer statement. The U.S. Copyright Office will not interpret any agreement or other document pertaining to copyright.

If the applicant would like to record a transfer of copyright ownership or any other document pertaining to copyright, that document should be submitted separately using the procedures for recording documents with the U.S. Copyright Office. For a detailed discussion of these procedures, see Chapter 2300.

Examples:

- An application to register a motion picture is submitted along with a photocopy of an assignment involving this work. Biscuit Studios is named as the author, Grey Bullet LLC is named as the claimant, and the transfer statement indicates that the claimant obtained the copyright "by written agreement." The registration specialist will register the claim, but will not record the assignment or return the document to the applicant.

- An online application is submitted for a musical work, naming Jonathan Rich as the author and Poor Boy Productions LLC as the sole copyright claimant. In addition, the applicant uploads a signed, original copy of a contract that purportedly conveys the copyright in the work from the author to the copyright claimant. The Transfer field states, "see document attached." The registration specialist will communicate with the applicant. The specialist will explain that a contract is not an acceptable substitute for a transfer statement and will ask for permission to replace the phrase "see document attached" with an appropriate transfer statement, such as "by written agreement" or "by written contract."

- An online application is submitted for a logo, along with a copy of a legal contract. The application names BrandMe LLC as the author of the work and names Lenny Rodgers as the copyright claimant. There is no transfer statement. In the Note to Copyright Office field Lenny explains, "I paid for this logo so I own it. I would like to record the enclosed contract with the Office." The registration specialist will communicate with the applicant to determine if Lenny owns the copyright in this logo; if so, the specialist will ask Lenny to provide an appropriate transfer statement. In addition, the specialist will explain that if Lenny would like to record the agreement with the Office, the document should be submitted separately using the procedure for recording documents.

620.10(B) Chain of Title

As a general rule, the applicant need not provide a transfer statement for each transfer of ownership between the author and the party that currently owns all of the rights under copyright that initially belonged to the author. Ordinarily, the registration specialist will accept a transfer statement that describes the most recent transfer between the claimant named in the application and the previous copyright owner, unless the statement is unclear or contradicted by other information in the registration materials.

In special circumstances, the registration specialist may ask the applicant to submit a supplementary statement describing the entire chain of title from the author to the claimant, such as when the work was created by a long-deceased author or a recently-deceased well-known author and there is no indication that the claimant is related to that author.

Examples:

- Willie Park submits an application to register an oil painting that he found in his attic. Willie names his great-grandfather as the author of the work and he states that the author died in 1965. House of Oil Artwork, LLC is named as the copyright claimant and the transfer statement reads "by assignment." The

registration specialist will ask the applicant to provide a statement describing the chain of title from the author to the copyright claimant.

- Michele Roth submits an application to register an unpublished song written by Bob Marley in 1964. Michele names herself as the copyright claimant "by written agreement." There is no apparent link between the applicant and Bob Marley, and the applicant has not identified the party who transferred the copyright to Michele. The registration specialist will ask the applicant to provide a statement describing the chain of title from the author to the copyright claimant.

620.10(C) Unacceptable Transfer Statements

The U.S. Copyright Office will not accept a transfer statement indicating that the claimant obtained the copyright through an oral agreement; a statement indicating that the claimant does not own all of the rights under copyright that initially belonged to the author; a statement that merely describes the relationship between the author and claimant; or a statement that merely references the material object in which the work has been fixed. Each of these topics is discussed in Sections 620.10(C)(1) through 620.10(C)(4) below.

620.10(C)(1) Transfer by Oral Agreement

As discussed above, the copyright in a work created and/or first published on or after January 1, 1978 cannot be transferred by an oral agreement, unless the agreement has been memorialized in a written note or memorandum signed by the copyright owner or the owner's duly authorized agent. 17 U.S.C. § 204(a).

If the transfer statement states or suggests that the copyright was transferred to the claimant by oral agreement, the registration specialist will communicate with the applicant to determine whether the agreement was confirmed in a written document signed by the copyright owner. If so, the specialist will ask the applicant for permission to amend the transfer statement to read "by written agreement."

If the oral agreement has not been confirmed in writing, the specialist will ask the applicant for permission to name the author of the work as the sole copyright claimant.

620.10(C)(2) Transfer of One or More — but Less than All — of the Rights under Copyright

As discussed in Section 619.1, the author of the work or a person or entity that owns all of the rights under copyright are the only parties entitled to be named as a copyright claimant. If the transfer statement states or suggests that the copyright claimant is a party that owns some — but less than all — of the exclusive rights, a nonexclusive licensee, or any other party that does not own all the rights under copyright, the registration specialist will communicate with the applicant.

The following are examples of statements that may indicate that the claimant does not own all of the rights in the copyright:

Examples:

- Agreement to prepare derivative work.
- By consent.
- By consignment.
- By designation.
- By grant of contractual right to claim legal title in an application for copyright registration.
- By lease.
- By license.
- By permission.
- By purchase of option.
- By release.
- By request.
- By right of first refusal.
- Dedicated to.
- Adaptation rights.
- Broadcast rights.
- Display rights.
- Distribution rights.
- Motion picture rights.
- Performing rights.
- Publication rights.
- Reproduction rights.
- Serial rights.
- By transfer of all rights, except the exclusive right of performance (or the like).

- By transfer of all United States rights in videogame, except right to create hand held version of the work.
- By transfer of all rights in the United Kingdom (or the like).
- By transfer of worldwide rights, except for copyright in the United States of America.

620.10(C)(3) Transfer Statements That Merely Describe the Relationship between the Author and the Copyright Claimant

As a general rule, the U.S. Copyright Office will not accept a transfer statement that merely describes the relationship between the author and the claimant without specifying how the claimant obtained ownership of the copyright.

Examples:

- Claimant is the author's father, mother, son, or daughter, or any other member of the author's family (even if the author is a minor).
- Claimant is the mother, father, daughter, son, widow, or widower of a deceased author, or any other member of the deceased author's family (although the Office will accept a transfer statement indicating that the claimant is the author's "heir," acquired the copyright "by will," or similar statements indicating that the claimant obtained the copyright "by inheritance").
- Claimant is the author's spouse (although the Office will accept a transfer statement indicating that the spouse acquired the copyright "by operation of state community property law").
- Author is president of claimant corporation.
- Author owns 100% of the claimant corporation's stock.
- Claimant is the author's agent.
- Claimant is the author's publisher.
- Claimant is the author's licensee.
- Claimant produces all of the author's artistic works.

620.10(C)(4) Transfer or Possession of Material Object

The U.S. Copyright Office will not accept a transfer statement that merely refers to the transfer, ownership, or possession of a material object in which the work has been fixed. Ownership or possession of a copy or phonorecord does not convey any rights in the

copyright, nor does the transfer of ownership of the copyright convey property rights in any material object in which the work has been fixed (absent an agreement to that effect). 17 U.S.C. § 202.

Examples:

- I bought this painting.
- Mary Monks sent me this video.
- I found this diary in the attic.
- I discovered these papers in a warehouse.
- I bought this sculpture at an auction.
- The author sent me these love letters when we were in high school.
- The author asked me to keep these pictures for him.

620.10(D) No Transfer Statement Given

As a general rule, if the name provided in the Name of Author field/space differs from the name provided in the Name of Claimant field/space, the registration specialist will communicate with the applicant if the applicant fails to provide a transfer statement. There are a few exceptions to this rule, which are discussed in Sections 620.10(D)(1) through 620.10(D)(2) below.

620.10(D)(1) Copyright Transferred by Inheritance or by Operation of Law

As a general rule, an application may be accepted without a transfer statement if it is clear that the copyright was transferred to the copyright claimant by inheritance or by operation of law.

620.10(D)(1)(a) Inheritance

The registration specialist may accept an application without a transfer statement if the author is deceased and it is clear that the claimant is the author's heir.

Example:

- An application is submitted for a pictorial work. The applicant states that the author is deceased and names the claimant as "Joanne Chan (heiress)." The registration specialist may register the claim, even if the applicant fails to provide a transfer statement.
- An application names Cotton Wilson as the author of a play and states that the author died in 2008. The "Estate of Cotton

Wilson" is named as the copyright claimant. The registration specialist may register the claim, even if the applicant fails to provide a transfer statement.

620.10(D)(1)(b) Partnerships

The U.S. Copyright Office may accept an application if it is clear that the copyright was transferred to an unincorporated partnership by operation of law, even if the applicant does not provide a transfer statement. Typically, a partnership is an unincorporated business that is owned by two or more individuals. A partnership necessarily requires a written agreement stipulating that the partners are co-owners of any property held by the partnership, and works created by one of the partners are often considered the property of the partnership as a whole. Therefore, if the applicant names an unincorporated partnership as the claimant, and it is clear that one or more of the authors is a member of the partnership, the application may be accepted even if the applicant fails to provide a transfer statement.

Examples:

- Jerry Bennett submits an online application for a children's book. Jerry is named as the author of the text and Richard Bennett is named as the author of the artwork. The claimant is named as "Jerry & Richard Bennett, a partnership." The registration specialist may register the claim, even though no transfer statement has been provided.

- Mary Joseph and Josephine Mansfield are named as co-authors of a musical work. The claimant is identified as "Two for the Road, a Partnership." A statement on the phonorecord reads "Mary and Josephine Are Two for the Road." The registration specialist may register the claim, even if a transfer statement is not provided. The statement that appears on the phonorecord may be added to the registration record with an annotation, such as: "Regarding copyright claimant: Statement on the deposit copy reads 'Mary and Josephine Are Two for the Road.'"

620.10(D)(2) Same Person Is Named as Author and Claimant

As a general rule, if the author and the claimant are the same person, the registration specialist may accept an application without a transfer statement even if the names provided in the fields/spaces for the Name of Author and the Name of Claimant are different. For examples that illustrate this practice, see Sections 620.10(D)(2)(a) and 620.10(D)(2)(b) below.

620.10(D)(2)(a) Anonymous and Pseudonymous Works

If the names provided in the fields/spaces for the Name of Author and the Name of Claimant are different, and if the applicant does not provide a transfer statement, the registration specialist may register the claim if the claimant is an individual and if the applicant checked the box indicating that the work is anonymous or pseudonymous. In

this situation, the specialist will conclude that the applicant provided the author's real name in the Name of Claimant field/space and concealed the author's identity in the Name of Author field/space by stating "anonymous" or by providing the author's pseudonym.

Example:

- An application is submitted naming Baby Hog as the author of a pictorial work, and naming John Hodges as the copyright claimant. The Pseudonymous box has been checked, but a transfer statement has not been provided. The specialist may register the claim without communicating with the applicant because it appears that the author and the claimant may be the same individual.

For a detailed discussion of anonymous and pseudonymous works, see Sections 615.1 and 615.2.

620.10(D)(2)(b) Individual Named as Author and Unincorporated Organization Named as Claimant

If an individual is named as the author and an unincorporated organization is named as the claimant, the application may be accepted without a transfer statement if it is clear that the individual and the organization are the same legal entity or that the organization is merely a trade name or other assumed name for the individual.

As a general rule, the registration specialist may conclude that an individual and an unincorporated organization are the same legal entity if the applicant clearly states that the individual is "trading as," "doing business as," or "also known as" the organization or that the unincorporated organization is "solely owned by" the individual. Likewise, the specialist may register a claim without a transfer statement if there is a clear relationship between the name of the individual and the name of the unincorporated organization.

By contrast, if the individual and the organization appear to be separate legal entities or if the organization appears to be a corporation, the specialist will communicate with the applicant.

Examples:

- An application is submitted naming William Smith and Edward Brown as the co-authors of a cookbook. The claimant is named as Smith-Brown Company. A transfer statement has not been provided. The registration specialist may register the claim because the company appears to be an unincorporated business, and because there is a clear relationship between the name of the company and the names of the authors.

- An application is submitted for a fabric design. Margaret O'Connor is named as the author and Sassy Lass Haute Couture

is named as the copyright claimant. A transfer statement has not been provided. The registration specialist will communicate with the applicant, because the relationship between the author and the claimant is unclear. In a telephone conversation, Margaret confirms that she does business under the name Sassy Lass Haute Couture. The specialist will add this information to the registration record and will register the claim.

- An application for a multimedia work is submitted naming Lark Bradshaw as the author and Lark Bradshaw (Bradshaw Desktop Publishing, Inc.) as the claimant. The transfer statement reads, "Author is sole owner of Bradshaw Desktop." Because Bradshaw Desktop Publishing Inc. is a corporation, the registration specialist will communicate with the applicant to determine whether the claimant is Lark or the corporation. If the corporation is the copyright claimant, the specialist will ask the applicant to provide an appropriate transfer statement.

620.11 Extraneous Information Provided in the Transfer Statement Field / Space

As a general rule, if the author and the claimant appear to be the same person or organization the registration specialist will ignore any extraneous information that may be provided in the Transfer field/space, unless it explains or contradicts information that has been provided elsewhere in the registration materials.

Examples:

- An online application is submitted for a motion picture naming "Hari Prasad (Pvt.), Ltd., employer of Vijay Prasad" as the author and copyright claimant. The applicant checks the box indicating that the work is a work made for hire, and the transfer statement reads "by written agreement," "by contract," or the like. The registration specialist will register the claim without communicating with the applicant, because the transfer statement apparently refers to an employment agreement or work made for hire agreement, rather than an assignment of copyright from the author to the copyright claimant.

- Teacher Learning Services, Inc. submits an application for a textbook naming the company as the author and the copyright claimant. The work made for hire box is checked "yes" and the transfer statement states "by contract." The registration specialist will register the claim without communicating with the applicant, because the transfer statement apparently refers to a work made for hire agreement.

- Dennis Jameson submits an online application for a logo naming himself as the author/claimant of the work. The Transfer field reads "I created this logo for my unincorporated business." The

registration specialist will ignore the extraneous statement and will register the claim.

- An online application names Reed Hall as the author and claimant for a poem. The transfer statement reads "My nephew wrote this poem. I am his legal guardian." The registration specialist will communicate with the applicant, because the transfer statement suggests that Reed is neither the author nor the copyright owner of this work.

621 Limitation of Claim

This Section discusses the U.S. Copyright Office's practices and procedures for limiting the scope of a claim to copyright. A claim should be limited if the work contains an appreciable amount of material that was previously published, material that was previously registered, material that is in the public domain, and/or material that is owned by an individual or legal entity other than the claimant who is named in the application.

Derivative works almost always contain unclaimable material because, by definition, they are based on, or incorporate, one or more preexisting works. Likewise, compilations, including collective works, usually contain unclaimable material because they are often comprised of previously published, previously registered, public domain material, or material that is owned by a third party. To register a derivative work, a compilation, a collective work, or any other type of work that contains an appreciable amount of unclaimable material, the applicant should identify and exclude that material in the application using the procedure described in Section 621.8 below.

621.1 What Is Unclaimable Material?

A registration for a work of authorship extends only to the new material that the author contributed to that work. It does not extend to any unclaimable material that may appear in that work. For purposes of registration, unclaimable material includes the following types of material:

- Previously published material.
- Previously registered material (including material that has been submitted for registration but has not been registered yet).
- Material that is in the public domain.
- Copyrightable material that is owned by a third party (*i.e.*, an individual or legal entity other than the claimant who is named in the application).

These categories are described and discussed below in Sections 621.4 through 621.7.

If the work described in the application contains an appreciable amount of unclaimable material, the applicant should identify the unclaimable material that appears in that work and should exclude that material from the claim. Specifically, the applicant should

provide a brief, accurate description of the unclaimable material in the appropriate field/space of the application. In the case of an online application, the applicant should provide this information in the Material Excluded field on the Limitation of Claim screen. In the case of a paper application, the applicant should provide this information in space 6(a) in the space marked Preexisting Material. For instructions on how to complete these portions of the application, see Section 621.8(B) below.

In addition, the applicant should identify the new authorship that is being claimed in the application. The applicant should provide this information in the New Material Included field of the online application or in space 6(b) of a paper application in the space marked Material Added to this Work. In the case of a derivative work, the applicant should provide a brief description of the new or revised material that the author contributed to the work. In the case of a compilation, the applicant should provide a brief description of the preexisting material or data that has been selected, coordinated, and/or arranged by the author. For instructions on how to complete these portions of the application, see Section 621.8(C) and 621.8(D).

The information provided in these fields/spaces will appear on the certificate of registration in the field marked Limitation of Copyright Claim and in the online public record in the fields marked Preexisting Material and Basis of Claim (regardless of whether the applicant submits an online application or a paper application).

Completing these fields/spaces correctly is essential to defining the claim that is being registered and it ensures that the public record will be accurate. The registration specialist may either annotate the registration record or communicate with the applicant if the work appears to be a derivative work, a compilation, a collective work, or any other work containing an appreciable amount of unclaimable material and if the applicant fails to exclude that unclaimable material from the claim.

Examples:

- *Excluding previously published material*. The Slow Food Press published a self-help book titled *Navigating the Supermarket*. The first edition was published in 2009 and the second edition was published in 2010. Because the second edition contains an appreciable amount of previously published material from the first edition, the publisher should exclude that material from the application to register the second edition by stating "previously published edition" in the Material Excluded field and "new text" in the New Material Included field.

- *Excluding previously registered material.* ClamCake Software created a computer program called *Sharkbyte v. 1.0,* which was registered in 1999. ClamCake used an appreciable portion of the source code for this program to create a new program called *Sharkbyte v. 2.0*. Because the new program contains an appreciable amount of previously registered material, ClamCake should exclude that material from the application to register *Sharkbyte v 2.0* by providing the registration number for version

1.0 in the Previous Registration field or by stating "previously registered version" in the Material Excluded field and by stating "new computer code" in the New Material Included field.

- *Excluding public domain material.* Alice Masters created a poster that is closely based on illustrations that appear in the book *The Emerald City of Oz* by L. Frank Baum. Because her poster contains an appreciable amount of public domain material, Alice should exclude that material from the application to register her poster by stating "some public domain material" in the Material Excluded field and "new artwork" in the New Material Included field.

- *Excluding material that is owned by an individual or legal entity other than the claimant.* Kieran O'Brien submits an application to register a children's book. The copyright notice for this work reads "illustrations © Kieran O'Brien; text © Leaf Garrett." If the children's book is not a joint work, and if Kieran does not own the copyright in the text, he should exclude that material from the application to register his illustrations by stating "text by Leaf Garrett" in the Material Excluded field and "2-D artwork" in the New Material Included field.

- *Limitation of claim not required.* Susana Fernandez wrote the first draft for her novel in 1995. The following year she wrote a short story, which was never published or registered. In 2005, she incorporated portions of her short story into the novel. The short story and the initial draft of the novel would not be considered unclaimable material, because that material has not been published before, it has not been registered before, it is not in the public domain, and it is not owned by a third party.

621.2 Unclaimable Material That Need Not Be Excluded from the Application

If the applicant intends to register a work that contains a minimal amount of unclaimable material, the applicant need not identify or disclaim that material in the application. Unclaimable material should be disclaimed only if it represents an appreciable portion of the work as a whole. Likewise, if the work contains material that is uncopyrightable, such as facts or mere ideas, there is no need to exclude that material from the application.

Generally, applicants do not need to disclaim attributions, citations, or direct quotations, because in most cases it is obvious that this material was not created by the author of the work and is not owned by the copyright claimant. This may be indicated by the quotations marks themselves, or by blocks of text that have been indented and set aside from the rest of the text. It also may be indicated by attributions, citations, or other bibliographic references in the text, captions, footnotes, endnotes, bibliography, or the like.

Examples:

- An application is submitted for a musical work titled *Ask Not What Your Country Can Do For You*. The chorus contains the phrase, "Ask what you can do for your country," which was taken from President Kennedy's inaugural address. The New Material Included/Material Excluded fields may be left blank, because the copyright law does not protect short phrases or works of the United States Government. *See* 17 U.S.C. § 105, 37 C.F.R. § 202.1(a).

- An online application is submitted for an essay. The applicant asserts a claim in "text." In the Note to Copyright Office field, the applicant explains that he "read many newspapers and books in researching this topic." The New Material Included / Material Excluded fields may be left blank. The underlying facts, ideas, or concepts derived from the author's research are not copyrightable, and thus, are automatically excluded from the claim. *See* 17 U.S.C. § 102(b).

- An online application is submitted for a doctoral dissertation that contains extensive quotes and bibliographic references. The applicant asserts a claim in "text," but the Limitation of Claim screen is blank. The registration specialist may register the claim.

621.3 The Relationship Between the Author Created / Limitation of Claim Fields in the Online Application and the Relationship Between Spaces 2, 6(a), and 6(b) of the Paper Application

As a general rule, a claim to copyright is defined by the information provided in the Author Created field (in the case of an online application) or in the Nature of Authorship space (in the case of a paper application). Therefore, all of the material that the applicant intends to register should be identified in these fields/spaces.

If the work contains an appreciable amount of unclaimable material, the applicant should complete the Limitation of Claim fields/spaces in order to limit the claim to the new copyrightable material created by the author. In this case, the claim to copyright is defined by the information provided in the New Material Included field or the information provided in space 6(b). Therefore, all of the material that the applicant intends to register should be described in this field/space. In such cases, the information that the applicant provides in the New Material Included field should be duplicated in the Author Created field. Likewise, the information that the applicant provides in space 6(b) should be duplicated in the Nature of Authorship space.

NOTE: The applicant should complete the New Material Included field of the online application or space 6(b) of the paper application only when unclaimable material has been excluded from the claim in the Material Excluded field of the online application or in space 6(a) of the paper application. If no material has been excluded from the claim, the applicant should not complete this portion of the application.

See Corrections and Amplifications of Copyright Registrations; Applications for Supplementary Registration, 63 Fed. Reg. 59,235, 59,235 (Nov. 3, 1998) ("The Copyright Office follows the general policy of requiring all authors and copyright claimants to supply information, consistent with 17 U.S.C. § 409, concerning the authorship being claimed in the application for registration.").

621.4 Previously Published Material

If the work described in the application contains an appreciable amount of copyrightable material that has been previously published, the previously published material should be excluded from the claim using the procedure described in Section 621.8(B). This rule applies regardless of whether the previously published material was published in the United States or in a foreign country (or both).

The U.S. Copyright Office requires applicants to disclaim previously published material for several reasons. In particular, this information may be needed to determine:

- The length of the copyright term.
- Whether the relevant deposit requirements have been satisfied.
- Whether the certificate of registration is entitled to certain legal presumptions.
- Whether the copyright owner is entitled to certain legal remedies in an infringement dispute.
- Whether an infringer may rely on certain defenses in an infringement dispute.

Requiring applicants to disclaim previously published material also encourages early registration and promotes administrative efficiency. For information concerning each of these issues, see Chapter 500, Section 503.5.

The applicant should determine whether the work contains previously published material on the date that the work is submitted to the Office. In other words, if the applicant intends to register a work that contains an appreciable amount of material that was published at any time before the application is submitted, the applicant should exclude that previously published material from the claim.

The date of creation for the work that the applicant intends to register is irrelevant to this determination. In other words, previously published material should be disclaimed, regardless of whether that material was created before or simultaneously with the work that the applicant intends to register. Likewise, previously published material should be disclaimed regardless of whether that material was published before or after the date of creation for the work that the applicant intends to register.

Examples:

- The Piecemeal Press submits an application for a textbook and states that the work was published on March 24, 2005. The

deposit copies indicate that this is the second edition of this work and that the first edition was published in 2004. In the Material Excluded field the applicant states "previously published edition" to exclude the previously published material from the claim, and in the New Material Included field states "new text" to limit the claim to the new material that appears in the second edition. The registration specialist will register the claim.

- Dr. Sabrina Oxley submits an application on Form TX for a self-help book on May 1, 2012, and states that the book was published on April 1, 2012. A statement on the cover indicates that the third chapter was published in a fitness magazine on March 1, 2012. In space 6(a) the applicant states "chapter three was previously published" to exclude that chapter from the claim, and in space 6(b) the applicant states "new text" to limit the claim to the new material which was published on April 1, 2012. The registration specialist will register the claim.

- Frank Hempstead is the author of the novel *A Lovable Beast*, which was published in 1945. Hempstead's daughter published her father's original manuscript for this work in 2005. The manuscript contains an appreciable amount of text that did not appear in the 1945 edition. The applicant states "A Lovable Beast, published in 1945" in the Material Excluded field to exclude the material that appeared in the 1945 edition. The applicant states "additional text" in the New Material Included field to limit the claim to the new material that was published in 2005. The registration specialist will register the claim.

For a definition and detailed discussion of publication, see Chapter 1900.

621.5 Previously Registered Material

If the applicants intends to register a work that contains an appreciable amount of copyrightable material that has been registered with the U.S. Copyright Office, the previously registered material should be excluded from the claim using the procedure described in Section 621.8(F).

Likewise, if the work contains an appreciable amount of copyrightable material that has been submitted for registration, but has not been registered yet, the previously submitted material should be identified on the application as excluded material. Once the previously submitted material has been registered, the material is then considered unclaimable material.

As a general rule, the Office will issue only one registration for each version of a particular work, because multiple registrations for the same work would confuse the public record. 37 C.F.R § 202.3(b)(11). In most cases, this means that the applicant should disclaim any portion of the work that has been registered before.

NOTE: There are three exceptions to this rule, which are discussed in Section 619.11 and Chapter 500, Sections 510.1 through 510.3.

Before filing an application with the Office, the applicant should determine whether the work contains previously registered material or material contained in the deposit copy(ies) for a previously or concurrently filed application. The date of creation and the date of publication for the work that the applicant intends to register are irrelevant to this determination. In other words, previously registered material or material submitted with a previously or concurrently filed application should be disclaimed, regardless of whether that material was created before or simultaneously with the work that the applicant intends to register. It should be disclaimed regardless of whether that material was registered before or after the date of creation for the work that the applicant intends to register. Likewise, it should be disclaimed regardless of whether that material was registered before or after the date of publication for the work that the applicant intends to register.

This rule applies only to copyright registrations issued by the Office, including any registration made under Section 408 of the Copyright Act, a renewal registration made under Section 304 of the Copyright Act, or a registration or renewal registration made under Title 17 of the United States Code as it existed before January 1, 1978. It does not apply to preregistrations issued by the Office. Nor does it apply to material that has been registered with the U.S. Patent and Trademark Office, a foreign intellectual property office, or any other governmental or nongovernmental entity.

Examples:

- Bithia Adu submits an application to register the first draft of her short story. The following week she submits an application to register her second draft. In the Material Excluded field the applicant states "first draft has been submitted for registration but has not been registered yet;" in the New Material Included field the applicant states "additional text" to limit the claim to the new authorship that appears in the second draft. The registration specialist will register the claim.

- Discovery Studios submits an application using Form PA to register season two of the television series *Gold Diggers*. The deposit copy is a box set containing all of the episodes from this season, as well as some bonus footage. In space 6(a) the applicant states "the episodes from this season have been registered before;" in space 6(b) the applicant states "new motion picture" to limit the claim to the new authorship that appears in the bonus footage. The registration specialist will register the claim.

621.6 Public Domain Material

If the applicant intends to register a work that contains an appreciable amount of material that is in the public domain in the United States, that material should be excluded from the claim using the procedure described in Section 621.8(B).

A copyrighted work enters the public domain in the United States when "its full copyright term has expired." *Golan v. Holder*, 565 U.S. 302, 307 (2012). In addition, works published in the United States without a copyright notice on or before March 1, 1989 may be in the public domain, and works registered or published in the United States on or before December 31, 1963 may be in the public domain if the copyright was not renewed in a timely manner.

In most cases, material that is in the public domain has been published before, and as such, should also be excluded from the claim as previously published material.

The applicant should determine whether the work contains any public domain material on the date that the application is submitted to the U.S. Copyright Office. The date of creation and the date of publication for the work that the applicant intends to register are irrelevant to this determination. In other words, public domain material should be disclaimed, regardless of whether that material was created before or simultaneously with the work that the applicant intends to register. Likewise, it should be disclaimed regardless of whether that material entered the public domain before or after the date of creation or the date of publication for the work that the applicant intends to register.

This rule applies to material that is in the public domain in the United States. Material that is in the public domain in another country (but protected by copyright in the United States) need not be disclaimed (unless the material has been previously published, previously registered, or is owned by a third party).

Examples:

- Henry Glass submits an online application to register a play titled *The Misogynist.* The play is based on a novel that was published in 1920. Henry excludes the public domain material from the claim by stating "based on a novel published in 1920" in the Material Excluded field, and limits the claim to the new dramatic authorship that appears in the play by stating "script" in the New Material Included field. The registration specialist will register the claim.

- Nancy Dawson submits an application to register a songbook containing songs written by her father, and claims that she obtained the copyright in this material "by inheritance." The songbook also contains songs by various nineteenth-century composers. Nancy excludes the public domain material from the claim by stating "songs by nineteenth-century composers" in space 6(a) and limits the claim to the songs written by her father by stating "new music and lyrics" in space 6(b). The registration specialist will register the claim.

621.7 Copyrightable Material That Is Owned by an Individual or Entity Other Than the Claimant

If the applicant intends to register a work that contains an appreciable amount of copyrightable material that is not owned by the claimant named in the application, that material should be excluded from the claim using the procedure described in Section 621.8(B).

The applicant should make this determination on the date that the work is submitted to the Office. In other words, if the work being registered includes an appreciable amount of material that is not owned by the copyright claimant as of the date that the application is filed, the applicant should exclude that material from the claim, and the application should be limited to the material that is owned by the claimant.

The date of creation and the date of publication for the work that the applicant intends to register are irrelevant to this determination. In other words, material that is owned by another party should be disclaimed, regardless of whether that material was created before or simultaneously with the work that the applicant intends to register. Likewise, it should be disclaimed regardless of whether a third party acquired the copyright in that material before or after the date of creation or the date of publication for the work that the applicant intends to register.

Example:

- Francis Toldvey wrote a book about Leonard Bernstein that contains extensive passages from the composer's letters, diaries, and memoirs. Francis disclaims this material by stating "passages by Leonard Bernstein" in the Material Excluded field of the online application, and he limits the claim to the new authorship that appears in the rest of the book by stating "all remaining text" in the New Material Included field. The registration specialist will register the claim.

621.8 Completing the Application: Limitation of Claim

This Section provides guidance on completing the Limitation of Claim screen in an online application for works that contain an appreciable amount of unclaimable material, including derivative works. It also provides guidance on completing spaces 5, 6(a), and 6(b) of a paper application. For specific guidance on completing an application to register a compilation or a collective work that contains an appreciable amount of unclaimable material, see Section 621.8(D).

621.8(A) Identifying the Material That the Author Created

To register a claim to copyright, the applicant should identify all the copyrightable material that the applicant intends to register.

When completing an online application, the applicant should provide this information on the Authors screen by checking one or more of the boxes that appear under the heading Author Created. When completing a paper application, the applicant should

provide this information in space 2 of the application under the heading Nature of Authorship.

For guidance on completing this portion of the application, see Sections 618.4(A) and 618.4(B). For guidance on completing this portion of the application for a compilation or a collective work, see Sections 618.6 and 618.7.

As a general rule, the information that the applicant provides in the Author Created field should be identical to the information that the applicant provides in the New Material Included field. Likewise, the information that the applicant provides in the Nature of Authorship space should be identical to the information that the applicant provides in space 6(b).

For guidance in completing the New Material Included field and space 6(b), see Section 621.8(C).

621.8(B) Identifying Unclaimable Material That Should Be Excluded from the Claim

If the applicant intends to register a work that contains an appreciable amount of unclaimable material, the applicant should exclude that material from the claim.

When completing an online application the applicant should identify the unclaimable material by checking one or more of the boxes that appear on the Limitation of Claim screen in the field marked Material Excluded that accurately describe the previously published material, previously registered material, public domain material, or separately owned material that appears in the work. The options for each type of work are listed below:

Literary Works
- Text
- Artwork
- Photograph(s)
- Computer program

Works of the Visual Arts
- 2-D artwork
- Photograph
- Jewelry design
- Architectural work
- Sculpture
- Technical drawing
- Map

Works of the Performing Arts
- Lyrics
- Music
- Musical arrangement
- Text

Sound Recordings
- Sound recording

Motion Pictures and Audiovisual Works
- Script/Screenplay
- Preexisting music
- Preexisting footage
- Preexisting photograph(s)

Single Issue of a Serial Publication
- Text
- Artwork
- Translation
- Compilation
- Photograph(s)

For a definition and discussion of these terms, see Section 618.4(C).

If the terms provided in the checkboxes do not fully describe the unclaimable material that appears in the work, the applicant should provide a more specific description in the space marked Material Excluded/Other. Currently, the total amount of text that may be provided in both the Material Excluded and the New Material Included fields is limited to 1800 characters.

NOTE: If you complete the Material Excluded field, you also must the complete the New Material Included field (and *vice versa*). If you fail to complete both portions of the Limitation of Claim screen, the application will not be accepted by the electronic registration system. For guidance in completing the New Material Included field, see Section 621.8(C).

When completing a paper application, the applicant should provide a brief statement on space 6(a) of the application under the heading Preexisting Material that accurately describes the unclaimable material that should be excluded from the claim.

If the work does not contain an appreciable amount of unclaimable material, the Material Excluded field of the online application or space 6(a) of the paper application may be left blank.

For representative examples that demonstrate how to complete this portion of the application, see Section 621.8(E).

621.8(C) Identifying the New Material That the Applicant Intends to Register

This Section provides guidance on completing the New Material Included field in the online application and space 6(b) in the paper application.

When completing an application to register a compilation or a collective work that contains an appreciable amount of unclaimable material, the applicant should complete

the New Material Included/Other field in the online application or space 6(b) of the paper application using the procedure described in 621.8(D).

NOTE: If the work does not contain an appreciable amount of unclaimable material, this portion of the application may be left blank. In other words, the New Material Included field should be completed only if material has been excluded from the claim in the Material Excluded field. Likewise, space 6(b) of the paper application should be completed only if material has been excluded from the claim in space 6(a).

621.8(C)(1) The Online Application: New Material Included Field

When completing an online application, the applicant should identify the new authorship that he or she intends to register on the Limitation of Claim screen. Specifically, the applicant should check one or more of the boxes in the New Material Included field that accurately describe the new authorship that is owned by the copyright claimant. The options for each type of work are listed below:

Literary Works
- Text
- Artwork
- Photograph(s)
- Computer program

Works of the Visual Arts
- 2-D artwork
- Photograph
- Jewelry design
- Architectural work
- Sculpture
- Technical drawing
- Map

Works of the Performing Arts
- Lyrics
- Music
- Musical arrangement
- Text

Sound recordings
- Sound recording

Motion Pictures and Audiovisual Works
- Additional new footage
- Revisions / additions to script
- Production as a motion picture
- All other cinematographic material

Single Issue of a Serial Publication
- Text

- Artwork
- Editing
- Translation
- Compilation
- Photograph(s)

For a definition and discussion of these terms, see Section 618.4(C). For representative examples that demonstrate how to complete the New Material Included field, see Section 621.8(E).

NOTE: As discussed in Section 621.8(A), the information that the applicant provides in the New Material Included field should be identical to the information that the applicant provides in the Author Created field. But this portion of the application should be completed only if unclaimable material has been excluded from the claim in the Material Excluded field. If the work does not contain an appreciable amount of unclaimable material, the Limitation of Claim screen may be left blank. If you complete the Material Excluded field, you also must complete the New Material Included field (and *vice versa*). If you fail to complete both portions of the Limitation of Claim screen, the application will not be accepted by the electronic registration system. For guidance in completing the Material Excluded field, see Section 621.8(B).

As a general rule, the U.S. Copyright Office will accept any of the terms listed above or any combination of these terms, provided that they accurately describe the copyrightable authorship being claimed. If the information provided in the New Material Included field is contradicted by the information provided elsewhere in the registration materials, the registration specialist may communicate with the applicant.

The applicant should only check the boxes that describe the authorship created by the author(s) named in the application that is owned by the individual or entity who is named as the copyright claimant. The applicant should not assert a claim in material that is not owned by the copyright claimant, material that will not be submitted for registration, or material that does not appear in the deposit copy(ies). Likewise, the applicant should not assert a claim in any material that is uncopyrightable or *de minimis*. For information concerning claims in uncopyrightable or *de minimis* material, see Sections 621.9(E) and 621.9(F).

Example:

- An application is submitted for a CD that contains music, lyrics, and a musical arrangement. The claimant owns the copyright in the musical arrangement, but does not own the other material that appears in the work. In the New Material Included field, the applicant should check the box for "musical arrangement" and in the Material Excluded field the applicant should check the boxes marked "music" and "lyrics."

The applicant should check the box(es) that identify the specific type of authorship that the applicant intends to register. For example, if the applicant intends to register a computer program or a set of blueprints, the applicant should check the box marked

"computer program" or "technical drawing," rather than the box marked "text" or "2-D artwork." Likewise, if the applicant intends to register a new scene for a motion picture, the applicant should check the boxes marked "additional new footage" or "revisions/ additions to script," rather than the boxes marked "production as a motion picture" or "all other cinematographic material."

If the terms provided in the checkboxes do not fully describe the new authorship that the applicant intends to register, the applicant should provide a more specific description in the field marked New Material Included/Other.

Examples:

- The applicant intends to register the second edition of a coffee table book. The applicant may assert a claim to copyright in this new authorship by checking the boxes marked "text, artwork, photograph(s)," or by stating "revised text," "new illustrations," "some new photographs," "new introduction," or the like in the New Material Included/Other field.

- The applicant intends to register the foreword for a textbook. The applicant may assert a claim to copyright in this new authorship by checking the box marked "text" or by stating "text of foreword" in the New Material Included/Other field.

- The applicant intends to register a revised version of a previously published computer program. The applicant may assert a claim to copyright in this new authorship by checking the box marked "computer program" or by stating "revised computer code," "new computer software," or the like in the New Material Included/Other field.

- The applicant intends to register an article that combines an appreciable amount of previously published material with additional new text. The applicant may assert a claim to copyright in the new text by checking the box marked "text" or by stating "some new text" in the New Material Included/Other field.

- The applicant intends to register a Spanish translation of *Huckleberry Finn*. The applicant may assert a claim to copyright in this new authorship by stating "Spanish translation" in the New Material Included/Other field.

- The applicant intends to register new drawings that were added to a graphic novel. The applicant may assert a claim to copyright in this authorship by checking the box for "2-D artwork" in the New Material Included field, or by stating "new drawings added" in the New Material Included/Other field.

- The applicant intends to register a new musical arrangement for a previously registered song. The applicant may assert a claim to copyright in this new authorship by checking the box for "musical arrangement" in the New Material Included field or by stating "new musical arrangement," "revised music," or the like in the New Material Included/Other field.

- The applicant intends to register a screenplay adaptation of a previously published book. The applicant may assert a claim to copyright in this new authorship by checking the box for "text" in the New Material Included field, or by stating "adaptation of book for screenplay" in the New Material Included/Other field.

- The applicant intends to register a new treatment for a motion picture. The applicant may assert a claim to copyright in this new authorship by stating "revised treatment," "new treatment," or the like in the New Material Included/Other field.

- The applicant intends to register a remix of a previously published sound recording. The applicant may assert a claim to copyright in this new authorship by stating "remixed sound recordings" in the New Material Included/Other field.

NOTE: Currently, the total amount of text that may be provided in both the Material Excluded and the New Material Included fields is limited to 1800 characters.

621.8(C)(2) Paper Applications: Space 6(b)

When completing a paper application, the applicant should identify the new authorship that is owned by the copyright claimant that the applicant intends to register. This statement should be provided in space 6(b) under the heading Material Added to This Work.

The applicant should only assert a claim in material created by the author(s) named in the application that is owned by the copyright claimant. The applicant should not assert a claim in material that is not owned by the claimant, material that will not be submitted for registration, or material that does not appear in the deposit copy(ies). Likewise, the applicant should not assert a claim in any material that is uncopyrightable or *de minimis*. For information concerning claims in uncopyrightable or *de minimis* material, see Sections 621.9(E) and 621.9(F).

As a general rule, the U.S. Copyright Office may accept any of the terms listed below or any combination of those terms, provided that they accurately describe the new authorship being claimed. In some cases, the Office may accept variant forms of these terms. If the statement provided in space 6(b) is contradicted by the information provided in the deposit copy(ies) or elsewhere in the registration materials, the registration specialist may communicate with the applicant.

For a definition and discussion of the following terms, see Section 618.4(C). For representative examples that demonstrate how to complete space 6(b), see Section 621.8(E).

Literary Work / Form TX
- Text
- Artwork
- Photograph(s)
- Computer program

Work of the Visual Arts / Form VA
- 2-D artwork
- Photograph
- Jewelry design
- Sculpture
- Technical drawing
- Map

Work of the Performing Arts / Form PA
- Music
- Lyrics
- Musical arrangement
- Text
- Choreographic work
- Pantomime

Sound recording / Form SR
- Sound recording

Motion Picture or Audiovisual Work / Form PA
- Additional new footage
- Revisions / additions to script
- Production as a motion picture
- All other cinematographic material

Single Serial Issue (i.e., a single issue of a serial publication) / Form SE
- Collective work authorship
- Collective work authorship and component work(s) authored or fully owned by the Collective Work Author

NOTE: As discussed in Section 621.8(A), the information that the applicant provides in space 6(b) should be identical to the information that the applicant provides in space 2, but this portion of the application should be completed only if unclaimable material has been excluded from the claim in space 6(a). If the work does not contain an appreciable amount of unclaimable material, spaces 6(a) and 6(b) of the application may be left blank.

621.8(D) Completing an Application to Register a Compilation, a Collective Work, and / or a Contribution to a Collective Work

To register a compilation, a collective work, or a contribution to a collective work that contains an appreciable amount of unclaimable material, the applicant should identify the new material that the author created using the procedure described in Sections 618.6 or 618.7.

The applicant should exclude the unclaimable material from the application using the procedure described in Section 621.8(B).

In addition, the application should identify the new material that the applicant intends to register. When completing an online application, the applicant should provide this information on the Limitation of Claim screen in the field marked New Material Included/Other. Currently, the total amount of text that may be provided in both the Material Excluded and the New Material Included fields is limited to 1800 characters. When completing a paper application, the applicant should provide this information in space 6(b).

The applicant should use the procedure described in Section 618.6 to assert a claim in a compilation, and should use the procedure described in Sections 618.7 and 618.7(A) to assert a claim in a collective work. To assert a claim in a contribution to a collective work, the applicant should use the procedure described in Section 618.7(B). To assert a claim in a single issue of a serial publication, the applicant should use the procedure described in Section 618.7(C).

As discussed in Section 621.8(A), the information that the applicant provides in the Author Created/New Material Included fields or in spaces 2 and 6(b) should be identical to each other.

Examples:

- In March 2008 the Structured Credit Fund published a compilation containing thousands of statistics concerning collateralized debit obligations ("CDOs"). Specifically, the fund selected a number of CDOs held by Bear Stearns, Lehman Brothers, and other financial institutions. It coordinated this information based on credit rating, credit risk, and other factors, and it arranged the data based on VaR, BET, and other methodologies. In 2009 the fund published a new compilation. The new compilation contains the same selection of data, but the data have been coordinated and arranged in an entirely different manner.

  Author Created/Other: Compilation of financial data concerning CDOs.
  Material Excluded/Other: Previous version published in March 2008; financial data, namely, selection of CDOs held by Bear Stearns, Lehman Brothers, and other financial institutions.

New Material Included/Other: Compilation of financial data concerning CDOs.

- Estragon & Co. published an anthology titled *House of Cards*. It contains thirty articles about the Great Recession that were published in the *New York Times*, the *Wall Street Journal*, and the *Financial Times*. Estragon's employees selected the articles, organized them by subject matter, and prepared the footnotes for each article. Jonah Sarah wrote the introduction and assigned the copyright in his contribution to Estragon. The publisher submits an application to register the authorship involved in creating the collective work as a whole, and the authorship in Jonah's introduction. Estragon excludes the articles from the application, because they were previously published and because the publisher does not own the copyright in that material.

  Title of work being registered: *House of Cards.*

  Name of Author: Estragon & Co. (work made for hire box checked "yes").
  Author Created/Other: Compilation of articles.
  Name of Author: Jonah Sarah (work made for hire box checked "no").
  Author Created/Other: Introduction.
  Name of Claimant: Estragon & Co.
  Transfer statement: By written agreement.
  Material Excluded: Text.
  New Material Included/Other: Introduction, compilation of articles.

621.8(E) Examples for Identifying Unclaimable Material and the New Material That the Applicant Intends to Register

This Section provides representative examples for completing the Author Created and New Material Included/Material Excluded fields in the online application and spaces 2, 6(a), and 6(b) in the paper application.

Examples:

- Online application for a motion picture based on the novel *Little Women.*

  Author Created: Entire Motion Picture.
  Material Excluded: Text.
  New Material Included: Entire Motion Picture.

- Online application for a music book containing some original compositions and arrangements of Beethoven's piano concertos.

Author Created/Other: Some original music and arrangement of public domain music.
Material Excluded/Other: Some public domain music.
New Material Included/Other: Some original music and arrangement of public domain music.

- Online application for a new edition of Shakespeare's *Romeo and Juliet* with a new introduction.

  Author Created/Other: Text of introduction.
  Material Excluded/Other: Public domain play, *Romeo and Juliet.*
  New Material Included/Other: Text of introduction.

- Online application for a reissue of a previously published album containing remixed sound recordings, new photographs, and a previously unreleased bonus track.

  Author Created/Other: One new sound recording, remixing of previously published sound recordings, some new photographs.
  Material Excluded/Other: Previously published sound recordings and photographs.
  New Material Included/Other: One new sound recording, remixing of previously published sound recordings, some new photographs.

- Online application for a new catalog containing new artwork and new text, combined with text and artwork that appeared in a previous catalog.

  Author Created: 2-dimensional artwork.
  Author Created/Other: New text.
  Material Excluded/Other: Previously published text and artwork.
  New Material Included: 2-dimensional artwork.
  New Material Included/Other: New text.

- Online application for a children's book containing text by the author, as well as illustrations and clip art by a third party.

  Author Created: Text.
  Material Excluded/Other: Illustrations, clip art used with permission.
  New Material Included: Text.

- Online application for an interview submitted by the interviewer.

  Author Created/Other: Text of interviewer's questions.

Material Excluded/Other: Text of interviewee's answers.
New Material Included/Other: Text of interviewer's questions.

- Online application for an illustrated edition of a children's story by Hans Christian Anderson.

  Author Created: 2-D artwork.
  Material Excluded/Other: Text.
  New Material Included: 2-D artwork.

- Online application for a revised version of a previously registered computer program.

  Author Created/Other: New program code.
  Material Excluded/Other: Previously registered version.
  New Material Included/Other: New program code.

- Online application for a holiday ornament containing logos and artwork that are not owned by the copyright claimant.

  Author Created: Sculpture, 2-D artwork.
  Material Excluded/Other: Preexisting logos, 2-D artwork.
  New Material Included: Sculpture, 2-D artwork.

- Online application for a revised map of downtown San Juan, Puerto Rico that shows the location of the new central business district.

  Author Created: Map.
  Material Excluded/Other: U.S. Geological Survey map, San Juan municipal maps.
  New Material Included: Map.

- Paper application for a lithographic print of a nineteenth-century oil painting.

  Space 2: Reproduction of work of art.
  Space 6(a): Artwork.
  Space 6(b): Reproduction of work of art.

- Paper application for a U.S. Geological Survey map with additional maps and text added.

  Space 2: Maps, text.
  Space 6(a): Public domain map.
  Space 6(b): Maps, text.

- Paper application for a revised version of a previously registered screenplay.

Space 2: Revised text.
Space 6(a): Previously registered screenplay.
Space 6(b): Revised text.

For examples that illustrate how to complete an application to register a compilation, a collective work, or a contribution to a collective work, see Section 621.8(D). For additional examples, use this link to access the "help" section of the U.S. Copyright Office's electronic registration system.

621.8(F) Identifying Previously Registered Material That Should Be Excluded from the Claim

If the applicant intends to register a work that contains an appreciable amount of material that has been registered with the U.S. Copyright Office, the applicant should provide the registration number for that material and the year that the registration was issued.

Likewise, if the work contains an appreciable amount of material that was previously submitted for registration (but has not been registered yet), the applicant should provide the case number/service request number for the previous application. In the alternative, the applicant may state "pending" and provide the date that the previous application was submitted.

When completing an online application, the applicant should provide this information on the Limitation of Claim screen in the field marked Previous Registration.

When completing a paper application, the applicant should provide this information on space 5 of the application. Specifically, the applicant should check the "yes" box that appears on space 5 under the heading Previous Registration. The registration number that has been assigned to the previous registration should be provided under the heading Previous Registration Number. The year that the previous registration was issued should be provided under the heading Year of Registration.

If the Office has issued multiple registrations for the unclaimable material, the applicant should provide the registration number and year of registration for the two most recent registrations.

If the work submitted for registration does not contain an appreciable amount of previously registered material, the Previous Registration field/space should be left blank.

621.8(G) Identifying Preregistered Material

If the applicant is seeking a basic registration for a work that has been preregistered, the applicant should provide the preregistration number for that work in the application for basic registration. Doing so ensures that the records for the preregistration and the basic registration are cross-referenced with each other.

When completing an online application, the applicant should provide the preregistration number for the work (beginning with the prefix "PRE") on the Publication/Completion screen in the field marked Preregistration Number. The applicant should not provide this information on the Limitation of Claim screen in the field marked Previous Registration.

When completing a paper application, the applicant should provide the preregistration number in space 5 of the application and check the box marked "no" that appears in that space under the heading Previous Registration.

For a detailed discussion of preregistration, see Chapter 1600.

621.9 Examination Guidelines: Limitation of Claim

This Section discusses the U.S. Copyright Office's practices and procedures for examining applications for derivative works, compilations, collective works, or any other work that contains an appreciable amount of unclaimable material.

As a general rule, "[a]ny substantive editing of authorship and/or new matter statements and/or material excluded from claim statements, will be done only after contacting the applicant for permission to amend the information" set forth in that portion of the application. Online Registration to Claims of Copyright, 72 Fed. Reg. 36,883, 36,887 (July 6, 2007). In some cases, the registration specialist may annotate the registration record to clarify the extent of the claim and to identify material that should be excluded from the claim. In other cases, the scope of the claim may be clear from the face of the application, even though the application is incomplete or has been completed incorrectly. If the scope of the claim is unclear and the issue cannot be addressed with an annotation, the registration specialist will communicate with the applicant.

621.9(A) Limitation of Claim Not Required

621.9(A)(1) Works Containing Uncopyrightable Material or a Minimal Amount of Unclaimable Material

As discussed in Section 621.2, if a work contains only a minimal amount of unclaimable material, the New Material Included, Material Excluded, and Previous Registration fields may be left blank in the online application, or spaces 5, 6(a), and/or 6(b) may be left blank in a paper application. Likewise, there is no need to complete these portions of the application if the work contains material that is not copyrightable.

Examples:

- An online application is submitted for a 500-page catalog. A statement on the deposit copy indicates that the text and photographs on pages 390–395 appeared in an earlier edition of the catalog, but the rest of the content is new. The Limitation of Claim screen may be left blank, because the work does not contain an appreciable amount of previously published material.

- An online application is submitted for a comedy sketch. The applicant asserts a claim in "text." In the Note to Copyright Office field, the applicant explains that "the characters in this work are loosely based on two well-known television personalities." The New Material Included/Material Excluded fields may be left blank, because it appears that the author merely borrowed ideas, themes, or other uncopyrightable material from another work.

621.9(A)(2) Applicant Has Not Asserted a Claim in Unclaimable Material

If it is clear that the claimant is not asserting a claim to copyright in the unclaimable material that appears in the work, the registration specialist may register the claim without communicating with the applicant. In making this determination, the registration specialist may consider the title of the work or any other information found in the deposit copy(ies) or elsewhere in the registration materials.

Examples:

- The Office receives an online application for a photograph of a terra cotta sculpture. In the Author Created field the applicant checked the box for "photograph," but the Limitation of Claim fields have not been completed. The applicant is clearly asserting a claim in the photograph, and has not asserted a claim in the sculpture depicted in the photograph. The registration specialist will register the claim.

- Leading Edge Records submits an online application for a sound recording. In the Author Created field the applicant checks the box for "sound recording," but the Limitation of Claim fields have not been completed. The liner notes indicate that three songs have been used with permission from Monkey's Uncle Music Publishing. The applicant should have disclaimed these songs in the Material Excluded field, because they appear to be owned by a third party. Nevertheless, the scope of the claim is clear, because the applicant is asserting a claim in the sound recording, but is not asserting a claim in the music embodied in that recording. The registration specialist will register the claim.

- The applicant submits a paper application on Form VA for a lithograph. In space 2 the applicant checks the box for "reproduction of work of art." The work appears to be a reproduction of a painting by Vincent Van Gogh. Spaces 6(a) and 6(b) are blank. The applicant should have disclaimed the Van Gogh painting in space 6(a) and should have described the new material that the applicant intends to register in space 6(b). Nevertheless, the scope of the claim is clear, because space 2 states that the author created a reproduction of a preexisting work of art. The registration specialist may register the claim

with an annotation, such as: "Regarding authorship information: Art reproductions are derivative works, based on the underlying work of art, per 17 USC 101, definition of 'derivative work.'"

621.9(A)(3) Unclaimable Material Described in the Application but Not Included in the Deposit Copy(ies)

If the applicant completes the New Material Included/Material Excluded fields or spaces 6(a) and 6(b), but the deposit copy(ies) do not appear to contain any unclaimable material, the registration specialist may annotate the record to clarify the content of the deposit copy(ies).

Example:

- A paper application is submitted for an unpublished work consisting solely of words. In space 6(b) the applicant explains that the author "added words to go with music." In space 6(a) the applicant disclaims "previously published music." The work may be registered with an annotation such as: "Regarding limitation of claim: Copy only contains words."

621.9(B) Identifying the Author of a Work That Contains an Appreciable Amount of Unclaimable Material

The applicant should provide the name of the author(s) who created the new material that the applicant intends to register. The applicant need not and should not provide the name of the author(s) who created any unclaimable material that may be included in the work.

An application may be accepted if it names both the author of the unclaimable material and the author of the new material, provided that the unclaimable material itself has been excluded from the claim. Identifying the author of the unclaimable material is considered superfluous in this situation. Likewise, an application may be accepted if the author of the new material and the author of the unclaimable material are named as co-claimants, provided that the work appears to be a joint work and provided that the application has been certified by the author of the new material or his or her authorized agent. Otherwise, the registration specialist will communicate with the applicant.

621.9(C) Authorship Unclear

The copyrightable authorship that the applicant intends to register should be clearly identified in the application, and the scope of the claim to copyright in that authorship should be clearly stated. As a general rule, the U.S. Copyright Office will accept any of the terms set forth in Section 621.8(C), or any combination of those terms, unless the statement provided in the New Material Included field or space 6(b) is contradicted by information provided elsewhere in the registration materials. For examples of terms that may be considered unclear, see Sections 618.8(A)(1) through 618.8(A)(10).

As discussed in Section 621.8(C), the New Material Included field in the online application or space 6(b) of the paper application should identify all of the copyrightable authorship that the applicant intends to register. As discussed in Sections 621.8(A) and 621.8(C), the statement provided in the Author Created field should be identical to the statement provided in the New Material Included field (if any). Likewise, the statement provided in space 2 should be identical to the statement provided in space 6(b) (if any).

If there is a discrepancy between the statements provided in the Author Created/New Material Included fields or in spaces 2 and 6(b), or if the deposit copy(ies) contain an appreciable amount of copyrightable authorship that is mentioned in one portion of the application but not the other, the registration specialist may register the claim if the statements are consistent with each other and if the claim is clear based on the registration materials as a whole. If there is a conflict between these statements or if the extent of the claim is unclear, the registration specialist will communicate with the applicant.

621.9(D) Claim Clarified by Information Provided Elsewhere in the Registration Materials

As a general rule, if the work appears to contain an appreciable amount of unclaimable material and if the applicant fails to complete the New Material Included and/or Material Excluded fields in an online application, or fails to complete spaces 5 and/or 6(a) and/or 6(b) on a paper application, the registration specialist may register the work if the claim is clearly limited by information provided in the application or elsewhere in the registration materials. If so, the specialist may amend the application and/or add an annotation to the registration record to clarify the extent of the claim. If this information is not provided in the application itself, the specialist may communicate with the applicant.

621.9(D)(1) Claim Clearly Defined by the Title of the Work

If the extent of the claim is clearly defined by the title provided in the application or the title given on the deposit copy(ies), the registration specialist may register the claim, even if the applicant failed to complete the Limitation of Claim screen in the online application or spaces 6(a) and/or 6(b) in a paper application.

Examples:

- An online application is submitted for a work titled *Industrial Training Guide, 15th Edition,* with a copyright notice dated 1990–2005. In the Author Created/New Material Included fields the applicant asserts a claim in "text." In the Material Excluded/Other field the applicant disclaims the "previously published text." The registration specialist may register the claim.

- An online application is submitted for a work titled *Marva Thompson's New Band Arrangements of J.S. Bach Fugues*. Marva Thompson is named as the author of "music," but the Limitation of Claim screen is blank. The registration specialist may register

the claim without communicating with the applicant. The title indicates that the claim is limited to the new musical arrangements but does not extend to any music that is in the public domain.

- A Standard Application is submitted for a book titled *Envious of the Obvious*. The deposit also contains a "preview chapter" from another book by the same author titled *Hostage of History*. The registration specialist may register the claim. The application indicates that the claim is limited to the book titled *Envious of the Obvious* but does not extend to the preview from the other book.

  NOTE: If the applicant used the Single Application, the specialist would refuse registration in this situation. The Single Application may be used to register one work by one author, but it cannot be used if the deposit contains two or more works. For information concerning the Single Application, see Chapter 1400, Section 1405.

- A paper application is submitted for a textbook. In space 2 the applicant asserts a claim in "text," but spaces 6(a) and 6(b) are left blank. The deposit copies indicate that this is the fourth edition of this work. The registration specialist may add this information to the title space and register the claim with an annotation, such as: "Regarding title information: 'Fourth edition' added by Copyright Office from deposit copy(ies)." Alternatively, the specialist may communicate with the applicant to clarify the preexisting material.

621.9(D)(2) Claim Clarified by Information Provided in the Author Created Field or Nature of Authorship Space

If the applicant fails to complete the New Material Included and/or Material Excluded fields in an online application or fails to complete spaces 6(a) and/or 6(b) on a paper application, the application may be accepted if the claim is clearly defined by information provided in the Author Created field or the Nature of Authorship space.

Examples:

- UnderWare LLC submits an online application for a computer program titled *Passion for Fashion v. 3.0*. UnderWare is named as the sole author of the work and its name appears in the copyright notice. In the Author Created/Other field the applicant asserts a claim in "numerous updates to this version." Although this information should have been provided in both the Author Created and New Material Included fields, the registration specialist may register the claim, because the application is clearly limited to the updates that the author made to this work.

- Kyle Kessler submits a paper application for a floral pattern naming himself as the author and claimant. In space 6(a) the applicant disclaims "previous unadorned version of artwork." In the Nature of Authorship space the applicant asserts a claim in "updated adorned version of artwork." Although this information also should have been provided in space 6(b), the registration specialist may register the claim, because it is clearly limited to the "updated adorned version."

- A paper application is submitted for a work titled *100 Poems by Ingrid Stacy (Second Edition).* In the Nature of Authorship space the applicant asserts a claim in "forty new poems." Although this information should have been provided in both space 2 and space 6(b), the registration specialist may register the claim, because it is clearly limited to the forty new poems that were published in the second edition.

621.9(D)(3) Claim Clarified by Information Provided in the Limitation of Claim Screen or Spaces 6(a) and / or 6(b) of the Paper Application

If the information provided in the New Material Included field describes both the unclaimable material and the new material that the applicant intends to register, and if the Material Excluded field has been left blank (or vice versa), the registration specialist may move the information to the correct field and register the claim without communicating with the applicant. The registration specialist may follow the same approach if the applicant failed to complete space 6(b) and if the information provided in space 6(a) of the paper application describes both the unclaimable material and the new material that the applicant intends to register (or vice versa).

Examples:

- An online application is submitted for a musical work. In the Material Excluded/Other field and in the New Material Included/Other field the applicant states "new lyrics added to previously published words and music." The application may be accepted, even though the Material Excluded field should have described only the "previously published words and music" and the New Material Included field should have described only the "new lyrics."

- A paper application is submitted for a doctoral thesis. The statement in space 6(a) reads "revised chapter 4; prepared new chapter 5 based on previously registered manuscript." The application may be accepted, even though the new material should have been listed in space 6(b) rather than space 6(a). In this case, the specialist may move the statement to space 6(b) and register the claim.

621.9(D)(4) Claim Clarified by Information Provided in Space 5 of the Paper Application

If the applicant fails to complete spaces 6(a) and/or 6(b) in a paper application, the registration specialist may register the claim without communicating with the applicant, if the applicant has completed space 5. (This portion of the application poses the following question to the applicant: "Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?") Specifically if the applicant checked box "c" in space 5, the specialist may register the claim without communicating with the applicant, provided that the work appears to be "a changed version of the work."

621.9(D)(5) Claim Clarified by Information Provided in the Deposit Copy(ies)

If the applicant fails to complete the New Material Included and/or Material Excluded fields in an online application or fails to complete spaces 6(a) and/or 6(b) on a paper application, the application may be accepted if the scope of the claim is clearly defined by the deposit copy(ies). If so, the registration specialist may register the claim without communicating with the applicant, or may add an annotation to clarify the scope of the claim, if appropriate.

Examples:

- An online application is submitted for a musical work. In the Author Created field the applicant asserts a claim in "music" and "lyrics." The work contains some new lyrics and some text taken from the King James Bible, but the Limitation of Claim screen is blank. Because the Biblical text is clearly in the public domain, the registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Copy contains some Biblical text."

- An online application is submitted for an anthology of short stories by the same author. In the Author Created field the applicant asserts a claim in "text." The deposit copy states that two of the stories were previously published in the *New Yorker*, but the Limitation of Claim screen is blank. The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Statement on deposit copy indicates some text previously published."

- An online application is submitted for a travel guide. In the Author Created field, the applicant asserts a claim in "photograph(s)" and "text." The captions for two of the photographs state "photo by Susan Trainer, used with permission," but the Limitation of Claim screen is blank. The registration specialist may register the claim with an annotation, such as: "Regarding authorship information: Statement on copy indicates some photographs used with permission."

621.9(E) Uncopyrightable Material Claimed in the New Material Included Field or Space 6(b)

The authorship that is claimed in the New Material Included field or space 6(b) must be copyrightable. If the applicant asserts a claim in uncopyrightable material, the U.S. Copyright Office may ask for permission to remove that claim from the application, or in appropriate cases, may add an annotation to clarify that the registration does not cover that element. If the claim appears to be limited to the uncopyrightable material, or if there appears to be no other basis for asserting a valid claim in the work, the Office will refuse registration.

621.9(E)(1) Deposit Copy(ies) Contain Copyrightable Authorship and Uncopyrightable Material; No Claim Asserted in the Uncopyrightable Material

If the deposit copy(ies) contain copyrightable material as well as uncopyrightable material, the registration specialist may register the claim without communicating with the applicant, provided that the applicant does not claim the uncopyrightable material in the New Material Included field or in space 6(b).

Example:

- An application is submitted for a revised version of a user's manual. In the New Material Included field the applicant states "new text." The deposit copies contain text, geometric symbols, and some sections highlighted in color. The registration specialist will register the claim because the applicant only asserted a claim in the copyrightable new text, and did not assert a claim in the uncopyrightable geometric shapes and highlighting.

621.9(E)(2) Claim in Copyrightable Authorship and Uncopyrightable Material

If the New Material Included field or space 6(b) of the application asserts a claim in copyrightable material and material that is uncopyrightable under the Copyright Act, Section 202.1 of the regulations, or this *Compendium*, the registration specialist may communicate with the applicant. In the alternative, the specialist may register the claim with an annotation indicating that the registration does not cover the uncopyrightable material. The annotation is intended to put the applicant, the claimant, the courts, and the general public on notice concerning the extent of the claim to copyright.

Example:

- An application is submitted for a new version of a banner advertisement. The applicant states "artwork, slogan, typeface" in the New Material Included field. If the work contains a sufficient amount of pictorial or graphic authorship to support a claim in artwork, the registration specialist may register the claim with an annotation, such as: "Regarding new material included: Slogan, typeface, typographic ornamentation not copyrightable. 37 CFR 202.1."

621.9(E)(3) Claim in Uncopyrightable Material: Deposit Copy(ies) Contain Copyrightable Authorship

If the deposit copy(ies) contain copyrightable material and if the applicant only asserts a claim in material that is uncopyrightable, the registration specialist may communicate with the applicant, which will delay the examination of the claim. Alternatively, the specialist may register the claim with an annotation describing the copyrightable material contained in the deposit copy(ies) and indicating that the registration does not cover the uncopyrightable material.

621.9(E)(4) Claim in Uncopyrightable Material: Acceptable Authorship Statement Used to Describe Uncopyrightable Material

If the applicant uses a term in the New Material Included field or space 6(b) of the application that normally would be used to describe copyrightable authorship, such as "artwork" or "text," and if it appears that the applicant is using that term to describe material that is uncopyrightable, the specialist may communicate or may register the claim with an annotation indicating that the registration does not cover the uncopyrightable material.

621.9(E)(5) Claim in Uncopyrightable Material: Works Created by Two or More Authors

If two or more authors are named in the application, and if it appears that one or more of the authors did not contribute copyrightable authorship to the work, the specialist will ask for permission to remove the noncontributing author's information from the registration record.

621.9(E)(6) Claim in Uncopyrightable Material: Registration Refused

If the applicant asserts a claim in material that is uncopyrightable under the Copyright Act, Section 202.1, or this *Compendium*, the registration specialist will refuse registration if the claim appears to be limited to that material or if there appears to be no other basis for asserting a valid claim in the work.

621.9(F) *De Minimis* Material Claimed in the New Material Included Field or Space 6(b)

The material described in the New Material Included field or in space 6(b) must be copyrightable. If the material claimed in that field/space is *de minimis*, the U.S. Copyright Office may ask for permission to remove that claim from the application, or in appropriate cases may add an annotation to clarify that the registration does not cover that element. If the claim appears to be limited to the *de minimis* material or if there appears to be no other basis for asserting a valid claim in the work, the Office will refuse registration.

621.9(F)(1) Deposit Copy(ies) Contain Copyrightable Authorship and *De Minimis* Material; No Claim Asserted in the *De Minimis* Material

If the deposit copy(ies) contain copyrightable material and *de minimis* material, the registration specialist may register the claim without communicating with the applicant, provided that the applicant does not claim the *de minimis* material in the New Material Included field or in space 6(b).

621.9(F)(2) Claim in Copyrightable Authorship and *De Minimis* Material

If the applicant asserts a claim in copyrightable material and *de minimis* material, the registration specialist may ask the applicant for permission to remove the claim in the *de minimis* material, which will delay the examination of the claim. Alternatively, the specialist may register the claim with an annotation identifying the copyrightable material that has been submitted for registration and stating that the registration does not cover the *de minimis* material claimed in the application.

621.9(F)(3) Claim in *De Minimis* Material: Works Created by Two or More Authors

If two or more authors are named in the application, and if it appears that one of the authors contributed only a *de minimis* amount of authorship, the specialist will communicate with the applicant. If the applicant confirms that the author did not make a copyrightable contribution to the work, the specialist will ask for permission to remove that author's name from the registration record.

621.9(F)(4) Claim in *De Minimis* Authorship: Registration Refused

If the applicant asserts a claim in *de minimis* material, the registration specialist will refuse registration if the claim appears to be limited to that material, or if there appears to be no other basis for asserting a valid claim in the work.

621.9(G) Discrepancies Between the Limitation of Claim Fields and the Deposit Copy(ies)

If the applicant completes the Material Excluded field or space 6(b), but the deposit copy(ies) do not appear to contain any unclaimable material, the registration specialist may annotate the record to clarify the content of the deposit copy(ies).

Example:

- A paper application is submitted for an unpublished work consisting solely of words. In space 6(b) the applicant explains that the author "added words." In space 6(a) the applicant disclaims "previously published music." The registration specialist may register the work with an annotation, such as: "Regarding limitation of claim: Copy only contains words."

If the applicant completes the New Material Included field or space 6(a), but the authorship described in that portion of the application does not appear in the deposit copy(ies), the specialist may register the claim with an annotation identifying the copyrightable material that appears in the deposit.

Example:

- Walter Bridge submits an online application to register one of his photographs. In the New Material Included and Material Excluded fields he checks the boxes marked "2-D Artwork," "Photograph," "Jewelry design," "Architectural work," "Sculpture," "Technical Drawing," and "Map." The registration

specialist may register the claim with an annotation, such as: "Regarding limitation of claim: Deposit contains only one photograph."

621.9(H) Discrepancies Involving the Copyright Notice

621.9(H)(1) Published Works

The presence of multiple year dates in the copyright notice for a published work (*e.g.*, © Mountain View Software 2004, 2005, 2006) may indicate that portions of the work have been previously published or previously registered. Likewise, a copyright notice that precedes the date of publication for a published work by two or more years (*e.g.*, Rise and Shine, published January 2008, © Sunny Day Inc. 2005) may indicate that the work contains previously published or previously registered material. In this situation, the registration specialist may question an application if the applicant fails to complete the Limitation of Claim screen in an online application or spaces 5, 6(a), and/or 6(b) in a paper application.

621.9(H)(2) Unpublished Works

The presence of an earlier date or multiple dates in the copyright notice for an unpublished work does not necessarily mean that the work contains unclaimable material. However, if the date clearly refers to previously published material or previously registered material, the registration specialist may communicate with the applicant if the applicant failed to complete the Limitation of Claim screen or spaces 5, 6(a), and/or 6(b) of the paper application.

621.9(I) Discrepancies Involving the Registration Number or Year of Registration in a Paper Application

If the applicant checks the "yes" box on space 5 of a paper application without providing a registration number and/or year of registration, or with a statement such as "unknown" or "I don't know," the registration specialist may either communicate with the applicant, or may attempt to locate the previous registration information in the U.S. Copyright Office's records. In conducting such a search, the specialist will only look for works that have been registered under the exact same author and title as the work described in the application.

If there is no record of a previous registration under the same author and title, the specialist may register the claim with an annotation, such as: "Regarding previous registration: Copyright Office records show no previous registration under this title."

If the work described in the application has been published, and if the specialist finds another work registered under the exact same author and title, he or she may add the previous registration number and year to the registration record. If the previous registration is for an unpublished version of the work described in the application, the specialist may explain that the Office is issuing a new registration for the first published edition of this work by adding an annotation, such as: "Regarding previous registration: Registration number added from Copyright Office records. Registered as first published

edition." If the previous registration is for a previously published version of the work described in the application, the specialist will communicate with the applicant to determine whether there is a basis for issuing a new registration.

In some cases, the applicant may check box (a) in space 5, indicating that "this is the first published edition of a work previously registered in unpublished form" without providing a date of publication for the work that has been submitted for registration and without providing a previous registration number or year of registration. If the work appears to be unpublished, and if there is no record of a previous registration under the same title, the registration specialist may add an annotation, such as: "Regarding previous registration: Application states that this is the first published edition of a work previously registered in unpublished form, but no publication date or previous registration number given. Registered as unpublished."

621.9(J) Reference to Previous Registration Clearly Erroneous

Where the applicant provides a number in the Previous Registration field/space, but the number is clearly erroneous or does not relate to a registration issued by the U.S. Copyright Office, the registration specialist may annotate the registration record and register the claim without communicating with the applicant. If the applicant provides an erroneous number and checks the "yes" box on space 5 of a paper application, the specialist may ask the applicant for permission to remove that number from the registration record and to change the answer on space 5 from "yes" to "no."

Examples:

- Lois Lanier submits an application for a product logo. In the Previous Registration field, the applicant provides a U.S. trademark registration number. The specialist will add an annotation to the registration record, such as: "Regarding previous registration: Applicant gives RN 1234567, which is not a Copyright Office registration number."

- Joshua Steinberg submits an online application for a screenplay. In the Note to Copyright Office field the applicant states "that work has been registered with the Screenwriters Guild." Because this statement is considered superfluous, the registration specialist will register the claim without communicating with the applicant.

- Saskatoon Scriveners submits a paper application to register an anthology of short stories by a Canadian author. The applicant checks the "yes" box on space 5 of the application indicating that the work has been previously registered. In a cover letter, the applicant explains that the work has been registered in Canada and a copy of the Canadian registration is included with the application. The registration specialist will ask for permission to remove the reference to the Canadian registration

by changing the answer on space 5 of the application from "yes" to "no."

621.9(K) Reference to a Preregistration in the Previous Registration Field/Space

If the applicant provides a preregistration number in the Previous Registration field in the online application, the registration specialist will move that information to the correct portion of the registration record.

If the applicant provides a preregistration number on a paper application, the specialist will move that information to the correct portion of the record. If the applicant checks the "yes" box that appears in space 5, the specialist will register the work with an annotation, such as: "Regarding previous registration: Information refers to preregistration under 17 USC 408(f), not full registration under 17 USC 408(a)."

622 Rights and Permissions Information / Correspondent / Mail Certificate

This Section discusses the procedures for providing contact information in the Standard Application or a paper application.

For guidance on providing this type of information in the Single Application, or an application for a group registration, a renewal registration, or a supplementary registration, see the following chapters:

- For the Single Application, see Chapter 1400, Section 1405.
- For group registrations and the unit of publication option, see Chapter 1100.
- For renewal registrations, see Chapter 2100.
- For supplementary registrations, see Chapter 1800, Sections 1802.8(A) and 1802.8(B)(5) through 1802.8(B)(7).

622.1 Rights and Permissions Information

The applicant may provide the name, address, and other contact information for the person and/or organization that should be contacted for permission to use the work. Providing this information is optional and an application will be accepted even if this portion of the application is left blank.

The applicant may provide rights and permissions information in an online application on the Rights and Permissions Information screen. Currently, there is no space for this information on the paper applications.

The applicant may provide as much or as little information as the applicant prefers. For example, the applicant may provide the name of the person and/or organization who may be contacted for permission to use the work, along with the street address, telephone number, fax number, and email address (if any) for that person or organization. If the applicant prefers not to provide personally identifiable information,

the applicant may provide the name and address for a third party agent or a post office box number in lieu of a street address.

If the applicant provides rights and permissions information on the application, that information will appear on the certificate of registration, which will be made available to the public upon request. In addition, rights and permissions information will appear in the online public record for the work, which can be accessed by anyone who performs a search for the work on the U.S. Copyright Office's website.

Once a certificate of registration has been issued, the author, claimant, or their authorized representative may ask the Office to remove or replace this information in the online public record (but not the offline public record). To do so, the requesting party must submit a written request in the form of an affidavit, and must pay the appropriate fee for this service. For more information on this procedure, see Chapter 1800, Section 1805.

For a general discussion of privacy issues, see Chapter 200, Section 205.

622.2 Correspondent

The applicant must provide the name, address, and other contact information for the person or persons who should be contacted if the registration specialist has questions or concerns regarding the application. This person is known as the correspondent.

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

When completing an online application, the applicant should provide this information on the Correspondent screen; when completing a paper application, the applicant should provide this information on space 7(b) of the application under the heading Correspondence. Specifically, the applicant should provide the correspondent's first and last name, along with the street address (or P.O. Box) and email address where that person may be contacted. If the applicant fails to provide this information in an online application, the application will not be accepted by the electronic registration system. In addition, the applicant is strongly encouraged to provide the area code, daytime telephone number, and fax number (if any) for the correspondent, as well as the name of the organization (if any) where the correspondent may be reached.

When a duly authorized agent or other third party submits an application on behalf of the author, the claimant, and/or an owner of one or more of the exclusive rights in the work, the third party should provide his or her name, address, and contact information in the Correspondent field/space.

The name and address provided in the application will not appear in the online public record, but it will appear on the certificate of registration and the offline registration record. The Office will not remove this information from the offline registration record once a registration has been issued, and may make this information available to the

public upon request. *See generally* Removal of Personally Identifiable Information From Registration Records, 82 Fed. Reg. 9004 (Feb. 2, 2017).

For a general discussion of privacy issues, see Chapter 200, Section 205.

622.3 Applicant's Internal Tracking Number

The applicant may assign an internal tracking number to an online application by completing the field marked Applicant's Internal Tracking Number on the Certification screen.

Providing a tracking number is optional and this feature is intended solely for the applicant's convenience. The U.S. Copyright Office does not use these numbers to keep track of pending applications, although the number will appear on the certificate of registration.

622.4 Mailing Address for the Certificate of Registration

The applicant should provide the first and last name of the person and/or the name of the organization to whom the certificate of registration should be sent, along with the street address (or P.O. Box), city, state, and zip code for that person and/or organization.

When completing an online application, the applicant should provide this information on the Mail Certificate screen. If the applicant fails to provide this information, the application will not be accepted by the electronic registration system.

When completing a paper application, the applicant should provide this information in space 9 of the application under the heading "Certificate Will be Mailed in Window Envelope to This Address." Space 9 should be completed legibly; failure to provide a legible name and address may delay the delivery of the certificate of registration.

The applicant should provide only one mailing address in the application. The Office will send a single copy of the certificate of registration to that address by first class mail. Additional copies of the certificate of registration may be obtained from the Office for an additional fee. For instructions on how to request additional copies of a certificate of registration, see Chapter 2400, Section 2408.

The name and mailing address provided in the application will not appear in the online public record, but it will appear on the certificate of registration and the offline registration record. The Office will not remove this information from the offline registration record once a registration has been issued, and may make this information available to the public upon request. *See generally* Removal of Personally Identifiable Information From Registration Records, 82 Fed. Reg. 9004 (Feb. 2, 2017).

For a general discussion of privacy issues, see Chapter 200, Section 205.

623 Special Handling

This Section discusses the U.S. Copyright Office's practices and procedures for special handling.

623.1 What Is Special Handling?

Special handling is a procedure for expediting the examination of an application to register a claim to copyright or the recordation of a document pertaining to copyright. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate of registration or a certificate of recordation, as described in Section 623.2. The Office charges an additional fee for this service, which is discussed in Section 623.6.

The copyright law provides that a work of authorship is protected by copyright from the moment it is fixed in a tangible medium of expression and that a registration or recordation is not a prerequisite for such protection. 17 U.S.C. §§ 102(a), 408(a). However, registration is required in order to institute a lawsuit for the infringement of a U.S. work, and recordation is required in order to obtain the benefit of certain statutory provisions and presumptions. *See* 17 U.S.C. §§ 203(a)(4)(A), 205(c), 304(c)(4)(A), 411(a), 412.

The Office recognizes that a delay in the issuance of a certificate may create difficulties for the copyright owner or other interested parties, particularly when litigation is expected. Therefore, the Office has established a procedure for processing applications and recording documents on an expedited basis for an additional fee. The procedure for requesting special handling is discussed in Section 623.5.

See generally Fees for Special Handling of Registration Claims, 74 Fed. Reg. 39,900 (Aug. 10, 2009); Policy Decision: Revised Special Handling Procedures, 56 Fed. Reg. 37,528 (Aug. 7, 1991); Policy Decision Fixing Fees for the Special Handling of Import Statements and Documents, 50 Fed. Reg. 46,206 (Nov. 6, 1985); Policy Decision Announcing Fee for Special Handling of Applications for Copyright Registration, 47 Fed. Reg. 19,254 (May 4, 1982).

623.2 Justification for Special Handling

The U.S. Copyright Office will grant a request for special handling in the following situations:

- Pending or prospective litigation.
- Customs matters.
- Contract or publishing deadlines that necessitate the expedited issuance of a certificate.

The Office may refuse to grant special handling if the request is not sufficiently justified, or if the Office is unable to process the request based on the Office's workload or budget at the time the request is made. The Office will not grant any request for special handling in connection with a request for reconsideration of a refusal to register.

Examples:

- Timothy King discovers that a website published his photograph of the Dalai Lama without his permission. He intends to send a cease and desist letter to the website demanding that the photo be removed from the site. Before sending the letter, Timothy submits an application to register his work and asks the Office to process the application on an expedited basis due to pending or prospective litigation. The request for special handling will be granted.

- The Pomegranate Company submits an application to register a motion picture and asks the Office to process the application on an expedited basis. In the Note to Copyright Office field the applicant explains that it intends to record its registration with the U.S. Customs and Border Protection Service to prevent infringing copies from being imported into the United States. The request for special handling will be granted.

- I.P. Asset Advisors intends to make a loan to a songwriter. The company intends to take a security interest in the songwriter's works as collateral for the loan. The loan agreement stipulates that the security interest must be recorded with the Office on or before the date that the deal closes. The company submits a copy of the loan agreement and asks the Office to record the document on an expedited basis. The request for special handling will be granted.

See Fees for Special Handling of Registration Claims, 74 Fed. Reg. at 39,900-01(August 10, 2009); Policy Decision: Revised Special Handling Procedures, 56 Fed. Reg. at 37,528 (August 7, 1991); Policy Decision Fixing Fees for the Special Handling of Import Statements and Documents, 50 Fed. Reg. at 46,206 (November 6, 1985).

623.3 Examination Guidelines: Special Handling

The U.S. Copyright Office will apply the same practices and procedures when examining a claim to copyright or a document pertaining to copyright, regardless of whether the applicant asks for special handling.

623.4 Timeline for Special Handling Requests

Once a request for special handling has been received, the U.S. Copyright Office will determine if the applicant paid the correct fee and provided a compelling justification for the request, as discussed in Section 623.2. If the applicant failed to pay the correct fee, failed to provide a compelling justification, or if the Office determines that special handling would be unduly burdensome, the Office will notify the applicant that the request has been denied and that the claim will be examined on a regular basis.

If the request for special handling is granted, the Office will make every attempt to examine the application or the document within five working days thereafter, although

the Office cannot guarantee that all applications or all documents will be registered or recorded within that timeframe.

As a general rule, the Office will issue a certificate of registration or a certificate of recordation within five working days after the request for special handling has been granted, if it is clear that the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of U.S. copyright law have been met.

If there are questions or issues that prevent the Office from registering the work or recording the document, the Office generally will notify the party that submitted the application or document within five working days after the request for special handling has been granted. If the applicant responds to this communication, the Office will provide its response to the applicant's communication(s) within a reasonable amount of time.

If it is clear that the requirements of the law have not been met, the Office will refuse to register the claim or will refuse to record the document. A refusal will be made in a written communication signed or initialed by the registration or recordation specialist or supervisor assigned to the claim or document. The communication will be mailed to the party that submitted the application or document. However, the Office cannot guarantee that a decision will be made or that the refusal will be issued within the timeframe specified above.

623.5 Procedure for Requesting Special Handling

To expedite an application to register a work, the applicant may send a written request to the U.S. Copyright Office online, in person, or by commercial carrier, courier, or mail. To expedite a document recordation, the remitter may send a written request to the Office in person, or by commercial carrier, courier, or mail. The procedures for each type of request are discussed in Sections 623.5(A) through 623.5(D).

The request may be made when the application or document is submitted to the U.S. Copyright Office or any time before the Office issues a certificate of registration, a certificate of recordation, or a refusal. In all cases, the Office will retain a copy of the request in the registration record or the recordation record.

When requesting special handling for a claim to copyright, the Office strongly encourages applicants to complete an online application and upload an electronic copy of the work if the work is eligible for submission in an electronic format. When submitting the deposit in a hard copy format, the Office strongly encourages applicants to deliver the deposit copy(ies) in person to ensure they are received in a timely manner and to minimize the risk of damage. For guidance in determining whether a work is eligible for submission in electronic format, see Chapter 1500, Section 1507.2. For information concerning the procedures for delivering deposit copy(ies) in person, see Chapter 1500, Section 1508.5.

If the Office subsequently registers the work, the registration specialist may add an annotation to the certificate of registration and the online public record indicating that the work was registered on an expedited basis. But the specialist will add this

annotation only in cases where the request for special handling was submitted after the application, deposit copy(ies), and filing fee were received. For information concerning this procedure, see Section 623.5(D).

By contrast, when the Office records a document on an expedited basis, the recordation specialist will not add an annotation to the certificate or the online public record for that document.

623.5(A) Online Requests for an Expedited Certificate of Registration

When submitting an application using the electronic registration system, the applicant may request special handling by completing the fields that appear on the Special Handling screen. The applicant should check the box marked Special Handling and provide a justification for the applicant's request by checking one or more of the boxes that appear under the heading Compelling Reason(s) (*i.e.*, pending or prospective litigation; customs matters; contract or publishing deadlines).

The request for special handling must be certified by an author of the work, the claimant named in the application, an owner of one or more of the exclusive rights in the work, or a duly authorized agent of one of the aforementioned parties. The certifying party should check the box that reads, "I certify that I am the author, copyright claimant of exclusive rights, or the authorized agent of the author, copyright claimant of exclusive rights of this work." By checking this box, the certifying party confirms that the information provided in the request for special handling is correct to the best of his or her knowledge. There is no need to date the certification; the date will be added automatically when the application is received by the U.S. Copyright Office.

Additional comments or instructions that may be relevant to the request for special handling may be provided in the field marked Explanation for Special Handling, such as the applicant's preference for the delivery of the certificate of registration.

623.5(B) In Person Requests

To request special handling in person, the requesting party should prepare a letter explaining why there is a compelling need for the expedited issuance of a certificate of registration or a certificate of recordation. The letter must include one or more of the justifications listed in Section 623.2 (*i.e.*, pending or prospective litigation; customs matters; contract or publishing deadlines). In addition, the party making the request must provide a signed statement certifying that the information contained in the letter is correct to the best of his or her knowledge.

The letter should be clearly labeled "Special Handling" and should be delivered to the Public Information Office together with the following items:

Special handling for copyright registration:

- An appropriate application to register the claim to copyright.
- The appropriate deposit copy(ies), phonorecords, or identifying material for the claim to copyright.

- The appropriate filing fee or deposit account number.
- The special handling fee or deposit account number.

Special handling for copyright recordation:

- The transfer or other document pertaining to copyright that is being submitted for recordation.
- The appropriate document recordation fee or deposit account number.
- The special handling fee or deposit account number.

The Public Information Office is located in Room LM-401 of the James Madison Memorial Building of the Library of Congress, 101 Independence Avenue SE, Washington, DC 20559, and is open Monday through Friday from 8:30 a.m. to 5:00 p.m. Eastern Time (except for federal holidays). Please be advised that visitors to the U.S. Copyright Office must pass through security before entering the building, and that sealed packages or packages that are more than twenty-four inches wide by fifteen inches high are not permitted.

For more information on visiting the Office, see Chapter 200, Section 204.1(B)(3).

623.5(C) Requests Delivered by Commercial Carrier, Courier, or by Mail

Although it is strongly discouraged, applicants may submit a request for special handling by mail, by courier, or by a commercial carrier, such as Federal Express or United Parcel Service.

The party making the request should prepare a letter containing the information set forth in Section 623.5(B). The letter should be sent to the U.S. Copyright Office together with the items listed in Section 623.5(B) in an envelope or package that is clearly labeled "Special Handling."

Items delivered by courier should be sent to the Congressional Courier Acceptance Site, which is located at 2nd and D Streets NE, Washington, DC. This location is open Monday through Friday from 8:30 a.m. to 4:30 p.m. Eastern Time (except for federal holidays). Items delivered to this location are typically sent to the Office the next working day.

Items delivered by U.S. mail should be sent to the following address:

Special Handling
Copyright RAC Division
P.O. Box 71380
Washington, DC 20024-1380

A package containing a request for special handling must not exceed twelve inches by eighteen inches by four inches in size. Packages exceeding these dimensions should be delivered in person to the Public Information Office using the procedure described in

Section 623.5(B) or should be sent by U.S. mail or commercial carrier to the following address:

Special Handling
Department 100
Washington, DC 20540

IMPORTANT NOTE: If a courier attempts to deliver a package to one of the mailing addresses listed above, it may be rerouted to another location and may not be delivered to the Office for up to three months. *See* New Procedure for Courier Deliveries, 68 Fed. Reg. 70,039 (Dec. 16, 2003).

623.5(D) Procedure for Requesting Special Handling for a Pending Application or a Pending Recordation

A request for special handling may be made at any time before the U.S. Copyright Office issues a certificate of registration or certificate of recordation. If an application or a document recordation request is already pending, the applicant or remitter may ask the U.S. Copyright Office to process the application or document on an expedited basis, provided that the requesting party pays the special handling fee and provided that there is a compelling reason for the request.

To request special handling for a pending application or a pending recordation request, the applicant or remitter should complete the form posted on the Office's website. Alternatively, the applicant or remitter may prepare a letter containing the information set forth in Section 623.5(B).

To facilitate the location of the application that is the subject of the request, it should include the following information:

- The service request number/case number for the work, if known.
- The exact title of the work as it appears in the application.
- The name(s) of the author(s) and claimant(s) named in the application.
- A description of the deposit copy(ies), phonorecords, or identifying material that were submitted to the Office.
- The date that the application and copy(ies) were submitted to the Office.
- The means by which the application and copy(ies) were submitted to the Office (*e.g.*, by electronic submission, first class mail, registered mail, certified mail, commercial carrier, courier, or hand delivery).

To facilitate the location of the document that is the subject of the request, it should include the following information:

- The title of the first work listed in the document.

- The date the document was submitted to the Office.
- The means by which the document was submitted to the Office (*e.g.*, by first class mail, registered mail, certified mail, commercial carrier, courier, or hand delivery).
- The amount of the recordation fee that was submitted to the Office and the type of payment (*e.g.*, by deposit account, by check, by credit card, etc.).
- The name of the person or entity who paid the recordation fee.

The request should be sent to the Office in an envelope that is clearly labeled "Special Handling" together with the special handling fee and, if possible, with a photocopy of the application or a photocopy of the document. The envelope may be delivered in person to the Public Information Office using the procedure described in Section 623.5(B), or it may be delivered by U.S. mail, commercial carrier, or courier using the procedure described in Section 623.5(C).

In some cases, the applicant may be required to pay a search fee if the application or document cannot be located immediately. The fee for this service is set forth in the Office's fee schedule under the heading "Retrieval of in-process or completed Copyright Office records or other Copyright Office material."

623.6 Special Handling Fee

To expedite a registration or recordation, the applicant or remitter must pay a special handling fee in addition to the filing fee for the application or the recordation fee for the document. These fees are set forth in the Office's fee schedule under the heading "Special handling fee for a claim" and "Special handling fee for recordation of a document." The special handling fee must be paid for each application and for each document for which expedited service is requested and granted.

Once a request for special handling has been granted, the special handling fee is not refundable, regardless of whether the Office issues a certificate of registration or a certificate of recordation.

If the applicant requests special handling through the electronic registration system, the special handling fee may be paid with a credit card, a debit card, or an electronic transfer from a checking account, savings account, or a deposit account.

If the request is made in person at the Public Information Office, the special handling fee may be paid in cash, by credit card, by check, or it may be charged to a deposit account.

If the request is delivered by mail, commercial carrier, or courier, the special handling fee may be paid by check or it may be charged to a deposit account.

Checks must be made payable to the U.S. Copyright Office, they must be payable in U.S. dollars, they must be imprinted with an American Banking Association routing number, and they must be redeemable through a U.S. institution without a service charge or

exchange fee. International money orders and foreign postal money orders that are negotiable only at a post office will not be accepted.

If the Office issues a certificate of registration or a certificate of recordation, and if the payment for the special handling fee is returned or invalidated, the registration or recordation will be cancelled.

See Policy Decision: Revised Special Handling Procedures, 56 Fed. Reg. at 37,528 (August 7, 1991); Policy Decision Announcing Fee for Special Handling of Applications for Copyright Registration, 47 Fed. Reg. at 19,254 (May 4, 1982).

623.7 Special Handling for Multiple Applications That Share the Same Deposit Copy

On occasion, an applicant will submit multiple applications together with a single deposit copy, and will ask the U.S. Copyright Office to process some — but less than all — of those applications on an expedited basis. In such cases, the Office will expedite the examination of the applications for which special handling has been requested, but will not expedite the examination of the other applications. The applicant must pay an additional fee, which will be added to the filing fee for each application and the special handling fee. The fee for this service is set forth in the Office's fee schedule under the heading "Handling fee for each non-special-handling claim using the same deposit."

Before processing each application the Office will ask the applicant to submit the additional fee (if it has not been paid). If the applicant prefers to avoid the additional fee, the applicant may submit a separate deposit copy for the applications that do not require special handling.

Example:

- Grantham Records intends to register a compact disc containing seven tracks. The company submits seven applications on Form PA for each song on the CD, one application on Form SR for the sound recording, and one application on Form VA for the artwork that appears on the cover of the CD. The company submits a single CD as the deposit copy for all of its applications. Grantham asks the Office to process the application for the first song on an expedited basis, because the company intends to file a lawsuit against a website that is streaming the song without permission. Grantham submits the filing fee for each application and the special handling fee for the application to register the first song. Because Grantham submitted a single CD as the deposit copy for all of its applications, the Office will ask the company to pay an additional fee for using the same deposit copy for the claims that do not require special handling. If Grantham does not wish to pay the additional fee, the company should submit a separate CD as the deposit copy for the applications that do not require expedited service.

See Policy Decision: Revised Special Handling Procedures, 56 Fed. Reg. at 37,528 (August 7, 1991); Policy Decision Announcing an Increase in the Fee for Special Handling of Applications for Copyright Registration, 49 Fed. Reg. 39,741 (Oct. 10, 1984).

624 Certification

This Section discusses the procedures for certifying a Standard Application or a paper application, and the practices regarding the examination of the Certification field/space.

624.1 The Significance of the Certification

The person who signs a copyright application certifies that the information provided therein is correct to the best of his or her knowledge. 37 C.F.R. § 202.3(c)(3)(iii). Knowingly making a false representation of a material fact in an application for copyright registration, or in any written statement filed in connection with the application, is a crime that is punishable under 17 U.S.C. § 506(e).

624.2 Who May Certify the Application?

The applicant is the party who certifies the certification and submits the application to the U.S. Copyright Office. A Standard Application or a paper application may be certified by any of the following parties:

- The author of the work.
- A person or organization that has obtained all of the rights under copyright from the author.
- An owner of one or more — but less than all — of the exclusive rights in the work.
- A duly authorized agent of any of the foregoing parties.

See 37 C.F.R. § 202.3(c)(3)(i); Streamlining the Single Application and Clarifying Eligibility Requirements, 83 Fed. Reg. 5227, 5229 (Feb. 6, 2018).

624.2(A) Application Certified by the Author or the Author's Duly Authorized Agent

If the author owns all of the rights under the copyright on the date that the application is submitted, the author should be named in the application as the copyright claimant. In this situation, the application should be certified by the author or the author's duly authorized agent.

For further discussion of this issue, see Section 619.6 and Chapter 400, Section 405.

624.2(B) Application Certified by a Party That Owns All the Rights under Copyright That Initially Belonged to the Author or That Party's Duly Authorized Agent

If a party owns all the rights under copyright that initially belonged to the author and if the work has not been registered before, that party may be named in the application as

the copyright claimant. In this situation, the application should be certified by that party or that party's duly authorized agent.

In the alternative, the author may be named as the copyright claimant and the application may be certified by the author or the author's duly authorized agent, even if the author has transferred all of the rights to another party, and even if the author does not own any of the rights at the time the application is filed.

For further discussion of this issue, see Sections 619.7 and 619.8, and Chapter 400, Sections 405 and 406.

624.2(C) Application Certified by an Owner of One or More — but Less than All — of the Exclusive Rights or That Party's Duly Authorized Agent

If the author has assigned one or more — but less than all — of the rights in the work to another party, then the author should be named as the copyright claimant. In this situation, the application may be certified by the author, the transferee, or their respective agents.

If the author assigned all of his or her rights under copyright to a third party and that transferee, in turn, assigned some — but not all — of those rights to an exclusive licensee, the author should be named as the copyright claimant. However, the author, the transferee, the exclusive licensee, or their respective agents may certify and submit an application to register the work with the U.S. Copyright Office.

For further discussion of this issue, see Section 619.7 and 619.9 and Chapter 400, Sections 405 and 407.

See Registration of Copyright: Definition of Claimant, 77 Fed. Reg. 29,257, 29,259 (May 17, 2012).

624.3 Completing the Application: Certification

624.3(A) Online Applications

When completing an online application, the applicant will be asked to certify the application on the Certification screen. Specifically, the applicant should provide the first and last name of the individual who is certifying the application in the space marked "Name of Certifying Individual" and should check the box that reads "I certify that I am the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights of this work and that the information given in this application is correct to the best of my knowledge." 37 C.F.R. § 202.3(c)(3)(ii). There is no need to date the certification in an online application; the date will be added automatically when the application is received by the U.S. Copyright Office. *See* 37 C.F.R. § 202.3(c)(3)(iv).

If the certification box has not been checked, or if a name is not provided in the field marked "Name of Certifying Individual," the application will not be accepted by the electronic registration system.

For guidance concerning the Note to Copyright Office field on the Certification screen, see Section 605.2(A).

624.3(B) Paper Applications

A paper application should be signed and dated on space 8 of the application under the heading Signature. The applicant may provide a handwritten, typed, or printed signature in this space. If the signature is handwritten, the first and last name of the person who certified the application should be typed or printed on the space marked Typed or Printed Name and Date. 37 C.F.R. § 202.3(c)(3)(ii).

If the signature is illegible the registration specialist will add an annotation to the registration record, such as: "Regarding certification: Image of signature on file in Copyright Office."

The person who certifies the application should check one of the boxes on the application indicating whether he or she is an author of the work, the claimant specified in the application, an owner of one or more exclusive rights in the work, or a duly authorized agent of one of the foregoing persons. 37 C.F.R. § 202.3(c)(3)(i). Ordinarily, an application will be accepted if two or more of the boxes in space 8 have been checked unless there is reason to question the application.

- Checking the "author" box means that the person certifying the application is one of the authors of the work named in space 2 of the application.

- Checking the "other copyright claimant" box means that the person certifying the application is the copyright claimant named in space 4 of the application. It also means that the person certifying the application owns all the rights under the copyright that initially belonged to the author.

- Checking the "owner of exclusive rights" box means that the person certifying the application owns one or more of the exclusive rights under the copyright, such as the right to distribute the work, or the right to perform the work publicly, etc.

- Checking the "authorized agent of" box means that the person certifying the application is an authorized representative of an author named in space 2 of the application, the copyright claimant named in space 4 of the application, or a party that owns one or more of the exclusive rights in the work. If the person certifying the application is a duly authorized agent, he or she should provide the name of the person or entity that he or she represents.

If the application has not been certified, the specialist generally will communicate with the applicant, even if a signature appears in a cover letter or elsewhere in the registration materials. If the applicant or the applicant's authorized agent confirms that the information in the application is correct, the specialist will add that party's name to the Certification space and will provide the date of the communication as the date of certification. In addition, the specialist will add a note to the registration record indicating that there is correspondence in the file.

624.4 Examination Guidelines: Certification

624.4(A) Signature Requirements

As a general rule, the registration specialist will assume that the certification was signed by an authorized individual, unless there is evidence to the contrary in the registration materials.

When completing an online application, the individual who certifies the application should provide his or her first and last name.

When completing a paper application, the individual who certifies the application should provide a handwritten, printed, or typed signature containing his or her first and last name. The U.S. Copyright Office will accept a photocopy of a handwritten signature, a stamped signature, or a signature provided on a preprinted label. Likewise, the Office will accept a handwritten signature consisting solely of initials or a monogram if it is accompanied by the typed or printed name of the person who certified the application.

If the work described in the application is a pseudonymous work, the author may sign the application using his or her pseudonym, provided that the name is clearly identified as a pseudonym in the registration materials. For a detailed discussion of pseudonymous works, see Section 615.2.

The application must be certified by an individual. A certification that merely recites the name of a business, company, partnership, or other legal entity is unacceptable. The registration specialist will accept a certification that includes the name of the individual who certified the application, along with the name of that person's employer or the business or organization that he or she represents.

Examples:

- An online application is submitted for a product catalog naming Viscous Liquids, LLC as the author and copyright claimant. The certification reads, "Mark Arnett, for Viscous Liquids, LLC." The claim will be registered.

- An online application is submitted for a technical drawing naming Nobel Gas, Inc. as the author and copyright claimant. The certification reads "Executive Vice President and General Counsel." The registration specialist will ask the applicant to provide the first and last name of the person who certified the application. The specialist will add this name to the registration record, and will add a note indicating that there is correspondence in the file.

- An online application is submitted for a prospectus naming Precious Metals Corporation as the author and copyright claimant. The certification reads "Precious Metals." The registration specialist will communicate with the applicant and explain that the application must be certified by an individual

and that the applicant should provide the first and last name of the certifying individual. The specialist will add this name to the registration record, and will add a note indicating that there is correspondence in the file.

624.4(B) Date of Certification in a Paper Application

When completing a paper application, the applicant should specify the month, day, and year that the application was certified. 37 C.F.R. § 202.3(c)(3)(iv). The date of the certification may be the same as the date that the application is received in the U.S. Copyright Office, but it cannot be later than the date of receipt or earlier than the date of publication specified in the application. If the date specified in the Certification space is later than the date that the application was received, the registration specialist will communicate with the applicant. Likewise, if the date of publication specified in space 3(b) of the application is later than the date of the certification, the specialist will communicate with the applicant to confirm that the date of publication is correct. 37 C.F.R. § 202.3(c)(3)(v).

Examples:

- Kitt Robbins submits a paper application that is received by the Copyright Office on September 1, 2012. The certification is dated October 2, 2012. The registration specialist communicates with the applicant by phone on March 15, 2013. If the applicant confirms that the information set forth in the application is correct, the specialist will register the claim with an effective date of registration of September 1, 2012. In addition, the specialist will add a note to the registration record indicating that there is correspondence in the file.

- Jason Johns signs his application on August 25, 2012 and mails it to the Office. The application is received on September 1, 2012. The application gives October 1, 2012 as the date of publication. The registration specialist contacts the applicant on December 1, 2012 to confirm that the work was, in fact, published on October 1, 2012. If the applicant confirms that the date of publication is correct the specialist will register the claim and will add a note to the registration record indicating that there is correspondence in the file. If the applicant confirms that the work was published on a different date (such as September 15, 2012), the specialist will amend the registration record to reflect the correct publication date. In both cases, the effective date of registration will be September 1, 2012.

625 Registration Decision Date and Effective Date of Registration

When the U.S. Copyright Office completes its examination and "determines that . . . the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of [title 17] have been met," the Office will "register the claim and issue to the applicant a certificate of registration." 17 U.S.C. § 410(a). In addition, it will

create an online public record for the registration, which may be accessed through the Office's website.

The certificate and the online public record will include the registration number that has been assigned to the claim. The certificate may also contain a "registration decision date." This date appears on certificates issued on or after August 19, 2019, but it does not appear in the online public record for such claims.

The registration decision date is the date that "registration of the copyright claim has been made in accordance with [title 17]." 17 U.S.C. § 411(a). In other words, it is the date that the Office completed its examination and determined that the "application, deposit, and fee" are "acceptable for registration." 17 U.S.C. § 410(d); *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC,* 139 S. Ct. 881, 892 (2019) ("[W]e conclude that 'registration . . . has been made' within the meaning of 17 U.S.C. § 411(a) . . . when the Register has registered a copyright after examining a properly filed application.").

In addition, the Office will assign an "effective date of registration" ("EDR") to the claim. This date appears on certificates issued on or after January 1, 1978 and in the online public record for such claims.

The EDR is the date that "an application, deposit, and fee, which [were] later determined by the Register of Copyrights . . . to be acceptable for registration, have all been received in the Copyright Office." 17 U.S.C. § 410(d). "Where the three necessary elements are received at different times the date of receipt of the last of them is controlling, regardless of when the Copyright Office acts on the claim." H.R. REP. NO. 94-1476, at 157 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5773.

If the Office "determines that . . . the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason," the Office "shall refuse registration and shall notify the applicant in writing of the reasons for such refusal." 17 U.S.C. § 410(b). The date of the refusal will appear on the refusal letter.

"[I]f a court later determines that a refused claim was registrable, the 'effective date of [the work's] copyright registration is the day on which' the copyright owner made a proper submission to the Copyright Office." *Fourth Estate Public Benefit Corp.,* 139 S. Ct. at 889 (quoting 17 U.S.C. § 410(d)). Specifically, the EDR is "the day on which an application, deposit, and fee, which [were] later determined . . . by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office." 17 U.S.C. § 410(d).

Thus, Section 410(d) "not only takes account of the inevitable timelag between receipt of the application and other material and the issuance of the certificate, but it also recognizes the possibility that a court might later find the Register wrong in refusing registration." H.R. REP. NO. 94-1476, at 157, *reprinted in* 1976 U.S.C.C.A.N. at 5773.

625.1 Minimum Requirements for an Acceptable Application

To establish an effective date of registration, the U.S. Copyright Office must receive an appropriate application that includes the information required by that particular form. 37 C.F.R. § 202.3(c)(2).

If it appears that the applicant submitted the wrong form, completed the form incorrectly, or attempted to register multiple works with the same form, the registration specialist may communicate with the applicant or may refuse registration.

If the applicant made a reasonable, good faith effort to complete the relevant fields/spaces in the application and if the claim is approved, the effective date of registration will be the date that the Office received the application, provided that the applicant satisfied the minimum requirements for an acceptable, complete deposit copy, and paid the applicable filing fee as of that date, and provided there have been no material changes in the facts stated in the application since that date.

Examples:

- On January 1, 2005 the Office receives an online application for an unpublished manuscript along with the requisite deposit copy and filing fee. The application states that the title of the work is *Sunny Days*. On February 1, 2005, the applicant notifies the Office that the title of the work should be changed to *Sunny Daze*. The work will be registered with an effective date of registration of January 1, 2005.

- On June 10, 2012, the Office receives an online application for a sound recording, along with the proper deposit copy and filing fee. The application states that the author is a citizen of Iran and that the work was first published in Iraq. On December 10, 2012, the registration specialist notifies the applicant that the work does not appear to be eligible for copyright protection in the United States, because the United States has not signed any copyright treaties with Iran or Iraq. On January 10, 2013 the applicant informs the specialist that the author created this sound recording at a recording studio in Syria. The specialist will add an annotation to the registration record, such as: "Regarding publication: Applicant states the work was first fixed in Syria." The work will be registered with an effective date of registration of June 10, 2012.

- On June 1, 2007 the Office receives a paper application for a product logo naming Light & Lithe as the author, together with the proper deposit copies and filing fee. The claimant space has been left blank but transfer statement "by contract" is given in the Transfer space. On October 1, 2007 the registration specialist notifies the applicant that the name of the claimant does not appear in the application or elsewhere in the registration materials. The applicant provides the claimant's

name, No More Weight, Ltd., to the specialist in a telephone conversation on October 10, 2007, and confirms that the claimant owned all of the rights in this work on June 1, 2007. The specialist will add the claimant's name to the registration record and will make a note in the correspondence record identifying the source of this information. The work will be registered with an effective date of registration of June 1, 2007.

- On August 31, 2007 the Office receives an online application for a musical composition, along with the proper deposit copies and filing fee. The application names Mimi Cameron as the author, and Moonshine LLC as the sole claimant. In a letter dated September 30, 2007 the applicant informs the Office that the copyright actually belongs to Moonbounce LLC, which is a subsidiary of Moonshine LLC.

  If Moonbounce owned all of the rights in this work as of August 31st, the applicant may remove Moonshine's name from the application and replace it with "Moonbounce LLC." Alternatively, the applicant may remove Moonshine's name from the application and name "Mimi Cameron" as the claimant. In both cases, the work would be registered with an effective date of registration of August 31, 2007.

  If Moonbounce acquired all of the rights in this work after August 31, 2007, the applicant may remove Moonshine's name from the application and replace it with "Moonbounce LLC." In this situation, the effective date of registration would be based on the date that Moonbounce acquired ownership of the work.

- On April 15, 2010, Pierce Testing Service submits an application to register five workbooks, along with an appropriate copy of each work and the proper filing fee. The registration specialist will notify the applicant that the workbooks cannot be registered with one application and one filing fee. The specialist may allow the applicant to register one workbook with an effective date of registration of April 15, 2010 and exclude the rest from the claim. Alternatively, the specialist may refuse to register the entire claim and instruct the applicant to submit a separate application, deposit, and filing fee for each workbook. If the applicant subsequently submits the other workbooks in proper form, the effective date of registration for each claim will be based on the date that these materials are received.

625.2 Minimum Requirements for Acceptable Deposit Copy(ies)

To establish an effective date of registration, the U.S. Copyright Office must receive deposit copy(ies) containing the entire copyrightable content of the work described in the application.

The registration specialist may communicate with the applicant or may refuse registration if it appears that the applicant failed to submit the appropriate number of copies or phonorecords, failed to submit the entire copyrightable content of the work (or appropriate identifying material, where permitted), failed to submit the work in an acceptable file format (in the case of an electronic submission), or if the specialist is otherwise unable to access, view, or examine the deposit.

If the work is approved for registration, the effective date of registration will be the date that the Office received the entire copyrightable content of the work in a form that can be accessed, viewed, and examined.

625.2(A) Acceptable File Formats for the Deposit Copy(ies) Accompanying an Online Application

If the applicant uploads a deposit copy(ies) using any of the acceptable file formats listed on the U.S. Copyright Office's website, the effective date of registration will be the date that the Office received the deposit copy(ies), provided that the file can be opened and provided that the applicant satisfied the minimum requirements for an acceptable application and paid the applicable filing fee as of that date.

625.2(B) Unacceptable File Formats for the Deposit Copy(ies) Accompanying an Online Application

If the applicant uploads the deposit copy(ies) in a file format that is not listed in the regulations or on the U.S. Copyright Office's website, the registration specialist will refuse registration.

625.2(C) Corrupted Deposit Copy(ies) Files Accompanying an Online Application

If the applicant submits the deposit copy(ies) in a file format that is listed on the U.S. Copyright Office's website, and if the registration specialist is unable to access, view, or examine the deposit copy(ies) because the file appears to be corrupted, the specialist will ask the applicant to submit another copy or phonorecord of the work.

If the applicant resubmits the deposit copy(ies) in one of the file formats listed on the Office's website, the effective date of registration generally will be based on the date that the Office received an acceptable copy, although the Office may assign a different date at its discretion (*e.g.*, the date of the original submission).

625.2(D) Shipping Slips for Mailing Physical Deposit Copy(ies) to Accompany an Online Application

When submitting an online application, the applicant may upload the deposit copy(ies) through the U.S. Copyright Office's electronic registration system, provided the work is not subject to best edition requirements and provided that the work meets one or more of the requirements set forth in Chapter 1500, Section 1507.2. For a discussion of the best edition requirements, see Chapter 1500, Section 1504.

When required to submit physical deposit copy(ies), the applicant may submit the deposit copy(ies) by mail, commercial carrier (such as Federal Express or United Parcel

Service), courier, or hand delivery to the Public Information Office. When submitting the deposit copy(ies) using one of these methods, the applicant must attach a shipping slip to the deposit copy(ies) to ensure that they will be paired with the online application. 37 C.F.R. § 202.3(b)(2)(i)(D).

To create a shipping slip the applicant must click the Create Shipping Slip button at the bottom of the Case Summary screen, then click the shipping slip link that appears in the Send By Mail field. The applicant must print a copy of the shipping slip and attach it to each of the deposit copy(ies).

The effective date of registration for claims submitted by mail, commercial carrier, courier, or hand delivery will be determined based on the date that the Office receives the deposit copy(ies) together with the corresponding shipping slip. Failure to attach the shipping slip to each deposit copy(ies) will prevent the copy(ies) from being paired with the online application and may require the applicant to resubmit the deposit copy(ies) to the Office, which in turn, will delay the effective date of registration.

For additional information concerning this procedure, see Chapter 1500, Section 1508.2.

625.3 Minimum Requirements for an Acceptable Filing Fee

To establish an effective date of registration the U.S. Copyright Office must receive the full, applicable filing fee. To determine the correct filing fee, see the fee schedule on the Office's website.

If the claim is approved, the effective date of registration will be the date that the Office received the correct filing fee, provided that the applicant satisfied the minimum requirements for an acceptable application and deposit copy(ies) as of that date.

625.3(A) Forms of Payments

A filing fee may be paid with a credit card, a debit card, an electronic transfer from a checking or savings account, or with a check, bank draft, or money order made payable to the U.S. Copyright Office. The Office also maintains a system of deposit accounts for parties who frequently conduct business with the Office. Persons or entities that maintain a deposit account may deposit funds into the account and charge fees against that balance instead of sending a separate payment with each application or other request for services. *See* 37 C.F.R. § 201.6(b). For a discussion of deposit accounts, see Chapter 1400, Section 1412.5.

Checks or money orders from a foreign country must be payable in U.S. dollars, they must be redeemable through a U.S. institution, they must be imprinted with an American Banking Association routing number, and they must be redeemable for the full amount of the fee required without a service or exchange fee. 37 C.F.R. § 201.6(a). Postal money orders and international money orders that are negotiable only at a post office are not acceptable.

The Office cannot assign an effective date of registration if the applicant submits an unacceptable form of payment, such as uncollectible payments submitted through www.pay.gov, dishonored ACH fees, uncollectible checks, unsigned checks, postdated

checks, mutilated checks, illegible checks, fees made payable in a foreign currency, postage stamps, or the like.

625.3(B) Insufficient Funds

If the applicant fails to submit the correct filing fee or if there are insufficient funds in a deposit account when an application is received, the U.S. Copyright Office's Receipt Analysis and Control Division ("RAC") will notify the applicant or account holder in writing.

If the correct filing fee is submitted within forty-five days after the date set forth in the notice from RAC, the effective date of registration will be changed to reflect the date that the funds were received, provided that the applicant satisfied the minimum requirements for an acceptable application and deposit copy(ies) as of that date. If the Office does not receive a response within forty-five days after the date set forth in the notice from RAC, the file will be closed.

If an applicant submits funds or has funds in a deposit account that are sufficient to cover the filing fee for one or more, but not all, of the applications that are submitted for registration, the Office will not communicate with the applicant to determine which application should be processed first. RAC will apply the filing fees to the applications in no particular order until the funds have been exhausted and will forward those applications to the Registration Program for examination.

625.3(C) Special Handling Fee

The fee for processing an application on an expedited basis is separate from the filing fee, and the date that the special handling fee is received in the U.S. Copyright Office does not affect the effective date of registration. If the applicant submits an application together with the appropriate deposit copy(ies) and filing fee, and subsequently asks the Office to process that application on an expedited basis, the effective date of registration will be the date that the Office received an acceptable application, deposit copy(ies), and filing fee, rather than the date that the special handling fee was received.

For a discussion of special handling, see Section 623.

625.4 Minimum Requirements for Establishing an Effective Date of Registration Distinguished from the Requirements for Issuing a Certificate of Registration

The fact that an applicant satisfied the minimum requirements for establishing an effective date of registration does not necessarily mean that the work will be registered. The U.S. Copyright Office will not register a claim or issue a certificate of registration until the registration specialist has determined that the material deposited constitutes copyrightable subject matter and the other legal and formal requirements for registration have been met. 17 U.S.C. § 410(a).

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Literary Works

701 What This Chapter Covers

This Chapter discusses the U.S. Copyright Office's practices and procedures for the examination and registration of literary works. For information and instructions on completing an application to register a literary work (or any other type of work), see the following Chapters:

- For a general overview of the registration process, see Chapter 200.
- For a discussion of copyrightable subject matter, see Chapter 300.
- For guidance in determining who may file the application and who may be named as the copyright claimant, see Chapter 400.
- For guidance in identifying the work that will be submitted for registration, see Chapter 500.
- For instructions on completing the application, see Chapter 600.
- For guidance on the filing fee, see Chapter 1400.
- For guidance on submitting the deposit copy(ies), see Chapter 1500.

702 The Literary Division

The Literary Division ("LIT") of the U.S. Copyright Office handles applications to register literary works. The registration specialists in this division specialize in the examination and registration of these types of works, including serials, databases, and computer programs.

703 What Is a Literary Work?

The Copyright Act defines a literary work as "works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied." 17 U.S.C. § 101.

A literary work is a nondramatic work that explains, describes, or narrates a particular subject, theme, or idea through the use of narrative, descriptive, or explanatory text, rather than dialog or dramatic action. Generally, nondramatic literary works are intended to be read; they are not intended to be performed before an audience. Examples of nondramatic literary works include the following types of works:

- Fiction
- Nonfiction
- Poetry
- Directories
- Catalogs
- Textbooks
- Reference works
- Advertising copy
- Compilations of information
- Computer programs
- Databases

See 37 C.F.R. § 202.3(b)(1)(i); H.R. REP. NO. 94-1476, at 54 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5667.

704 Literary Works Distinguished from Works of the Performing Arts

Textual works that are intended to be performed before an audience and textual works that are intended to be used in a sound recording, motion picture, or other audiovisual work are considered works of the performing arts, rather than nondramatic literary works. For a definition and discussion of works of the performing arts, see Chapter 800.

Examples:

- Julia Babcock is the author of a novel titled *The Sisters.* Cynthia Cisneros is the author of a Spanish-language play titled *Las Hermanas,* which is based on Julia's novel. Anne Kennedy wrote an article about the play that was published in a local newspaper. Julia's novel and Anne's article could be registered as nondramatic literary works, while Cynthia's play could be registered as a work of the performing arts.

- Leonard Edgemoor is the author of the novel *Get Lucky*, which was published by the Mystery Press in a print and ebook edition. The Mystery Press also published a recording of an actor reciting the text of the novel. Leonard's novel could be registered as a nondramatic literary work, while the recording of the novel could be registered as either a literary work or a work of the performing arts.

- Mary Bentham was selected as the valedictorian of her graduating class. In honor of this occasion she recited her original poem at the graduation ceremony. Mary's poem could be registered as either a nondramatic literary work or a work of the performing arts.

705 Fixation of Literary Works

A literary work may be registered with the U.S. Copyright Office if it has been "fixed in any tangible medium of expression, now known or later developed, from which [it] can be perceived, reproduced, or otherwise communicated." 17 U.S.C. § 102(a). A literary work is considered "fixed in a tangible medium of expression" when it has been embodied "in a copy or phonorecord, by or under the authority of the author" that "is sufficiently permanent or stable to permit [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").

There are countless ways that a literary work may be fixed in a tangible medium of expression. Most literary works are fixed by their very nature, such as a poem written on paper, a short story saved in a computer file, an article printed in a periodical, or a novel embodied in an audio recording. However, some copies or phonorecords may not be sufficiently permanent or stable to warrant registration. The registration specialist may communicate with the applicant or may refuse registration if the work is fixed in a medium that only exists for a transitory period of time, a medium that is constantly changing, or a medium that does not allow the specific words, numbers, or other verbal or numerical symbols or indicia that constitute the literary work to be perceived, reproduced, or otherwise communicated in a consistent and uniform manner.

706 Copyrightable Authorship in Literary Works

A literary work may be registered with the U.S. Copyright Office if it contains a certain minimum amount of literary expression that originated with the author of that work.

When a registration specialist examines a literary work, he or she determines whether the work contains a sufficient amount of original authorship "expressed in words, numbers, or other verbal or numerical symbols or indicia." 17 U.S.C. § 101 (definition of "literary works"). In making this determination, specialists apply the legal standards set forth in the Copyright Act, the Office's regulations, the *Compendium*, and the relevant caselaw. However, specialists do not look for any particular style of literary authorship, and they do not judge the "literary merit or qualitative value" of the work. H.R. REP. NO. 94-1476, at 54 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5667; S. REP. NO. 94-473, at 53 (1975).

For a general discussion of these legal standards, see Chapter 300, Sections 302 through 308.

707 Uncopyrightable Material

The U.S. Copyright Office is charged with administering the provisions of the Copyright Act and with issuing regulations for the administration of the copyright system that are

consistent with the statute. The Office has no authority to register claims to copyright in works that fall outside the scope of federal statutory protection.

Section 102(a) of the Copyright Act states that copyright protection extends only to "original works of authorship." 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, such as the following:

- An idea, procedure, process, system, method of operation, concept, principle, or discovery.
- Facts.
- Research.
- Typeface or mere variations of typographic ornamentations.
- Format and layout.
- Book designs.
- Works that contain an insufficient amount of authorship.
- Names, titles, slogans, or other short phrases.
- Numbers.
- Works consisting entirely of information that is common property, such as standard calendars, height and weight charts, schedules of sporting events, and lists or tables taken from public documents or other common sources.
- Measuring and computing devices.
- A mere listing of ingredients or contents.
- Blank forms.
- Scènes à faire.
- Familiar symbols and designs.
- Mere variations of coloring.
- U.S. government works.
- Government edicts.

- Works that are in the public domain.

For a discussion of numbers, research, and book designs, see Sections 707.1 through 707.3 below. For a discussion of other types of works that cannot be registered with the Office, see Chapter 300, Section 313.

707.1 Numbers

Individual numbers are not copyrightable and cannot be registered with the U.S. Copyright Office. Likewise, the Office cannot register a claim to copyright in values expressed in individual numbers, individual letters, or individual words.

Individual numbers are never copyrightable for the same reason that an individual word cannot be protected by copyright. *See Southco, Inc. v. Kanebridge Corp*., 390 F.3d 276, 286-87 (3d Cir. 2004) (holding that the regulatory bar against registering "short phrases" logically extends to short sequences of numbers). An individual number is a common symbol that is not independently created and does not, in itself, reveal any creativity. *See* 37 C.F.R. § 202.1(a); *see also* Chapter 300, Section 313.4(J). Nor does it fit within the established categories of copyrightable subject matter set forth in Section 102(a) of the statute. *See* 17 U.S.C. § 102(a). While the Copyright Act states that literary works may be expressed in "numbers" or "numerical symbols," a critical element in the statutory definition is that there must be a "work" that is expressed in some combination of "words, numbers, or other verbal or numerical symbols or indicia." *See* 17 U.S.C. § 101 (definition of "literary works"). In other words, a work that includes numbers may constitute a literary work, but it does not follow that a number contained in the literary work alone contains sufficient expression to constitute a work, or that such an element alone constitutes copyrightable authorship.

A compilation of numbers may be registered if there is a sufficient amount of creativity in the author's selection, coordination, and/or arrangement of data. However, the registration for a compilation does not create a presumption that the individual numbers are copyrightable as independent works or as independent authorship.

The authorship involved in selecting, coordinating, and/or arranging the copyrightable and uncopyrightable elements of a compilation must be perceptible in the deposit copy(ies). *See* Chapter 300, Section 312.2. While the process of deriving a particular number or value may be creative, any such creativity is not perceptible in a number alone. An individual number in and of itself never comprises sufficient authorship to be copyrightable. Copyright protects expression, not ideas or processes, and an individual number itself is not, and does not reveal, any copyrightable expression.

Moreover, the statutory definition of a compilation states that the selection, coordination, and/or arrangement of preexisting material or data must be done "in such a way that the resulting work as a whole constitutes an original work of authorship." 17 U.S.C. § 101; *see also Feist Publications, Inc. v. Rural Telephone Service Co.,* 499 U.S. 340, 358 (1991). The process of arriving at individual numbers or values may require judgment, prediction, valuation, or expertise, but an individual number does not express any selection, coordination, or arrangement that results in an original work of

authorship. Mental processes and methods of operations are unfixed and they are exempt from copyright protection under Section 102(b) of the statute.

707.2 Research

The U.S. Copyright Office cannot register a claim in research, because it suggests that the applicant may be asserting a claim in the facts that appear in the work or the effort involved in collecting that information.

The Supreme Court expressly rejected the "sweat of the brow" or "industrious collection" doctrines, which made copyright protection a "reward for the hard work" involved in creating a work. *Feist*, 499 U.S. at 352, 364. The Court concluded that "[p]rotection for the fruits of such research…may in certain circumstances be available under a theory of unfair competition," but recognized that a claim to copyright "on this basis alone distorts basic copyright principles." *Id*. at 354.

Although research is not copyrightable, the Office may register a work of authorship that describes, explains, or illustrates factual research, provided that the work contains a sufficient amount of original authorship. For example, a research paper, a scientific journal, or a biopic may be registered if the work contains a sufficient amount of literary, pictorial, graphic, or audiovisual expression. However, the registration does not extend to the facts, ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries described in the work. "They may not be copyrighted and are part of the public domain available to every person." *Id*. at 348 (quoting *Miller v. Universal City Studios, Inc.*, 650 F. 2d 1365, 1369 (5th Cir. 1981).

For a further discussion on "research" as an authorship term, see Chapter 600, Section 618.8(A)(9).

707.3 Book Design

The overall format or layout of a book or other printed publication cannot be registered with the U.S. Copyright Office, regardless of whether the book is published in print or electronic form. Book design includes all of the physical or visual attributes of a book or printed publication, such as the choice of style and size of typeface, leading (*i.e.*, the space between lines of type), the placement of the folio (*i.e.*, page numbers), the arrangement of type on the pages, or the placement, spacing, and juxtaposition of textual and illustrative matter in the work.

The copyright law does not protect these elements because they fall within the realm of uncopyrightable ideas. Deciding how and where to place content in a book or printed publication is merely a process or technique, regardless of the number of decisions involved. The fact that "a work is distinctive, unique or pleasing in appearance, and embodies certain ideas of contrast or coloring does not necessarily afford a basis for copyright protection." Registration of Claims to Copyright: Notice of Termination of Proposed Rulemaking Regarding Registration of Claims to Copyright in the Graphic Elements involved in the Design of Books and Other Printed Publications, 46 Fed. Reg. 30,651, 30,652 (June 10, 1981).

For a further discussion on "design" as an authorship term, see Chapter 600, Section 618.8(A)(1).

708 Joint Works

A "joint work" is a work "prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." 17 U.S.C. § 101. A joint work may be registered as a nondramatic literary work if it contains a sufficient amount of literary expression. Examples of works that may satisfy this requirement include essays, articles, textbooks, reference works, children's books, graphic novels, or any other work that may be jointly prepared by two or more authors.

Ordinarily, each author owns the copyright in the authorship that he or she contributed to the work. In the case of a joint work, all of the authors jointly own the copyright in each other's contributions and each author owns an undivided interest in the copyright for the work as a whole. *See* 17 U.S.C. § 201(a).

When asserting a claim in a joint work, the applicant should provide the name of each author who contributed copyrightable authorship to the work and should provide specific authorship statements for each author. When completing an online application, the authorship information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618 and 621. In addition, the applicant should provide the name of the claimant who owns the copyright in that material. For guidance on completing this portion of the application, see Chapter 600, Section 619.

For a general discussion of joint works, see Chapter 500, Section 505.

709 Derivative Literary Works

A derivative literary work is a work that is based upon one or more preexisting works, regardless of whether the preexisting work is a literary work, a work of the performing arts, a sound recording, a pictorial, graphic, or sculptural work, or any other type of work. Typically, a derivative literary work is a new version of a preexisting work or a work that contains new material combined with material that has been recast, transformed, or adapted from a preexisting work. *See* 17 U.S.C. § 101 (definition of "derivative work").

A derivative literary work may be registered with the U.S. Copyright Office if the author contributed a sufficient amount of new authorship to the work. Making trivial changes or additions to a preexisting work does not satisfy this requirement. *See Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 103 (2d Cir. 1951). Examples of nondramatic literary works that may be registered as a derivative work include translations, fictionalizations, abridgements, editorial revisions, and a wide range of other works such as:

- A short story based on a preexisting poem.
- A children's book featuring copyrightable characters from a preexisting children's book.
- The third edition of a previously published textbook.
- The fourth version of a previously published computer program.
- New content that has been added to a preexisting website.
- A computer program that has been translated from C++ into the C# programming language.

When asserting a claim in a derivative literary work, the applicant should provide the name of each author who created the new material that the applicant intends to register, and the applicant should provide the name of the claimant who owns the copyright in that new material. The Literary Division may accept a claim in "text" if the new material contains a sufficient amount of textual expression, or a claim in "artwork" and/or "photograph(s)" if the new material contains a sufficient amount of pictorial or graphic expression. The Literary Division may accept a claim in "revised computer program" if the new material contains sufficient statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result. When completing an online application this information should be provided in the Author Created field and the New Material Included field; when completing a paper application on Form TX this information should be provided in spaces 2 and 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

For a discussion of translations, fictionalizations, abridgements, and editorial revisions, see Sections 709.1 through 709.4 below. For a discussion of derivative computer programs, see Sections 721.2 and 721.8 below. 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 311.2.

709.1 Translations

A translation is a rendering of a nondramatic literary work from one language into another, such as a work that has been translated from English into Spanish, from German into English, or from Hindi into Malayalam.

Translations are among the nine categories of works that can be specially ordered or commissioned as a work made for hire, provided that the parties expressly agree in a signed written instrument that the translation shall be considered a work made for hire. *See* 17 U.S.C. § 101 (definition of "work made for hire," Section 2). For a detailed discussion of works made for hire, see Chapter 500, Section 506.

A translation may be registered if it contains a sufficient amount of original expression. A translation that is performed by a computer program that automatically converts text from one language into another without human intervention cannot be registered

because the conversion is merely a mechanical act. For the same reason, a transliteration or other process whereby the letters or sounds from one alphabet are converted into a different alphabet cannot be registered. *See Signo Trading International, Ltd. v. Gordon*, 535 F. Supp. 362, 364 (N.D. Cal. 1981) (holding that a list of words translated from English into Arabic and then transliterated from Arabic into Roman letters "simply does not embody sufficient originality to be copyrightable").

Examples:

- A Portuguese translation of a Spanish language newspaper could be registered as a derivative work.
- A Tagalog translation of *The King James Bible* could be registered as a derivative work, even though *The King James Bible* is in the public domain.

When submitting an application to register this type of work, the claim should be limited to the text of the translation, the applicant should provide the name of the author who translated the preexisting work from one language into another, and the applicant should provide the name of the claimant who owns the copyright in the translated text. Applicants should use the term "translation" to describe this type of authorship, rather than "text" or "editing." When completing an online application, this information should be provided in the Author Created/Other field and the New Material Included/Other field. When completing a paper application, this information should be provided in spaces 2 and 6(b) of Form TX. For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

709.2 Fictionalizations

A fictionalization is a work of fiction that recasts, transforms, or adapts the facts or factual events that are described in one or more preexisting works. A work of fiction that is only loosely based on the facts or events described in a preexisting work typically would be considered a work of fiction, rather than a fictionalization.

Examples:

- A children's book about the life and times of Kit Carson would be considered a fictionalization.
- A short story based on Stokely Carmichael's experiences during the Freedom Rides would be considered a fictionalization.
- A romance novel set during the Civil War featuring original characters, situations, and dialog with occasional references to historical persons or events would be considered a work of fiction rather than a fictionalization.

When submitting an application to register this type of work, the claim should be limited to the text of the fictionalization, the applicant should provide the name of the author of

that text, and the applicant should provide the name of the claimant who owns the copyright in that text. Applicants should use the term "text" or "fictionalization" to describe this type of authorship, rather than "editing." When completing an online application, this information should be provided in the Author Created/Other field. When completing a paper application on Form TX, this information should be provided in space 2. For guidance on completing these portions of the application, see Chapter 600, Section 618.4.

If the fictionalization is based on or incorporates a preexisting work, such as a biography or other work of authorship, the applicant should exclude that preexisting work from the claim using the procedure described in Section 621.8. By contrast, if the fictionalization is based solely on historical facts, persons, or events, or other uncopyrightable material, there is generally no need to complete this portion of the application.

709.3 Abridgements

An abridgment is a shortened or condensed version of a preexisting work that retains the general sense and unity of the preexisting work. An abridgment of a nondramatic literary work may be registered if the author contributed a sufficient amount of creative authorship in the form of edits, revisions, or other modifications to the preexisting work, and if the work as a whole is sufficiently creative in adapting the preexisting work such that it constitutes an original work of authorship. *See* 17 U.S.C. § 101 (definition of "derivative work"). Trivial changes do not satisfy this requirement, such as merely omitting a section from the beginning or end of a preexisting work.

Examples:

- An audiobook version of Leo Tolstoy's *Anna Karenina* that has been abridged and condensed in order to fit into an eight–hour recording could be registered as a derivative work.
- A book that contains an abridged and condensed edition of a novel by Joseph Conrad could be registered as a derivative work.

When submitting an application to register an abridgement, the claim should be limited to the condensed text that appears in the work, the applicant should provide the name of the author who condensed the preexisting work, and the applicant should provide the name of the claimant who owns the copyright in the condensed text. Applicants should use the term "abridged text" or the like to describe this type of authorship, rather than "text," "edits," or "editing." When completing an online application, this information should be provided in the Author Created/Other field and the New Material Included/Other field. When completing a paper application on Form TX, this information should be provided in spaces 2 and 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

709.4 Editorial Revisions, Annotations, Elaborations, or Other Modifications

Editorial revisions, annotations, elaborations, or other modifications to a preexisting work or the addenda or errata sheets for a published work may be registered as a

derivative literary work if the author contributed a sufficient amount of new material to the work, and if the derivative work as a whole sufficiently modifies or transforms the preexisting work such that it constitutes an original work of authorship. *See* 17 U.S.C. § 101 (definition of "derivative work"). Specifically, the author must contribute new text or revised text to the preexisting work, and the text must possess a sufficient amount of written expression. Merely correcting errors in spelling, punctuation, grammar, or making other minor changes, revisions, or other modifications to a preexisting work do not satisfy this requirement.

Examples:

- The Lifetime Consulting Group published a training manual for pension benefit administrators. The following year the company revised the manual to account for recent changes in the tax code and added new chapters on individual retirement accounts and the estate tax. The revised text and the additional text may be registered as a derivative work if they contain a sufficient amount of new and revised material.

- Agatha Thornton is the author of the novel *Bangers and Mash*, which was published in the United Kingdom. Before the work was published in the United States, Agatha revised certain passages that were likely to confuse an American reader. The revisions to the British edition may be registered as a derivative work if they contain a sufficient amount of new and revised material.

- Herman Melville is the author of the novel *Moby-Dick*. Professor Whalen wrote a brief introduction that analyzes the plot, setting, characters, and theme of the novel. Professor Cetacean prepared footnotes, endnotes, and other marginalia that explain the meaning of certain words and phrases that appear in the novel. All of these works were published together in a single volume and the copyright is owned by the Leviathan Press. The introduction, footnotes, and other annotations may be registered as a derivative work, because they clearly contain a sufficient amount of new authorship.

When submitting an application to register this type of work, the claim should be limited to the new text or revised text that the author contributed to the work, the applicant should provide the name of the author who created the new material, and the applicant should provide the name of the claimant who owns the copyright in that new material. Applicants should use the terms "new text" and/or "revised text" to describe this type of authorship, rather than "text" or "editing." When completing an online application, this information should be provided in the Author Created/Other field and the New Material Included/Other field. When completing a paper application on Form TX, this information should be provided in spaces 2 and 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

710 Compilations

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

Compilations are among the nine categories of works that can be specially ordered or commissioned as a work made for hire, provided that the parties expressly agree in a signed written instrument that the compilation shall be considered a work made for hire. *See* 17 U.S.C. § 101 (definition of "work made for hire," Section 2). For a detailed discussion of works made for hire, see Chapter 500, Section 506.

Typically, the author of a compilation selects the preexisting material or data that will be included in the compilation, the author classifies, categorizes, or groups these elements into particular sequences, and the author decides how these elements should be arranged within the compilation as a whole. A compilation may be registered if the author's selection, coordination, and/or arrangement of preexisting material or data was independently created, and if the selection, coordination, and/or arrangement contains a sufficient amount of creativity. A registration for a compilation may cover the author's original selection, coordination, and/or arrangement, but it does not cover any preexisting material or data that is included in the compilation. *See* 17 U.S.C. § 103(b) ("Copyright in a compilation . . . does not imply any exclusive right in the preexisting material").

The compilation must fall within one or more of the categories listed in Section 102(a) of the Copyright Act. *See* H.R. REP. NO. 94-1476, at 57 (1976) *reprinted in* 1976 U.S.C.C.A.N. at 5670; S. REP. NO. 94-473, at 54-55 (1975). In other words, a compilation may be registered if the selection, coordination, and/or arrangement as a whole would be considered a literary work, a musical work, or any other type of work listed in 17 U.S.C. § 102(a). If the author's selection, coordination, and/or arrangement does not fall within one or more of the congressionally established categories of authorship, the registration specialist may communicate with the applicant or may refuse registration. *See* Registration of Claims to Copyright, 77 Fed. Reg. 37,605, 37,606 (June 22, 2012).

Examples of nondramatic literary works that may be registered as a compilation include the following:

- Yellow pages directories, street directories, criss-cross directories, membership lists, price lists, catalogs, financial reports, financial ratings, and the like may be registered as a compilation, provided that the author contributed a sufficient amount of selection, coordination, and/or arrangement authorship to the work.

- Charts, tables, graphs, figures, diagrams, and the like may be registered as a compilation, provided that there is a sufficient amount of original authorship in the selection, coordination, and/or arrangement of data or other textual or numerical elements.

- A populated database that presents data in an organizational framework for recording information may be registered as a compilation, provided that there is a

sufficient amount of original authorship in the selection, coordination, and/or arrangement of data. If the author subsequently updates the database by inserting new data into the original framework, it may be possible to register the updates as a derivative work, provided that the updates contain a sufficient amount of new data and provided that the author contributed a substantial amount of new copyrightable authorship in the selection, coordination, and/or arrangement of new data that appears in each update.

When asserting a claim in a compilation, the applicant should provide the name of each author who created the selection, coordination, and/or arrangement that the applicant intends to register, and the applicant should assert a claim to copyright in that material using the procedures described in Chapter 600, Sections 618.7, 618.6, and 621.8(D).

For a general discussion of the legal standard for determining whether a compilation contains a sufficient amount of original expression to warrant registration, see Chapter 300, Section 312.2.

711 Collective Works and Contributions to Collective Works

The Copyright Act defines a "collective work" as a work "in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole." 17 U.S.C. § 101. A contribution to a collective work is a separate and independent work that has been included within a collective work.

Collective works are a subset of compilations. Consequently, the author must select, coordinate, and/or arrange the component works in such a way that the resulting work as a whole constitutes an original work of authorship. *See* 17 U.S.C. § 101 (definition of "compilation" stating that "[t]he term 'compilation' includes collective works.").

Both collective works and contributions to collective works are among the nine categories of works that can be specially ordered or commissioned as a work made for hire, provided that the parties expressly agree in a signed written instrument that the work shall be considered a work made for hire. *Compare* 17 U.S.C. § 101 (definition of "compilation") ("The term 'compilation' includes collective works."), *with id*. (definition of "work made for hire") ("a 'work made for hire' is…a work specially ordered or commissioned for use as a contribution to a collective work [or]…as a compilation…"). For a detailed discussion of works made for hire, see Chapter 500, Section 506.

Collective works and contributions to collective works may be registered as nondramatic literary works, provided that they contain a sufficient amount of literary expression. Examples of collective works that may satisfy this requirement include a periodical issue, an anthology, an encyclopedia, or any other work that contains a number of separate and independent works that have been assembled into a collective whole. *See* 17 U.S.C. § 101 (definition of "collective work"). Examples of a contribution to a collective work that may satisfy this requirement include an article that has been included within a periodical issue, an essay that has been included within an anthology, or an entry that has been included within an online encyclopedia.

Collective works typically contain two different types of authorship:

- The authorship in the collective work as a whole, which may involve selecting, coordinating, and/or arranging a number of separate and independent works and assembling them into a collective work, and/or revising the collective work as a whole.

- The authorship in the separate and independent works that have been included in the collective work, which may contain literary expression and/or artistic expression.

An applicant may register a collective work together with the separate and independent works contained therein (i) if the copyright in the contributions and the collective work are owned by the same claimant, and (ii) if the component works have not been previously published or registered. In no case may the claimant register a contribution that is in the public domain. If the copyright in the collective work and the contributions to the collective work are owned by different parties, separate applications for each work will be required. For additional information concerning collective works, see Chapter 500, Section 509.

When asserting a claim in a collective work and/or a contribution to a collective work, the applicant should identify the copyrightable authorship that the applicant intends to register, and the applicant should assert a claim to copyright in that material using the procedures described in Chapter 600, Sections 618.7 and 621.8(E).

For guidance on the deposit requirements for a contribution to a collective work, see Chapter 1500, Section 1505.5.

712 Monographs and Serials

This Section discusses the U.S. Copyright Office's practices and procedures for registering literary monographs. It also discusses the Office's practices and procedures for registering serial publications, such as a newspaper, magazine, newsletter, or journal.

NOTE: The Office has established a procedure that allows copyright owners to register a group of serials, a group of newspapers, or a group of newsletters with one application and one filing fee. The requirements for these group registration options are discussed in Chapter 1100, Sections 1109 through 1111.

712.1 What Is a Literary Monograph?

A literary monograph is a literary work that is "published in one volume or a finite number of volumes." 37 C.F.R. § 202.19(b)(5). Examples of works that may qualify as a monograph include fiction, nonfiction, poetry, short stories, memoirs, textbooks, and other types of nondramatic literary works.

Most monographs are published in a single volume, rather than a series of successive issues or parts. Some monographs are published in separate volumes with each bearing the same title and successive numerical designations (as in the case of a multi-volume encyclopedia). But typically the entire work is published in a limited number of volumes that, taken together, constitute the work as a whole. *See* Simplifying Deposit

Requirements for Certain Literary Works and Musical Compositions, 82 Fed. Reg. 38,859, 38,860 (Aug. 16, 2017).

NOTE: Serials and legal publications are not considered monographs for purposes of registration. For information concerning the registration requirements for these types of works, see Sections 712.2 and 717.1.

712.1(A) Copyrightable Authorship in Literary Monographs

When registering a literary monograph, the applicant may assert a claim in new and original text, artwork, and/or photographs appearing in the work. The applicant should provide the name(s) of the author or co-authors who created that material, and the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in "text" if the work contains a sufficient amount of written expression~~,~~ and/or a claim in "artwork" and/or "photograph(s)" if the work contains a sufficient amount of pictorial or graphic expression.

A literary monograph may be considered a collective work if it contains "a number of contributions, constituting separate and independent works in themselves, [that] are assembled into a collective whole." 17 U.S.C. § 101 (definition of "collective work"). Collective works typically contain the following types of authorship:

- The authorship in the compilation, which may involve selecting, coordinating, and/or arranging a number of separate and independent works within the monograph as a whole, and/or revising the monograph as a whole.

- The authorship in the separate and independent works that have been included within the monograph, which may contain literary expression and/or artistic expression.

As with any other type of collective work, an applicant may register a monograph together with the separate and independent works contained therein, (i) if the claimant owns the copyright in the monograph and the contributions, and (ii) if those contributions have not been previously published or registered. In no case may the claimant register a contribution that is in the public domain.

712.1(B) Application Tips for Registering a Literary Monograph

When completing an online application, the applicant should describe the work being registered in the Author Created field, and if applicable, in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, in space 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

For guidance concerning the deposit requirements for literary monographs, see Chapter 1500, Section 1509.1(A).

712.2 What Is a Serial?

A serial is a work that is issued or intended to be issued in successive parts bearing numerical or chronological designations that are intended to be continued indefinitely. 37 C.F.R. § 202.3(b)(1)(v). Examples include periodicals (including newspapers); annuals; and the journals and proceedings of societies, and other similar works. Examples of works that do not fall within this category include episodes of a television series, a series of online videos, a collection of musical works, a group of manuscripts, an assortment of poetry, or a set of advertising copies.

"Periodicals" are considered "collective works" for purposes of registration, because they contain "a number of contributions, constituting separate and independent works in themselves, [that] are assembled into a collective whole." 37 C.F.R. § 202.4(b)(3); 17 U.S.C. § 101 (definition of "collective work").

Most serials are – but do not *have* to be – collective works to qualify for registration. For example, a newsletter that contains a single article and a single photograph would not be considered a collective work, because it does not contain sufficient contributions. Nevertheless, it could still be registered as a "serial" if the requirements set forth in Section 712.2(B) have been met.

712.2(A) Copyrightable Authorship in Serials

Most serials are collective works, because they typically contain "a number of contributions, constituting separate and independent works in themselves, [that] are assembled into a collective whole." 17 U.S.C. § 101 (definition of "collective work"). As such, they typically contain two different types of authorship:

- The authorship in the compilation, which may involve selecting, coordinating, and/or arranging a number of separate and independent works within the serial as a whole, and/or revising the serial as a whole.

- The authorship in the separate and independent works that have been included within the serial, which may contain literary expression and/or artistic expression.

As with any other type of collective work, an applicant may register a serial together with the separate and independent works contained therein, (i) if the claimant owns the copyright in the serial and the contributions, and (ii) if those contributions have not been previously published or registered. In no case may the claimant register a contribution that is in the public domain.

A registration for a single issue of a serial publication covers the particular issue that has been submitted for registration, as well as any contributions that may be included within the claim. The U.S. Copyright Office does not offer "blanket registrations" that cover future issues or future contributions to that publication.

712.2(B) Application Tips for Registering a Single Issue of a Serial Publication

An applicant may register a single issue of a serial publication with the online application by selecting the option for "Single Serial Issue." Alternatively, an applicant

may submit a paper application using Form SE. An applicant may also register a serial by selecting the option for "Literary Work" or by submitting a paper application using Form TX. If the claim is approved, the U.S. Copyright Office will issue a certificate of registration beginning with the prefix "TX," regardless of whether the claim is submitted as a "Literary Work" or a "Single Serial Issue."

Form SE and the application for a "Single Serial Issue" may only be used to register an issue that has been published. These applications may only be used to register a serial that qualifies as a collective work. They also may be used to register an individual article, photograph, or other contribution to a serial publication, but only if the applicant is registering that contribution together with the issue as a whole. If the registration specialist determines that the issue does not satisfy these requirements, he or she will refuse to register the claim.

In all cases, the applicant should provide the title that appears on the serial, as well as the volume number, issue number, and date (if any) that appears on the specific issue that will be submitted for registration, as well as the frequency of publication for that serial, such as daily, weekly, monthly, etc. When completing an online application, an applicant may provide this information in the Title field (*e.g., Home Cooking*, Vol. 2, No. 17, February 2, 2013). When completing a paper application, this information should be provided in space 1. For guidance in completing this portion of the application, see Chapter 600, Section 610.

The applicant should identify the copyrightable authorship that the applicant intends to register, and the applicant should assert a claim to copyright in that material. When completing an online application, this information should be provided in the Author Created field. When completing a paper application, this information should be provided in space 2. For guidance on completing Form SE or the online application for a "Single Serial Issue," see Chapter 600, Sections 618.7(C) and 618.7(D). For Form TX or the online application for a "Literary Work," see Chapter 600, Sections 618.4(A), 618.4(B), 618.7(A), and 618.7(B)(2).

If the applicant intends to register the authorship involved in creating the issue as a whole, the applicant should assert a claim in the "collective work authorship." If the applicant intends to register the authorship involved in creating the issue as a whole, as well as the individual contributions that appear within that issue, the applicant should assert a claim in the "collective work authorship and component work(s) authored or fully owned by the Collective Work Author."

As mentioned above, an applicant may register an issue together with the articles, photographs, or other contributions contained therein (i) if the claimant owns the copyright in the individual contributions and the issue as a whole, and (ii) if the contributions have not been previously published or previously registered. *See Morris v. Business Concepts, Inc.*, 259 F.3d 65, 71 (2d Cir. 2001), *abrogated on other grounds by Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010). In no case may the claimant register a contribution that is in the public domain.

If the copyright in the individual contributions and the issue as a whole are owned by different parties, or if the contributions were previously published or previously

registered, the applicant generally must submit a separate application for each contribution.

If the claimant is not the author of the issue as a whole or is not the author(s) of the individual contributions that appear within that issue, the applicant should provide a transfer statement explaining how the claimant obtained the copyright in the issue as a whole or a particular contribution, as appropriate. For guidance on completing this portion of the application, see Chapter 600, Section 620.9(A).

If the issue contains an appreciable amount of previously published material, previously registered material, public domain material, or material that is not owned by the copyright claimant, the applicant should exclude that material from the claim using the procedure described in Chapter 600, Section 621.8.

For guidance concerning the deposit requirements for serials, see Chapter 1500, Section 1509.1(B).

712.3 ISBN and ISSN Numbers

If an International Standard Book Number ("ISBN") or International Standard Serial Number ("ISSN") has been assigned to a monograph or serial, the applicant is strongly encouraged to include that information in the online application. For guidance on completing this portion of the application, see Chapter 600, Section 612.6(C). When completing Form SE or Form TX the applicant may include the ISSN number in the space marked Previous or Alternative Titles.

If the applicant provides an ISBN or ISSN, the number will appear on the certificate of registration and the online public record. Providing this information is useful, because the number may be used to search and retrieve the registration records for a particular monograph or serial. However, providing an ISBN or ISSN is optional and an application will be accepted even if this portion of the application is left blank.

The U.S. Copyright Office does not assign ISBNs or ISSNs. In the United States, ISBNs are administered by R.R. Bowker (www.bowker.com). For information concerning the procedure for obtaining an ISSN, applicants should write to the Serials Record Division of the Library of Congress at the following address:

Library of Congress
ISSN Publisher Liaison Section
101 Independence Avenue SE
Washington, DC 20540-4284

Additional information, including the ISSN application form, is available on the ISSN Publisher Liaison Section's webpage.

713 Book Jackets

Book jackets often contain several types of authorship that is separate from the book itself, such as text, illustrations, and photographs. If text is the predominant form of authorship in the jacket, the work may be registered as a nondramatic literary work. If

the predominant form of authorship consists of artwork, illustrations, or photographs, the jacket may be registered as a work of the visual arts. *See* 37 C.F.R. § 202.3(b)(1)(i), (iii).

When asserting a claim in a book jacket, the applicant should clearly indicate that the claim extends to the copyrightable material that appears on the jacket. Specifically, the claim should be limited to the text, artwork, and/or photographs that appear on the jacket, the applicant should provide the name of the author who created that material, and the applicant should provide the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in "text" if the jacket contains a sufficient amount of written expression, or a claim in "artwork" and/or "photograph(s)" if the jacket contains a sufficient amount of pictorial or graphic expression. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

If the claim in the book jacket is based solely on the title of the work, the registration specialist will refuse to register the claim. If the claim is based solely on the arrangement, spacing, juxtaposition, and layout of copyrightable or uncopyrightable elements, the registration specialist may communicate with the applicant or may refuse to register the claim if the jacket merely contains a standard arrangement that is not sufficiently creative to support a compilation claim. *See* 37 C.F.R. § 202.1(a); Chapter 300, Section 313.3(E).

A book and a book jacket may be registered with the same application if the works can be physically separated from each other, and if the copyright in both works is owned by the same claimant. For more information concerning this option, see Chapter 1100, Section 1103.

In the alternative, the applicant may submit separate applications for the book and the jacket. If the applicant submits a separate application for a jacket that has been published, the Office will retain the jacket "for the longest period considered practicable and desirable by the Register of Copyrights and the Librarian of Congress." 17 U.S.C. § 704(d). If the applicant submits an application to register a book that has been published but does not assert a separate claim in the jacket, the Library of Congress may add the book to its collection, but the jacket will be discarded. For a discussion of the deposit requirements for book jackets, see Chapter 1500, Section 1509.1(D).

714 Games

A game may be registered as a literary work if the predominant form of authorship in the work consists of text. Examples of works that may satisfy this requirement include word games, card games, party games, riddles, brain teasers, and similar diversions, including the instructions or directions for playing a particular game. A game may be registered as a work of the visual arts if the predominant form of authorship consists of pictorial or sculptural authorship. Examples of works that may satisfy this requirement include board games, playing cards, playing pieces, and the like. *See* 37 C.F.R. § 202.3(b)(1)(i), (iii).

When submitting an application to register a game, the claim should be limited to the text, artwork, and/or photographs that appear in the work (as applicable), the applicant should provide the name of the author who created that material, and the applicant should provide the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in "text" if the game contains a sufficient amount of written expression, or a claim in "artwork" and/or "photograph(s)" if the work contains a sufficient amount of pictorial or graphic expression. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

A registration for a game covers all of the copyrightable elements that appear in the work, regardless of whether the game has been registered as a literary work or a work of the visual arts. However, copyright does not protect the idea for a game, the name or title of a game, or the procedure, process, or method of operation for playing a game. Nor does copyright protect any idea, system, method, or device involved in developing or marketing a game. Once a game has been made available to the public, the copyright law cannot be used to prevent others from developing another game based on similar principles. Copyright protects only the particular expression that appears in the literary or artistic elements that the work may contain. *See* 17 U.S.C. § 102(b); 37 C.F.R. § 202.1.

If the game consists of separately fixed elements and works that were physically bundled together by the claimant for distribution to the public in the same integrated unit, it may be possible to register them with one application and one filing fee if all the works were first published in that integrated unit and if the claimant owns the copyright in those works. For information concerning the unit of publication option, see Chapter 1100, Section1103.

For a discussion of the practices and procedures for registering videogames, see Chapter 800, Section 807.7(A). For a discussion of the practices and procedures for registering board games, see Chapter 900, Section 910.

715 Genealogies

715.1 What Is a Genealogy?

A genealogy is a work that contains information about the history of a particular family. These types of works typically contain a substantial amount of factual information, such as the names of family members, dates of birth, marriage, death, and other significant events, as well as family trees illustrating the relationships between family members. Frequently, this information is obtained from various sources, such as letters, diaries, scrapbooks, photo albums, birth certificates, marriage licenses, church records, census records, wills and probate records, gravestones, and the like. Much of this material may be in the public domain, it may be previously published, it may be previously registered with the U.S. Copyright Office, or it may be separately owned by another copyright owner.

715.2 Copyrightable Authorship in Genealogies

Although facts are not copyrightable, a genealogy may be registered as a literary work if it contains a sufficient amount of written expression. The application should be limited to the text, artwork, and/or photographs that the author contributed to the work (as applicable), the applicant should provide the name of the author who created that material, and the applicant should provide the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in "text" if the work contains a sufficient amount of written expression, and may accept a claim in "artwork" and/or "photograph(s)" if the work contains a sufficient amount of pictorial or graphic expression. Likewise, the Literary Division may accept a claim in "compilation" if the author exercised a sufficient amount of creativity in selecting, coordinating, and/or arranging the information that appears in the genealogy.

715.3 Application Tips for Genealogies

Submitting an online application is the preferred way to register a genealogy. When completing the application, the applicant should provide the name of the author who created the genealogy on the Author screen. In the field marked Author Created, the applicant should check one or more of the boxes that accurately describe the material that the author created.

Examples:

- The applicant should check the box marked "text" if the author wrote the captions, footnotes, comments, biographies, or other textual expression that appears in the genealogy.

- If the author created any of the artwork or took any of the photographs that appear in the genealogy, the applicant should check the boxes marked "artwork" or "photograph(s)," as applicable.

- If the author selected, coordinated, and/or arranged the names, dates, records, photographs, or other material that appears in the genealogy, the applicant should provide a brief statement to that effect in the field marked Other. For example, the Literary Division will accept a brief statement, such as: "selection, coordination, and arrangement of family photographs, newspaper clippings, census records, and other source material," "selection and arrangement of information obtained from family records, court records, church records, and gravestones," "selection of family photos, coordination of family names and relationships, and arrangement of facts and historical information," or the like.

For additional guidance on completing this portion of the application, see Chapter 600, Section 618.4.

The applicant should provide the exact same information on the Limitation of Claim screen in the field marked New Material Included. In other words, if the applicant

checked the box for "text" in the Author Created field, the applicant also should check the box for "text" on the Limitation of Claim screen in the New Material Included field. If the applicant stated "selection and arrangement of church records" on the Author Created screen in the field marked Other, the applicant should state "selection and arrangement of church records" on the Limitation of Claim screen in the field marked Other. For additional guidance on completing these portions of the application, see Chapter 600, Section 621.8.

A registration for a genealogy does not cover any of the factual information that may be included in the work. Nor does it cover material that is in the public domain, material that has been previously published, material that has been previously registered, or material that is owned by another person or legal entity. If the genealogy contains this type of material the applicant should exclude it from the application by checking the appropriate boxes that appear on the Limitation of Claim screen in the field marked Material Excluded.

Examples:

- The applicant should check the box marked "text" if the genealogy contains an appreciable amount of text that is in the public domain, text that has been previously published, text that has been previously registered, or text owned by a third party.

- The applicant should check the box marked "photograph(s)," if the genealogy contains an appreciable number of photos that are in the public domain, photos that have been previously published, photos that have been previously registered, or photos owned by a third party.

- The applicant should check the box marked "artwork" if the genealogy contains an appreciable amount of artwork that is in the public domain, artwork that has been previously published, artwork that has been previously registered, or artwork owned by a third party.

If the genealogy contains an appreciable amount of material that has been registered with the U.S. Copyright Office, the applicant should provide the registration number and the year that the registration was issued in the field marked Previous Registration. For additional guidance on completing this portion of the application, see Chapter 600, Section 621.8(F).

If the genealogy appears to contain an appreciable amount of public domain material, previously published material, previously registered material, or material that is owned by another party, and if the applicant failed to exclude that material from the claim, the registration specialist may add an annotation to the registration record, such as "Regarding authorship information and limitation of claim: Registration does not extend to previously registered, previously published, public domain, or separately owned material, or to facts."

If it is unclear whether the author contributed text, artwork, photographs, or compilation authorship to the genealogy, the registration specialist will communicate with the applicant. If the genealogy does not contain a sufficient amount of original authorship to warrant registration, the specialist may refuse to register the claim.

Examples:

- Jane Springer created a genealogy titled *The Springers of Springfield, Massachusetts.* She gathered information from local courthouses, churches, cemeteries, and other sources; she assembled this information into a book; and wrote a brief introduction for the work. Jane may register the introduction by checking the box for "text" in the Author Created and New Material Included fields. She may register the compilation of information by stating "selection and arrangement of family records" on the Author Created and Limitation of Claim screens in the fields marked Other.

- Jennifer Smith submits an application to register a genealogy titled *The Smith Family of Hamilton County, Virginia*. Jennifer wrote the introduction for this work, the captions for each photograph, and a short biography for each member of the family. The genealogy also contains text and photographs created by other family members. On the Author Created screen Jennifer checks the boxes for "text" and states "selection, coordination, and arrangement of family records" in the field marked Other. Jennifer should have provided this exact same information on the Limitation of Claim screen in the New Material Included field. In addition, she should have checked the boxes for "text" and "photograph(s)" in the Material Excluded field because the genealogy contains text or photos created and owned by other parties. The registration specialist will register the claim with an annotation, such as: "Regarding authorship information: Registration does not extend to previously registered, previously published, public domain, or separately owned material, or to facts."

- Thomas Henry submits an application to register a genealogy titled *The Henrys in Spokane County*. On the Author Created screen he checks the box for "text" and states "compilation of public records" in the field marked Other. In the Note to Copyright Office field, Thomas explains that he wrote the introduction for this work and he prepared a list of all the members of the Henry family who were born in Spokane County. The names are listed in chronological order based on the individual's date of birth. The registration specialist will communicate with the applicant. Although the introduction may be registered as "text," the Office cannot register the claim in "compilation," because preparing a list of all of the family members from a particular county and organizing the names in chronological order does not contain a sufficient amount of compilation authorship to warrant registration.

716 Instructional Texts and Instructional Works

Textbooks and other instructional texts may be registered if the work contains a sufficient amount of original authorship. The statute defines an "instructional text" as "a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities." *See* 17 U.S.C. § 101 (definition of "work made for hire"). As the legislative history explains, this category includes "textbook material," regardless of whether the work is published "in book form or prepared in the form of text matter." H.R. REP. NO. 94-1476, at 121 (1976) *reprinted in* 1976 U.S.C.C.A.N. at 5737; S. REP. NO. 94-473, at 105 (1975). The "basic characteristic" of an instructional text is that the work must be prepared for "use in systematic instructional activities," rather than a work "prepared for use by a general readership." H.R. REP. NO. 94-1476, at 121 (1976) *reprinted in* 1976 U.S.C.C.A.N. at 5737; S. REP. NO. 94-473, at 105 (1975). Instructional texts are among the nine categories of works that can be specially ordered or commissioned as a work made for hire, provided that the parties expressly agree in a signed written instrument that the work shall be considered a work made for hire. For a discussion of works made for hire, see Chapter 500, Section 506.

Other types of instructional works may be registered with the U.S. Copyright Office, provided that the work, taken as a whole, contains a sufficient amount of original authorship. Examples of works that may satisfy this requirement include cookbooks, instructions for knitting, crocheting, or needlework, instructions for operating a machine, appliance, or other device, and similar types of works.

If text is the predominant form of authorship, an instructional text or other instructional work may be registered as a nondramatic literary work. If the predominant form of authorship consists of artwork, illustrations, or photographs, the work may be registered as a work of the visual arts. *See* 37 C.F.R. § 202.3(b)(1)(i), (iii). For information concerning the registration requirements for stencils, patterns, and how-to books, see Chapter 900, Section 920.

The Literary Division may register an instructional work that explains how to perform a particular activity, provided that the work contains a sufficient amount of text, photographs, artwork, or other copyrightable expression. Likewise, the Literary Division may register an instructional work that illustrates or describes the end result for a particular activity or technique, such as a drawing of a crochet pattern or a photograph of a product that has been fully assembled.

When asserting a claim in an instructional text or an instructional work, the claim should be limited to the text, artwork, and/or photographs that appear in the work, the applicant should provide the name of the author who created that material, and the applicant should provide the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in "text" if the work contains a sufficient amount of written or editorial expression, or a claim in "artwork" and/or "photograph(s)" if the work contains a sufficient amount of pictorial or graphic expression. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

A registration for a cookbook covers the instructional text that appears in the work, as well as any photographs or illustrations that are owned by the copyright claimant. However, the registration does not cover the list of ingredients that appear in each recipe. Likewise, a registration for a cookbook or other instructional work does not cover the activities described in the work, because procedures, processes, or methods of operation are not subject to copyright protection. *See* 17 U.S.C. § 102(b); 37 C.F.R. § 202.1(a); *see also* Policy Decision on Copyrightability of Digitized Typefaces, 53 Fed. Reg. 38,110, 38,112 (Sept. 29, 1988) ("[T]he explanation and illustration of recipes is copyrightable even though the end result — the food product — is not."). The registration specialist may add an annotation, may communicate with the applicant, or may refuse registration if the applicant appears to be asserting a claim to copyright in a particular activity or a list of ingredients, if the work merely illustrates the specific hand or body movements for performing a particular activity, or if the instructions, taken as a whole, are *de minimis*.

Examples:

- Martha Custer submits an application to register a set of basic instructions for knitting a sweater. In the Author Created field, she checks the box for "text." There are dozens of steps in the process, and the instruction for each step is one sentence long. The registration specialist will register the claim, because the instructional text, taken as a whole, contains a sufficient amount of expression to support a registration.

- Jules Kinder submits an application to register a cookbook titled *Pie in the Sky*. In the Author Created field, the applicant asserts a claim in "text, photographs, and compilation of ingredients." Each recipe contains a list of ingredients, instructions for making a pie, and a photograph of the finished product. The claim in text and photographs is acceptable, but the claim in compilation is not, because the applicant appears to be asserting a claim in a mere listing of ingredients. The registration specialist may add an annotation, such as: "Regarding authorship information: Compilation is mere listing of ingredients or contents; not copyrightable. 37 CFR 202.1."

- The Abigail Adams Co. submits an application to register a set of basic instructions for knitting a scarf. In the Author Created field, the applicant asserts a claim in "text, photographs, and artwork." The work contains illustrations, photographs, patterns, and other artwork, but the instructional text is extremely basic, abbreviated, and formulaic, such as "knit 1, purl 2." The registration specialist will communicate with the applicant. The claim in "artwork" and "photographs" is acceptable, but the claim in "text" is not, because the instructional text, taken as a whole, is *de minimis*.

- Paulina Neumann submits an application to register a recipe for a caesar salad. In the Author Created field, the applicant asserts a

claim in "text." The work contains a list of eleven ingredients together with the following instructions: "(1) puree anchovies, garlic, dijon, egg yolks; (2) drizzle oil in gradually to emulsify; (3) add lemon, parmesan cheese, salt, pepper, worcestershire and tobasco sauce." The registration specialist will refuse to register the claim, because the list of ingredients is not copyrightable and the instructional text is *de minimis*.

For a discussion of the deposit requirements for an instructional work, see Chapter 1500, Section 1509.1(I).

717 Legal Materials

Certain types of legal materials may be registered with the U.S. Copyright Office if they were created by a private entity or non-lawmaking official, and if they contain a sufficient amount of original expression. Examples of legal materials that may satisfy this requirement are discussed in Sections 717.1 through 717.3 below.

When submitting an application to register these types of works, the claim should be limited to the new material that appears in the work, the applicant should provide the name of the author who created that material, and the applicant should provide the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in "text" if the work contains a sufficient amount of written expression, or a claim in "artwork" and/or "photograph(s)" if the work contains a sufficient amount of pictorial or graphic expression. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

Certain types of legal materials may be registered as a compilation if the author exercised a sufficient amount of creativity in selecting, coordinating, and/or arranging the preexisting materials that appear within the deposit. When asserting a claim in a compilation, the applicant should provide the name of the author who created the selection, coordination, and/or arrangement that the applicant intends to register, and the applicant should assert a claim to copyright in that material using the procedures described in Chapter 600, Section 618.6.

As discussed in Sections 717.1 and 717.2, legal materials often contain an appreciable amount of content that is not eligible for copyright protection. They also may contain an appreciable amount of content that is in the public domain, content that has been previously published, content that has been previously registered, or content that is owned by a third party. If so, the applicant should exclude this content from the application using the procedure described in Chapter 600, Section 621.8(F).

If the applicant asserts a claim in both the copyrightable and uncopyrightable elements of the work, the registration specialist may annotate the application to indicate that the registration does not extend to the uncopyrightable elements. If the applicant asserts a

claim to copyright in an element that is uncopyrightable, the registration specialist may communicate with the applicant or may refuse registration if the claim appears to be based solely on that element.

NOTE: The Office will not register legislative enactments, judicial decisions, administrative rulings, public ordinances, or similar types of official legal materials that have been issued by a federal, state, local, or territorial government. Likewise, the Office will not register "non-binding, explanatory legal materials" created by a legislator or legislative body "vested with the authority to make law" or by judges "who possess the authority to make and interpret the law." *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1504 (2020). This is known as the "government edicts doctrine." *Id.* at 1504, 1506. For information concerning this doctrine, see Chapter 300, Section 313.6(C)(2).

717.1 Legal Publications

A legal publication that analyzes, annotates, summarizes, or comments upon legislative enactments, judicial decisions, executive orders, administrative regulations, or other edicts of government may be registered as a nondramatic literary work, if the publication was "prepared by a private party, or a non-lawmaking official" "who lack[s] the authority to make or interpret the law," and if it contains a sufficient amount of original authorship. *Georgia*, 140 S. Ct. at 1507, 1509, 1510. Examples of legal publications that may satisfy this requirement are listed below, but in no case does the registration cover any government edict that may be included in the work. *See id.* at 1504; *see also* Chapter 300, Section 313.6(C)(2).

Examples:

- Annotated codes authored by a private entity not acting under the control of a legislative or judicial body that summarize or comment upon government edicts issued by a federal, state, local, or foreign government.
- A compilation authored by a private entity not acting under the control of a legislative or judicial body that contains legislative enactments, judicial decisions, or other government edicts, provided that the entity exercised a sufficient amount of creativity in selecting, coordinating, and/or arranging this material.
- Treatises that analyze or review legal subjects.
- Dictionaries, anthologies, and encyclopedias that define or describe legal subjects.
- Legal periodicals that cover specific areas of the law, such as law reviews, legal journals, legal newspapers, legal newsletters, and the like.
- Casebooks containing a selection of legislative enactments and judicial decisions that have been abridged and/or annotated with

comments and questions for use in systematic instructional activities.

- Test materials that are used to determine eligibility for membership in a bar association or other professional organization, as well as study materials used to prepare for such tests.

The Office will consider an application to register a citator containing specialized indexes for tracing the prior and subsequent history of a judicial decision; for identifying decisions that have followed, explained, distinguished, criticized, or overruled a previous judicial decision; or for researching a specific area of the law. This type of work may be registered if it contains a sufficient amount of new text, such as an introduction or a brief summary of the issues discussed in each case. Likewise, a citator may be registered as a compilation, provided that the author exercised a sufficient amount of creativity in selecting, coordinating, and/or arranging the categories that appear within the work. However, the registration specialist may communicate with the applicant or may refuse registration if the claim appears to be based solely on the selection of judicial decisions, because citators typically list all of the subsequent decisions that cite the same case. The specialist also may communicate or refuse registration if the claim appears to be based solely on a system for conducting legal research or on any "idea, procedure, process, system, method of operation, concept, principle, or discovery" that may be reflected or implemented in the work. 17 U.S.C. § 102(b).

717.2 Legal Documents

Contracts, insurance policies, or other legal documents may be registered if they contain a sufficient amount of expression that is original to the author. The U.S. Copyright Office may register briefs, motions, prepared testimony, expert reports, or other legal pleadings, provided that they contain a sufficient amount of expression that originated with the author (regardless of whether the pleading has or has not been filed with a judicial or administrative body). Likewise, the Office may register books that contain sample forms used in preparing contracts, pleadings, or other legal documents.

Legal documents typically contain an appreciable amount of language that may have been obtained from other sources, such as standard form contracts, prior pleadings, form books, and the like. Much of this language may have been previously published, it may be owned by other parties, or it may be in the public domain. Often the language used in a legal document may be determined by the requirements of the relevant statutory, regulatory, or decisional law. In some cases, the author may be required to use specific legal terminology or a specific sentence structure, such as the boilerplate language found in a lease, bailment, chattel mortgage, security interest, or similar transactions.

The Office may register a legal document that contains an appreciable amount of unclaimable material, provided that the claim is limited to the new material that the author contributed to the work and provided that the unclaimable material has been excluded from the claim. For purposes of registration, unclaimable material includes previously published material, previously registered material, public domain material, or copyrightable material that is owned by another party.

When completing the application, the applicant should provide a brief statement that describes the new material that the author contributed to the work, such as "new text," and a brief statement that describes the unclaimable material that should be excluded from the claim, such as "standard legal language." In the case of an online application, this information should be provided in the Author Created, New Material Included, and Material Excluded fields. In the case of a paper application submitted on Form TX, it should be provided in spaces 2, 6(a), and 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

717.3 Patents, Patent Applications, and Non-Patent Literature

The U.S. Copyright Office may register a claim to copyright in the written description for an invention or the drawings or photographs set forth in a patent or a patent application, provided that the work contains a sufficient amount of original authorship. Likewise, the Office may register a claim to copyright in articles, publications, or other non-patent literature that may be submitted with a patent application. However, the copyright in a patent, a patent application, or non-patent literature does not extend to any "idea, procedure, process, system, method of operation, concept, principle, or discovery" that may be disclosed in these works.

Under U.S. patent law, a patent application must be filed within one year after the invention has been described in any printed publication. *See* 35 U.S.C. § 102(a)(1), (b)(1). Filing a patent application or non-patent literature with the U.S. Patent and Trademark Office or the U.S. Copyright Office is not considered publication within the meaning of the copyright law. The U.S. Copyright Office takes no position on whether filing an application to register the text and illustrations in a patent application or in non-patent literature would be considered a publication within the meaning of the patent law.

718 Letters, Email, and Other Written Correspondence

Letters, emails, journals, diaries, and other forms of written correspondence may be registered if they contain a sufficient amount of copyrightable expression and if the claimant owns the copyright in that material.

When submitting an application to register these types of works, the applicant should limit the claim to the text, artwork, and/or photographs that appear in the work, the applicant should provide the name of the author who created that material, and the applicant should provide the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in "text" if the work contains a sufficient amount of written expression, or a claim in "artwork" and/or "photograph(s)" if the work contains a sufficient amount of pictorial or graphic expression. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

As a general rule, the author of the correspondence—not the recipient—should be named as the copyright claimant. The fact that a person owns or possesses the original

copy of a letter, a journal, diary, or other material object does not give that person the right to claim copyright in that work, even if the material object was purchased or found. Ownership of the copyright in a work, or of any of the exclusive rights under a copyright, is distinct from the ownership of any material object in which the work has been fixed. A transfer of ownership involving a material object does not convey any rights in the copyrighted work, nor does the transfer of ownership of a copyright convey any property rights in any material object (absent a written agreement to that effect). 17 U.S.C. § 202.

A party that has obtained all of the rights under copyright that initially belonged to the author may be named as the copyright claimant for a letter, email, journal, diary, or other written correspondence. When completing the application, the applicant should provide a brief transfer statement explaining how the claimant obtained the copyright in the work. For example, the registration specialist may accept an application if the applicant states that the claimant obtained the copyright "by inheritance" or "by written agreement," but the specialist will question an application if the applicant simply states "I found this diary in the attic," "my mother gave me this journal," "my boyfriend sent me these love letters," or the like. These types of statements suggest that the claimant may own a material object (*i.e.*, a journal, a diary, a letter), but it is unclear whether the claimant owns the copyright in the work that is embodied in those objects. For guidance on identifying the copyright claimant, see Chapter 600, Section 619. For guidance on providing a transfer statement, see Chapter 600, Section 620.

In some cases, journals, diaries, letters, or other written correspondence may be published with new material that introduces, illustrates, or explains the work, such as forewords, afterwords, footnotes, annotations, or the like. As discussed in Section 709.4, this type of material may be registered as a derivative work if it contains a sufficient amount of original authorship. *See* 17 U.S.C. § 101 (definition of "derivative work"). The applicant should limit the claim to the new text that the author contributed to the work, the applicant should provide the name of the author who created the new text, together with the name of the claimant who owns the copyright in the new text. Applicants should use the terms "new text," "text of introduction," or the like to describe this type of authorship, rather than "text" or "editing." If the new material contains an appreciable amount of pictorial or graphic expression, applicants should use the term "artwork" and/or "photograph(s)" to describe this type of authorship. In all cases, the journal, diary, letters, or other written correspondence should be excluded from the claim if that material has been previously published, previously registered, if it is in the public domain, or if the copyright in that material is owned by another party. For a discussion of the procedure for excluding this type of material from a claim, see Chapter 600, Section 621.8.

719 Interviews

An interview is a written or recorded account of a conversation between two or more individuals. Typically, the interviewer poses a series of questions that elicit a response from the interviewee(s).

An interview may be registered if the conversation has been fixed in a tangible medium of expression and if it contains a sufficient amount of creative expression in the form of

questions and responses. Specifically, an interview may be registered as a literary work if it has been fixed in a written transcript, an audio recording, a video recording, or other medium of expression. An interview may be registered as a work of the performing arts if the interview was performed or is intended to be performed before an audience, such as a television interview, radio interview, or onstage interview.

In all cases, the applicant should provide the name of the author who created the questions and/or the author who created the responses that appear in the interview, and the applicant should provide the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in "text" if the interview contains a sufficient amount of written expression, or may accept a claim in "text by interviewer" or "text by interviewee" if the claim is limited to the interviewer's questions or the interviewee's responses. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

The U.S. Copyright Office will assume that the interviewer and the interviewee own the copyright in their respective questions and responses unless (i) the work is claimed as a joint work, (ii) the applicant provides a transfer statement indicating that the interviewer or the interviewee transferred his or her rights to the copyright claimant, or (iii) the applicant indicates that the interview was created or commissioned as a work made for hire. If the applicant fails to provide a transfer statement or fails to answer the work made for hire question, the registration specialist may communicate with the applicant if it appears that the interviewee or the interviewer is attempting to register the entire interview instead of registering a claim in his or her contribution to the work. For guidance on providing a transfer statement, see Chapter 600, Section 620. For guidance on answering the work made for hire question, see Chapter 600, Section 614. For guidance on joint works, see Chapter 500, Section 505.

Examples:

- Michael Scorch submits an application to register his interview with Major William Smith. The application names Michael and William as authors of "text of interview questions" and "text of responses to interview questions," respectively. Michael is named as the sole copyright claimant and the transfer statement indicates that he obtained the copyright in William's contribution "by written agreement." The registration specialist will register the claim.

- Beth McBride submits an application to register her interview with Franklin Murphy. Beth is named as author of "text by interviewer" and Franklin is named as author of "text by interviewee." Beth is named as the sole copyright claimant, but a transfer statement has not been provided and the work made for hire question has not been answered. The registration specialist will communicate with the applicant to determine if Franklin transferred his copyright to

Beth or if the interview was created or commissioned as a work made for hire. If Beth does not own the copyright in Franklin's contribution, the specialist will ask her to limit the claim to the "text by interviewer."

720 [Reserved]

721 Computer Programs

This Section discusses the U.S. Copyright Office's practices and procedures for the examination of computer programs.

For a discussion of databases, see Section 727. For a discussion of websites and website content, see Chapter 1000. For a discussion of videogames, see Section 726 and Chapter 800, Section 807.7(A).

721.1 What Is a Computer Program?

The Copyright Act defines a "computer program" as "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result." 17 U.S.C. § 101. Congress added this definition to the statute "to make it explicit that computer programs, to the extent that they embody an author's original creation, are proper subject matter of copyright." NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS ("CONTU"), FINAL REPORT 1 (1979) (CONTU REPORT); *see also* 126 CONG. REC. 29,895 (1980) (statement of Rep. Kastenmeier) (explaining that the legislation "eliminates confusion about the legal status of computer software by enacting the recommendations of [CONTU] clarifying the law of computer software").

A claim to copyright in a computer program may be based on the authorship "expressed in words, numbers, or other verbal or numerical symbols or indicia," regardless of whether that expression has been fixed in tapes, disks, cards, or any other tangible medium of expression. 17 U.S.C. § 101 (definition of "literary works"). However, the fixed program must be used directly or indirectly in a computer. For purposes of copyright registration, a "computer" is defined as a programmable electronic device that can store, retrieve, and process data that is input by a user through a user interface, and is capable of providing output through a display screen or other external output device, such as a printer. "Computers" include mainframes, desktops, laptops, tablets, and smart phones.

721.2 What Is a Derivative Computer Program?

A derivative computer program is a program that is "based upon one or more preexisting works." 17 U.S.C. § 101 (definition of "derivative work"). Typically, a derivative computer program is a new version of a preexisting program, or a program that contains material from a preexisting work that has been revised, augmented, abridged, or otherwise modified such that the modifications as a whole represent an original work of authorship.

Example:

- Telamon Software submits an application to register a computer program titled *Ajax 4.0*. The program corrects certain problems found in previous versions of the same program. For instance, it increases the number of file formats that can be processed by the program, it doubles the speed for decoding graphics, and it allows the program to work with other types of graphics cards and semiconductor chips. *Ajax 4.0* would be considered a derivative computer program. *See Montgomery v. Noga*, 168 F.3d 1282, 1290-91 (11th Cir. 1999).

721.3 What Is Source Code?

Source code is a set of statements and instructions written by a human being using a particular programming language, such as C, C++, FORTRAN, COBOL, PERL, Java, Basic, PASCAL, LISP, LOGO, or other programming languages. These statements or instructions are comprehensible to a person who is familiar with the relevant programming language, but in most cases a computer or other electronic device cannot execute these statements or instructions unless they have been converted into object code. This conversion is performed by a separate program within the computer, which is known as an interpreter, assembler, or compiler. *See Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1243 (3d Cir. 1983); *Williams Electronics, Inc. v. Artic International, Inc.*, 685 F.2d 870, 876 n.7 (3d Cir. 1982) (quoting the CONTU REPORT at 21 n. 9, 28).

721.4 What Is Object Code?

Object code is the representation of a computer program in a machine language. It typically consists of the numbers zero and one (*i.e.*, binary coding), the numbers zero through seven (*i.e.,* octal coding), or a combination of letters and numbers (*i.e.,* ASCII or hexadecimal coding). Object code is comprehensible to a computer or other electronic device, but it is not intended to be read by human beings, and as a general rule, it is not directly comprehensible to human beings. *See Apple Computer,* 714 F.2d at 1243.

721.5 Relationship Between Source Code and Object Code

The U.S. Copyright Office views source code and object code as two representations of the same work. *See GCA Corp. v. Chance*, 217 U.S.P.Q. 718, 719-20 (N.D. Cal. 1982) ([b]ecause the object code is the encryption of the copyrighted source code, the two are to be treated as one work…").

As a general rule, the Office will not issue separate registrations for the source code and object code versions of the same program. If a program was registered in unpublished form based on a submission of object code, the Office may register the first published version of the same program based on a submission of source code (or *vice versa*), even if the published version "is substantially the same as the unpublished version." 17 U.S.C. § 408(e); 37 C.F.R. § 202.3(b)(11)(i).

For details concerning the deposit requirements for registering a computer program with a submission of object code, see Chapter 1500, Section 1509.1(F)(4)(b).

721.6 Relationship Between a Computer Program and a Work Created with a Computer or a Computer Program

The ownership of the copyright in a work of authorship, or of any of the exclusive rights under a copyright, is distinct from the ownership of any material object in which the work has been fixed. A transfer of ownership of a material object does not convey any rights in the work, nor does the transfer of ownership of a copyright convey property rights in any material object (absent a written agreement to that effect). 17 U.S.C. § 202.

Likewise, ownership of the copyright in a work is distinct from ownership of any material object that may be used to create that work. The fact that the author used a computer to write an article, short story, or other nondramatic literary work does not mean that the work is a computer program. The fact that the author saved his or her work onto a hard drive, flash drive, thumb drive, CD-ROM, or other electronic storage device does not mean that the work is a computer program. A work only qualifies as a computer program if it contains "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result." 17 U.S.C. § 101 (definition of "computer program"). Moreover, when a work is created with a computer program, any elements of the work that are generated solely by the program are not registerable, such as formatting codes that are inserted by a word processing program.

721.7 Copyrightable Authorship in a Computer Program

A computer program may be registered with the U.S. Copyright Office if it contains a sufficient amount of original authorship in the form of statements or instructions to a computer.

Section 102(b) of the Copyright Act "make[s] clear that the expression adopted by the programmer is the copyrightable element in a computer program, and that the actual processes or methods embodied in the program are not within the scope of the copyright law." H.R. REP. 94-1476, at 57 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5670; S. REP. NO. 94-473, at 54 (1975).

As a general rule, the Office does not distinguish between executable code and nonexecuting comments or data that may appear in the source code for a computer program. Either element may support a claim to copyright if the program contains a sufficient amount of original statements or instructions, and both elements may be registered with the same application. *See* Registration of Claims to Copyright Deposit Requirements for Computer Programs Containing Trade Secrets and for Computer Screen Displays, 54 Fed. Reg. 13,173, 13,174 n.2 (Mar. 31, 1989); *see also* Registration Decision: Registration and Deposit of Computer Screen Displays, 53 Fed. Reg. 21,817, 21,819 (June 10, 1988). To register a claim in the executable code, the applicant should check the box marked "computer program" in the Author Created field. To register a claim in nonexecuting comments, the applicant may check the box marked "computer program," or may also check this box and state "nonexecuting comments" in the field marked "Other." In both cases, the applicant should avoid using the term "text," either alone or in combination with the term "computer program." For guidance in completing this portion of the application, see Section 721.9(F).

The copyright in a computer program 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 the program. 17 U.S.C. § 102(b). As such, the Office will not register the functional aspects of a computer program, such as the program's algorithm, formatting, functions, logic, system design, or the like. Likewise, the Office will communicate with the applicant and may refuse registration if the applicant asserts a claim in uncopyrightable elements that may be generated by a computer program, such as menu screens, layout and format, or the like.

721.8 Copyrightable Authorship in a Derivative Computer Program

A derivative computer program may be registered if it contains new material that is sufficiently different from the preexisting work such that the program qualifies as an original work of authorship. *See* 17 U.S.C. § 101 (definition of "derivative work"). The new material must be original and it must contain a sufficient amount of copyrightable authorship. Making only a few minor changes or revisions to a preexisting work, or making changes or revisions of a rote nature that are predetermined by the functional considerations of the hardware does not satisfy this requirement. In no case does the copyright for a derivative computer program 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 the program. 17 U.S.C. § 102(b).

Examples:

- Decrypt Corp. created a computer program titled *Skeleton Key version 5.0*. The program contains a substantial amount of new code that did not appear in prior versions of the same program. The additions and revisions that appear in the source code for version 5.0 may be registered as a derivative work.

- Pentathlon Games released a videogame titled *World of Watercraft*, which is designed to run on the Sony PlayStation. A month later, the company released another version of the game that is designed to run on the Microsoft Xbox. The source code for each version is substantially different, and not simply the result of interoperability or hardware compatibility, although the sounds and images that appear in the videogame are exactly the same. The source code for the Xbox version may be registered as a derivative work.

- Derrick Maxwell created a word processing program titled *Linux Write*, which is designed to run on the Linux operating system. He subsequently created another program titled *Android Write*, which is designed to run on the Android operating system. Derrick submits an application to register *Android Write* and in the Author Created/Other field he states that he "adapted this program to run on a different operating system." The registration specialist will communicate with the applicant, because it is unclear whether the

author contributed a sufficient amount of copyrightable authorship to this work.

- Shell Games LLC submits two applications for the same computer program, one specifically for the source code and the other for the object code. Because there are no copyrightable differences between the source code and the object code, there is no basis for issuing a separate registration for each representation of the program. Moreover, if the object code was created by a computer program, there would be no human authorship in the object code, and no authorship that is distinct from the source code. The registration specialist will register the claim in the source code, and reject the claim in the object code.

Each version of a computer program that contains new, copyrightable authorship is considered a separate work. *See* 17 U.S.C. § 101 (definition of "created;" stating that "where the work has been prepared in different versions, each version constitutes a separate work"). A registration for a specific version of a computer program covers the new material that the author contributed to that version, including any changes, revisions, additions, or other modifications that the author made to that version. *See* H.R. REP. NO. 94-1476, at 57 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5670; S. REP. NO. 94-473, at 55 (1975) (explaining that "copyright in a 'new version' covers only the material added by the later author, and has no effect one way or the other on the copyright or public domain status of the preexisting material."). However, a registration for a specific version of a computer program does not cover any unclaimable material that may appear in that version. For purposes of registration, unclaimable material includes:

- Previously published material.
- Material that has been previously registered with the U.S. Copyright Office.
- Material that is in the public domain.
- Copyrightable material that is owned by a third party (*i.e.*, an individual or legal entity other than the claimant who is named in the application).

If the program contains an appreciable amount of unclaimable material, the applicant should identify that material in the application and should exclude it from the claim using the procedure described in Section 721.9(G) below. *See* 17 U.S.C. § 409(9) (stating that "[t]he application for copyright registration… shall include... in the case of a compilation or derivative work, an identification of any preexisting work or works that it is based upon or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered...").

Examples:

- *Excluding previously published material.* Softwear, Inc. submits an application to register a program titled *Clothing Maker version 3.0*. Version 3.0 contains an appreciable amount of code that appeared

in versions 1.0 and 2.0 of the same program. Softwear distributed copies of versions 1.0 and 2.0 to the public before it filed its application for registration of version 3.0. Versions 1.0 and 2.0 would be considered previously published works, even if the copies only contained the object code for those versions and even if the source code for those versions was never disclosed. Therefore, the application should be limited to the new material that appears in version 3.0, and any source code that appeared in versions 1.0 or 2.0 should be excluded from the claim using the procedure described in Section 721.9(G).

- *Excluding previously registered material.* Jesper Nielsen submits an application to register a program titled *Ink Blot version 5.0*. This version contains an appreciable amount of source code that appeared in versions 1.0 through 4.0 of the same program. The prior versions have not been distributed to the public, but version 2.2.1 was previously registered with the Office as an unpublished work. The registration for version 5.0 will cover the new material that appears in that version, as well as any unpublished or unregistered source code from versions 1.0 through 4.0 that appear in version 5.0. However, the source code that appeared in version 2.2.1 should be excluded from the claim using the procedure described in Section 721.9(G).

- *Excluding third party material.* Vivek & Associates created an operating system titled *Architexture v. 9.0* using a software development tool titled *Picture This v. 2.50*. The source code for *Architexture v. 9.0* contains an appreciable number of modules, subroutines, and macros that were used with permission from the company that produced *Picture This*. Vivek & Associates should exclude those modules, subroutines, and macros from its application to register *Architexture v. 9.0* using the procedure described in Section 721.9(G), because the copyright in that material is owned by a third party.

- *No disclaimer required*. CodeBuster LLC submits an application to register a program titled *Hackleberry Finn version 3.0*. Version 3.0 contains an appreciable amount of code that appeared in versions 1.1.1 and 2.2.2 of the same program. CodeBuster never registered versions 1.1.1 and 2.2.2 and never distributed those versions to the public. Therefore, the prior versions of the program need not be disclaimed in the application to register version 3.0. The registration for version 3.0 will cover all of the copyrightable content that appears in that version, including any unpublished or unregistered source code from versions 1.1.1 or 2.2.2 that have been incorporated into version 3.0.

The registration specialist may communicate with the applicant if the program appears to contain an appreciable amount of unclaimable material and if the applicant does not

exclude that material from the claim. Examples of factors that may prompt a specialist to inquire whether a computer program contains unclaimable material include the following:

- Multiple copyright notices.
- A copyright notice containing an earlier date than either the completion year or the publication date specified in the application.
- A copyright notice containing multiple dates.
- A copyright notice containing a different name than the author or copyright claimant named in the application.
- Multiple version numbers or multiple release numbers (if it appears that the previous versions may have been published or registered or if they may be owned by a party other than the copyright claimant).
- A revision history in the deposit indicating that changes were made to the program after the year of completion or date of publication specified in the application.
- An indication that the author created the work using another computer program as an authoring tool.

If the deposit contains multiple dates or multiple version/release numbers, the applicant should notify the registration specialist if those dates or numbers refer to the development history of the program or if they refer to previous versions of the program that have not been published or registered before. When submitting an online application, this information may be provided in the Note to Copyright Office field; when completing a paper application this information may be provided in a cover letter.

If the program contains only a minimal amount of unclaimable material or if the program contains material that is uncopyrightable, there is no need to exclude that material from the application. Unclaimable material should be excluded only if that material is copyrightable and represents an appreciable portion of the work.

Example:

- Professor Barrakat submits an application for a computer program titled *BearCat 5.0*. The program contains 5,000 lines of entirely new source code and 50 lines that appeared in a previously published version of the same program. There is no need to exclude these 50 lines of code from the application, because they do not represent an appreciable portion of the program code for *BearCat 5.0*.

721.9 Application Tips for Computer Programs

This Section discusses the practices and procedures for completing an application to register a computer program. For guidance concerning the deposit requirements for

computer programs, see Chapter 1500, Section 1509.1(F). For guidance concerning the filing fee, see Chapter 1400, Section 1412.

721.9(A) Identifying the Type of Work

Submitting an online application through the U.S. Copyright Office's electronic registration system is the preferred way to register a computer program. The first step in completing the online application is to select the type of work that the applicant intends to register. In the case of a computer program, the applicant should select Literary Work from the drop down menu marked Type of Work.

When submitting a paper application, Form TX should be used to register a claim to copyright in a computer program.

721.9(B) Title of the Program

The application must provide the title of the computer program. 17 U.S.C. § 409(6). The title should include the version number or release number (if any) for the specific version of the program that the applicant intends to register. The version number or release number may be provided in the application as follows:

- *Advantage Works v. 1.0*
- *Advantage Works (v. 2.0)*
- *Advantage Works version 3.5.1*
- *Advantage Works (release 4.1.1)*

When completing an online application, the applicant should provide the title of the program on the Title screen. When completing a paper application, the applicant should provide the title on space 1 of Form TX. For guidance on completing this portion of the application, see Chapter 600, Section 610.

If the applicant does not provide a version number or release number, the registration specialist may add that information to the Title field/space if the number appears on the deposit or elsewhere in the registration materials and if it is clear that the number identifies the specific version that has been submitted for registration. In such cases, the specialists will add an annotation to the record, such as: "Regarding title information: Added by Copyright Office from deposit." If the title contains multiple version numbers (*e.g.*, *Scale Modeler v. 1.0, 2.0, 3.0, 4.50*), the specialist may communicate with the applicant if he or she is unable to identify the specific version that the applicant intends to register.

721.9(C) Name of Author / Name of Claimant

The applicant should provide the name of the author(s) who created the specific version of the program that the applicant intends to register. Specifically, the applicant should provide the name(s) of the person(s) or organization(s) who created the source code for the version that will be submitted for registration. In addition, the applicant should

provide the name of the claimant who owns the copyright in that version. When completing an online application the applicant should provide this information on the Author and Claimant screens; when completing a paper application the applicant should provide this information in spaces 2 and 4 of Form TX.

For guidance on completing this portion of the application, see Chapter 600, Sections 613 and 619. For guidance on identifying the author of a work made for hire, see Chapter 600, Section 614.

721.9(D) Year of Completion

The applicant should identify the year that the author completed the specific version of the program that the applicant intends to register. As a general rule, the applicant should provide a year of completion only for the specific version of the program that will be submitted for registration. The applicant should not provide a year of completion for the first version of the program or any other version of the program that is not included in the application.

For the purpose of copyright registration, each version of a computer program is considered a separate work. Each version of a program is considered complete when that version has been fixed in a tangible medium of expression for the first time. When a program is prepared over a period of time, the portion that has been fixed at any particular time constitutes the version that has been completed as of that date. *See* 17 U.S.C. § 101 (definition of "created"); *see also* 37 C.F.R. § 202.3(c)(4) (explaining that the year of completion means "the latest year in which the creation of any copyrightable element was completed").

When completing an online application, the applicant should provide the year of completion on the Publication/Creation screen; when completing a paper application the applicant should provide this information in space 3(a) of Form TX. For guidance on completing this portion of the application, see Chapter 600, Section 611.

If the year specified in the application does not match the year that is specified in the copyright notice for the program (if any) or if the copyright notice contains multiple dates (*e.g.*, © Lionel Software 2010, 2011, 2012), the registration specialist may communicate with the applicant if he or she is unable to identify the specific version that the applicant intends to register.

721.9(E) Date of Publication

If the version that the applicant intends to register has been published as of the date that the application is filed with the U.S. Copyright Office, the applicant should provide the month, day, and year that the version being registered was published for the first time. As a general rule, the applicant should provide a date of first publication only for the specific version that will be submitted for registration. The applicant should not provide a date of publication for the first version of the program or any other version of the program that is not included in the application.

A computer program is considered published when copies of the program are distributed "to the public by sale or other transfer of ownership, or by rental, lease, or

lending" or when copies of the program are offered "to a group of persons for purposes of further distribution, public performance, or public display." 17 U.S.C. § 101 (definition of "publication"). As a general rule, a program is considered published if there has been a general distribution of the program code, regardless of whether the copies are distributed by purchase or license and regardless of whether the copies are distributed on a CD-ROM, DVD, or downloaded online. Likewise, a program is considered published even if the copies contained object code rather than source code and even if the source code has not been disclosed to the public. *See Midway Manufacturing Co. v. Strohon*, 564 F. Supp. 741, 751 (N.D. Ill. 1983) ("the object code is nothing other than a direct transformation of a computer program, composed... in source code").

When completing an online application, the applicant should provide the date of first publication on the Publication/Completion screen. When completing a paper application the applicant should provide this information on space 3(b) of Form TX. For guidance on completing this portion of the application, see Chapter 600, Section 612.

For a general discussion of publication and for specific guidance on determining whether a particular work has been published, see Chapter 1900.

721.9(F) Asserting a Claim to Copyright in a Computer Program

The applicant should identify the copyrightable authorship that the applicant intends to register and should assert a claim to copyright in that authorship. The information provided in the application defines the claim that is being registered, rather than the information given in the deposit copy(ies) or elsewhere in the registration materials.

When completing an online application, the applicant should provide this information on the Author screen in the field marked Author Created. When completing a paper application, the applicant should provide this information on space 2 of the application under the heading Nature of Authorship. For guidance on completing this portion of the application, see Chapter 600, Section 618.4.

"Computer program" is the most appropriate term for registering a claim in this type of work. If this term does not fully describe the copyrightable material that the applicant intends to register, the applicant should provide a more specific description in the Author Created/Other field using the procedure described in Chapter 600, Section 618.4(A). For a representative list of other terms that may be acceptable, see Section 721.9(H).

"Revised computer program" is the most appropriate term for registering a claim in a derivative computer program. If this term does not fully describe the copyrightable material that the applicant intends to register, the applicant should provide a more specific description using the procedures described in Chapter 600, Section 621.8(C)(1) and 621.8(C)(2). For a representative list of other terms that may be acceptable, see Section 721.9(H).

As discussed in Section 721.7, an applicant may assert a claim in executable code as well as the nonexecuting comments that appear in the source code for a computer program. Both claims may be registered with the same application. To register a claim in

executable code, the applicant may check the box marked "computer program" in the Author Created field. To register a claim in nonexecuting comments, the applicant may check the box marked "computer program," or may also check this box and state "nonexecuting comments" in the field marked Other. In both cases, the applicant should avoid using the term "text," either alone or in combination with the term "computer program."

If the claim is unclear, the registration specialist may communicate with the applicant or may refuse registration. For example, if the applicant merely asserts a claim in "text" or a claim in "text" and "computer program," the specialist will communicate if it is unclear whether the deposit copy(ies) contain text that is distinguishable from source code, object code, or other statements or instructions that may be used directly or indirectly in a computer in order to bring about a certain result. Likewise, the specialist may communicate if the applicant merely asserts a claim in "computer program" that is not discernable as a written language or a programming language.

If the applicant asserts a claim in both the copyrightable and uncopyrightable features of the program, the specialist may communicate with the applicant or may annotate the application to indicate that the registration does not extend to the uncopyrightable features. For representative examples that illustrate this practice, see Chapter 600, Section 618.8(C). If the claim appears to be based solely on the functional aspects or other features that are not eligible for copyright protection, registration will be refused.

For a representative list of unclear terms that may be questioned, see Section 721.9(I). For a representative list of terms that will not be accepted, see Section 721.9(J).

721.9(G) Limiting the Claim to Copyright in a Computer Program

If the computer program contains an appreciable amount of unclaimable material, the applicant should exclude that material from the claim. As discussed in Section 721.8, this category includes previously published material, previously registered material, public domain material, or copyrightable material that is owned by a party other than the copyright claimant.

When completing an online application, the applicant should provide a brief statement that identifies the unclaimable material that appears in the program. Specifically, the applicant should provide this information on the Limitation of Claim screen by checking one or more of the boxes that appear in the Material Excluded field that accurately describe the unclaimable material. When completing a paper application, the applicant should provide this information on space 6(a) of Form TX. For guidance on completing this portion of the application, see Chapter 600, Section 621.8(B).

In addition, the applicant should provide a brief statement that identifies the new material that the applicant intends to register. When completing an online application, the applicant should provide this information on the Limitation of Claim screen by checking one or more of the boxes that appear in the New Material Included field that accurately describe the new material that the author created. When completing a paper application, the applicant should provide this information on space 6(b) of Form TX. For

guidance on completing this portion of the application, see Chapter 600, Section 621.8(C).

The statement that the applicant provides in the New Material Included field should be identical to the statement that the applicant provided in the Author Created field. Likewise, the statement that the applicant provides in space 6(b) of the paper application should be identical to the statement that the applicant provides in space 2. Together, these statements define the claim in a derivative computer program.

If the program contains an appreciable amount of material that has been previously registered with the U.S. Copyright Office, the applicant should identify the registration number for that material and the year that the registration was issued. When completing an online application, the applicant should provide this information on the Limitation of Claim screen in the field marked Previous Registration. When completing a paper application, the applicant should provide this information on space 5 of Form TX. For guidance on completing this portion of the application, see Chapter 600, Section 621.8(F).

721.9(H) Acceptable Terminology for an Application to Register a Computer Program

This Section provides guidance for completing the Author Created/Other field and the New Material Included/Other field of the online application, as well as guidance for completing spaces 2 and 6(b) of paper application Form TX.

The applicant should provide a brief statement in this portion of the application that describes the copyrightable material that the applicant intends to register. The applicant should not describe any uncopyrightable elements or *de minimis* elements that appear in the program. Likewise, the applicant should not describe the material object in which the program has been fixed.

The U.S. Copyright Office may accept the term "computer program" or any of the terms listed below, provided that they accurately describe the copyrightable authorship that appears in the deposit copy(ies). In most cases, the Office will accept combinations or variant forms of these terms, unless they are contradicted by information provided in the deposit copy(ies) or elsewhere in the registration materials.

- Computer program
- Computer code
- Computer software
- New computer program
- New computer code
- New computer software
- Program code

- Program instructions
- Revised computer program
- Revised computer code
- Revised computer software
- Revision of [specify nature of revision, *e.g.*, revision of software subroutines, revision of program code, etc.]
- Software code
- Software modifications
- Software module(s)
- Software program
- Software routine(s)
- Software subroutine(s)
- Software update(s)
- Source code

721.9(I) Unclear Terminology for an Application to Register a Computer Program

The authorship that the applicant intends to register should be clearly identified in the application, and the claim to copyright in that authorship should be clearly stated. If the claim to copyright is unclear, the registration specialist may communicate with the applicant or may refuse registration. Examples of unclear terms include the following or any combination of the following:

- Adaptation (if it appears that the program was merely adapted to run on different hardware)
- Automation
- Cells
- Commands
- Compilation
- Computerized
- Debugging

- Editing
- Enhancements
- Entire program code
- Entire text
- Entire work
- Error corrections
- Features
- Macro(s)
- New programming text
- Patching
- Program text
- Programmer
- Programming text
- Search engine
- Text
- Text of computer program
- Text of computer game

If the applicant combines an acceptable authorship term with the term "text," such as "computer program and text" or "text and program code," the registration specialist will examine the deposit copy(ies) to determine if the work contains copyrightable text that is not part of the computer program. If the work does not appear to contain copyrightable text apart from the text of the computer program, the specialist may communicate with the applicant or may refuse to register that aspect of the claim.

721.9(J) Unacceptable Terminology for an Application to Register a Computer Program

If the applicant asserts a claim in both the copyrightable and uncopyrightable features of the program, the specialist may annotate the application to indicate that the registration does not extend to the uncopyrightable features. If the applicant asserts a claim to copyright in any storage medium or any feature of the program that is uncopyrightable, the registration specialist may communicate with the applicant or may refuse

registration if the claim appears to be based solely on those features. Examples of unacceptable terms include the following or any combination of the following:

- Algorithm
- Analysis
- Cassette
- Chip
- Computation
- Computer language(s)
- Computerized
- Data
- Designed program
- Disk
- Drive
- Encrypting
- EPROM
- Flash drive
- Format
- Formatting
- Formula(s)
- Functions
- Hard drive
- Interface
- Language
- Layout
- Logic

- Menu screens
- Mnemonics
- Models
- Object
- Object code
- Object listing
- Organization
- Peripheral(s)
- Printout
- PROM
- RAM (Random Access Memory)
- ROM
- Protocol
- Software methodology
- System
- System design(er)
- Template
- Text of algorithm
- Thumbdrive
- Typeface
- Typefont

721.10 Screen Displays

721.10(A) Relationship Between Source Code and Screen Displays

As a general rule, a computer program and the screen displays generated by that program are considered the same work, because the program code contains fixed expression that produces the screen displays. If the copyright in the source code and the

screen displays are owned by the same claimant, the program and any related screen displays may be registered with the same application. The U.S. Copyright Office will not knowingly issue a separate registration for a computer program and the screen displays that may be generated by that program. Nor will the Office issue a supplementary registration that purports to add a claim in screen displays to a basic registration for a computer program.

By contrast, if the copyright in the code and the screen displays are owned by different parties, separate applications will be required. The computer program should be registered as a literary work, while the screen displays should be registered as an audiovisual work, a pictorial work, or a graphic work, as appropriate.

If the applicant states "computer program" in the Author Created/New Material Included fields or in spaces 2 and 6(b), the registration will cover the copyrightable expression in the program code and any copyrightable screen displays that may be generated by that code, even if the applicant did not mention the screen displays and even if the deposit copy(ies) do not contain any screen displays. By contrast, if an applicant states "screen displays" in the application, the registration will not cover the computer program unless the applicant also asserts a claim in the "computer program" and submits an appropriate deposit. *See* Registration Decision: Registration and Deposit of Computer Screen Displays, (August, 1987).

This rule does not apply to the hypertext markup language ("HTML") for a website, because HTML is not a computer program or source code. If the applicant submits an application to register HTML, the registration may cover the HTML itself, but it does not cover any of the content that may appear on the website unless the applicant submits a copy of the website content and expressly asserts a claim in that material. For a discussion of HTML, see Chapter 1000, Section 1006.1(A).

721.10(B) Copyrightable Authorship in Screen Displays

When asserting a claim in screen displays, the claim should be limited to the new material that appears in the screen displays, the applicant should provide the name of the author who created that material, and the applicant should provide the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in "text" if the screen displays contain a sufficient amount of textual expression that is not a part of the code, or a claim in "artwork" and/or "photograph(s)" if the screen displays contain a sufficient amount of artwork or photos that are not generated by the computer program. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

A registration for a computer program covers the copyrightable expression that appears in any screen that may be generated by the program, even if the applicant does not submit identifying material depicting the screen displays or merely submits a representative sampling of those displays. If the screen displays as a whole do not

contain copyrightable authorship, the registration specialist may communicate with the applicant or may refuse registration. For example, if the claim is based solely on the layout or format of a screen or if the deposit copy(ies) consist solely of blank forms, *de minimis* menu screens, or other elements that are purely functional, registration will be refused. *See* Registration Decision: Registration and Deposit of Computer Screen Displays, 53 Fed. Reg. 21,817, 21,819 (August, 1987).

721.10(C) Deposit Requirements for Screen Displays

For a discussion of the deposit requirements for computer screen displays, see Chapter 1500, Section 1509.1(F)(6).

721.11 User Manuals and Other Documentation for a Computer Program

User manuals, instructional booklets, flowcharts, and other documentation that explain the development or operation of a computer program may be registered with the U.S. Copyright Office, provided that they contain a sufficient amount of original authorship. If text is the predominant form of authorship, the work may be registered as a nondramatic literary work. If the predominant form of authorship consists of artwork, illustrations, or photographs, the work may be registered as a work of the visual arts. If the predominant form of authorship consists of audiovisual material, the work may be registered as a work of the performing arts. *See* 37 C.F.R. § 202.3(b)(1)(i)-(iii).

If the claimant owns the copyright in the program and the user manual or other documentation for that program, and if the claimant physically bundled these items together and distributed them to the public in the same, integrated unit (such as a shrink-wrapped box containing a disk and booklet), it may be possible to register them together with one application and one filing fee. For information concerning this option, see Chapter 1100, Section 1103. By contrast, if the program and the documentation are distributed online, if they are distributed separately from each other, or if they are owned by different claimants, each element is considered a separate work and a separate application for each element is required.

When asserting a claim in a user manual or other documentation, the claim should be limited to the new material that appears in the work, the applicant should provide the name of the author who created that material, and the applicant should provide the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in "text" if the work contains a sufficient amount of written expression, or a claim in "artwork" and/or "photograph(s)" if the work contains a sufficient amount of pictorial or graphic expression. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see Chapter 600, Sections 618.4 and 621.8.

For a discussion of the deposit requirements for user manuals and other documentation, see Chapter 1500, Section 1509.1(F)(7).

722 Apps

An "app" is a computer program that is used directly or indirectly in a computer or handheld electronic device. An app may be registered if it contains a sufficient amount of original authorship in the form of statements or instructions that bring about a certain result in the computer or device.

When asserting a claim in an app, the applicant should provide the name of the author who created the work. Specifically, the applicant should provide the name(s) of the person(s) or organization(s) who created the source code for the specific version of the app that the applicant intends to register. In addition, the applicant should provide the name of the claimant who owns the copyright in that version.

"Computer program" is the most appropriate term for registering a claim in an app. As discussed in Section 721.9(F), this term should be provided in the Author Created field, and if applicable, also in the New Material Included field of the online application. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, also in space 6(b).

If the applicant registers the app as a computer program and submits identifying portions of the source code for that program, the registration will cover any copyrightable screen displays generated by that work, provided that the app and the screen displays are owned by the same claimant. If the applicant expressly asserts a claim in the text, artwork, or screen displays generated by an app, the applicant must submit a representative sampling of those screen displays together with the identifying portions of the source code.

For guidance in completing the application, see Section 721.9. For a discussion of the deposit requirements for computer programs and screen displays, see Chapter 1500, Sections 1509.1(F)(1) through 1509.1(F)(6).

723 Computer Programs That Generate Typeface, Typefont, or Barcodes

Typeface and mere variations of typographic ornamentation or lettering are not copyrightable. 37 C.F.R. § 202.1(a), (e).

A computer program that generates bar codes or a particular typeface, typefont, or letterform may be registered if the program contains a sufficient amount of original authorship in the form of statements or instructions to a computer. For example, creating a scalable font output program that produces harmonious fonts consisting of hundreds of characters may require numerous decisions in drafting the instructions that drive a printer or other output device. If this expression contains a sufficient amount of original authorship, the work may be registered as a computer program. However, the registration would not cover any bar codes, typeface, typefont, letterform, or mere variations of typographic ornamentation or lettering that may be generated by the program. *See* Registrability of Computer Programs that Generate Typefaces, 57 Fed. Reg. 6201, 6202 (Feb. 21, 1992).

When asserting a claim in a computer program that generates typeface, typefont, letterform, or barcodes, the applicant should identify the author(s) that created the

work. Specifically, the applicant should provide the name of the person(s) or organization(s) that created the source code for the program. The registration specialist may communicate with the applicant if it appears that the author merely assigned coordinates to a particular letterform and then used a third party program to render typeface or typefont from those coordinates (but did not create any of the source code for that program).

"Computer program" is the most appropriate term for registering a claim in this type of work. As discussed in Section 721.9(F), this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, also in space 6(b). The U.S. Copyright Office will not accept an application that asserts a claim in the "entire work," "entire computer program," "entire text," or the like, because these statements suggest that the applicant may be asserting a claim in both the copyrightable and uncopyrightable elements of the program. *See* 57 Fed. Reg. at 6202.

To register a computer program that generates typeface, typefont, letterform, or barcodes, the applicant must submit a portion of the source code for that program. If the applicant merely submits a representation of the characters generated by the program without providing any code, the registration specialist will communicate with the applicant. For a discussion of the deposit requirements for computer programs, see Chapter 1500, Section 1509.1(F).

724 Diagrams, Models, Outlines, Pseudocode, and Other Types of Works That Illustrate or Describe a Computer Program

Diagrams, models, outlines, pseudocode, or other types of works that illustrate or describe the structure or order of operation for a computer program may be registered with the U.S. Copyright Office, provided that they contain a sufficient amount of original authorship. However, such illustrations or descriptions may not be claimed as computer programs.

The Literary Division may accept a claim in "text" if the work contains a sufficient amount of written expression, or a claim in "artwork," "photograph(s)," "technical drawing," or "graphic work" if the work contains a sufficient amount of pictorial or graphic expression. When completing an online application this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and if applicable, also in space 6(b). For guidance on completing these portions of the application, see Sections 721.9(F) and 721.9(G). When asserting a claim in these types of works, the applicant should provide the name of the author who created the work and the name of the claimant who owns the copyright in that work.

A registration for this type of work covers the copyrightable expression that appears in the deposit copy(ies). However, it does not cover the computer program that may be described in the deposit copy(ies) unless the applicant expressly asserts a claim in the program and submits an appropriate selection of source code.

As a general rule, these types of works do not contain "statements or instructions" that may be used "directly or indirectly in a computer in order to bring about a certain result," nor do they contain any executable program code. 17 U.S.C. § 101 (definition of "computer program"). In some cases, they may represent nothing more than an "idea, procedure, process, system, method of operation, concept, principle, or discovery." 17 U.S.C. § 102(b). Therefore, if an applicant attempts to register a diagram, model, outline, or other type of work as a computer program, the registration specialist may communicate with the applicant or may refuse to register the claim.

725 Spreadsheets, Reports, and Other Documents Generated by a Computer Program

Spreadsheets, reports, or other documents generated by a computer program may be registered with the U.S. Copyright Office if they contain a sufficient amount of original authorship. When asserting a claim in this type of work, the applicant should limit the claim to the copyrightable material that appears in the deposit copy(ies), the applicant should provide the name of the author who created that material, and the name of the claimant who owns the copyright in that material. The Literary Division may accept a claim in "text" if the deposit copy(ies) contain a sufficient amount of written expression, or a claim in "artwork" if the deposit copy(ies) contain a sufficient amount of pictorial or graphic expression.

A computer program that may be used to generate spreadsheets or to perform calculations or other functions within a spreadsheet, report, or other document may be registered, provided that the applicant expressly asserts a claim in the "computer program" and submits an appropriate selection of source code. When completing an online application, this information should be provided in the Author Created field, and if applicable, also in the New Material Included field. When completing a paper application on Form TX, this information should be provided in space 2, and also in space 6(b) if applicable. For guidance on completing these portions of the application, see Sections 721.9(F) and 721.9(G).

A claim in "text" or "artwork" covers the copyrightable expression that appears in the deposit copy(ies), but it does not cover the computer program that may be used to perform calculations or other functions within a spreadsheet, report, or other document. While these types of documents may contain statements or instructions that may be used directly or indirectly in a computer in order to bring about a certain result, in most cases the code that performs those functions was created by the author of the authoring tool, rather than the author of the document itself. Therefore, if an applicant attempts to register a spreadsheet, report, or other document as a computer program but fails to submit an appropriate selection of source code, the registration specialist may communicate with the applicant or may refuse to register the claim.

A spreadsheet, report, or other document may be registered as a compilation if the author exercised a sufficient amount of creativity in selecting, coordinating, and/or arranging the information that appears within the deposit copy(ies). When asserting a claim in a compilation, the applicant should provide the name of the author who created the selection, coordination, and/or arrangement that the applicant intends to register, and the applicant should assert a claim to copyright in that material by using the procedure described in Chapter 600, Section 618.6.

As discussed in Section 710, a registration for a compilation covers the author's selection, coordination, and/or arrangement of information, but it does not cover any of the information that appears in the deposit copy(ies). *See* 17 U.S.C. § 103(b). It does not cover the authoring tool that was used to create the work, nor does it cover any "idea, procedure, process, system, method of operation, concept, principle, or discovery" that is reflected or implemented in the work. 17 U.S.C. § 102(b). In some cases, it may be unclear whether the applicant intends to register a spreadsheet, report, or other document as a compilation or simply intends to register the information that appears in the document itself. The fact that the deposit copy(ies) contain fictitious data may indicate that the applicant is asserting a claim in selection, coordination, and/or arrangement authorship, rather than a claim in any copyrightable material in the deposit copy(ies). By contrast, if the deposit copy(ies) contain data that has been entered by an actual user, it may be unclear whether the applicant is asserting a claim in a compilation or a claim in any copyrightable text or artwork that may appear in the deposit.

In all cases, the authorship that the applicant intends to register should be clearly identified in the application, and the claim to copyright in that authorship should be clearly stated. Examples of unclear terms that will prompt the registration specialist to annotate the application or to communicate with the applicant include "template" and "data."

Examples:

- The Office receives an application to register a report titled *2013 Annual Report of Tanley Corporation*. In the Author Created field the applicant asserts a claim in "text," "artwork," and "coordination and arrangement of financial data." The registration specialist will register the claim. The application is clearly limited to the text, artwork, and compilation that appears in the report itself, but does not extend to the authoring tool used to create that report.

- The Concordia Company submits an application to register a spreadsheet that contains various graphs and tables of information. In the Author Created and New Material Included fields the applicant asserts a claim in "text." The applicant excludes the authoring tool from the application by checking the box for "computer program" in the Material Excluded field. The registration specialist will register the claim.

- Olympian Human Resources submits an application to register a report containing dozens of columns and rows. In the Author Created field the applicant asserts a claim in "text." In the Note to Copyright Office field, the applicant explains that the report was "created using Microsoft Access." The registration specialist may add this information to the Material Excluded field and register the claim with an annotation, such as: "Regarding material excluded: Information added from Note to Copyright Office."

- AutoCrat LLC submits an application to register a spreadsheet that contains graphs, tables of information, explanatory text, as well as various formulas, such as "SUM (b12, c12, d12)/d13." In the Author Created and New Material Included fields the applicant asserts a claim in "text." In the Material Excluded/Other field the applicant explains that the spreadsheet "uses Excel 5.2." The registration specialist will conclude that AutoCrat created the spreadsheet using Excel 5.2 as an authoring tool. The claim will be registered.

- DentalSoft submits an application for a work titled *PatientCare.* In the Author Created field the applicant asserts a claim in "Report and data to help dentists manage their practices." The deposit is a spreadsheet that appears to contain fictitious data; no source code has been submitted. The registration specialist will communicate with the applicant. It is unclear whether the applicant intends to register a computer program that generates these types of reports or intends to register the selection, coordination, and/or arrangement of data that is reflected in the deposit.

726 Videogames

The U.S. Copyright Office may issue separate registrations for the audiovisual material in a videogame and the computer program that generates that material. For a discussion of the practices and procedures for registering a videogame, see Chapter 800, Section 807.7(A).

727 Databases

This Section discusses the practices and procedures for obtaining a registration for a specific version of a single-file or multi-file database. In the case of an unpublished database, an applicant may register all of the copyrightable material that appeared in the database as of the date that the registration materials are received in the U.S. Copyright Office. In the case of a published database, an applicant may register all of the copyrightable material that was first published on the date specified in the application.

A registration for a specific version of a database does not cover any previously published or previously registered content that may be included in the database. Likewise, a registration for a specific version of a database does not cover any subsequent updates or revisions that may be made to the database (regardless of whether the database is published or unpublished). Instead, the Office has established a special procedure that allows applicants to register a database together with the subsequent updates or revisions that were made to that database within a period of three months or less. The requirements for this group registration option are discussed in Chapter 1100, Section 1112.4.

727.1 What Is a Database?

For purposes of copyright registration, a "database" is defined as a compilation of digital information comprised of data, information, abstracts, images, maps, music, sound recordings, video, other digitized material, or references to a particular subject or

subjects. In all cases, the content of a database must be arranged in a systematic manner, and it must be accessed solely by means of an integrated information retrieval program or system with the following characteristics:

- A query function must be used to access the content.
- The information retrieval program or system must yield a subset of the content, or it must organize the content based on the parameters specified in each query.

A single-file database is a database comprised of one data file that contains a group of data records pertaining to a common subject, regardless of the size or amount of the data that the records contain. A multi-file database is a database comprised of separate and distinct groups of data records covering multiple subjects. A data record contains all of the information related to a particular unit of information within a database. A "data file" is defined as a group of data records pertaining to a common subject matter, regardless of the size of the records or the amount of data they contain. 37 C.F.R. § 202.20(c)(2)(vii)(D)*(2)*.

As a general rule, databases are considered machine-readable works, because they are fixed or published in optical discs, magnetic tapes, or similar storage media, and as a result they cannot be perceived without the aid of a machine or device.

Websites may contain databases, but they are not considered databases for the purpose of copyright registration. As discussed above, users retrieve sets of data or other content from a database by using a query function that fetches content that matches the criteria specified by the user. By contrast, users retrieve content from a website by using a browser function that allows the user to locate and link to the specific pages of the website where information or content is stored.

727.2 Copyrightable Authorship in Databases

The legislative history for the Copyright Act states that "computer databases" may be protected by copyright "to the extent that they incorporate authorship in the programmer's expression of original ideas, as distinguished from the ideas themselves." H.R. REP. NO. 94-1476, at 54 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5667. Single-file or multi-file databases typically contain the following forms of authorship:

- The selection authorship involved in choosing the material or data that is included in the database.
- The coordination authorship involved in classifying, categorizing, ordering, or grouping the material or data.
- The arrangement authorship involved in determining the placement or arrangement of the material or data within the database as a whole.
- The authorship involved in creating the material or data that appears within the database.

Each form of authorship may be registered with the Office, provided that the database contains a sufficient amount of original expression and provided that the claimant owns the copyright in that material.

727.3 Application Tips for Databases

A single-file or multi-file database may be registered as a literary work if the predominant form of authorship in the work consists of text. A database may be registered as a work of the visual arts if the predominant form of authorship consists of photographs or other forms of pictorial authorship.

As a general rule, an applicant may register a specific version of a database by submitting an online application. However, if the applicant intends to register a database that predominantly consists of photographs, the applicant must contact the Visual Arts Division at (202) 707-8202 to coordinate the filing and to obtain proper guidance concerning the information that should be included in the online application and the proper method for submitting the deposit copies. Applicants will be permitted to file an online application for a photographic database only if they obtain authorization from the Visual Arts Division and follow the instructions from the Division. *See* 37 C.F.R. §§ 202.3(b)(5)(ii)(A), 202.20(c)(2)(vii)(D)*(8)*; *see also* Registration of Claims to Copyright, 76 Fed. Reg. 4072, 4075 (Jan. 24, 2011), Group Registration of Photographs, 81 Fed. Reg. 86,643, 86,652 (Dec. 15, 2016).

In the alternative, an applicant may register a specific version of a database with a paper application. The applicant should use the form that is most appropriate for the subject matter of the works that appear in the database. *See* 76 Fed. Reg. at 4074. For example, if the works in the database consist primarily of words, numbers, or other verbal or numerical symbols or indicia, the applicant should use Form TX. If the works consist predominantly of photographs, the applicant should use Form VA. *Id*.

NOTE: The online application may be used to register a group of updates or revisions for a database that predominantly consists of photographs, but it cannot be used for updates or revisions for any other type of database. For a discussion of the application requirements for this group registration option, see Chapter 1100, Section 1112.5.

727.3(A) Name of Author / Name of Claimant

The applicant should provide the name of the author(s) who created the specific version of the database that the applicant intends to register. In addition, the applicant should provide the name of the claimant who owns the copyright in that version. When completing an online application the applicant should provide this information on the Author and Claimant screens; when completing a paper application the applicant should provide this information on spaces 2 and 4.

For guidance on completing these portions of the application, see Chapter 600, Sections 613 and 619. For guidance on identifying the author of a work made for hire, see Chapter 600, Section 614.

727.3(B) Year of Completion

The applicant should identify the year that the author completed the specific version of the database that is submitted for registration (even if other versions exist and even if the author intends to update or revise the database in the future).

For guidance on completing this portion of the application, see Chapter 600, Section 611.

727.3(C) Date of Publication / Nation of Publication / Author's Citizenship or Domicile

If the version that the applicant intends to register has been published as of the date that the application is filed with the U.S. Copyright Office, the applicant should provide the month, day, and year that the version being registered was published for the first time. As a general rule, the applicant should provide a date of first publication only for the specific version that is being submitted for registration. The applicant should not provide a date of publication for the first version of the database or any other version of the database that is not included with the application.

In addition, the applicant should identify the nation where the database was first published and the author's country of citizenship or domicile. The Office will use this information to determine whether the database is eligible for copyright protection in the United States. For a definition and discussion of the nation of first publication, see Chapter 600, Section 612.5. For a definition and discussion of the author's citizenship and domicile, see Chapter 600, Section 617.

727.3(D) Asserting a Claim to Copyright in a Database

In all cases, the applicant should identify the copyrightable authorship that the applicant intends to register, and the applicant should assert a claim to copyright in that material. When completing an online application, this information should be provided on the Author Created screen in the field marked Other. When completing a paper application, this information should be provided in space 2 under the heading marked Nature of Authorship. For guidance on completing this portion of the application, see Chapter 600, Sections 618.4.

To register the authorship involved in selecting, coordinating, and/or arranging the material that appears in the database, the applicant may use any of the terms listed below, provided that they accurately describe the copyrightable authorship that appears in the deposit copy(ies). In most cases, the Office will accept combinations or variant forms of these terms, unless they are contradicted by information provided in the deposit copy(ies) or elsewhere in the registration materials.

- Compilation of data
- Compilation of database information
- Compilation of photographs
- Compilation of artwork

- Compilation and text
- Revised and updated compilation

The authorship that the applicant intends to register should be clearly identified in the application, and the claim to copyright in that authorship should be clearly stated. If the claim to copyright is unclear, the registration specialist may communicate with the applicant or may refuse registration. Examples of unclear terms include the following or any combination of the following:

- Data dictionary
- Data analysis
- Data insertion
- Data layout or format
- Data manipulation
- Database features

If the applicant asserts a claim in both the copyrightable and uncopyrightable features of the database, the registration specialist may annotate the application to indicate that the registration does not extend to the uncopyrightable features. If the applicant asserts a claim to copyright in any storage medium or any feature of the database that is uncopyrightable, the specialist may communicate with the applicant or may refuse registration if the claim appears to be based solely on those features. Examples of unacceptable terms include the following or any combination of the following:

- Database design
- Database interface
- Database structure
- Data system

If the applicant intends to register other copyrightable material that appears in the database, the applicant should describe the specific form of authorship that the author contributed to that material, such as "text," "photographs," "artwork," or the like.

If the database contains an appreciable amount of previously published material, previously registered material, public domain material, or material that is not owned by the copyright claimant, the applicant should exclude that material from the claim by using the procedure described in Chapter 600, Section 621.8.

727.4 Deposit Requirements

For a discussion of the deposit requirements for registering a specific version of a single-file or multi-file database, see Chapter 1500, Section 1509.1(G).

For a discussion of the deposit requirements for registering a group of updates or revisions for a database, see Chapter 1100, Section 1112.6.

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Works of the Performing Arts

801 What This Chapter Covers

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

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

801.1 Performing Arts Division

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

801.2 What Is a Work of the Performing Arts?

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

- Musical Works, including any accompanying words.
- Sound Recordings.
- Dramatic Works, including any accompanying music.
- Choreographic works.
- Pantomimes.

- Audiovisual Works.
- Motion Pictures.

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

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

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

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

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

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

801.3 Fixation of Works of the Performing Arts

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

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

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

801.3(A) Copies

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

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

801.3(B) Phonorecords

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

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

801.4 Copyrightable Authorship in Works of the Performing Arts

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

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

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

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

- Section 802.5: Musical Works.
- Sections 803.5 and 803.6(B): Sound Recordings.
- Section 804.6: Dramatic Works.
- Section 805.4: Choreographic Works.
- Section 806.4: Pantomimes.
- Section 807.5: Audiovisual Works.
- Section 808.7: Motion Pictures.

801.5 Uncopyrightable Material in Works of the Performing Arts

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

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

801.6 Joint Authorship in Works of the Performing Arts

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

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

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

If the multiple authors of a work created their contributions with the intention of merging them into a unitary, interdependent whole at the time of creation, their contributions should be registered together as a joint work on the same application. If the authors did not intend for their separate elements to be merged into an interdependent whole, the separate copyrightable elements should be registered as separate works on separate applications. *See* H.R. REP. NO. 94-1476, at 120 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5736 (stating that the "touchstone" of the definition of a joint work "is the intention, at the time the writing is done, that the parts be absorbed or combined into an integrated unit…"); S. REP. NO. 94-473, at 103 (1975). If the parts of the unitary work are inseparable, each joint author must be listed in the application unless the work is a work made for hire.

Examples:

- Jay Munroe, Justin Edison, and Ava Applebaum wrote a musical drama together, entitled *Life on Mars*. Jay wrote the book (script), and Justin and Ava wrote the songs, with Justin writing the lyrics and Ava the music. Jay, Justin, and Ava are joint authors of the musical and all three of them should be named in the application.

- Jay Munroe writes the script for a new musical based on music previously recorded by the recording artist, Shawn 2K. He obtains the appropriate licenses from Shawn 2K to use the music in the musical. Jay and Shawn 2K are not joint authors. The script and the music should be registered separately.

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

801.7 Works Made for Hire

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

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

801.8 Derivative Works

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

Examples:

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

Copyright protection provides exclusive rights to the author and/or owner of the copyrighted work. One of those exclusive rights is the right to create derivative works. *See* 17 U.S.C. § 106(2). Generally, if the author of the derivative work is not the copyright owner of the preexisting work, and the preexisting work is still under copyright protection, the author of the derivative work may not use the preexisting copyrighted work as the basis for a new work, unless a copyright exception applies. *See, e.g.*, 17 U.S.C. § 115 (providing a compulsory license for the creation of a new sound recording of a preexisting nondramatic musical work).

Example:

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

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

801.9 Compilations

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

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

801.10 Collective Works

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

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

801.11 Completing the Application for Works of the Performing Arts

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

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

- Section 802.9: Musical Works.
- Section 803.9: Sound Recordings.

- Section 804.9: Dramatic Works.
- Section 805.9: Choreographic Works.
- Section 806.7: Pantomimes.
- Section 807.8: Audiovisual Works.
- Section 808.11: Motion Pictures.

801.12 Deposit Requirements for Works of the Performing Arts

For information concerning the deposit requirements for works of the performing arts, see Chapter 1500, Section 1509.2.

802 Musical Works

802.1 What Is a Musical Work?

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

802.2 Musical Works Distinguished from Other Types of Works

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

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

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

802.2(B) Musical Works Distinguished from Sound Recordings

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

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

802.3 Elements of Musical Works

The Office's registration specialists examine musical works for copyrightable authorship. The main elements of copyrightable musical work authorship include

melody, rhythm, harmony, and lyrics, if any. These terms are defined in Sections 802.3(A) through 802.3(D).

802.3(A) Melody

Melody is a linear succession of pitches.

802.3(B) Rhythm

Rhythm is the linear succession of durational sounds and silences.

802.3(C) Harmony

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

802.3(D) Song Lyrics

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

802.4 Fixation of Musical Works

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

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

802.4(A) Copies

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

Copies of musical works include the following:

- Hard copy formats, including but not limited to sheet music and lead sheets.
- Non-audio digital files, including text files (*e.g.*, .pdf or Microsoft Word) or files created by music notation software embodied in compact discs, flash drives, hard drives, and other digital file storage devices.

- Music accompanying a motion picture or other audiovisual work (as fixed in the audiovisual work).

- A non-audio digital file (*e.g.*, digital notation) that is uploaded to the Office's server in support of an online application.

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

802.4(B) Phonorecords

Phonorecords of musical works include the following:

- Hard copy formats embodying recorded sound, including but not limited to compact discs, vinyl records, and tapes.

- Digital audio files embodying recorded sound, including .wav, .mp3, .wma (uploaded or embodied in compact discs, flash drives, and other digital file storage devices). A digital audio file that is uploaded to the Office's server in support of an electronic registration application is a phonorecord for registration purposes.

For the deposit requirements for musical works published in phonorecords, see Chapter 1500, Sections 1509.2(A)(2)(a) and 1509.2(A)(2)(c). For unpublished musical works, see Chapter 1500, Section 1509.2(A)(1).

802.4(C) Motion Pictures

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

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

802.5 Copyrightable Authorship in Musical Works

802.5(A) Independent Creation

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

- Diatonic or chromatic scales.

- Arpeggios.

- Chord symbols based on standard chord progressions.

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

802.5(B) Creative Expression

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

802.5(C) Human Authorship

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

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

802.6 Derivative Musical Works

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

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

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

802.6(A) Permission to Use Preexisting Material

Musical works that unlawfully employ a work that is protected by copyright are not subject to copyright protection if they are inseparably intertwined with the preexisting work. 17 U.S.C. § 103(a); *see also* H.R. REP. NO. 94-1476, at 57-58 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5670-5671; S. REP. NO. 94-473, at 54-55 (1975).

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

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

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

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

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

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

802.6(C) Musical Arrangements

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

802.6(C)(1) Harmonization

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

Example:

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

802.6(C)(2) Instrumentation

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

Examples of sufficient original authorship:

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

802.6(D) Adaptations

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

Examples:

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

802.6(E) Variations

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

802.6(F) Setting

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

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

802.6(G) Musical Works Containing Samples or Interpolation

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

802.6(H) Revised or Additional Music / Lyrics

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

802.6(I) Editorial Authorship

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

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

802.6(J) Method Books

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

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

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

802.7 Collective Musical Works

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

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

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

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

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

802.8 Registration Issues

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

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

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

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

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

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

It also may be possible to register multiple musical works together with a sound recording of each work if the compositions and the recordings are owned by the same claimant and if they were packaged or physically bundled together as a single unit and first published on the same date. This is known as the unit of publication option. For information concerning this option, see Chapter 1100, Section 1103.

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

Examples:

- Louise and Stan co-created a song and co-produced a recording of their composition. Louise wrote the music for the song and sang the vocals on the recording. Stan wrote the lyrics and played guitar on the recording. Louise and Stan co-own the copyright in both the song and the sound recording; therefore, both works may be registered with the same application. The applicant should complete an SR application and should name Louise and Stan as the co-claimants for the music, lyrics, and sound recording.

- Renuka wrote the music and lyrics for a song, and she owns the copyright in her composition. Renuka and Gopal co-produced a sound recording of this song, and they co-own the copyright in that recording. Because the ownership of the song and the sound recording are different, they must be registered with separate applications. The applicant should complete a PA application naming Renuka as the author/claimant of the musical composition, and an SR application naming Renuka and Gopal as the co-authors and co-claimants of the sound recording.

802.8(B) Identifying the Author

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

802.8(C) Joint Authorship

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

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

Examples:

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

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

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

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

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

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

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

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

Where the authors are members of a performing group and the applicant wishes to include the name of the performing group in the record, the applicant may provide that information in the Note to Copyright Office field of the online application. When completing a paper application, the applicant should list each author in the Author space

and may include the statement "member of [performing group X]." In both cases, the registration specialist will add the name of the performing group to the record as an index term.

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

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

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

Example:

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

802.8(E) Work Made for Hire Authorship

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

If the application states that a musical work was a work made for hire, the registration specialist may communicate with the applicant to determine whether the musical work truly falls within the statutory definition. Since musical works are not one of the categories listed under part two of the work made for hire definition set forth in § 101 of

the Copyright Act, a musical work must fall under part one of the definition or one of the particular uses identified under part two of the statutory definition to be considered a work made for hire.

Examples:

- The applicant names Joe Smith as author of lyrics and music, answers "yes" to the "work made for hire" question, and states that Joe wrote the lyrics and paid a friend to write the music. The registration specialist may communicate with the applicant and provide information on works made for hire, because it appears unlikely (i) that Joe's friend was employed by Joe and created the music within the scope of his employment, (ii) that the music was specially commissioned in a signed, written agreement, or (iii) that the music falls within one of the nine categories that may be specially ordered or commissioned as a work made for hire.

- The applicant submits an album containing dozens of short, copyrightable musical selections that are intended to be licensed as television cues. The applicant names TV Production Music, LLC as the author of the music, states that the work is made for hire, and states that the company owns the copyright in both the music and the album as a whole. It is possible that the company's employees compose television production music. In the alternative, it is possible that the music was specially ordered or commissioned for use as part of a motion picture or as a contribution to a collective work. The registration specialist will register the claim with an annotation, such as: "Basis for registration: Collective work."

For a full discussion of work made for hire authorship, see Chapter 500, Section 506.

802.8(F) Publication Issues

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

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

of January 1, 1978, and the musical work was not subsequently rereleased, the work may be registered as an unpublished work.

For more information on publication, see Chapter 1900.

802.8(G) [Reserved]

802.8(H) [Reserved]

802.9 Application Tips for Musical Works

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

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

802.9(A) Type of Work

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

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

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

802.9(B) Title of Work

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

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

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

802.9(C) Year of Completion

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

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

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

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

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

- Music
- Lyrics
- Text
- Musical Arrangement

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

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

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

802.9(E) Unclear Authorship Terms

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

802.9(E)(1) Instrument Names / Vocals

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

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

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

802.9(E)(2) Production / Produced

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

802.9(E)(3) Rap

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

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

802.9(E)(4) Beats

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

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

802.9(E)(5) Loops

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

802.9(E)(6) Transcription

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

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

802.9(E)(7) Sound Effects

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

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

If the work being registered is a derivative work or a compilation of preexisting works, the use of the underlying works must be lawful and the preexisting material must be identified and excluded from the claim. When completing an online application, the applicant should provide this information in the Material Excluded and New Material Included fields. When completing a paper application, the applicant should provide this information in the Preexisting Material and Material Added to This Work space. For information on how to complete these portions of the application, see Chapter 600, Section 621.8.

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

Example:

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

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

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

802.10 Deposit Requirements for Musical Works

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

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

803 Sound Recordings

803.1 What Is a Sound Recording?

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

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

803.2 Sound Recordings Distinguished from Other Types of Works

803.2(A) Sound Recordings Distinguished from Musical Works

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

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

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

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

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

803.3 Elements of Sound Recordings

There are two types of sound recording authorship:

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

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

803.3(A) Performance Authorship

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

803.3(B) Production Authorship

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

803.4 Fixation of Sound Recordings

A sound recording is "fixed" in a tangible medium of expression when its embodiment in a phonorecord, "by or under the authority of the author, is sufficiently permanent or

stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration." 17 U.S.C. § 101 (definition of "fixed").

803.4(A) Unauthorized Fixation

To be "fixed," a live performance must be recorded by or under the authority of the performer. *See* 17 U.S.C. § 101. If a live performance is recorded without the performer's permission, the U.S. Copyright Office cannot register that recording.

803.4(B) Types of Phonorecords

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

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

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

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

803.4(C) Insufficiently Fixed Formats

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

803.5 Copyrightable Authorship in Sound Recordings

803.5(A) Independent Creation

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

803.5(B) Creative Expression

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

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

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

803.5(C) Human Authorship

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

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

803.5(D) Pre-1972 Sound Recordings

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

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

NOTE: Sound recordings fixed before February 15, 1972 may be protected under state common law or statutes. The 1976 Copyright Act provides that any rights or remedies under the common law or statutes of any State shall not be annulled or limited by federal copyright law until February 15, 2067. 17 U.S.C. § 301(c). The Orrin G. Hatch – Bob Goodlatte Music Modernization Act ("MMA") also provides owners of pre-1972 sound recordings with certain protections and remedies for copyright infringement if their recordings are used without authorization. To exercise these remedies, owners typically must file schedules with the U.S. Copyright Office listing their sound recordings and specifying the name of the rights owner, title, and featured artist for each recording. 17 U.S.C. § 1401(f)(5)(A). Additional information concerning the MMA and instructions on how to file a schedule is available on the Office's website.

803.6 Derivative Sound Recordings

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

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

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

803.6(A) Permission to Use Preexisting Material

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

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

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

803.6(B) Copyrightable Authorship in Derivative Sound Recordings

To be registrable, a derivative sound recording must contain a sufficient amount of new, creative sound recording authorship. Where the changes made to the preexisting sound recording are the result of a purely mechanical process rather than creative human authorship, or where only a few slight variations or minor additions have been made, registration will be refused. *See* Section 803.5(B) and 803.5(C).

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

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

803.6(B)(1) Additional Sounds

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

803.6(B)(2) Remix

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

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

803.6(B)(3) Editorial Authorship

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

803.6(B)(4) Sound Recordings Containing Samples

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

803.6(B)(5) Mashups

For sound recordings, a mashup is a track formed by combining elements from two or more preexisting (often disparate) works. A simple example would be laying a vocal track from one work on top of the instrumental track from another. Usually, the preexisting materials are edited and remixed in order to create a seamless, integrated work. Copyrightable editing / remixing authorship that has been added may support a

derivative authorship claim. Mashups that unlawfully employ preexisting sound recordings are not subject to copyright protection. 17 U.S.C. § 103(a).

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

803.6(B)(6) Mixtapes

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

803.7 Compilations of Preexisting Sound Recordings

803.7(A) Registrable Compilations

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

Examples:

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

803.7(B) Unregistrable Compilations

A re-issue containing previously released or registered sound recordings cannot be registered as a compilation unless the author contributed a sufficient amount of original authorship in selecting or arranging the preexisting sound recordings. For instance, taking all the works by a particular artist and arranging them in chronological order would not be registrable, because there is no creativity in selecting all the artist's works and putting them in date order.

Examples:

- Two previously released albums are combined onto a single CD and rereleased; the tracks are not reordered. The registration specialist will refuse registration because the author merely combined two preexisting albums, which does not represent enough original authorship to support a claim in a compilation of sound recordings.

- Kalorama Records released a box set of all of the singles that the label released in a particular calendar year, presented in chronological order. The registration specialist will refuse registration because the order of the singles was predetermined by the order of the calendar year.

803.8 Registration Issues

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

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

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

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

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

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

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

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

Examples:

- Bob and Mary co-created a song and co-produced a recording of their composition. Bob wrote the lyrics for the song and sang the vocals on the recording. Mary wrote the music and played keyboards on the recording. Bob and Mary co-own the copyright in both the song and the sound recording; therefore, both works may be registered with the same application. The applicant should complete an SR application and should name Bob and Mary as the co-claimants for the music, lyrics, and sound recording.

- Sam wrote the music and lyrics for a song, and he owns the copyright in his composition. Sam and Bill co-produced a sound recording of this song, and they co-own the copyright in that recording. Because the ownership of the song and the sound recording are different, they must be registered with separate applications. The applicant should complete a PA application naming Sam as the author/claimant of the musical composition, and an SR application naming Sam and Bill as the co-authors and co-claimants of the sound recording.

803.8(B) Joint Authorship

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

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

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

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

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

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

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

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

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

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

803.8(D) Work Made for Hire Authorship

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

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

803.8(E) Executive Producer

An executive producer of a sound recording generally is involved only in the financial or administrative aspect of production. This type of contribution does not constitute copyrightable sound recording authorship. When an executive producer does contribute copyrightable sound recording authorship, the applicant should describe that author's contribution using the term "sound recording," rather than "executive producer."

803.8(F) Publication Issues

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

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

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

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

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

803.8(F)(2) Combination CD / DVD

It is not possible to register the same series of sounds both as a sound recording and as sounds accompanying a motion picture. If an applicant submits a package containing a

published CD and DVD, and attempts to register the same sounds both as a sound recording and as sounds accompanying a motion picture (such as a live concert and a concert video published together on the same date), the claim may include either the sound recording or the sounds accompanying the motion picture, but not both. For additional information concerning this issue, see Section 803.8(F)(1).

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

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

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

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

803.8(G) [Reserved]

803.8(H) [Reserved]

803.9 Application Tips for Sound Recordings

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

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

803.9(A) Type of Work

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

NOTE: If the applicant attempts to register a sound recording as a "Work of the Performing Arts" or with Form PA (or selects any other Type of Work other than "Sound Recording" or uses any paper application other than Form SR), the registration

specialist will change the Type of Work to "Sound Recording" or change the application to a Form SR without communicating with the applicant.

803.9(B) Title of Work

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

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

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

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

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

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

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

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

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

803.9(D) Unclear Authorship Terms

When completing the Author Created field or the Nature of Authorship space, the applicant should avoid ambiguous or unclear terms, such as referring to the physical object in which the sound recording has been fixed (*e.g.*, CD, mp3, tape, etc.). Additional

unclear terms are discussed in Chapter 600, Section 618.8(A) and in Sections 803.9(D)(1) through 803.9(D)(5) below.

803.9(D)(1) Instrument Names / Vocals

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

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

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

803.9(D)(2) Narration / Spoken Words

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

803.9(D)(3) Rap

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

803.9(D)(4) Beats / Music Track

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

The beat or "music track" may be preexisting in whole or in part, or it may be completely original. Where the beat is completely original, it may be described as a "sound recording." Where a preexisting beat or music track has been used, the material generally should be excluded from the claim. For more information on derivative sound recording authorship, see Section 803.6.

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

Example:

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

803.9(D)(5) Executive Producer

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

803.9(D)(6) Sound Effects

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

uncopyrightable material or unclaimable material, the specialist will communicate with the applicant.

803.9(E) Claims in Hidden Tracks

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

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

If the sound recording is a derivative work or a compilation of preexisting works, the use of the underlying works must be lawful and the preexisting material must be identified and excluded from the claim. When completing an online application, the applicant should provide this information in the Material Excluded field. When completing a paper application, the application should provide this information in the Preexisting Material space.

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

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

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

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

803.9(F)(2) Samples

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

Example:

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

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

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

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

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

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

- Declicking
- New format
- Noise reduction
- Reissue

803.10 Deposit Requirements for Sound Recordings

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

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

804 Dramatic Works

804.1 What Is a Dramatic Work?

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

804.2 Dramatic Works Distinguished from Other Types of Works

804.2(A) Dramatic Works Distinguished from Nondramatic Literary Works

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

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

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

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

804.3 Elements of Dramatic Works

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

804.3(A) Plot

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

804.3(B) Characters

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

804.3(C) Dialog / Monolog

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

804.3(D) Stage Directions and Directions for Performance

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

804.3(D)(1) Stage Business

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

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

804.3(D)(2) Blocking

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

804.3(E) Music in Dramatic Works

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

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

Illustrations of costumes, scenery, sets, props, and lighting may be included in a dramatic work. If the illustrations are copyrightable, they may be registered as visual arts works. A textual description of such works may also be registered as a literary work, but the registration does not extend to the costume, prop, set or lighting itself. For more information on literary works and visual arts works, see Chapters 700 and 900. For more information on costumes, see Chapter 900, Section 924.3(A)(2).

804.4 Types of Dramatic Works

804.4(A) Stage Plays

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

804.4(B) Musical Plays

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

804.4(C) Screenplays

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

804.4(D) Teleplays

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

804.4(E) Radio Plays

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

804.4(F) Precursors of Dramatic Works

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

804.4(F)(1) Synopses

A synopsis is a summary of the major plot points and description of the characters in a play or other dramatic work, generally consisting of at least a page or two of text. A registration for a synopsis extends to the text of the synopsis submitted to the U.S.

Copyright Office, but it does not extend to the completed dramatic work or the idea for the dramatic work. For guidance on registering these types of works, see Section 804.8(B).

804.4(F)(2) Treatments

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

804.5 Fixation of Dramatic Works

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

804.5(A) Copies

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

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

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

804.5(B) Phonorecords

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

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

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

804.6 Copyrightable Authorship in Dramatic Works

804.6(A) Independent Creation

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

804.6(B) Creative Expression

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

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

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

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

804.7 Derivative Dramatic Works

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

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

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

804.7(A) Dramatizations or Adaptations

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

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

Examples:

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

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

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

804.7(B) Revisions

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

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

804.7(C) Translations

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

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

804.7(D) Stage Directions

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

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

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

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

804.8 Registration Issues

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

804.8(A) Joint Authorship

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

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

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

For examples that illustrate these practices, see Section 801.6.

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

Different components of a dramatic work may be registered together as a joint work if the authors intended to merge their contributions into a single, unitary whole. By

contrast, the elements should be registered separately if there was no intent to merge the elements when the authors created them. If there is some indication in the registration materials that the authors of the separate elements did not intend to merge the elements into a unitary whole (*e.g.*, separate copyright notices), the registration specialist may communicate with the applicant to clarify the authors' intent.

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

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

Examples:

- Two authors of a musical play submit one application to register a musical play as a joint work. Author A wrote the libretto, and Author B wrote the lyrics and music. Both authors claim ownership in the musical play as a whole. The musical play will be registered as a joint work.

- Three authors of a hip-hop musical play wish to register their copyright claims as a joint work. The work contains a sixty-page script and fifteen songs. Author A wrote the script, Author B wrote thirteen of the fifteen songs, and Author C wrote two of the fifteen songs. The Office may communicate with the applicant to clarify whether Author C is, in fact, a joint author and owner of the musical play. If not, the songs by Author C must be registered separately.

804.8(B) Synopses

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

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

Where the synopsis is very short and/or merely amounts to an idea (*e.g.*, "I have an idea for a television show that will feature famous guest stars"), the specialist will refuse

registration if the authorship is insufficient to support a claim in a dramatic work or literary work. Where the work contains sufficient text to be copyrightable, but it is clear that the applicant is seeking to protect the idea, the specialist may add an annotation to the record, such as: "Regarding authorship information: Ideas not copyrightable. 17 USC 102(b)."

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

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

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

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

The redacted copy of the work must reveal at least half the work, and the redaction must be done in a manner that will allow the Office to compare and authenticate the redacted copy with an unredacted copy of the same work. If the work is approved for registration, the registration specialist will add an annotation to the record, such as: "Regarding deposit: Special relief granted under 37 CFR 202.20(d)."

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

804.8(D) Publication Issues

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

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

(finding that publication of the 1963 film *McLintock!* published all underlying works embodied in the film, including screenplays).

804.9 Application Tips for Dramatic Works

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

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

804.9(A) Type of Work

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

804.9(B) Joint Authors

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

Examples:

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

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

For additional guidance in completing this portion of the application, see Chapter 600, Section 613.

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

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

In all cases, the applicant should clearly and accurately describe the author's contribution to the work. When completing an online application, the applicant may select the boxes marked "text," "music," "lyrics," and/or "musical arrangement" in the Author Created field. If the author created the text that appears in the dramatic work,

the applicant may describe that text by writing one or more of the following terms in the field marked Other.

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

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

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

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

- Idea
- Plot
- Format
- Characters
- Stage directions

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

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

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

When completing an online application, the applicant should provide this information in the Material Excluded and New Material Included fields. When completing a paper application, the application should provide this information in the Preexisting Material

and Material Added to This Work space. For information on how to complete these portions of the application, see Chapter 600, Section 621.8.

Example:

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

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

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

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

804.9(D)(2) Translations

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

804.9(D)(3) Stage Directions

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

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

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

Examples:

- The applicant names Joe Lego as the author of "text of stage directions" and states that the author used the preexisting play *Carpe Diem* by David Abraham "with permission." The registration specialist will register the claim if the text is sufficiently creative.

- The applicant names Mary Claire as the author of "text of stage directions." In the Material Excluded field the applicant states "script by David Snow" and the script deposited names David Snow as author of that work. The registration specialist will communicate with the applicant to clarify whether the use of the preexisting dramatic work was lawful.

804.10 Deposit Requirements for Dramatic Works

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

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

805 Choreographic Works

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

805.1 What Is a Choreographic Work?

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

The word "choreography" is derived from the Greek words "*choreia*," meaning "dance," and "*graphikos*," meaning "to write." A dance is the "static and kinetic succession[] of bodily movement in certain rhythmic and spatial relationships." *Horgan v. Macmillan,*

Inc., 789 F.2d 157, 161 (2d Cir. 1986) (quoting COMPENDIUM (SECOND) § 450.01). The Office defines choreography as the composition and arrangement of "a related series of dance movements and patterns organized into a coherent whole." *Id.* (quoting COMPENDIUM (SECOND) § 450.03(a)).

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

805.2 Elements of Choreographic Works

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

805.2(A) Rhythmic Movement in a Defined Space

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

805.2(B) Compositional Arrangement

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

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

805.2(C) Musical or Textual Accompaniment

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

The accompaniment for a choreographic work typically provides an established rhythm or theme for the work. In some cases, choreographic works may be intended to express—through bodily movement—the themes or emotions conveyed by a specific

musical composition or literary work. *See* U.S. COPYRIGHT OFFICE, COPYRIGHT OFFICE STUDY NO. 28, COPYRIGHT IN CHOREOGRAPHIC WORKS, at 93 n.2 (1961) ("COPYRIGHT OFFICE STUDY NO. 28") ("Choreography is commonly devised to be performed with music; the dance may be intended to express a theme suggested by the music, or the music may be intended to heighten the dramatic effect of the dance.").

805.2(D) Dramatic Content

A choreographic work may present a story or theme or it may be an abstract composition. *See* U.S. COPYRIGHT OFFICE, REPORT OF THE REGISTER OF COPYRIGHTS ON THE GENERAL REVISION OF THE U.S. COPYRIGHT LAW 17 (COMM. PRINT 1961) ("We see no reason why an 'abstract' dance, as an original creation of a choreographer's authorship, should not be protected as fully as a traditional ballet presenting a story or theme.").

Choreographic works often tell a story, develop characters or themes, and convey dramatic concepts or ideas through a sequence of bodily movements presented in an integrated, compositional whole. "Choreographic works of this character are typified by ballets." COPYRIGHT OFFICE STUDY NO. 28, at 101.

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

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

805.2(E) Presentation Before an Audience

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

805.2(F) Execution by Skilled Performers

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

805.3 Fixation of Choreographic Works

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

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

805.3(B) Capacity for Uniform Performance

A choreographic work should be fixed in a form that reveals "the movements of the dance in sufficient detail to permit the work to be performed therefrom." COPYRIGHT OFFICE STUDY NO. 28, at 103. In other words, the specific movements and physical actions that constitute the choreographic work should be fixed in a form that allows the work to be performed in a consistent and uniform manner.

805.3(C) Improvisation

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

805.3(D) Forms of Fixation for Choreographic Works

805.3(D)(1) Dance Notation

Dance notation may be used to represent the precise movement of the dancers in a choreographic work. Examples of dance notation systems include Labanotation (which employs abstract symbols), Benesh Dance Notation (which employs stick figures), among other systems. *See generally* Ann Hutchinson Guest, CHOREO-GRAPHICS: A COMPARISON OF DANCE NOTATION SYSTEMS FROM THE FIFTEENTH CENTURY TO THE PRESENT (1989).

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

805.3(D)(2) Audiovisual Recordings

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

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

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

805.4 Copyrightable Authorship in Choreographic Works

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

805.4(A) Copyrightable Subject Matter

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

When evaluating a claim to copyright in choreography, the registration specialist will use objective criteria to determine whether the work is a dance that constitutes copyrightable subject matter under Section 102(a)(4) of the Copyright Act. In making this determination, the specialist will focus on the intrinsic nature of the work, rather than the specific performance that is reflected in the deposit copy(ies). The primary criteria that the specialist will consider are set forth in Section 805.2. These elements are found in most choreographic works, although the presence or absence of a particular element may not be determinative.

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

805.4(B) Choreographic Authorship

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

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

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

805.4(C) Human Performance Required

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

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

As discussed in Section 805.5(B), social dances, simple routines, and other uncopyrightable movements cannot be registered as separate and distinct works of authorship, even if they contain a substantial amount of creative expression. Nevertheless, uncopyrightable movements may be used as the building blocks for a choreographer's expression, in much the same way that words and short phrases provide the basic material for writers. Choreographic works that incorporate social dance steps, simple routines, or even athletic exercises may be protected by copyright, provided that the work as a whole contains a sufficient amount of choreographic authorship. *See Horgan*, 789 F.2d at 161 (quoting COMPENDIUM (SECOND) § 450.06).

Example:

- José Eduardo da Silva created the choreography for a complex dance production titled, *Tango de Janeiro*. One of the dances in the production incorporates an extensive number of steps and routines

from a social dance. While the overall production could be registered as a choreographic work, the U.S. Copyright Office would reject a claim limited to the adapted social dance.

805.5 Uncopyrightable Dances and Dance Steps

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

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

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

Examples:

- Aruna Desai choreographed a music video for a song titled "Made in the USA." The dance is a complex and intricate work performed by a troupe of professional dancers. During the chorus, the dancers form the letters "U, S, A" with their arms. Although the dance as a whole could be registered as a choreographic work, the Office would reject a claim limited to the "U, S, A" gesture.

- Butler Beauchamp is a wide receiver for a college football team. Whenever he scores a touchdown, Butler performs a celebratory dance in the endzone. The dance merely consists of a few movements of the legs, shoulders, and arms. The Office would refuse to register this dance as a choreographic work.

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

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

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

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

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

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

The registration specialist will use objective criteria to determine whether a particular work falls on one side of the continuum or the other. The primary criteria that the specialist will consider are set forth in Section 805.2. The presence or absence of a particular element is not determinative. Instead, the specialist will consider the intrinsic nature of the work, including its individual elements as well as the work as a whole, to determine whether it is the type of dance that constitutes copyrightable subject matter under Section 102(a)(4) of the Copyright Act.

805.5(B)(1) Simple Routines

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

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

805.5(B)(2) Social Dances

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

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

Choreographic works are compositions that are intended to be performed by skilled dancers, typically for the enjoyment of an audience. By contrast, social dances are intended to be performed by members of the general public for their own personal enjoyment. In other words, "social dances are intended to be *executed by* the public, not to be *performed for* the public as audience." COPYRIGHT OFFICE STUDY NO. 28, at 100. Performing a social dance is often a participatory, social experience, while the

performance of a choreographic work is an expressive act that is typically intended to be performed for the enjoyment of others. Whereas social dances are generally capable of being performed by members of the public, choreographic works typically cannot. *See id.* at 93, 100.

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

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

Example:

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

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

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

Non-expressive physical movements, such as "ordinary motor activities" or "functional physical movements" — in and of themselves — do not represent the type of authorship that Congress intended to protect as choreography. Registration of Claims to Copyright, 77 Fed. Reg. at 37,607. The U.S. Copyright Office cannot register a claim to copyright in such non-expressive activities. *See Bikram's Yoga College of India, L.P. v. Evolation Yoga, LLC,* 803 F.3d 1032 (2015) (declining to extend copyright protection in a book describing yoga poses to the yoga poses themselves). Examples of non-expressive

physical movements that cannot be registered with the Office include exercise routines, aerobic dances, yoga positions, and the like.

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

Examples:

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

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

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

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

805.6 Derivative Choreographic Works

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

Examples:

- Adding a new section to Petipa's *Don Quixote.*
- A modern dance version of the ballet *The Nutcracker*.

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

805.7 Compilations

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

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

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

Unlike other categories of authorship, such as literary works, musical works, pictorial, graphic, or sculptural works, audiovisual works, and sound recordings, the mere selection, coordination, and arrangement of bodily movements does not necessarily result in the creation of a choreographic work, even if the work contains more than a *de minimis* number of dance movements. As discussed in Section 805.4(D), an expressive dance composition may qualify as a choreographic work if it "represents a related series of dance movements and patterns organized into a coherent whole." *Horgan*, 789 F.2d at 161 (quoting COMPENDIUM (SECOND) § 450.03(a)). As a general rule, classical ballet and

modern abstract dance are considered choreographic works, because they objectively constitute an expressive compositional whole. By contrast, many combinations of dance steps or other physical movements do not satisfy this requirement.

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

805.8 Registration Issues

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

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

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

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

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

805.8(B) Choreographic Work Combined with a Musical Work

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

805.8(C) Capacity for Uniform Performance

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

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

Example:

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

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

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

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

the description in its narrative or graphic form, would not extend to the execution of the dance.”).

805.9 Application Tips for Choreographic Works

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

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

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

805.10 Deposit Requirements for Choreographic Works

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

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

806 Pantomimes

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

806.1 What Is a Pantomime?

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

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

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

806.2 Elements of Pantomimes

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

806.2(A) Movements and Gestures in a Defined Space

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

806.2(B) Compositional Arrangement

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

806.2(C) Silent Action

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

806.2(D) Dramatic Content

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

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

806.2(E) Presentation Before an Audience

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

806.3 Fixation of Pantomimes

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

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

806.3(B) Capacity for Uniform Performance

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

806.3(C) Improvisation

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

806.3(D) Forms of Fixation for Pantomimes

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

806.4 Copyrightable Authorship in Pantomimes

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

806.4(A) Copyrightable Subject Matter

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

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

806.4(B) Pantomime Authorship

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

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

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

806.4(C) Human Performance Required

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

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

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

Example:

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

806.5 Uncopyrightable Pantomimes

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

806.5(A) *De Minimis* Movements

As discussed in Section 806.1, pantomime is the art of imitating, presenting, or acting out situations, characters, or events through the use of movements, gestures, and facial expressions. Individual movements, gestures, or expressions by themselves are not copyrightable. Likewise, the U.S. Copyright Office cannot register a pantomime consisting of a few stock gestures, movements, or facial expressions with minor linear or

spatial variations, such as pretending to be stuck inside an invisible box or using stiff arms and legs to suggest the movement of a mechanical doll. *Cf.* 37 C.F.R. § 202.1(a).

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

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

The U.S. Copyright Office cannot register a claim to copyright in such non-expressive activities. *See Bikram's Yoga College of India, L.P. v. Evolation Yoga, LLC,* 803 F.3d 1032 (2015) (declining to extend copyright protection in a book describing yoga poses to the yoga poses themselves). Examples of non-expressive physical movements that cannot be registered with the Office include exercise routines, aerobic dances, yoga positions, and the like.

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

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

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

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

806.6 Registration Issues

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

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

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

806.6(B) Capacity for Uniform Performance

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

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

806.7 Application Tips for Pantomimes

When registering a claim in a pantomime using the online application, the applicant should select "Work of the Performing Arts" as the "Type of Work." When registering a claim using a paper application, the applicant should complete Form PA.

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

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

806.8 Deposit Requirements for Pantomimes

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

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

807 Audiovisual Works

807.1 What Is an Audiovisual Work?

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

Types of audiovisual works include:

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

807.2 Audiovisual Works Distinguished from Other Types of Works

807.2(A) Audiovisual Works Distinguished from Motion Pictures

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

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

There is a legal distinction between the "soundtrack" of an audiovisual work and a "sound recording." The statutory definition of a sound recording specifically states that

this category does not include "sounds accompanying a motion picture or other audiovisual work." 17 U.S.C. § 101. Thus, when registering a claim in the soundtrack for an audiovisual work, the applicant should state "sounds," "soundtrack," or "sounds accompanying an audiovisual work" in the application, rather than "sound recording."

For further information concerning sound recordings, see Section 803.

807.2(C) Audiovisual Works Distinguished from Visual Art Works

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

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

807.2(D) Audiovisual Works Distinguished from Literary Works

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

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

807.3 Elements of Audiovisual Works

807.3(A) Visual Authorship

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

807.3(B) Series of Related Images

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

807.3(C) Intrinsic Use of Machine or Device

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

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

807.3(D) Single, Integrated Work

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

807.3(E) Aural Authorship

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

807.3(E)(1) Soundtrack

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

807.3(E)(2) Physical Integration of Sounds

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

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

807.4 Fixation of Audiovisual Works

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

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

807.5 Copyrightable Authorship in Audiovisual Works

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

807.5(A) Independent Creation

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

Example:

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

807.5(B) Creative Expression

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

Example:

- A slide of a famous work of art is displayed with extensive aural commentary. This would not be considered an audiovisual work,

because it does not contain a series of related images. The aural commentary may be registrable as a sound recording.

807.5(C) Human Authorship

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

Example:

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

807.6 Derivative Audiovisual Works

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

Examples:

- A CD-ROM that combines archival footage and photographs from the Korean War with a newly created narration, new interviews with veterans, and new textual information about the conflict.

- A karaoke disc that combines new pictorial displays with the lyrics and music of a preexisting song.

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

Examples:

- Revising a published website by adding new updates consisting of text and video clips.

- Writing new computer code for a published videogame so that the work can be released on a different platform.

When completing an application for a derivative work, the applicant should identify and exclude the preexisting material from the claim and describe the new authorship that

the author contributed to the preexisting work. The applicant also should limit the claim if the derivative work contains material created by others that is not a part of the claim.

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

807.7 Registration Issues

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

807.7(A) Videogames

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

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

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

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

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

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

If the differences do not appear in the audiovisual content, but instead appear solely in the computer programming that is used to achieve compatibility with the hardware and/or software for a particular device, console, platform, or operating system, the

applicant should register only one version of the audiovisual work. This version will cover the copyrightable content in the other versions. For guidance in registering multiple versions of a computer program that generates a videogame, see Chapter 700, Section 721.8.

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

807.7(B) Karaoke Displays

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

Example:

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

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

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

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

807.7(D) Banner Advertisements

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

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

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

Examples:

- Michael Williams submits an application to register his claim in a banner advertisement that he created for a local activist organization. The authorship is described as "audiovisual material." The deposit consists of short, textual phrases that alternate and zoom in and out with a mouse click. Michael's original song plays in the background. The claim to copyright in this work will be accepted because the work, as a whole, contains a sufficient amount of copyrightable authorship.

- Mika Roberts submits an application to register her claim in a banner advertisement that she created for a local religious organization. The ad consists of a line of scrolling continuous text that is a long quote from the Bible. In the background, a public domain religious hymn plays. The registration specialist will refuse to register this claim. Although there is a series of images, the work contains an insufficient amount of original material to support a copyright claim.

807.7(E) Slide Presentations

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

807.8 Application Tips for Audiovisual Works

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

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

807.8(A) Type of Work

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

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

visual art work. A website that predominantly contains text should be registered as a literary work.

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

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

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

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

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

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

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

807.9 Deposit Requirements for Audiovisual Works

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

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

808 Motion Pictures

808.1 What Is a Motion Picture?

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

808.2 Motion Pictures Distinguished from Other Types of Works

808.2(A) Motion Pictures Distinguished from Audiovisual Works

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

When an applicant asserts a claim in a "motion picture," the registration specialist will examine the material deposited to determine if the images impart some kind of motion. If the material submitted contains only still images, the specialist will request that the applicant change the authorship statement to "audiovisual material."

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

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

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

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

808.2(C) Motion Pictures Distinguished from Underlying Works

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

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

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

808.3 Elements of Motion Pictures

808.3(A) Impression of Motion Required

Motion pictures are audiovisual works that contain a series of images which are shown in a certain successive order that imparts the impression of motion. The impression of motion may be accomplished by action that is captured by the camera, such as the performance of one or more actors or the movement of fire in a fireplace, by animation, or through certain cinematic techniques, such as panning (the movement of the camera from one set point to another in a horizontal plane) or zooming (a camera shot in which the magnification of the objects by the camera lens is increased or decreased).

808.3(B) Device Needed for Viewing

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

808.3(C) Sound Not Required

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

808.3(D) Single, Integrated Work

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

808.4 Elements of Motion Picture Authorship

808.4(A) Production

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

808.4(B) Direction

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

808.4(C) Cinematography

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

808.4(D) Performance

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

808.4(E) Animation

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

808.4(F) Screenplay or Script

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

808.4(G) Works That Precede a Screenplay or Script

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

808.4(G)(1) Textual Proposal

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

808.4(G)(2) Synopsis

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

808.4(G)(3) Treatment

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

808.4(H) Editing

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

808.4(I) Musical Score

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

808.4(J) Soundtrack

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

808.5 Types of Motion Pictures

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

808.6 Fixation of Motion Pictures

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

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

808.6(A) Video Formats

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

808.6(A)(1) Videodiscs

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

Examples:

- DVD
- Blu-ray disc

808.6(A)(2) Digital Video Files

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

Examples:

- A CD-ROM or DVD-ROM

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

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

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

The most current list of acceptable file formats are posted on the Office's website.

808.6(A)(3) Videotape

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

Examples:

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

808.6(B) Film Format

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

Examples:

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

808.7 Copyrightable Authorship in Motion Pictures

808.7(A) Independent Creation

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

808.7(B) Creative Expression

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

Examples:

- The applicant submits a video recording of a child's birthday party. The claim in motion picture will be registered.

- The author cut two seconds from a preexisting film; the applicant submits a claim in editing. Because the authorship is *de minimis*, the claim will be refused.

808.7(C) Human Authorship

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

Examples:

- The applicant submits an application to register a work titled *Punish the Producers*. The applicant explains that the author transferred the motion picture from film to DVD, a process referred to as "digitization." The registration specialist will refuse the claim, because digitization is a mechanical process lacking any creative human authorship.

- A chimpanzee picks up a video camera, inadvertently turns it on and records images. The applicant submits a claim in a motion picture, naming the chimpanzee as the author. The registration specialist

will refuse to register the claim, because the author is not a human being.

808.8 Derivative Motion Pictures

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

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

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

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

808.8(A) Editing

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

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

808.8(B) Dubbed Soundtracks and Subtitled Motion Pictures

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

808.8(B)(1) Subtitles

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

808.8(B)(2) Dubbed Soundtracks

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

808.8(C) Closed and Open Captioning

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

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

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

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

808.8(D) Bonus Material Contained in DVD

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

808.8(E) Colorized Motion Pictures

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

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

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

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

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

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

808.9 [Reserved]

808.10 Registration Issues

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

808.10(A) Identifying the Author of a Motion Picture

A number of people may be involved in making a motion picture, including the producer, director, writer, camera operator, editor, and others. In some cases, these individuals may jointly be co-authors of the work. But in most cases, an individual contributor is not considered the author of a motion picture under U.S. copyright law,

because most motion pictures are created as a work made for hire. These issues are discussed below.

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

As described in Section 801.7, a work made for hire is a work that is either (i) prepared by an employee within the scope of his or her employment, or (ii) specially ordered or commissioned for use in various types of works, including a motion picture. 17 U.S.C. § 101. When a work is "made for hire," the employer or other party for whom the work was prepared is considered the author for copyright purposes.

The registration specialist may communicate with the applicant if it appears that the work made for hire portion of the application has been completed incorrectly.

Examples:

- An application for a major theatrical production names A&O Corporation as the author and the work made for hire question is answered "yes." The production statement on the footage identifies the motion picture as "An A&O Corporation Production." The application will be accepted.

- An applicant names Drew Corporation as the producer and Mary Crowson as the director and writer of a motion picture. The applicant checks the box indicating that Mary's contribution was a work made for hire. Drew Corporation is named as the sole claimant, and no transfer statement is provided. The registration specialist will communicate with the applicant to determine if Mary is an author of this work. Because the work made for hire box was checked "yes" and because Mary was not named as a co-claimant, it seems likely that Drew Corporation is the sole author and that Mary created the work for that company as a work made for hire.

- An applicant names Barry Monroe as the author and the work made for hire question is answered "yes." XYZ Corporation is named as the claimant and there is no transfer statement. The registration specialist will communicate with the applicant to determine if Barry is an author of this work.

For a general discussion of works made for hire, see Chapter 500, Section 506. For guidance in completing the work made for hire portion of the application, see Chapter 600, Section 614.

808.10(A)(2) Work Made for Hire Authorship and Foreign Motion Pictures

The copyright laws of many foreign countries do not include a work made for hire provision. Therefore, the registration specialist may communicate with the applicant if the applicant names an individual as the author of a foreign theatrical motion picture but does not indicate that the work was "made for hire."

808.10(A)(3) Joint Authorship

Under the Copyright Act, most motion pictures that are not works made for hire are considered joint works. As described in Section 801.6, a "joint work" is "a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." 17 U.S.C. § 101. For instance, the screenwriter, director, and cinematographer may be joint authors of a motion picture absent any agreement and assuming they each contributed a sufficient amount of original authorship to the work. The authors of a joint work are co-owners of the copyright in the entire work. In such cases, the authors' contributions are not subject to separate registrations.

For a general discussion of joint works, see Chapter 500, Section 505.

808.10(A)(3)(a) Identifying the Authors of a Joint Work

Generally, when a motion picture is a "joint work," the applicant should name all of the authors of that work, although the Office will accept an application that names only the major author(s). The major authors of a motion picture are usually the director or producer. For certain types of works, the camera operator, animator, or performer also may be considered major authors.

Examples:

- The applicant names the director as the sole author of a motion picture. The work is not a major commercial production. The credits name the director, as well as the producer and camera operator of the work. The registration specialist will register the claim.

- The applicant submits a "how to" video. The camera focuses mainly on an individual who delivers a lecture and performs a demonstration. The applicant names the lecturer as the sole author of the work. The registration specialist will register the claim.

- The applicant submits an application to register an episode of a television series, and names the editor as the sole author of the work. "Editing" is not a sufficient basis for asserting a claim in an entire motion picture. The registration specialist will communicate with the applicant to clarify the facts of the authorship.

808.10(A)(3)(b) Clarifying Joint Authorship

In some cases the applicant names two or more authors, but the motion picture does not appear to be a joint work. If so, the registration specialist may communicate with the applicant to determine whether the motion picture satisfies the statutory definition of a joint work.

Examples:

- An applicant names two authors/claimants: one created the motion picture, and the other composed the theme music. If the work does not appear to be "made for hire," the registration specialist may communicate with the applicant to determine whether the music and motion picture are separately owned and should be registered separately, particularly if the contributions are unequal and if it seems unlikely that the composer is a co-owner of the rights in the motion picture.

- A music video is submitted for registration naming the songwriter and director/producer as co-authors. The registration specialist will communicate with the applicant to determine whether the song and video are owned separately by their respective authors.

808.10(B) Executive Producer

To be considered an author of a motion picture, an individual must make a direct, creative contribution to the work. Individuals who manage only the business aspects of a motion picture project, such as executive producers, are not considered authors. If the application merely states that the author is the "executive producer" of the motion picture, the registration specialist will communicate with the applicant to determine if that individual contributed copyrightable authorship to the work.

808.10(C) Author and Authorship Variances

Generally, the registration specialist will compare the authorship statement given on the application with the credits on the copy or other information in the deposit material. If there is a variance, and the registration materials do not adequately explain the discrepancy, the specialist may communicate with the applicant to request clarification.

Examples:

- The applicant names Joan Craven as the author of "cinematography." The credits name three other individuals as camera operators, but they do not mention Joan. Because the word "cinematography" means camera work and because the credits contradict the information provided in the application, the registration specialist will communicate with the applicant.

- The applicant names Clark James as "producer, director, editor." The credits state "Produced and directed by Clark James" and "Edited by Don Ackers." The application will be approved. The credits do not necessarily contradict the information provided in the application, because there are several kinds of editing involved in making a motion picture.

- The application names Cindy Taylor as author of the "entire motion picture." The footage states that the XYZ Corporation is the author

of this work. The registration specialist will communicate with the applicant, because the credits contradict the information provided in the application.

808.10(D) Redacted Screenplay for a Motion Picture in Production

The Office will consider requests for special relief where the applicant wishes to submit a redacted version of a screenplay pending the publication of the motion picture. For information concerning this procedure, see Section 804.8(C).

808.10(E) Claims in Script with No Spoken Parts in the Motion Picture

When an applicant includes a claim in "script" or "screenplay," the registration specialist will assume that the work includes spoken parts, because this is the essence of most scripts. Occasionally, the Office receives scripts or screenplays that tell a story and include action, but do not contain any spoken parts. In this situation, the specialist may add an annotation to the record, such as: "Regarding authorship information: Deposit contains no dialog," or "Regarding authorship information: Deposit contains no spoken parts." If the authorship is described solely as "script" or "screenplay," or if this is the sole contribution for one of the authors, the specialist will communicate with the applicant to determine if the author(s) contributed copyrightable authorship to the work.

Example:

- The applicant asserts a claim to copyright in "motion picture including screenplay." The motion picture does not contain any words, although a story is clearly presented. The registration specialist will register the claim with an annotation, such as: "Regarding authorship information: Deposit contains no dialog [or spoken parts]."

NOTE: If the work is a music video that contains no additional dialog and does not present a clear story apart from the music and lyrics, the specialist will communicate with the applicant to determine whether the claim in "script" or "screenplay" should be removed and whether the claim should include the song lyrics.

808.10(F) Underlying Works Contained in Motion Picture Soundtracks

The soundtrack is an integral part of the motion picture and generally should be registered with the motion picture as a single, unified work. *See* Motion Picture Soundtracks, 40 Fed. Reg. 12,500, 12,501 (Mar. 19. 1975). However, a soundtrack may contain an underlying work, such as a musical composition or a script (inasmuch as the script is revealed in the spoken dialog) that is owned apart from the motion picture. These topics are discussed in Sections 808.10(G)(1) through 808.10(G)(3).

808.10(F)(1) Scripts Contained in a Motion Picture Soundtrack

A script is incorporated into the soundtrack of a motion picture. A motion picture may be made using a script that was written as a work made for hire, or using a preexisting

script that is separately owned from the motion picture. If the copyrights in the script and the motion picture are separately owned, each work may be registered with a separate application.

If the screenwriter independently created the script and then transferred the copyright to the party that owns the copyright in the motion picture, the script may be registered with the motion picture. In this situation, the screenwriter should be named as an author of the script, but not as a claimant. In addition, the applicant should provide a transfer statement that explains how the claimant obtained the copyright in the script, such as "by written agreement."

808.10(F)(2) Musical Compositions Contained in a Motion Picture Soundtrack

A song or other musical composition may be incorporated into the soundtrack of a motion picture. The musical composition may be a preexisting work, or it may be a new work that was composed for the motion picture.

If the copyright in the motion picture and the copyright in the musical composition are separately owned, each work should be registered with a separate application.

808.10(F)(3) Separately Owned Sounds Contained in a Motion Picture Soundtrack

In some cases, a recording of a song may be incorporated into the soundtrack of a motion picture. Often times the recording of the song is a previously published work and the copyright in the motion picture and the copyright in the recording are separately owned. If so, the motion picture and the sound recording should be registered with separate applications. When completing the application for the motion picture, the applicant should exclude the previously published sound recording from the claim by stating "sound recording" in the Material Excluded field or the Preexisting Work space, even though the recording is an integral party of the motion picture soundtrack.

By contrast, if the recording of the song was first published in the motion picture, the recording is considered an integral part of the motion picture. As such, the applicant should submit one application covering both the motion picture and the recording of the song, rather than a separate application for the motion picture and the sound recording.

808.10(G) Issues Regarding Sound Recording Claims

As discussed in Section 808.2(B), the term "sound recording" should not be used to describe authorship in a motion picture.

808.10(G)(1) Sounds Contained in One Format

When an applicant submits a claim for a motion picture and mistakenly includes the term "sound recording" in the authorship statement, the registration specialist will communicate with the applicant and ask for permission to remove that term.

808.10(G)(2) Sounds Contained in Two Different Formats

As a general rule, the exact same recorded sounds cannot be registered as both a sound recording and as sounds accompanying a motion picture.

When the same sounds are published in different formats, such as a CD and a DVD, the applicant should decide whether to register the sounds as a sound recording or as a motion picture. This determination may be based a number of factors, such as whether the copy or the phonorecord was registered or published before the motion picture. These issues are discussed in Sections 808.10(H)(2)(a) through 808.10(H)(2)(d).

808.10(G)(2)(a) Sounds Published on the Same Date

If the same sounds are published on DVD and CD on the same day, and they contain the same fixation of sounds:

- If the applicant prefers to register the sounds as part of the motion picture, the applicant should only submit an application for the motion picture.
- If the applicant prefers to register the sounds as a sound recording, the applicant should submit separate claims for the motion picture and the sound recording. The sounds should be excluded from the claim in the motion picture by stating "sounds registered separately as a sound recording" in the Material Excluded field. Both claims will be registered.

808.10(G)(2)(b) Remixes

If the sounds published on a CD are a remix of the sounds published in the motion picture, and if the publication date is the same for both works, the applicant may register both works with separate applications.

By contrast, if the motion picture was published before the CD, the claim in the remix should be limited to the new sound recording authorship that appears on the CD by stating "remixed sound recording" in the New Material Included field. In addition, the sounds from the motion picture should be excluded from the claim by stating "sounds from previously published motion picture" in the Material Excluded field.

808.10(G)(2)(c) Sounds Published on Different Dates

If an applicant submits two applications for the same published sounds — one application for a motion picture submitted on a DVD and one application for a soundtrack album submitted on a CD — and if the applicant provides a different date of publication on each application, the registration specialist will communicate with the applicant.

If the soundtrack album was published before the motion picture, the previously published album should be excluded from the claim in the motion picture.

If the motion picture was published before the album and if the sounds on the album are taken directly from the motion picture soundtrack and have been reprocessed without

change, the specialist will refuse to issue a separate registration for the album, because all of those sounds are covered by the registration for the motion picture.

808.10(G)(2)(d) Multimedia Kits

A multimedia kit is a work that combines authorship in two or more forms of media (excluding the container for the work). The authorship in a multimedia kit may include:

- Text
- Music
- Sounds
- Cinematography
- Photography
- Artwork
- Sculpture

The forms of media in a multimedia kit may include:

- Printed matter, such as a book, charts or posters, or sheet music.
- Audiovisual material, such as a video disc.
- A phonorecord, such as an audio disc.
- A machine-readable copy, such as a computer-read disc.

If the applicant submits an application for a multimedia kit that contains sounds fixed on a CD as well as sounds and video fixed on a DVD, and if the applicant asserts a claim in both "sound recording" and "motion picture," the registration specialist will communicate with the applicant to determine if the CD and DVD contain the same fixation of sounds.

If the CD and DVD contain the same fixation, the specialist may ask the applicant to delete the term "sound recording" or replace it with the term "sounds" if they appear to be "sounds accompanying a motion picture" rather than a "sound recording."

By contrast, if the CD and DVD contain different fixations, the specialist may ask the applicant to exclude the motion picture soundtrack from the claim by revising the authorship statement to read "sound recording and motion picture excluding sounds."

For more information regarding the registration of multimedia kits, see *Copyright Registration for Multimedia Works* (Circular 55).

808.10(H) Motion Pictures of Live Performances

When a live performance is recorded on film, video, or other audiovisual medium, one work is captured and another work is created by the recording. For a musical

performance, the work captured is the music and lyrics, if any. For a dramatic performance, the work captured is the dramatic work. In both instances, the work created by the recording is considered a motion picture, rather than a musical work or a dramatic work.

808.10(H)(1) Fixation of Live Musical Performances

If a fixation of a live musical performance appears to be unlawful, the registration specialist may communicate with the applicant to determine whether it is an authorized fixation (*i.e.*, a fixation made with the consent of the performer(s) and/or songwriter(s)).

808.10(H)(2) Fixation of Live Dramatic Performances

As discussed in Section 808.2(C) a dramatic work, such as a stage play or musical, may be fixed in a motion picture and a motion picture may be used as the deposit copy for the dramatic work. Typically, the director of a stage production creates a concept for how a work should be realized on the stage, including the movements of the characters on stage. Concepts and ideas are not protected by copyright, and the ordinary movement of characters on a stage is not a copyrightable element. Therefore, the registration specialist will refuse to register a claim in blocking, stage business, staging, or stage directions for a dramatic work when these terms refer to the movement of actors or the manner or method of their acting. *See* Sections 804.3(D)(1) and 804.3(D)(2). Likewise, if the applicant asserts a claim in the "motion picture," the registration may cover the motion picture direction, but it will not cover the stage directions for the dramatic work.

808.10(I) Publication Issues

The applicant should determine whether a motion picture has been published for registration purposes. The U.S. Copyright Office can provide general information about publication and the Office may ask for an explanation in certain cases, but the Office is not permitted to give specific legal advice. For more information on publication of copyrighted works, see Chapter 1900.

808.10(I)(1) Distribution to the Public

A motion picture is distributed to the public when copies are sold or rented, or when film prints, videotapes, DVDs, or other formats are distributed to theaters, schools, or other organizations.

808.10(I)(2) Offering to Distribute

An offering may constitute publication when copies of a motion picture are offered to a group of persons for the purpose of further distribution, public performance, or public display, regardless of whether the distribution, performance, or display actually occurs. For example, offering copies of a motion picture to a group of wholesalers, retailers, broadcasters, motion picture distributors, or exhibitors generally is considered publication. Likewise, the syndication of a television series generally is considered publication.

808.10(I)(3) Fixed Copies

The statutory definition indicates that offering to distribute copies constitutes publication, provided that the copies exist when the offer is made. Offering to distribute copies before they exist or before they are ready for further distribution, public performance, or public display does not constitute publication. Thus, making an offer to distribute a motion picture or television show before or during the production of that work does not constitute publication, because the work is not completely fixed at the time of the offering. Once an offer has been made, however, a work is considered published once the work has been completed. In the case of an offer involving a television series that has not been completed, the publication date will be the same for the episodes that were completed as of the date that the offer was made and the publication date for the rest of the episodes will be the date that each episode is completed.

808.10(I)(4) Publication of Underlying Works

The publication of a motion picture constitutes publication of all the underlying works used in the motion picture. Thus, a screenplay, musical score, or other underlying work are published to the extent that they are embodied in a published motion picture. *Maljack Productions Inc. v. UAV Corp.*, 964 F. Supp. 1416, 1421 (C.D. Cal. 1997) (stating that the publication of a film publishes all underlying works embodied in a film, including the screenplay).

808.10(J) Restored Copyrights in Foreign Motion Pictures

If a motion picture published in a foreign country fell into the public domain in the United States for any reason (such as publication without a copyright notice) the copyright in that work may have been restored as of January 1, 1996 under the GATT-URAA amendment to the copyright law. For works of Canada and Mexico published between January 1, 1978 and before March 1, 1989, restoration may have occurred as of January 1, 1995 under the North American Free Trade Agreement (NAFTA). These topics are discussed in Sections 808.10(K)(1) and 808.10(K)(2).

808.10(J)(1) The 1994 Uruguay Round Agreements Act (URAA) and the General Agreement on Tariffs and Trade (GATT)

On December 8, 1994, the U.S. copyright law was amended in accordance with the intellectual property provisions of the 1994 Uruguay Round Agreements Act (URAA). *See* Pub. L. No. 103-465, 108 Stat. 4809 (1994) (codified as amended at 17 U.S.C. §§ 104A, 1101). This amendment provides for the automatic restoration of copyrights in certain foreign works that are in the public domain in the United States, but are not in the public domain in their source country through the expiration of the term of protection. The earliest effective date of restoration is January 1, 1996. The restoration amendment is codified in Section 104A of the copyright law and it supersedes the NAFTA amendment discussed below. Works from treaty countries whose copyrights have been restored may be registered on Form GATT. For information concerning this procedure, see Chapter 2000, Section 2007.

808.10(J)(2) North American Free Trade Agreement (NAFTA)

In 1993, the North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico was implemented. Under NAFTA, the United States agreed to restore copyrights in certain motion pictures which entered the public domain in the United States because they were published without a copyright notice in Mexico and Canada on or after January 1, 1978 and before March 1, 1989. *See* North American Free Trade Agreement Implementation Act (NAFTA ACT), Pub. L. No. 103-182, 107 Stat. 2057 (1993). To benefit from this agreement, a copyright owner had to file a notice of intent to enforce the restored copyright with the U.S. Copyright Office between January 1, 1994 and January 1, 1995. The notice was then published by the U.S. Copyright Office in the Federal Register. Restoration was effective on January 1, 1995. A list of motion pictures restored under NAFTA was posted in the Federal Register, and on the Office's website. *See* Copyright Restoration of Certain Motion Pictures in Accordance with the North American Free Trade Agreement: List of Titles for Which Statements of Intent to Restore Copyright Were Received, 60 Fed. Reg. 8252 (Feb. 13, 1995).

Although the period for filing these notices has expired, copyright owners who filed such notices may continue to file applications to register these restored works. If a notice of intent to enforce the restored copyright was not filed in a timely manner, the work may have been restored effective January 1, 1996 under the URAA/GATT provisions of the copyright law. *See* Chapter 2000, Section 2007.

808.11 Application Tips for Motion Pictures

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

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

808.11(A) Type of Work

When registering a claim in a motion picture using the online application, the applicant should select "Motion Picture/AV Work" as the Type of Work. When submitting a paper application, the applicant should use Form PA.

808.11(B) The Work Made for Hire Field / Space

Before completing the application, it is important to determine whether part or all of the motion picture was "made for hire." For general information concerning works made for hire for motion pictures, see Sections 808.10(A)(1) and 808.10(A)(2). For a detailed discussion of this topic, see Chapter 500, Section 506.

When a work is "made for hire," the employer or other party for whom the work was prepared is the legal author.

- If the entire work was "made for hire," the employer or other party for whom the work was prepared should be named as author. The "for hire" question should be

answered "yes." The names of the employees should not be given. Often the authorship in this case will be described as "motion picture."

- If no part of the work was "made for hire," the individual(s) who made the motion picture should be named as author(s) and the "for hire" question(s) should be answered "no." Each author's contribution to the motion picture should be briefly described in the Author Created field or the Nature of Authorship space using an acceptable authorship term, such as "production" "direction," "script/screenplay," "cinematography," and so forth.

- If part of the work was "made for hire" and part was not, the applicant should provide an appropriate response for each author in the Name of Author and Author Created/Nature of Authorship fields/spaces. In some cases, the applicant may need to list the same name twice, with the "for hire" question answered "yes" or "no" as appropriate.

For guidance in completing this portion of the application, see Chapter 600, Section 614.

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

When completing an online application, the applicant should describe the authorship that will be submitted for registration, either by checking one or more of the box(es) in the Author Created field or by providing an appropriate statement in the box marked "Other." When completing a paper application, the applicant should provide this information in the Nature of Authorship space.

To register the entire work using the online application, the applicant may select the box marked "entire motion picture." This term covers all of the authorship involved in creating a motion picture, including the screenplay, production, direction, cinematography, and editing. To assert a claim in a specific element of a motion picture, the applicant may select one or more of the following boxes:

- Production
- Directing
- Cinematography
- Editing
- Script/Screenplay

For a definition and discussion of these terms, see Chapter 600, Section 618.4(C).

The "Other" box may be used to describe other types of authorship, such as "music."

These same terms may be used when completing the Nature of Authorship space in the paper application.

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

808.11(D) Unclear Authorship Terms

Generally, items used in set design, scenery, props, and costumes, are regarded as useful articles. The copyright law does not protect the design or styling of useful articles. If a useful article incorporates any separable and original artwork, such as graphics, pictures, or sculpture, only the artwork may be protected. *See* 17 U.S.C. § 101 (definition of "pictorial, graphic, and sculptural works"); *see also* Chapter 900, Section 924. In such cases, the authorship should be specifically described, such as "artwork on scenery" or "soft sculpture" (in the case of a puppet or animal costume).

These types of works often raise special issues that generally are handled by the Visual Arts Division. Therefore, if the applicant combines this type of authorship with a motion picture claim, the registration specialist may ask the applicant to prepare separate applications for the motion picture and the visual arts work. For more information, see Chapter 900, Section 924.

808.11(E) Unacceptable Authorship Terms

The applicant should not use the following terms in the authorship description for a motion picture:

- Blocking, stage directions, staging, stage business. *See* Sections 804.3(D) and 808.10(I)(2).
- Concept, idea, format, layout, titles, styles of lettering, credits, characters. *See* 17 U.S.C. § 102(b); 37 C.F.R. § 202.1.
- Executive Producer. *See* Section 808.10(B).
- Sound Recording. *See* Sections 808.2(B) and 808.10(H).
- Medical Imaging, such as ultrasound, CAT-scan and x-rays. *See* Chapter 900, Section 924.3(D).

808.12 Deposit Requirements for Motion Pictures

The deposit requirements for motion pictures are complex. For information on registration and mandatory deposit requirements for these types of works, see Chapter 1500, Section 1509.2(F) and 1511.8(F).

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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.

In some cases, it may be possible to register multiple visual art works with one application and one filing fee by using the following options:

- The group registration option for unpublished works (GRUW).
- The group registration options for published photographs (GRPPH) or unpublished photographs (GRUPH).
- The group registration option for contributions to periodicals (GRCP).
- The registration accommodation for registering multiple works as a unit of publication.

For information concerning these options, see Chapter 1100, Sections 1103, 1106, 1110, and 1114.

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 works.

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.
- "Soft sculptures," such as stuffed animals and puppets.
- 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.

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 or may not 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 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.

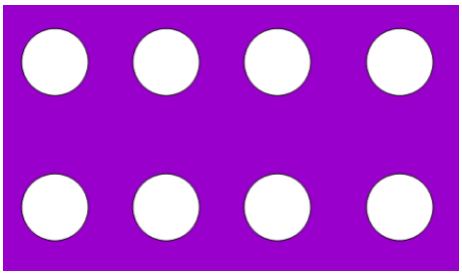
Examples:

- 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.

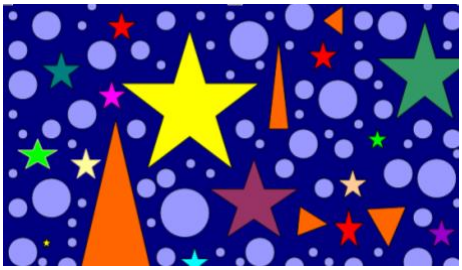
- Grover Gold creates a painting of a beach scene that includes circles of varying sizes representing bubbles, striated lines representing ocean currents, as well as triangles and curved lines representing birds and shark fins. The registration specialist will register the claim despite the presence 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 backdrop 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-striped 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 blue and white 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?

A jewelry design is a decorative article that may 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).

Ornamental jewelry designs are considered works of artistic craftsmanship. *See* 37 C.F.R. § 202.8(a) (1948) (citing "artistic jewelry" as an example of a work of artistic craftsmanship); H.R. REP. NO. 94-1476, at 54-55 (1976), *reprinted in* 1976 U.S.C.C.A.N at 5667-68 (noting that this part of the statutory definition is based on "Copyright Office regulations promulgated in the 1940's").

When reviewing jewelry, the U.S. Copyright Office will consider the overall form of the design, but will ignore any mechanical or utilitarian aspects of the work. For example, a jeweled dragonfly could be registered as a work of artistic craftsmanship if it contains a sufficient amount of sculptural authorship. The registration may cover the shape, color, orientation, or other creative aspects of the design, but it would not extend to its functional elements, such as a plain hook or clasp.

Jewelry designs and other embellishments that are incorporated into useful articles, such as garments, footwear, belt buckles, or other personal accessories may be registered only if the design is capable of being identified separately from and existing independently of the utilitarian aspects of the useful article. When evaluating jewelry designs incorporated into useful articles, the Office will apply the separability test set forth in Section 924.3 and then determine if the separable design contains a sufficient amount of creative expression. For a detailed discussion of the differences between a work of artistic craftsmanship and the design of a useful article, see Section 925.3.

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 design 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 plain silver clasp. The registration specialist will refuse to register this work because it consists of functional elements (*e.g.*, a silk cord and a plain 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 plain 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 their only utilitarian function is to 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, Toys, Dolls, Stuffed Animals, and Puppets

This Section discusses certain issues that commonly arise with toys, dolls, stuffed animals, puppets, and other sculptural works. It also discusses common issues involving board games, card games, and other games with pictorial, graphic, or sculptural authorship. For information concerning videogames, see Chapter 800, Section 807.7(A).

NOTE: As a general rule, these types of works are not considered useful articles for purposes of registration, because in most cases they merely portray their own appearance or the item that the work represents. 17 U.S.C. § 101 (definition of "useful article"). By contrast, backpacks, lunchboxes, nightlights, scooters, tricycles, or other items that have an intrinsic utilitarian function are considered useful articles, and as such, are subject to the separability test described in Section 924.3.

Toys, dolls, stuffed animals, and puppets are frequently protectable under the U.S. copyright law as sculptural works. Applicants may use the term "toy," doll," "stuffed animal," "puppet," or any other term that reasonably describes the work that the author created. Alternatively, applicants may describe the type of authorship that the author contributed to the work, such as "sculpture" or "soft sculpture."

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 work(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 USC 102(b). Registration extends to artwork deposited."

Games and other items 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(E) 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.

Fanciful costumes that depict a character may be considered useful articles for purposes of registration. Although they portray the appearance of the character, they also may serve the intrinsic useful function of clothing the human body. If so, they are subject to the separability test described in Section 924.3. As with all clothing, the Office will examine fanciful costumes to determine if they contain two- or three-dimensional design elements that are conceptually separable from the utilitarian aspects of the article, and to determine if those separable elements contain a sufficient amount of creative expression. *See generally* Registrability of Costume Designs, 56 Fed. Reg. 56,530 (Nov. 5, 1991) (discussing the Office's policy and several federal court decisions on the registrability of costume designs).

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 1100, 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 (1976), *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 preexisting 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 their only utilitarian function is to 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 and templates 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 or a template of petals that may be used to create paper flowers. 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 typically their only utilitarian function is to 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.

Stencils and templates are useful articles, because they have an intrinsic utilitarian function, namely, tracing, printing, transferring, or reproducing the design depicted within the stencil or template. As such, they are subject to the separability test described in Section 924.3.

Many two-dimensional graphic designs easily satisfy this test because they can be imagined "as separable from the utilitarian aspects of" the stencils or templates. H.R. REP. NO. 94-1476, at 55 (for example, "[a] two-dimensional painting [or] drawing . . . printed on or applied to utilitarian articles such as textile fabrics, wallpaper, containers, and the like").

The U.S. Copyright Office may register a pictorial, graphic, or sculptural work that can be created with a stencil or template if that design contains a sufficient amount of original expression. Likewise, the Office may register a compilation of original designs, such as a stencil book that contains a creative selection, coordination, and arrangement of artistic images of animals, trees, and automobiles. However, the Office will refuse to register designs 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 their only utilitarian function is to 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 their only utilitarian function is to 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 (1976), *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 application. 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. Nor does it protect the overall form, shape, or configuration of a useful article. *See id.* at 1010, 1014. 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 (1976), *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" 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.

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 rulers, calculators, and thermometers.
- 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, glassware, and bowls.
- Kitchen utensils, such as pots and pans.
- Bottles, pitchers, and other containers.
- Textile fabrics.
- Articles of clothing.
- Footwear.
- Measuring tape.
- Eye charts and vision tests.
- Shooting targets.
- Instrument panels that operate a thermostat or other electrical or mechanical device.
- Stencils, templates, and pattern pieces.

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.* An article's intrinsic utilitarian function is an indispensable characteristic of the article itself. This useful function is objectively observable or perceivable from the appearance of the item and is an inherent part of its very nature. For instance, chairs are inherently useful because they provide a place to sit, 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, such as René Magritte's *Ceci n'est pas une pipe*.

- 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 intrinsic utilitarian function, the U.S. Copyright Office focuses solely on the article itself and applies purely objective criteria. The Office will consider the inherent, undeniable qualities or characteristics of the article, but will not consider the subjective intent or subjective reaction of any person in relation to that article. *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). In particular, the Office will not consider the author's state of mind concerning the intended use of the article. *Mazer*, 347 U.S. at 218; *Star Athletica*, 137 S. Ct. at 1015; 37 C.F.R. § 202.10(a). Nor will the Office consider the marketability or commercial value of the article. *See Star Athletica*, 137 S. Ct. at 1015; H.R. Rep. No. 94-1476, at 54 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5667.

For additional information concerning the factors that the Office will and will not consider when evaluating the design of a useful article, see Section 924.5.

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. This test is based on the text of section 101 – "giving each word its ordinary, contemporary, common meaning" – and based on "the provisions of the whole law" that give "instruction as to its meaning." *Id.* at 1008, 1010, 1014 (acknowledging but declining to apply alternate tests).

Congress and the Supreme Court made clear that the Copyright Act does not provide protection for useful articles in and of themselves. Likewise, copyright law does not protect the overall form, shape, or configuration of a useful article, no matter how aesthetically pleasing it may be. *See id.* at 1010, 1014. Thus, if a useful article does not contain any features that can be separated from the utilitarian aspects of the article or the overall shape of the article, the Office will refuse to register the claim. *See id.* at 1007; H.R. REP. NO. 94-1476, at 55 (1976), *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).

NOTE: As a general rule, the Office will not consider the originality of the design when applying the first or second part of the separability test. In other words, the registration specialist will determine if the design can be identified separately from, and is capable of existing independently of, the utilitarian aspects of the article. Then the specialist will determine if the design contains a sufficient amount of creative expression to warrant

registration. For information concerning when and how the Office will apply the originality test to the design of a useful article, see Section 924.4.

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 intrinsic 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.

To be clear, the copyright law does not protect the overall form, shape, or configuration of the useful article itself. 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 or a part of it. *See id.* at 1010, 1012.

The following are representative examples of two- and three-dimensional features that typically satisfy the independent-existence 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).

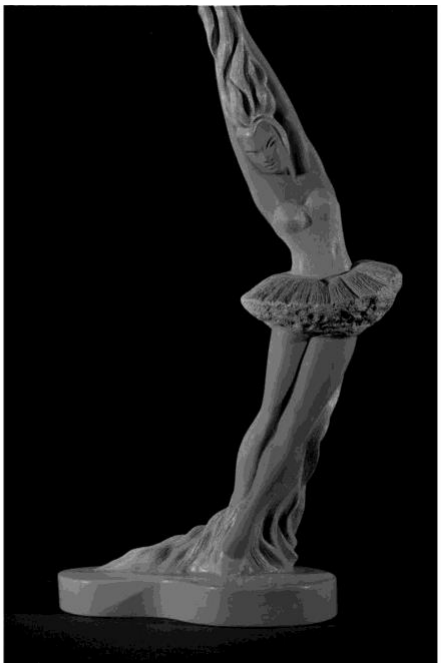
924.3(C) Separable Features May Enhance the Functionality of the Useful Article

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." *Star Athletica*, 137 S. Ct. 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."

Id. at 1014; *Mazer*, 347 U.S. at 211 ("Verbal distinctions between purely aesthetic articles and useful works of art ended" in 1870).

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." *Star Athletica*, 137 S. Ct. 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

A two- or three-dimensional pattern, picture, or design that has been applied to the surface of a useful article may be capable of existing on its own as a pictorial, graphic, or sculptural work.

Surface ornamentation usually retains its decorative features, regardless of the material or object to which it is applied. It may be eligible for copyright protection, even if it covers the entire surface of a useful article. And this artistic expression may be protected even if it would retain the overall shape of a useful article if that feature was imaginatively removed from 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. As discussed in Section 924.3(B), 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 surface design would be considered a two-dimensional work of art that simply "corresponds to the shape of the useful article to which it was applied." *Id.* In other words, the design may portray the appearance of a three-dimensional object in two-dimensional form, but it is not a useful article in and of itself. And if that surface 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). It also means that the overall form, shape, or configuration of a useful article cannot be protected by copyright. *Id*. at 1010, 1014.

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 in the viewer's mind after the artistic feature has been imaginatively removed from the article.

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"); *id*. at 1014 (stating that "some aspects of the useful article" must be "left behind" once the artistic feature has been "conceptually removed" from that article); *id*. at 1016 (stating that "our test does not render the shape, cut, and physical dimensions of the [useful article] eligible for copyright protection"); *see also* 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, § 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 in industry when deciding whether a design is copyrightable. *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 or may not 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?

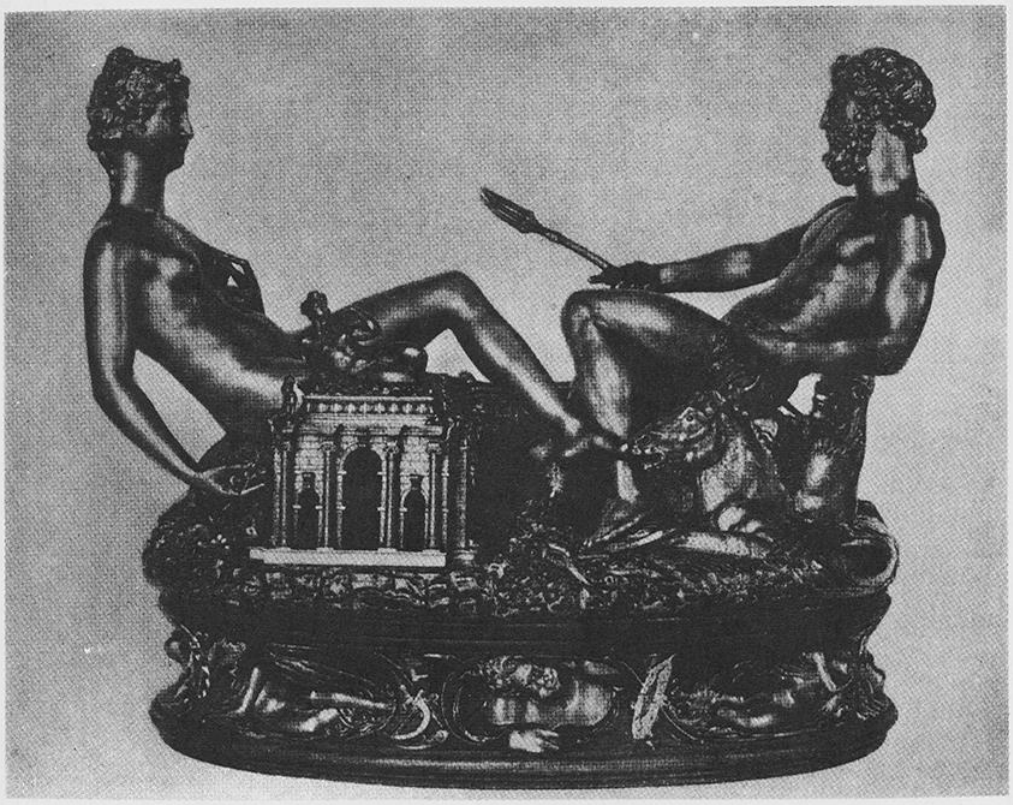
The Copyright Act protects "works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned." 17 U.S.C. § 101. This part of the statutory definition "is classic language . . . drawn from Copyright Office regulations promulgated in the 1940's and expressly endorsed by the Supreme Court in the *Mazer* case." H.R. REP. NO. 94-1476, at 54-55 (1976), *reprinted in* 1976 U.S.C.C.A.N at 5667-68 (referring to 37 C.F.R. § 202.8(a) (1948)).

A work of artistic craftsmanship is a decorative or ornamental object that can be considered a "work of art," even though it "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, 213-14 (same).

The definition of a work of artistic craftsmanship is converse to the definition for a useful article. A useful article is "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. By contrast, a work of artistic craftsmanship is *intrinsically aesthetic* in nature, and the work primarily portrays its own appearance. This is the essential and fundamental characteristic of the work (even though it may have some mechanical or utilitarian aspects).

Works of artistic craftsmanship are protected by copyright and may be registered, regardless of their mechanical or utilitarian aspects. Representative examples of such works include:

- Ornamental jewelry
- Decorative masks
- Stained glass windows
- Tapestries
- Mosaics
- Wallpaper designs
- Decorative bookends or paperweights
- Benvenuto Cellini's salt cellar



NO. 192. CELLINI. GOLD SALT. ABOUT 1540-1543

Benuto Cellini, Gold Salt (circa 1540-1543), *cited in* Brief for Respondents, Mazer v. Stein, 347 U.S. 201 (1954) (No. 228) (reproduction from MUSEUM OF MODERN ART, ART TREASURES FROM THE VIENNA COLLECTIONS, Plate XXXVIII (1949)).

Although not the main issue in the case, the cast iron bank from *L. Batlin & Son v. Snyder* is another classic example of a work of artistic craftsmanship. The bank features a sculpted figure of Uncle Sam with a carpet bag and umbrella standing on a base decorated with streamers and an eagle. The bank has an internal mechanism that is operated with a lever. When a coin is placed in the figure's hand and the lever is pressed, Uncle Sam smiles, lowers his arm, and drops the coin into the carpetbag. Although it has mechanical components, the bank has a "basic delightful design" that "qualifies as a work of art." 536 F.2d 486, 488, 491, 492 (2d Cir. 1976). And like most coin banks, it "falls within the class of artistic works which, however debatable their aesthetic merit, are clearly artistic in conception." Brief for the Register of Copyrights as Amicus Curiae Supporting Respondents at 27 n.10, Mazer v. Stein, 347 U.S. 201 (1954) (No. 228).

U.S. Design Patent No. 16,728, *cited in L. Batlin & Son*, 536 F.2d at 488.

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 innately artistic, and any incidental mechanical or utilitarian aspects are simply inherent in the object of the art form. Brief for the Register of Copyrights as Amicus Curiae Supporting Respondents at 30, Mazer v. Stein, 347 U.S. 201 (1954) (No. 228).

For instance, stained glass, tapestries, mosaics, and wallpaper are primarily used to decorate interior spaces, but they may also be incidentally useful in filtering sunlight, blocking cold air, repelling water, 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.

If an object is intrinsically aesthetic in nature and primarily portrays its own appearance it may be considered a work of artistic craftsmanship, even if it is incidentally useful. Because copyright does not extend to a work's mechanical or useful aspects, a registration for a work of artistic craftsmanship does not extend to those aspects, such as plain clasps, straps, or snaps that secure ornamental jewelry or a decorative mask to a person's body. *See* Registrability of Costume Designs, 56 Fed. Reg. 56,530 (Nov. 5, 1991) (discussing the Office's policy on the registrability of decorative masks).

The Office will determine whether an object is – or is not – intrinsically aesthetic and primarily portrays its own appearance, based solely on the item shown in the deposit. The Office will consider the overall appearance of the item, including the form, shape, and configuration of the object as a whole, and the essential and innate qualities or characteristics of the object. However, the Office will not consider the author's subjective intent concerning the decorative, ornamental, or utilitarian purpose of the object. It will not consider the author's skill, experience, or artistic reputation. It will not consider the marketability or commercial value of the object or the number of copies

made. Nor will it consider the subjective reaction of any person in relation to the object. For this reason, the Office does not invite and will not consider evidence concerning the perception or use of the object by actual users or purchasers. *See Star Athletica*, 137 S. Ct. at 1015; *Mazer*, 347 U.S. at 218; 37 C.F.R. § 202.10(a); H.R. REP. NO. 94-1476, at 54 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5667; Brief for the Register of Copyrights as Amicus Curiae Supporting Respondents at 32-34, Mazer v. Stein, 347 U.S. 201 (1954) (No. 228).

925.2 Copyrightable Authorship in Works of Artistic Craftsmanship

The copyright law protects works of artistic craftsmanship as pictorial, graphic, or sculptural works "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). As discussed in Section 925.1, the U.S. Copyright Office will consider the overall shape and configuration of the work. *Id*. 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.

This approach follows the practices developed by the Office, and considered by the courts, more than sixty years ago. As Register Fisher testified in *Mazer v. Stein*:

> [O]ur problem is to determine whether the work submitted is a work of art. We make that determination and registration even though we may have reason to believe that the work of art may happen to be used for some other purpose.
>
> [T]he phrase 'insofar as their form but not their mechanical or utilitarian aspects are concerned' is interpreted by the office and by our examiners to permit them to deal only with the question of whether the work is a work of artistic craftsmanship, and . . . it is our practice to consider as immaterial whether the work may also have a mechanical or utilitarian aspect.

Transcript of Proceedings at 56, Stein v. Mazer, 111 F. Supp. 359 (D. Md. Nov. 20, 1952) (No. 5879); Brief for the Register of Copyrights as Amicus Curiae Supporting Respondents at 11-12, Mazer v. Stein, 347 U.S. 201 (1954) (No. 228).

In exceptional cases, the registration specialist may add an annotation to the record, such as: "Basis for registration: Work of artistic craftsmanship." As a general rule, the specialist will add an annotation only when the Office determines that clarification will aid the public's understanding of the scope of the registration.

The specialist may refuse registration if there is "an entire absence of artistic craftsmanship notwithstanding the presence of a pleasing functional design." Brief for the Register of Copyrights as Amicus Curiae Supporting Respondents at 29, Mazer v. Stein, 347 U.S. 201 (1954) (No. 228). Likewise, the specialist may refuse registration if he or she determines that the object is a useful article with no separable copyrightable features (rather than a work of artistic craftsmanship).

925.3 Works of Artistic Craftsmanship Distinguished from a Useful Article

As discussed in Sections 925.1 and 925.2, the definition for a work of artistic craftsmanship, the test used to determine if the work is eligible for copyright protection, and the scope of protection for the work are the mirror image of the definition for the design of a useful article and the tests used to evaluate the copyrightability and scope of protection for such works (and vice versa).

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. As mentioned in Section 925.1, 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 (1976), *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. In making these determinations, the Office will consider 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 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. *See Star Athletica*, 137 S. Ct. at 1010, 1014, 1016.

A useful article must have "an intrinsic utilitarian function." 17 U.S.C. § 101 (definition of "useful article"). An article "may be aesthetically satisfying" and its appearance may be "determined by esthetic . . . considerations." H.R. REP. NO. 94-1476, at 55 (1976). But copyright only protects those "elements, if any, which can be identified separately" "from the utilitarian aspects of that article," rather than "the over-all configuration of the utilitarian article as such." *Id*. Works of artistic craftsmanship, by contrast, may 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 intrinsic 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 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, or whether it is intrinsically aesthetic and primarily portrays its own appearance, 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*. Architectural works do not have to be constructed to be eligible for copyright protection.

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 ("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.* It also may include the "selection, coordination, or arrangement of unprotectable

elements into an original, protectable 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, the applicant must use the Standard Application. If an applicant attempts to register an architectural work using the Single Application or a paper application, the U.S. Copyright Office will refuse registration and instruct the applicant to resubmit the claim using the appropriate form. 37 C.F.R. § 202.11(d)(4)(i).

An application may cover only one architectural work, regardless of whether the work is published or unpublished. The 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)(3).

When completing the Standard Application, applicants should select "Work of the Visual Arts" from the drop down menu on the Type of Work screen. If the 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." *Id.* § 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 in the Note to Copyright Office field. *Id.* § 202.11(c)(4)(i).

To register an architectural work, applicants should check the box marked "architectural work" in the Author Created field. 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 926.1.

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

NOTE: In exceptional cases, the Office may waive the online filing requirement, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. An applicant may submit a request to waive this requirement in writing. It should explain why the applicant is unable to use the Standard Application, and it should be sent to the following address:

Associate Register of Copyrights and
Director of Registration Policy & Practice
Registration Program
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559

See 37 C.F.R. § 202.11(c)(4)(ii); Simplifying Copyright Registration for Architectural Works, 83 Fed. Reg. 66,182 (Dec. 26, 2018); Architectural Works, 84 Fed. Reg. 16,784 (Apr. 23, 2019).

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Websites and Website Content

1001 What This Chapter Covers

This Chapter discusses the U.S. Copyright Office's policies and procedures for the examination and registration of copyrightable content contained on websites.

- 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, see Chapter 1500.

For guidance concerning the practices and procedures relating to specific types of works, see the following chapters:

- For a discussion of literary works, see Chapter 700.
- For a discussion of works of the performing arts, see Chapter 800.
- For a discussion of visual art works, see Chapter 900.

1002 Definitions

This Section provides a brief definition for many of the terms that are used throughout this Chapter.

1002.1 Website

For purposes of copyright registration, the U.S. Copyright Office defines the registrable content of a "website" as a webpage or set of interconnected webpages, including a homepage, located on the same computer or server (*i.e.*, fixed together on that computer or server), and prepared and maintained as a collection of information by a person, group, or organization.

Members of the public access the information and other works on a website by using a uniform resource locator ("URL") that is organized under a particular domain name. Each URL address or file-path leads to a distinct webpage or file resource. When the

user opens a webpage with a browser application, the user's computer retrieves data from the URL and the browser assembles, coordinates, and arranges the data for presentation as a screen display based on a set of layout instructions from the hypertext markup language ("HTML"), style sheet, or other markup language for that page. The actual content of the website may be embedded in the HTML or may be contained in a file retrieved by the markup language.

A key element of a website is that the user can browse through the content on the site by scrolling through each webpage, by using internal hypertext links, or by using a search feature. This is in contrast to a database, which does not disclose the underlying content to the user but instead requires a search query to find and access particular information contained within the database that matches the parameters of each query.

1002.2 Website Content

For purposes of copyright registration, "website content" is material that is perceptible to the users of a particular website. This may include literary or textual works (such as news articles or literature) that are visibly displayed on a website, works of the performing arts (such as music, sound recordings, motion pictures, other audiovisual works and computer games) that are displayed or performed on a website, and two-dimensional visual art works (such as drawings, photographs, or illustrations) that are displayed on a website.

A work that is perceptible to the user only by downloading or separately purchasing that particular work is not considered part of the website for registration purposes and must be registered separately. Likewise, externally linked content (*i.e.*, content residing on another website or another server) is not considered part of the website's content for registration purposes.

1002.3 Hypertext

Hypertext consists of text or graphics displayed on a webpage that allow the user to link to other content or webpages. As a general rule, these links are dynamic addresses that redirect the user to a particular part of the same page (in the manner of a bookmark), another page within the website (*i.e.*, an internal link), or an external website (*i.e.*, an external link). In some cases, the external link may be an "inline" link that presents the external content within a frame on the linking site (*i.e.*, "framing" the content).

1002.4 Hypertext Markup Language (HTML)

Hypertext markup language ("HTML") is the standard markup language used in the design of websites. HTML establishes the format and layout of text and graphics when a user views a website by instructing the user's browser to present material in a specified manner. HTML may be hand-coded, but it is often generated by web design software programs. For registration purposes, HTML is not considered a computer program.

For a definition and discussion of computer programs, see Chapter 700, Section 721.

1002.5 Cascading Style Sheets

Cascading Style Sheets ("CSS") are a method of presenting structured documents. They are used to format and layout the organization and a uniform presentation of webpages written in a markup language, such as HTML.

1002.6 Databases

For purposes of copyright registration, the U.S. Copyright Office defines a "database" as a compilation of digital information comprised of data, information, abstracts, images, maps, music, sound recordings, video, other digitized material, or references to a particular subject or subjects. In all cases, the content of a database must be arranged in a systematic manner and it must be accessed solely by means of an integrated information retrieval program or system with the following characteristics:

- A query function must be used to access the content.
- The information retrieval program or system must yield a subset of the content or it must organize the content based on the parameters specified in each query.

In other words, a database generally consists of two fundamental elements: (i) a data set or multiple data sets, and (ii) an information retrieval program or system that serves as the sole entry point into the underlying data, information, or files. Typically, the party that created the information retrieval program or system is not the same party that created the copyrightable content contained within the database. An application to register a database typically covers the selection, coordination, and/or arrangement of the data, information, or files, but does not cover the data, information, or files unless they are specifically claimed in the application.

Websites may contain databases, but they are not considered databases for the purpose of copyright registration. Generally, users may access all the content on a website by browsing through the pages of the website or its hierarchical structure. By contrast, users generally cannot access the content of a database in its entirety. Instead, users retrieve specific data, data sets, or other content from the database by using a query function that fetches content that meets the particular criteria provided by the user. Whereas the content of a website is wholly displayed online, the data contained within a database is displayed only to the extent that it matches a particular query that a specific user enters into the information retrieval system. Not all search functions qualify as information retrieval programs or systems. For instance, a website may provide a search feature to assist users in locating particular information on the site, but this does not transform the website into a database because the search feature is not the sole entry point for accessing the underlying data or files.

For additional information concerning databases, see Chapter 700, Section 727.

1003 Identifying the Authors of a Website

1003.1 Distinguishing Between Individual Authors, Joint Authors, and Works Made for Hire

Websites often contain multiple types of copyrightable content, including literary works, visual art works, and performing arts works. The authors of the content may include visual artists, web designers, bloggers, coders, musicians, singer songwriters, among others. These authors may be individual contributors to the website, multiple authors who contributed to a group project, or employees of a company.

When an individual creates a work of authorship, generally he or she is considered the author of that work. If two or more individuals create a work, they are considered joint authors and the work is considered a joint work. *See* 17 U.S.C. § 101 (definition of "joint work"). When an individual creates a work during the course of his or her employment, that individual is not considered the author; the employer is considered the author and the work is considered a work made for hire. *See id*. (definition of "work made for hire").

For a definition and detailed discussion of joint works and works made for hire, see Chapter 500, Sections 505 and 506.

1003.2 Distinguishing Between Authorship and / or Ownership When the Owner of a Website Hires a Third Party to Create Content for That Site

When an employee of a business or other organization designs or creates content for the employer's website while acting within the scope of his or her employment, the employee's contribution is considered a work made for hire. In such cases, the employer is considered the author and the copyright owner of the website and the copyrightable content created by the employee.

In many cases, an individual, organization, or company will hire another individual or entity to create a website. In such cases, the hired individual or entity is considered an independent contractor and any authorship created by the independent contractor is authored and owned by that individual or entity. This is the case even if the hiring party paid the independent contractor to create the website, much like a bride and groom that hired a photographer to take photos at their wedding. In such cases, the photographer is considered the author and the owner of the copyright in the photos, even though the bride and groom paid the photographer for his or her time and purchased copies of the photos. Likewise, the author and owner of the copyright in a website may be distinct from the owner of the tangible copies of that website content, notwithstanding the fact that the hiring party purchased those copies or paid for the web designer's services.

In such cases, the independent contractor always remains the author of the work created. That individual or entity may transfer ownership of the exclusive rights comprising the copyright only by means of a signed, written agreement that transfers or exclusively licenses those rights to another party.

Example:

- Wendy Genoa is a website designer who works as an independent contractor. Val Miller hired Wendy to create a website for his small business. Wendy created the copyrightable backgrounds, banners, and other graphics for the website, as well as the selection, coordination, and arrangement of the pages of the site. Val submits an application to register the website naming himself as the author and claimant. The deposit copies clearly indicate that Wendy contributed copyrightable authorship to the work and the application contains no transfer statement. The registration specialist will communicate with the applicant, because Wendy appears to be the author of this content and Val does not appear to be the proper claimant unless there was a valid transfer of ownership via a signed written agreement.

For further information on issues involving the ownership of a website or website content, see Section 1004.

1003.3 Copyrightable Content Contained in or Added to a Website

Websites often contain contributions that constitute separate and independent works in themselves, such as text, photographs, videos, sound recordings, and the like. In such cases, the website is typically a form of collective work in which a number of component works are selected, coordinated, and/or arranged into a collective whole, while the components works typically are contributions to the collective work.

The creator of the website may be the author and owner of the website as a whole, while another party or parties may be the author(s) and owner(s) of particular works contained within the site. In many cases, multiple applications may be required to register the copyright in all the works contained within a website, unless there has been a valid transfer of ownership for the copyright interest in each of the component works (assuming those works were not previously published or registered).

1003.4 User Generated Content (UGC)

Many websites allow users to post content that they created, such as comments, reviews, photographs, or videos. This type of material is known as user generated content ("UGC").

As a general rule, the user is the author of any original expression that he or she creates and posts to a website, and the user owns the copyright in that material unless he or she transfers ownership of all the exclusive rights to the website owner pursuant to a valid, signed, written transfer of ownership.

For more information on ownership issues involving UGC, see Section 1005.

1004 Identifying the Owner of Website Content

For purposes of copyright registration, the owner of website content is either (i) the author of the content or (ii) a copyright owner that owns all the exclusive rights in that content. When completing an application to register website content, the owner of the content should be identified in the application as the "claimant." Although the author of the content or the copyright owner of that content are the only parties who are entitled to claim ownership of the copyright in that material, an application to register that claim may be signed and submitted by any of the parties listed in Chapter 400, Section 402.

The author of website content may be named as a claimant even if the author transferred some or all of the exclusive rights in that content to another party. A copyright owner that owns all of the exclusive rights in website content may be named as a claimant, provided that the copyright in that content was transferred to the owner pursuant to a valid signed, written agreement. If the website contains content authored by a third party and if the copyright in that content has not been fully transferred to the claimant, the applicant should expressly exclude that content from the claim.

If an individual, company, or organization hires an independent contractor to design a website and/or create copyrightable content for the website, the hiring party may have a contractual or implied right to use the website and/or the content for the purpose for which it was intended. However, the hiring party does not own the copyright in that content and cannot be named as a claimant unless there was a valid transfer of ownership in the copyright from the independent contractor to the hiring party.

Examples:

- Trashy Productions LLC operates a fashion blog called "OneGirlsTrash;" Jake Rag is an employee of the company. Jake shot a video of street fashion and uploaded it to the company's website. Jake submitted an application to register the video as a "motion picture," naming Trashy Productions as the author and claimant with the work made for hire box checked "yes." The registration specialist will register the claim.

- Madge Pash enters into a signed, written agreement with a well-known artist granting Madge a nonexclusive license to display the artist's drawings on her website. Madge submits an application to register the content of her website, naming herself as the claimant/owner of the drawings "by nonexclusive license." The registration specialist will refuse to register the claim in the drawings, because a nonexclusive license is not a transfer of ownership, and because Madge is neither the author of the drawings or the owner of all the exclusive rights in those works.

For guidance in identifying the claimant and providing a transfer statement, see Section 1009.7 and Chapter 600, Sections 619 and 620. For information on the procedure for excluding third party material from a claim, see Section 1009.8 and Chapter 600, Section 621.

1005 Transfer of Ownership by Terms of Service

In some cases, an individual author may be asked to accept the terms of service for a website before the author uploads UGC to that site. If the terms of service state that the website becomes the owner of all the exclusive rights in any works that are lawfully uploaded to that site, the author may be deemed to have transferred ownership of the copyright in that UGC through a written, digitally-signed transfer agreement. *See Metropolitan Regional Information Systems v. American Home Realty Network, Inc.*, 722 F.3d 591 (4th Cir. 2013).

While this issue has not been addressed by many courts, at present the U.S. Copyright Office will accept an application that names the owner of a website as the claimant for UGC that has been uploaded to that site, but only if the applicant identifies the authors of that content in the application and confirms that the authors transferred their rights to the claimant. The Office encourages applicants to name all the authors of the UGC that is claimed in the application. However, if the content was created by a large number of authors, the Office will accept an application that provides representative names of some of the authors and the number of additional authors who contributed to the content that is included in the claim (*e.g.*, "B.F. Pierce, John McIntyre, Hank Blake, Walter O'Reilly, and 14 others"). In any claim of ownership involving a "click-through" agreement or terms of service agreement, the claimant must know and have a record of the names of the authors who transferred ownership of all the exclusive rights to the claimant. To verify this requirement, the registration specialist may request additional information from the applicant. In such cases, the specialist will not accept transfers from anonymous, pseudonymous, or unidentified authors as a valid transfer of ownership.

1006 Copyrightable Subject Matter

Section 102(a) of the Copyright Act states that copyright protection only extends to "original works of authorship." 17 U.S.C. § 102(a). To satisfy this requirement, a work must be fixed in a tangible medium of expression, it must be created by a human being, it must constitute copyrightable subject matter, and it must contain a sufficient amount of creative expression.

A website in and of itself is not explicitly recognized as copyrightable subject matter, although it may contain copyrightable subject matter that falls within one or more of the categories of authorship set forth in Section 102(a), and/or it may qualify as a compilation, a collective work, or a derivative work. A website is merely a medium of fixation for works of original authorship, but it is not a work of authorship in and of itself. In other words, it is a vehicle for the dissemination of content, which may or may not be copyrightable. Like any medium for copyrightable expression, such as a book, DVD, or CD-ROM, it is the content of the website—not the medium of expression—that comprises the copyrightable authorship that may be registered with the U.S. Copyright Office.

Websites may contain three layers of potentially copyrightable authorship:

- Websites contain content that is made perceptible on the website's pages in the form of text or digital files. Websites usually contain multiple forms of content, such as text, computer programs, photographs and other two-dimensional artwork,

musical works, sound recordings, dramatic works, and motion pictures or other audiovisual works. Website content may be registered if it constitutes copyrightable subject matter and if it contains a sufficient amount of original authorship. The Office applies the same rules when examining these types of works, regardless of whether they are made available on a website or other online medium or whether they are made available in a hard copy format.

- Websites may contain compilation authorship. Specifically, there may be authorship in the way in which the copyrightable text and/or digital files are selected, coordinated, and/or arranged on a particular webpage, or the way in which the pages of the overall website are selected, coordinated, and/or arranged, such as the manner or hierarchy in which the pages are connected or linked to each other. In many cases, the author or claimant of the selection, coordination, and/or arrangement may not be the same as the author of the individual elements within the website. If the selection, coordination, and/or arrangement is sufficiently creative, the website may be registered as a compilation, collective work, or derivative work.

- Websites contain underlying markup language or style sheets that structure, arrange, and coordinate the manner in which the user views or otherwise perceives the content on the site through the his or her browser. The underlying markup language for a website may or may not contain copyrightable authorship. Moreover, markup language may or may not be authored by the creator of the website, but instead may be generated by the website design software that the creator used to create the website.

Websites are somewhat unique as vehicles for the dissemination of content. Unlike a tangible object, such as a printed magazine or a roll of film, websites are not static containers for content. They are dynamic containers that may change over time as often and to the extent that the website owner wishes. In addition, websites are not linear from beginning to end, but rather may be browsed in many varied ways.

Although websites are dynamic, copyright protection in the United States extends only to fixed works of authorship that fall under the categories provided in Section 102(a) of the Copyright Act. The Office will register a claim in website content only as it exists at the time that the application is received. The Office will not register a claim in website content as it may exist in the future if that content has not been fixed yet.

For information concerning specific types of website content, see Sections 1006.1 through 1006.4. For general information on what constitutes copyrightable subject matter and copyrightable authorship, see Chapter 300, Sections 307 and 308. For general information concerning compilations, collective works, and derivative works, see Chapter 300, Sections 311 and 312, and Chapter 500, Sections 507, 508, and 509.

1006.1 Literary Works

Websites typically contain some text or literary authorship. Websites also may include specific types of literary works, such as poems, short stories, news articles, blog entries, databases, and computer software. This type of website content may be claimed in an

application if it is sufficiently creative. However, a claim in text or literary authorship does not extend to titles, short phrases, standard navigational text, or other insufficiently creative or functional elements.

1006.1(A) Hypertext Markup Language (HTML)

An applicant may register HTML as a literary work if it was created by a human being (rather than a website design program) and if it contains a sufficient amount of creative expression. The claim may include the HTML underlying an entire website or it may be limited to specific webpages. In all cases, the claimant must be the author of the HTML or must own all of the exclusive rights in the HTML. If the HTML contains an appreciable amount of previously published, previously registered, or public domain material, that material should be excluded from the claim. For a definition and discussion of the differences between an applicant, author, and claimant, see Chapter 400.

The Office will not register HTML as a computer program, because HTML does not constitute source code. HTML is a markup language that merely formats the text and files on a webpage in much the same way that the codes in a word processing program format the characters and spaces in a document.

Unlike computer programs that are hand-coded by programmers using computer programming languages, HTML is frequently generated by website design software that provides templates or WYSIWYG ("What You See Is What You Get") functionality. If the website design software automatically creates the HTML, the website designer is not considered the author of the resulting markup language. By analogy, when an author creates a document using a word processing program, the author may insert text, spaces, and paragraphs, choose the font and the size of the letters, and select the color of these elements, but those decisions do not constitute copyrightable authorship. In such cases, the author of the document cannot assert a claim in the codes generated by the word processing program, because those codes were created by the program itself. The same is true for HTML that is automatically generated by website design software.

The HTML for a website typically contains any text that is viewable on the site, because the HTML formats, colors, sizes, and lays out the text on each webpage. If an applicant intends to register the text within a website, the applicant should submit the text as it is rendered on the webpage; there is no reason to submit the HTML.

To register a claim in HTML the applicant must submit copy(ies) of the entire work. The applicant may not rely on the regulations governing computer programs, which allow applicants to submit only a portion of the source code.

A registration for HTML and/or accompanying text will extend to the original text that is embedded in the HTML (*i.e.*, the series of letters and numbers, interspersed with file names and/or text). However, it will not extend to the formatting and layout of text or digital files on a webpage that may be dictated by the HTML or style sheets. A claim in a computer program may cover the screen displays and other content generated by the program, but a claim in HTML does not extend to the screen displays or any content of the files referred to in the HTML.

For information concerning the practices and procedures for registering computer programs see Chapter 700, Section 721.

1006.1(B) Databases

As discussed in Section 1002.6, a website is not considered a database for the purpose of copyright registration. The mere fact that a website contains a database of information or the fact that the information on a website is searchable does not transform the website into a database. For these reasons, the group registration option for database updates cannot be used to register websites or webpages, and at present there is no group registration option for website revisions that have been made over a period of time.

If a website contains a database as part of its website content, the database may be registered as a literary work if it contains a sufficient amount of original authorship. The Office applies the same rules when examining this type of work, regardless of whether the database is made available through a website or in a hard copy format. For information concerning the practices and procedures for registering a database, see Chapter 700, Section 727. For information concerning the group registration option for database updates, see Chapter 1100, Section 1112.

1006.2 Visual Art Works

Websites typically contain visual art works, such as photographs, graphic designs, drawings, illustrations, and other two-dimensional works. This type of website content may be registered if it is sufficiently original.

A visual art work may be registered on an individual basis if the claimant is the author of that website content or owns all the exclusive rights in that content. In the alternative, the two-dimensional visual arts content contained in a website may be registered as a collective work if the author selected, coordinated, and/or arranged that content and if the claimant is the author of the collective work or owns all the exclusive rights in that work.

Creative pictorial authorship that is contained in a standard design feature, such as a background, button, banner, or template may be copyrightable if it is sufficiently creative. However, a claim in the pictorial authorship contained on a website does not extend to the standard placement of features on the webpages, such as elements that are part of the template, including mere coloration, the use of borders, or the selection of typeface and font.

Example:

- Mighty Oak Insurance creates an original logo design featuring the image of an oak tree and incorporates the logo into the template for

its website. The logo may be registrable as two-dimensional artwork.

1006.3 Works of the Performing Arts

Works of the performing arts that are perceptible on webpages may be registered if they are sufficiently original, including musical works, sound recordings, dramatic works, choreographic works, pantomimes, motion pictures, and other audiovisual works.

A work of the performing arts may be registered on an individual basis if the claimant is the author of that website content or owns all the exclusive rights in that content. In the alternative, the performing arts content contained in a website may be registered as a collective work if the author selected, coordinated, and/or arranged that content and if the claimant is the author of the collective work or owns all of the exclusive rights in that work.

1006.4 Compilation Authorship

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

The content of a website may qualify as a compilation if there is a sufficient amount of creative expression in the selection, coordination and/or arrangement of the content as a whole. For example, there may be "selection" authorship involved in choosing the material or data that will be included in the website. There may be coordination authorship involved in classifying, categorizing, ordering, or grouping the content. In addition, there may be arrangement authorship involved in determining the placement or arrangement of the content within the website as a whole.

To register a claim to copyright in a compilation the applicant should state "compilation of _____" in the field marked Other, and should specify the type of website content that the author selected, coordinated, and/or arranged (*e.g.*, "compilation of text" or "compilation of text and photographs"). A registration for a compilation may cover each type of authorship if it is sufficiently creative, but it does not cover any content that appears within the website unless that content is copyrightable and is specifically claimed in the application.

Example:

- Camilla Beret is the owner of a dating website called "Switch and Bait." Camilla did not create the individual listings that are posted on the site, but she selected the fields that are included within each listing and she created the arrangement of listings, headings, graphics, and photographs within the website as a whole. If the selection and arrangement is sufficiently creative, the registration

specialist may register Camilla's authorship as a "compilation of text, graphics, and photographs."

For general information regarding compilations, see Chapter 500, Section 508. For information regarding compilation authorship, see Chapter 300, Section 312. For information regarding the practices and procedures for registering a claim in a compilation, see Chapter 600, Section 618.6 and 621.8(D).

1007 Uncopyrightable Material

A registration for a claim in website content does not extend to any uncopyrightable material contained within a website. In particular, the U.S. Copyright Office will refuse to register website content that does not constitute copyrightable subject matter or content that lacks a sufficient amount of original authorship. Examples of uncopyrightable material include, but are not limited to, the following:

- Ideas, such as plans for future websites.
- Functional design elements.
- Domain names and hypertext links.
- The layout, format, or "look and feel" of a website.
- Common, unoriginal material, such as names, icons, or familiar symbols.

See 17 U.S.C. § 102(b); *see also* 37 C.F.R. § 202.1.

This type of material is discussed in Sections 1007.1 through 1007.4. For a general discussion of uncopyrightable material, see Chapter 300, Section 313.

1007.1 Ideas for Websites, Website Operation, or Website Structure

Section 102(b) of the Copyright Act specifically states that copyright protection for an original work of authorship 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). For example, copyright protection does not extend to the ideas for a website, nor does it extend to any ideas or concepts for the visual or operational design of a website, its user interface, or the hyperlink structure of the site.

1007.2 Domain Names and URLs

A domain name or URL is the address for a website or webpage. It is the online equivalent of a mailing address or phone number. These elements are facts that are not eligible for copyright protection. *See Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 347 (1991) ("No one may claim originality as to facts . . . because facts do not owe their origin to an act of authorship."). In addition, domain names and URLs are not protectable because they are merely words or short phrases that lack the sufficient amount of creativity required for copyright protection. *See* 37 C.F.R. § 202.1(a).

1007.3 Hypertext Links

A hypertext link is generally a URL or bookmark within a website. These elements are not copyrightable, because they are essentially addresses or facts and because they are simply a method for accessing content within a website.

Although a URL or bookmark in and of itself would not be protected by copyright, the creative text or graphic that embodies a hypertext link may be copyrightable if that text or graphic contains a sufficient amount of original authorship.

1007.4 Layout and Format

The copyright law does not protect the overall look and feel of a website. It only protects the specific copyrightable expression found on a website on a given date.

As a general rule, the selection, coordination, and/or arrangement of particular content on a webpage may be copyrightable if it is sufficiently creative. However, the layout (*i.e.*, spatial placement) or format of a webpage is not copyrightable in and of itself, regardless of how many elements are used in the layout or format. For example, a claim based on the border width for a webpage, the placement of some banner, and a placeholder for blocks of unspecified text or images would not be registrable. By contrast, a claim based on a particular banner, text, and images that are arranged in a creative manner may be eligible for registration, but the claim would extend only to that selection, coordination, and/or arrangement of those particular elements. It would not extend to other elements that have been arranged in the same or similar way.

The U.S. Copyright Office will not register the format and layout of a website because it would impede the very purpose of copyright—to promote creativity—by limiting the ways in which creativity may be expressed. After conducting a formal rulemaking, the Office determined that it cannot register the overall format or layout of a book or other printed publication, including the choice of style and size of typeface, leading (*i.e.*, the space between lines of type), the placement of the folio (*i.e.*, page numbers), the arrangement of type on the pages, or the placement, spacing, and juxtaposition of textual and illustrative matter in the work. The Office cannot register these elements because they fall within the realm of uncopyrightable ideas. If the Office registered claims in format or layout it would extend protection to the idea itself, because there are only a limited number of ways to organize content within a publication. Barring these types of claims thus serves the goal of copyright by ensuring that these building blocks of expression are available to all creators. *See* Registration of Claims to Copyright: Notice of Termination of Proposed Rulemaking Regarding Registration of Claims to Copyright in the Graphic Elements involved in the Design of Books and Other Printed Publications, 46 Fed. Reg. 30,651, 30,653 (June 10, 1981).

For the same reason, the Office will not register the standard arrangement or placement of the common elements and features on a webpage. The decision to add or place a banner, border, frame, sign-in box, title, footer, video screen, text blocks, or other elements in certain positions cannot be registered in the absence of specific copyrightable content in those elements, because these types of choices do not constitute original authorship. For instance, an original banner may be registered as a pictorial work if it is sufficiently creative, but the registration will not extend to the

placement of that banner because there are a limited number of ways to layout that type of content on a webpage.

Style sheet languages, such as Cascading Style Sheets, are merely methods of formatting and laying out the organization of documents written in a markup language, such as HTML. Because procedures, processes, and methods of operation are not copyrightable, the Office generally will refuse to register claims based solely on CSS.

For a general discussion of layout and format, see Chapter 300, Section 313.3(E) and Chapter 900, Section 906.5.

1008 Registration Issues

Claims in website content are often delayed because the application contains inaccurate or incomplete information and/or because there are discrepancies between the statements provided in the application and the information or material contained in the deposit copy(ies). This Section discusses issues that commonly arise in connection with the registration of such works.

1008.1 The Scope of a Registration for Website Content

A registration for website content extends only to the following material:

- Material that contains a sufficient amount of copyrightable expression,
- Material that is original to the author named in the application,
- Material that is owned by the claimant named in the application,
- Material that is expressly described in the application, and
- Material contained in the deposit accompanying the application.

1008.2 Unclaimable Material Must Be Excluded from the Claim

As with any type of work, a registration for website content does not extend to any unclaimable material that may be contained within that content. For purposes of registration, unclaimable material includes material that is not owned by the claimant, material that is in the public domain, or material that was previously published or previously registered.

If the deposit contains an appreciable amount of previously published, previously registered, public domain, or third party material, the applicant must expressly exclude that material from the claim using the procedure described in Chapter 600, Section 621.8. Asserting a claim in previously published material is one of the most common mistakes that applicants make when completing an application to register website content.

The U.S. Copyright Office has a longstanding practice of precluding previously published material from a claim in a collective work or derivative work, even if the author of the collective work or derivative work is the author of the previously published material

and owns all of the rights in that material. The Office requires applicants to disclaim previously published material for several reasons. Historically, publication affected the duration of the copyright in a work, and it continues to be implicated in the duration of works made for hire, anonymous works, and pseudonymous works. Obtaining information about the date and nation of first publication may be necessary to determine if a particular work is eligible for copyright protection in the United States or to determine if the applicant satisfied the applicable deposit requirements. To register a published work an applicant may be required to submit a complete copy of that work, unless the Office's regulations explicitly allow for the submission of identifying material. Finally, this longstanding practice clarifies the date of publication for a particular work, which may assist the courts in assessing the copyright owner's eligibility for statutory damages and attorney's fees in an infringement action. For information concerning these issues, see Chapter 500, Section 503.5.

1008.3 Publication Issues

1008.3(A) What Constitutes Publication?

Publication is defined in the U.S. Copyright Act as: "[T]he *distribution* of *copies* or *phonorecords* of a work *to the public* by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords *to a group of persons* for purposes of further distribution, public performance, or public display, constitutes publication." 17 U.S.C. § 101 (definition of "publication") (emphases added). The statute also states that "[a] public performance or display of a work does not in itself constitute publication." *Id*.

To perform or display a work "publicly" means "(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times." 17 U.S.C. § 101 (definition of "to perform or display a work 'publicly'").

Although, in the vernacular, the term "published" has acquired broad meaning, it has a much narrower meaning as a term of art within the Copyright Act. Moreover, publication was part of the copyright law long before the internet became a means of public communication and dissemination. While technological developments have blurred this traditional concept, the U.S. Copyright Office interprets publication in a manner consistent with congressional intent and with appreciation for the current factual and legal distinctions that may inform the assessment of this issue. Specifically, the Office views publication in light of the statutory definition of "publication," the

legislative history for the Copyright Act, and a host of business practices premised on divisible exclusive rights.[1]

For a detailed articulation of these definitions and a general discussion of publication, see Chapter 1900. For a general discussion of publication on the internet, see Sections 1008.3(B) through 1008.3(F).

1008.3(B) Reproduction and Distribution Distinguished from Performance and Display

The statutory definition makes clear that publication requires (i) the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending, or (ii) an offer to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display. 17 U.S.C. § 101.

As a general rule, the U.S. Copyright Office considers a work "published" when it is made available online if the copyright owner authorizes the end user to retain copies or phonorecords of that work. For example, the fact that a work is expressly authorized for reproduction or download by members of the public or is expressly authorized for distribution by the public creates a reasonable inference that copies or phonorecords have been distributed and that publication has occurred.

Likewise, the Office generally considers a work "published" when the copyright owner makes copies or phonorecords available online and offers to distribute them to a group of persons for purposes of further distribution, public performance, or public display. For instance, the fact that a sound recording has been offered for distribution to multiple online streaming or download services, or the fact that a photographer offered a photograph to multiple stock photo companies or website for purposes of further distribution or public display creates a reasonable inference that an offer to distribute to a group of persons has been made and that publication has occurred.

It may seem odd that allowing the whole world to view or hear a work does not constitute publication of a work, but the statutory definition is clear that the public performance or public display of a work does not, in and of itself, constitute publication.

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[1] U.S. copyright law has long drawn a distinction between the reproduction and distribution right, on the one hand, and the public performance and public display right on the other. Congress explicitly embraced the concept of divisibility of the exclusive rights of copyright when it enacted the 1976 Act. H.R. REP. NO. 94-1476, at 123 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5738-39.

A mere display or performance is not a distribution, because the end user does not retain a "copy" or "phonorecord" of the work, as defined under the Copyright Act. *See* 17 U.S.C. § 101 (definition of "copies" and "phonorecords").[2]

As a general rule, the Office does not consider a work to be published if it is merely displayed or performed online, unless the author or copyright owner clearly authorized the reproduction or distribution of that work, or clearly offered to distribute the work to a group of intermediaries for purposes of further distribution, public performance, or public display.

1008.3(C) The Authorization Requirement

A critical element of publication is that the distribution of copies or phonorecords to the public must be authorized by the copyright owner. To be considered published, the copyright owner must expressly or impliedly authorize users to make retainable copies or phonorecords of the work, whether by downloading, printing, or by other means.

A distribution or offer to distribute that has not been authorized by the copyright owner does not constitute publication. Thus, the mere fact that a work is disclosed on the internet does not "publish" the work. The end user's technical capacity to copy, capture, save, or otherwise reproduce a work in and of itself does not imply that the copyright owner authorized the distribution or publication of that work, unless there is an express or implied-in-fact authorization that supports such an inference. Likewise, the fact that it may be possible for an end user to reproduce or distribute a work that has been authorized only for public display or public performance online does not mean that publication has occurred.

An unauthorized reproduction or distribution online may constitute copyright infringement or may be a fair use in certain circumstances, even if there are no technological protection measures preventing the use of that work. While a fair use may be lawful, it is not considered an authorized reproduction or distribution that publishes the copyright owner's work. Similarly, an infringing reproduction or distribution does not constitute publication, even if the unauthorized copies or phonorecords are dispersed among large number of people.

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[2] The term "copies" is used interchangeably in this Chapter to refer to both "copies" and "phonorecords," which are defined in Section 101 of the Copyright Act.

While it is often a simple matter to determine whether a distribution of tangible copies was authorized by the copyright owner, it is not always factually clear whether the placement of works online is intended to be an authorized distribution of those works or merely an authorized public performance or public display.

The answer to this question may vary for different types of works or vary based on the way in which works are placed online. For instance, posting a sound recording online for authorized downloading by the public may well provide evidence of publication, whereas making a sound recording available for streaming may not constitute publication if the user does not receive a copy of the work. Similarly, posting an article on a news website that authorizes users to download articles or email them to a friend may support a finding of publication for that particular article, whereas posting the entire news website online would not constitute publication because the website as a whole is intended only for public display. Indeed, there would appear to be little basis for inferring that a copyright owner authorized a user to copy and/or distribute an entire website absent some indication to the contrary.

Because publication is premised on authorized distribution, it is ultimately for the author or the copyright owner to determine whether a work is authorized for distribution or is limited to public performance or public display. This choice may be express (*e.g.*, an express statement that the works on a website may be downloaded or that they are available only for online display) or implied in fact (*e.g.*, a website that provides a download option).

Authors and copyright owners who wish to clarify the publication status of their works should provide express information about what they are, or are not, authorizing others to do with their works. For instance, explicitly authorizing downloading or reproduction of all the content on a website would indicate that the works posted on that site have been published. Implicitly authorizing downloading or transmission of copies of works by offering copies for sale, free downloading, or transmission to others via email also may suggest that works subject to that implicit authorization have been published. By contrast, clearly stating that the content on a particular is available only for public display or public performance with an express prohibition on the reproduction, distribution, or transmission of any of that content would indicate that the works on that site are unpublished.

1008.3(D) Implied Nonexclusive License or Authorization

To assess the publication status of works placed online, it may be necessary to clarify the scope of any implied license purportedly granted by the copyright owner of those works. Courts have found that an implied, nonexclusive license or authorization may exist where the circumstances and the parties' conduct reflected their intent or understanding that the work would be used for a specific purpose.

Courts have considered a wide variety of factors in determining whether a nonexclusive, implied license may exist. In some cases, the grant of a license may be implied by objective conduct that "supports a finding that an implied license existed." *Effects Associates, Inc. v. Cohen*, 908 F.2d 555, 558 n.8 (9th Cir. 1990) (finding an implied license where the author created special effects for a horror movie and stated that the footage

would be used for this purpose in both a written agreement and in its application to register the footage). In other cases, a license may be implied by the totality of the parties' conduct. *See, e.g., Falcon Enterprises, Inc. v. Publishers Service, Inc.*, 438 Fed. App'x. 579, 581 (9th Cir. 2011) (holding that the parties' conduct demonstrated the existence of an ongoing nonexclusive, implied license where the plaintiff received a fee each time he sent copyrighted images to the publisher for publication over a period of several years). However, express or explicit limits on use may supersede an implied license, particularly if the copyright owner conveys those limits before the work is delivered to the licensee. *See Johnson v. Jones*, 149 F.3d 494, 500-501 (6th Cir. 1998) (finding no implied license where architect presented the client with proposed contracts containing an express provision stating that the drawings could not be used without his agreement or without appropriate compensation).

A variety of factors may be relevant in determining whether a copyright owner published website content by impliedly authorizing users to make copies of that content. Examples of factors that may be considered include the following:

- Whether there are indications on the website or webpage relevant to the work indicating that the copyright owner intends for the work to be distributed to the user via download, saving, printing, or emailing, such as the presence of a "download," "save," or "email" button for a particular work.

- Whether the copyright owner expressly reserved copyright rights in the work or explicitly prohibited the reproduction or distribution of the work in whole or in part.

- Whether the copyright owner employed barriers to the reproduction or distribution of the work, such as technological measures that disable or impair a web browser's print, copy, and/or save capabilities.

- Whether the copyright owner permitted the work to be streamed or displayed, but did not expressly permit the work to be copied or downloaded.

1008.3(E) Intermediate or Buffer Copies Made in the Course of Streaming

When a work is performed or displayed online through streaming or browsing, temporary copies of that work are routinely made due to the way in which the internet operates. These intermediate copies are necessary to perform or display the work online. If the means of achieving a public performance or public display constituted a distribution in all cases, the right of public performance and public display would cease to be distinct and separate exclusive rights in the online environment. That would be contrary to Congress's clear intention to explicitly recognize the divisibility of exclusive rights in the 1976 Act.

As discussed above, the U.S. Copyright Office does not consider a work "published" when it is made available online through a public performance or public display unless the copyright owner authorizes the end user to retain copies of that work. The fact that the user's computer or other device makes intermediate copies, buffer copies, or other temporary digital copies during a performance or display of that work is irrelevant to

this determination. Authorizing the performance or display of a work does not necessarily mean that the copyright owner authorized the end user to retain copies of the work. While temporary copies may or may not be fixed in the user's computer or other device for a period of more than transitory duration, they are purely functional copies made solely for the purpose of facilitating the technological delivery of the performance or display. Typically the copyright owner does not intend for the user to permanently retain those copies on his or her computer, and any further use of those copies would be unauthorized by the owner.

Moreover, temporary copies made in the course of browsing websites do not reproduce the entire site, but only the pages displayed in the user's web browser. When a website and its content are posted online, the copyright owner presumably gives users an implied license to create temporary copies for the purpose of viewing that content in a browser. But it is doubtful that an implied license would extend to authorizing the permanent reproduction of an entire website or its contents without clear authorization from the copyright owner.

1008.3(F) Determining the Publication Status of a Work Made Available Only Online

The applicant — not the U.S. Copyright Office — must determine whether a particular work is published or unpublished. This determination should be based on the facts that exist at the time the application is filed with the Office. As a general rule, the Office will accept the applicant's representation that website content is published or unpublished, unless that statement is implausible or is contradicted by information provided elsewhere in the registration materials or in the Office's records or by information that is known to the registration specialist.

In making this determination, the applicant may wish to consider the following general guidelines:

- *Streamed-only content*: Streaming is a performance, which may not constitute a distribution of copies if the user does not receive a copy.

- *Express authorization to download content*: If a work is expressly made available for download the work is deemed published, because a distribution occurs each time a user downloads a copy, such as when MP3s of a sound recording are offered for sale on a website or where a copy of software or a videogame can be obtained by clicking on a "download now" button or similar link.

- *Downloading or reproduction expressly prohibited*: If a work is posted and displayed on a website and if there is a notice on the webpage, in the terms of service for the site, or in another obvious place stating that the work and/or all content on the site may not be downloaded, printed, or copied (or other statement to that effect), that work(s) may be deemed unpublished, because any copies that may be downloaded, printed, or otherwise distributed to the user have not been authorized by the copyright owner.

- *Work posted without the authority of the copyright owner*: The fact that a work was posted on a website without authorization from the copyright owner has no impact

on whether the work is published or unpublished (even if the work may be downloaded or printed from the site), because the copyright owner did not authorize the work's availability on the website in the first instance.

- *Implied license*: If a work is posted on a website and there is no evident statement in the terms of service for the site, on the webpage where the work is displayed, or elsewhere stating that the work may be downloaded, copied, forwarded, and/or printed it may be unclear whether the copyright owner authorized the distribution of that work. If downloading, reproducing, or retransmitting is facilitated in some manner by the website, there may or may not be an implied license to distribute the work, in which case the work may or may not be considered published.

- *Work made available in electronic and hard copy format.* If the same work is posted online and distributed in tangible copies, such as CDs, DVDs, or in printed formats, the work will be deemed published, even if it has not been published online.

For complete certainty, authors or copyright owners may register website content as an unpublished work before it is distributed or placed online. Likewise, if a website has not been posted online yet and if all of the content contained in the site has never been distributed, the website may be registered as an unpublished work. A registration for an unpublished work secures the statutory benefits for a work, such as the availability of statutory damages and attorney's fees for infringements that occur after the effective date of the registration for that work (regardless of whether the work is subsequently published).

1008.4 Identifying the Work(s) That May Be Included in the Claim

To register a claim with the U.S. Copyright Office the applicant should begin by identifying the work(s) of authorship that will be included in the claim. This is especially critical for websites, because they typically contain a number of discrete works of authorship. Each work may present unique registration issues that the applicant may need to consider when preparing the application and the deposit material.

For example, if the website contains a number of works that are owned by different parties, it may be necessary to submit a separate application for each work. Separate applications may be necessary if the applicant determines that the works have been published and that each work was published on a different date. Likewise, separate applications may be necessary if the applicant intends to register multiple versions of the same work and if the applicant determines that the versions were published on successive dates. Indeed, every work that is added to a website potentially may qualify as a derivative work or a new contribution to a collective work. In such cases, a separate application and separate publication date may be required for each date that new content was uploaded to the website and authorized for distribution to the public.

By contrast, if the website qualifies as a collective work it may be possible to register the entire site with one application, provided that the claimant owns the copyright in the site as a whole. It also may be possible to register the entire site together with the component works contained therein if the claimant is the author of or owns the copyright in those works. However, it is important to note that a website claimed as a

collective work will only be eligible for one award of statutory damages no matter how many discrete works within the website may be infringed. 17 U.S.C. § 504(c)(1). For information concerning the registration options for collective works and contributions to collective works, see Chapter 500, Section 509.

In other cases, it may be possible to register a number of works with one application by using one of the group registration options, such as the option for registering a group of unpublished works, a group of short online literary works, or a group of published or unpublished photographs, provided that the applicant satisfies the eligibility criteria for these options. For information concerning these registration options, see Chapter 1100 (Registration for Multiple Works).

1008.5 Identifying the Specific Version That May Be Included in the Claim

Many websites are frequently updated and may change significantly over time. A website may add content every hour, day, week, month, or year. To register a claim with the U.S. Copyright Office it is important to identify the specific version of the work(s) that will be included in the claim.

As a general rule, each version of a work may be registered as a separate work if the version contains a sufficient amount of new, copyrightable authorship. *See* 17 U.S.C. § 101 (stating that "where the work has been prepared in different versions, each version constitutes a separate work"). A registration for a specific version of a work covers the new material that the author contributed to that version, including any copyrightable changes, revisions, additions, or other modifications that the author contributed to that version. But as discussed in Section 1008.2, the registration does not cover any unclaimable material that appears in that version, including any material that has been previously published or previously registered with the Office. Therefore, if the version contains an appreciable amount of content that has been previously published and/or previously registered, the applicant should exclude that material from the claim.

Example:

- Sam Bavard operates a duck hunting website called "Animal Quackers." Every three months Sam revises the website by adding new text and photographs. When Sam submits an application to register the latest version of the site he limits the claim to the "new text and photographs" that he added to the site, and he excludes the photographs and text that were previously registered with the Copyright Office.

For information concerning the procedure for excluding unclaimable material, see Section 1009.8. For a general discussion of issues involving the registration of different versions of a work, see Chapter 500, Section 512.

1008.6 Distinguishing Between Published and Unpublished Content

Published and unpublished website content is treated differently for the purposes of registration. Sections 1008.6(A) and 1008.6(B) discuss some of the issues that should be

considered when asserting a claim in published or unpublished content. For guidance in determining whether website content is published or unpublished, see Section 1008.3.

1008.6(A) Published Website Content

If the applicant determines that the content has been published, the applicant may register all of the copyrightable material that was first published on the date of publication specified in the application. If the content contains copyrightable material that was published before that date, the applicant must exclude that previously published material from the claim.

When preparing an application to register content that appears on a published website, the applicant should do the following:

- Identify the content that the applicant intends to register.
- Identify the year that the content was created.
- Identify the year that the content was completed.
- Identify the date (*e.g.*, month, day, and year) that the content was first published.
- Prepare an appropriate deposit containing a complete copy of the content in the form in which it was first published.

The date of first publication specified in the application must be limited to a single date, and a registration for published website content only covers the content that was first published on that date. Therefore, the deposit should contain a copy of the content as it existed on the date of publication that is specified in the application. If the publication date specified in the application is not the same as the publication date for the content reflected in the deposit, the registration specialist will communicate with the applicant, which will delay the examination of the claim.

If an author or copyright owner determines that a website has been published, that party is encouraged to preserve and maintain a copy of the website as it existed on each day that copyrightable authorship is added or incorporated into the website. This will ensure that a proper deposit may be prepared and submitted to the Office in the event that the author, the copyright owner, or other authorized party decides to register the website or the content contained therein. It also may provide critical evidence in the event there is an infringement dispute involving that content. As discussed in Chapter 200, Section 202, the date of publication may be crucial in determining whether a copyright owner is able to seek statutory damages and attorney's fees in an infringement action.

If the applicant determines that a website has been published, it may be beneficial to register the initial version of the content that appeared on the site on the date that the site was first published. If the applicant takes this approach, the registration will cover that content as it existed on the date of publication specified in the initial application, provided that the content (i) is contained within the deposit, (ii) is owned by the

claimant named in the application, and (iii) has not been previously published or previously registered with the Office.

If the applicant subsequently submits an application to register subsequent versions of the website, the registration will cover the new or revised material that was first published on the date specified in the subsequent application. As a general rule, the applicant should submit a separate application for each separately published update or revision to the website that the applicant wishes to register. If this is impracticable, the applicant may decide to seek one or more strategic registrations that cover the published content that is most valuable to the claimant.

1008.6(B) Unpublished Website Content

If the applicant determines that the content was placed online solely for the purpose of public display or public performance, the work may be deemed unpublished. If so, the applicant may register all of the copyrightable material that appears on the website as of the date that the application is submitted, provided that the material (i) is reflected in the deposit, (ii) is owned by the claimant named in the application, and (iii) has not been previously published or previously registered with the Office. If the website contains an appreciable amount of previously published, previously registered material, or material that is owned by a third party, the applicant must exclude that material from the claim. If copyrightable material is subsequently added to the website, the applicant may seek a new registration for the new or revised material when the claimant determines that further protection is desirable.

In some cases, it may be possible to register a number of unpublished works with one application using the group registration option described in Chapter 1100, Section 1106. It also may be possible to register a website as an unpublished collective work, provided that the site contains a sufficiently creative selection, coordination, and/or arrangement of content. For a detailed discussion of collective works, see Chapter 500, Section 509.

1008.7 Statutory Damages

In determining whether to register the content of a website separately or together the applicant should consider the potential impact on the copyright owner's ability to seek damages in the event that a third party infringes that content.

It is possible to register vast amounts of material that appear together on a website with one application if the content qualifies as a compilation, a collective work, or contribution to a collective work. It also may be possible to register an updated version of a website that contains vast amounts of new or revised content if it qualifies as a derivative version of the original website. However, derivative works, compilations, and collective works are considered one work for purposes of calculating statutory damages. *See* 17 U.S.C. § 504(c)(1) ("For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work."); 17 U.S.C. § 101 ("The term 'compilation' includes collective works."). Consequently, registering a number of self-contained works that appear on a website together as a compilation, collective work, or derivative work may have significant consequences in a copyright infringement action. For example, when a website consisting predominantly of photographs is registered as a compilation, a court may issue only one award of statutory damages for all the

photographs covered by that registration. That is not necessarily the case, however, if the photographs are (i) unpublished and are registered as a group of unpublished works or unpublished photographs, or (ii) are published and are registered using the group registration option for published photographs. *See* 37 C.F.R. § 202.4(n).

For information concerning the group registration options for unpublished works, short online literary works, unpublished photographs, and published photographs, see Chapter 1100, Sections 1106, 1111, and 1114. For a discussion of derivative works, compilations, and collective works, see Chapter 500, Sections 507 through 509. For a general discussion of publication issues involving website content, see Section 1008.3.

1009 Application Tips for Websites and Website Content

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

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

1009.1 Type of Work

Many websites contain multiple forms of authorship, including text, images, artwork, musical works, sound recordings, videogames, computer programs, audiovisual works, among other types of works. Identifying the type of work that will be submitted to the U.S. Copyright Office is the first step in completing an application.

The Register of Copyrights has prescribed six classes of works that may be registered with the Office. The applicant should select the class of work that is most appropriate for the type of content that the applicant intends to register. When completing an online application, the applicant should select the appropriate class from the drop down menu marked Type of Work. When completing a paper application, the applicant should use the form that has been designated for the type of content that appears in the work.

- *Literary Works*: When completing an online application, the applicant should select "Literary Work" if the content primarily contains nondramatic text, such as articles, blog entries, or the like, or if the content primary consists of computer programs, databases, compilations of information, or other works that are expressed in numbers or other verbal or numerical symbols or indicia.

- *Works of the Visual Arts*: When completing an online application, the applicant should select "Work of the Visual Arts" if the content primarily contains or consists of pictorial or graphic material, such as artwork, images, drawings, illustrations, photographs, or the like. When completing a paper application, the applicant should use Form VA.

- *Works of the Performing Arts*: When completing an online application, the applicant should select "Work of the Performing Arts" if the content primarily contains or consists of music, lyrics, scripts, choreography, or other works that are intended to be performed for an audience. When completing a paper application, the applicant should use Form PA.

- *Sound Recordings*: When completing an online application, the applicant must select "Sound Recording" if the content contains or consists of recorded sound, even if the work also contains other types of authorship, such as music or lyrics. When completing a paper application, the applicant must use Form SR.

  NOTE: There is a limited exception to this rule. If the content consists of sounds accompanying a motion picture or other audiovisual work, the applicant should select "motion picture / audiovisual material" or should use Form PA.

- *Motion Picture / Audiovisual Material*: When completing an online application, the applicant should select "Motion Picture / AV Work" if the content primarily contains or consists of motion pictures or other audiovisual works. When completing a paper application, the applicant should use Form PA.

- *Single Serial Issue*: When completing an online application, the applicant should select "Single Serial Issue" if the content consists of a single issue of a serial publication, such as a newsletter that is published and distributed online or via email as a self-contained, downloadable work. When completing a paper application, the applicant should use Form SE.

If the content contains more than one type of authorship, the applicant should select the option that is appropriate for the predominant form of authorship that appears in the deposit copy(ies) or phonorecord(s). For example, the applicant should select "literary work" to register a blog that mostly consists of text, even if the blog contains some images that accompany the text. By contrast, the applicant should select "work of the visual arts" to register a library of photographs or a website that primarily consists of clip art.

For additional guidance in selecting the appropriate type of work, see Chapter 600, Section 609.2.

1009.2 Title of This Work

The applicant should provide the title of the content that will be submitted for registration, including any subtitles. When completing an online application, the applicant should provide this information on the Title screen in the field marked Title of This Work. When completing a paper application, the applicant should provide this information on space 1 of the application.

The Office strongly encourages applicants to provide a title for each work that will be submitted. Interested parties typically search for works by title and it may be extremely difficult to find a particular work if the applicant fails to provide that information in the application. If the author has not selected a formal title for the content, the applicant may provide a descriptive title that identifies the author of the content, the type of content that the author created, or other pertinent information that can be reasonably identified in a search of the U.S. Copyright Office's online database.

Examples:

- Zehra Salim owns a website called "Zehra's Art Store," which sells art supplies. Zehra created a logo for the site that features a paint brush superimposed on a compass. To register this logo the applicant may provide a descriptive title, such as "Logo artwork for Zehra's Art Store," "Paint brush / compass logo for Zehra's Art Store," or the like.

- Cristine Prelle owns a fan website called "Wild About Oscar," which celebrates the career of Oscar Wilde. To register the entire content of her website, Christine may provide the URL for the site or a descriptive title for the site as a whole, such as "Oscar Wilde fan website."

The electronic registration system will accept titles consisting of Roman letters and/or Arabic numerals, but it will not accept a title that has been underlined. When providing a URL as the title for a website, the applicant may include the suffix that identifies for top level domain name for the site, such as .com, .net, or .org, but applicants should not include the prefixes"www," "http://" or other generic introductory phrases.

Examples:

- PetSupplies.com.

- Backtoschool.org (2012 version).

- Irvington Historical Society website.

For additional guidance in completing the title field/space of the application, see Chapter 600, Section 610.

1009.3 Year of Completion

The applicant must identify the year that the author completed the website or website content that the applicant intends to register. The applicant should only provide a year of completion for the specific version that will be submitted for registration. The applicant should not provide a year of completion for any other version that will not be submitted to the Office.

When completing an online application, the applicant should provide the year of completion on the Publication/Creation screen; when completing a paper application the applicant should provide this information in space 3(a). For guidance in completing this portion of the application, see Chapter 600, Section 611.

The year of completion may vary depending on the type of content that the applicant intends to register. If the content is a discrete work contained on a website, the year of completion is typically the year that the author completed that work in its final form. If the applicant intends to register multiple works that were created over a period of more

than one year, the applicant may provide the year of completion for the most recent work that will be submitted for registration.

If the applicant intends to register the collective authorship in the website as a whole, the year of completion may vary depending on whether the website is published or unpublished. If the website has been published, the year of completion must precede or be the same as the date of first publication for the specific content that is claimed in the application. If the website is deemed unpublished (*i.e.*, a site that is authorized only for public display or public performance), the Office will accept any year of completion that precedes the date that the application was submitted.

If the applicant intends to register content that is frequently revised or updated, such as a news website or blog, the applicant should provide the year of completion for the content that is reflected in the deposit copy(ies) (*i.e.*, the most recent year that is reflected in the deposit material). If the applicant provides a year of completion for an earlier version of the website, but does not submit a deposit containing that version, or provides a year of completion for any other content that is not contained in the deposit copy(ies), the registration specialist may communicate with the applicant, which will delay the examination of the claim.

Example:

- Precious & Paulie LLC operates a website that features cat videos. The company submits an application to register the entire content of this site. The application states that the work was completed in 2014, but the deposit material contains a statement that reads "last updated 2012." The registration specialist will communicate with the applicant to verify the year of completion.

1009.4 Date and Nation of First Publication

When completing an application, the applicant — not the U.S. Copyright Office — must determine whether the work is published or unpublished. This may be difficult when the applicant intends to register a website or website content. Often times, the website as a whole may be viewed as an unpublished work, but the particular content that appears on the site may be deemed published if it has been explicitly authorized for distribution (*e.g.,* with a button that enables users to "download" website content, an icon that invites users to "save" website content, or a feature that allows users to transmit content by email or other means).

As a general rule, the Office will accept the applicant's representation that a work is published or unpublished, unless that statement is implausible or is contradicted by information provided elsewhere in the registration materials or in the Office's records or by information that is known by the registration specialist.

If the applicant determines that the work has been authorized for distribution to the public, the applicant must identify the date and nation of first publication for that work. In most cases, the date of first publication is the date that the work was posted online with the authorization of the copyright owner.

If the applicant intends to register multiple works and if those works were published on successive dates, the applicant generally should submit a separate application with a separate date of publication for each work. Likewise, separate applications and separate publication dates may be required if the applicant intends to register multiple versions of the same work and if each version was distributed on a different date. Indeed, every work that is added to a website may constitute a derivative work or a contribution to a collective work, and a separate application and separate publication date may be required for each date that new material has been authorized for distribution on that site. In some cases the applicant may need to limit the claim to each individual work that was added to the website on a particular date, while in other cases the applicant may need to exclude previously published material that was distributed on the website on an earlier date.

By contrast, if the applicant determines that the work was placed online solely for the purpose of public display or public performance, the work may be deemed unpublished. An application for an unpublished work may cover all of the copyrightable material contained in the deposit copy(ies) that is owned by the copyright claimant, provided that the material has not been previously published or previously registered with the Office. As discussed in Section 1008.6(B), it may also be possible to register a number of unpublished works with one application, one filing fee, and one set of deposit copies if the applicant satisfies the requirements for registering the works as a group of unpublished works or unpublished photographs. If the applicant subsequently decides to register unpublished material that was added to the website at a later date, the applicant may seek a new registration for the new material when the copyright owner determines that further protection is desirable.

1009.4(A) Date of Publication

When completing an online application, the applicant will be asked to provide publication information on the Publication / Completion screen. If the applicant determines that the work has been published, the applicant should select "yes" in the drop down menu marked "Has this work been published?" In addition, the applicant should provide the month, day, and year that the work was published for the first time. Specifically, the applicant should provide the date that the work was first distributed or the date that the work was offered to a group of persons for the purpose of further distribution, performance, or display (whichever is earlier). As a general rule, the applicant should only provide a date of first publication for the specific version that will be submitted for registration. The applicant should not provide a date of publication for any other version of the work that will not be submitted to the Office.

If the applicant determines that the work is unpublished, the applicant should select "no" on the Publication / Completion screen.

When completing a paper application the applicant should provide the date of first publication in space 3(b) under the heading marked "Date and Nation of Publication of This Particular Work." If the work has not been published, space 3(b) should be left blank.

For additional guidance concerning this portion of the application, see Chapter 600, Section 612.

1009.4(A)(1) Date of First Publication for the Original Version of a Work

If the applicant intends to register a work that was published on the original version of a website, the applicant generally should provide the month, day, and year that the work was first posted on that site.

Example:

- J.J. Cool created a website to promote his music career. On May 18, 2012 he uploaded several songs that have never been published before, and he offered them for sale for $1.99 apiece. J.J. intends to register the words, lyrics, and sound recordings embodied in these songs. J.J. submits a separate application for each work, and in each case, he states that the work was first published on May 18, 2012. The registration specialist will register the claims.

1009.4(A)(2) Date of First Publication for Subsequent Versions of a Work

If the applicant intends to register a revised version of a published website, the applicant generally should provide the month, day, and year that the revised content was first posted on that site.

Example:

- Zeke Quarry operates a website called "Internal Revolution," which contains a compilation of public domain photographs from the Civil War. Users may download content from the website if they pay a subscription fee. Zeke launched the site on December 20, 2004, and he intends to register the selection of images that he added to the site on January 1, 2013, June 30, 2013, and December 31, 2013. Zeke submits a separate application for each batch of images, and he states that these updates were first published on January 1, 2013, June 30, 2013, and December 31, 2013. If each compilation contains a sufficient amount of creative expression, the registration specialist will register these claims.

1009.4(A)(3) Content Published Online and in Hard Copy Form

If the applicant determines that the work was published both online and in hard copy form (*e.g.*, in physical copies or phonorecords), the applicant should provide the date that the work was first published, regardless of whether the first publication occurred online or in hard copies.

1009.4(B) Nation of First Publication

If the applicant determines that the work has been published, the applicant must identify the nation of first publication. The Office may use this information to determine if the work is eligible for protection under U.S. copyright law.

When completing an online application the applicant should identify the country where the work was first published by selecting one of the countries listed in the drop down menu marked Nation of first publication. When completing a paper application, the application should provide this information on space 3(b) next to the heading marked Nation. For guidance in completing this portion of the application, see Chapter 600, Section 612.

As a general rule, the nation of first publication is the country where copies or phonorecords of the work were first published with the authorization of the copyright owner. This determination may be difficult when the applicant intends to register a website or website content, because the law in this area is unsettled. If the website was directed at users in a particular country (*e.g.*, a website written entirely in Danish with a domain name ending in the suffix .dk), that country could be deemed the nation of first publication for purposes of copyright registration. The location of the server where the work resides and/or the scope of the intended audience may also be relevant to this issue.

Upon request, the Office will provide the applicant with general information about the Copyright Act and the legislative history for the statute, including the statutory definition of publication and the provisions concerning nation of publication. However, the Office will not give specific legal advice on whether a work has or has not been published within a particular country. Instead, the Office leaves this determination to the applicant and the courts, because they are in a better position to assess the complete facts in any particular situation.

1009.5 Name of Author

The applicant should identify all of the authors who created or co-created the copyrightable content that is claimed in the application.

When completing an online application, the applicant should provide the author's full name on the Authors screen. If the content was created by an individual, the applicant should provide that person's full name in the field marked Individual Author. If the content was created by or on behalf of a legal entity, such as a corporation, partnership, or other organization, the applicant should provide that entity's name in the field marked Organization. If the works were created by more than one author, the applicant should complete the relevant fields, click the Save button, and then repeat this process for the other authors.

If the author created the content as a work made for hire, the applicant should select "yes" in response to the question "Is this author's contribution a work made for hire?" (For a definition and discussion of works made for hire, see Chapter 500, Section 506.) If the content was created by an employee acting within the scope of his or her employment, the employer should be named as the author (not the employee). If the content was specially ordered or commissioned as a work made for hire, the person or organization that ordered or commissioned the work should be listed as the author (rather than the individual who actually created the work).

NOTE: When asserting a claim in copyrightable web design authorship, the web designer(s) should be named as the author unless the designer created the website under a work for hire agreement.

In all cases, the applicant should provide the author's country of citizenship or domicile. The Office may use this information to determine if the work is eligible for protection under U.S. copyright law. If the applicant fails to provide this information, the application will not be accepted by the electronic registration system. If the author's citizenship or domicile is unknown, the applicant may select "not known" from the drop down menu.

When completing a paper application, the applicant should provide the author's full name and his or her country of citizenship and/or domicile on space 2(a). If the content was created by more than one author, the applicant should provide this information for the other authors on spaces 2(b) and 2(c). If the content was created by more than three authors, the applicant should provide this information on Form CON.

If the content qualifies as an anonymous work or pseudonymous work, the applicant may check the appropriate boxes that appear on the Authors screen of the online application or in space 2 of the paper application. For a definition and discussion of anonymous works and pseudonymous works, see Chapter 600, Sections 615.1 and 615.2.

For additional guidance in providing the Author's Name, see Chapter 600, Section 613.9. For guidance in providing the author's citizenship and domicile, see Chapter 600, Section 617.

1009.6 Author Created / Nature of Authorship Statements

To register a website or website content the applicant must identify the copyrightable authorship that will be submitted for registration and the applicant must assert a claim to copyright in that authorship. If the content was created by a single author, the applicant should clearly identify the copyrightable authorship that the author contributed to that work. If the content was created or co-created by two or more authors, the applicant should clearly identify the copyrightable authorship that each author contributed to work. However, the applicant should not describe any uncopyrightable material or *de minimis* elements that appear in the content.

When completing an online application, the applicant should provide this information on the Authors screen. Specifically, the applicant should check one or more of the boxes in the Author Created field that accurately describe the author's contribution to the content. If none of these terms fully describe the content that will be submitted for registration, the applicant should provide a more specific description in the field marked "Other." For guidance on completing this field, see Chapter 600, Section 618.4(A).

When completing a paper application, the applicant should provide this information in the space marked Nature of Authorship. For guidance in completing this portion of the application, see Chapter 600, Section 618.4(B).

NOTE: The deposit copy(ies) must contain all of the authorship that is claimed in the Author Created field or the Nature of Authorship space. If the applicant asserts a claim

in content that does not appear in the deposit copy(ies), the registration specialist may communicate with the applicant or may refuse to register that aspect of the claim. For more information on the deposit requirements, see Section 1010.

1009.6(A) Acceptable Terminology for an Application to Register a Website or Website Content

As a general rule, the following terms may be used to describe the copyrightable content on a website, provided that they accurately describe the authorship that appears in the deposit copy(ies). In most cases, the Office will accept combinations or variant forms of these terms, unless they are contradicted by information provided in the deposit copy(ies) or elsewhere in the registration materials.

Literary content:

- Text

Visual arts content:

- Artwork or 2-D artwork
- Photographs
- Drawings
- Technical drawings
- Map
- Architectural work

Performing arts content:

- Music
- Lyrics
- Script
- Choreographic work
- Pantomime

Recorded sounds:

- Sound recording

Audiovisual content:

- Audiovisual work
- Motion picture

For a definition and discussion of these terms, see Chapter 600, Section 618.4(C).

To register a computer program or a database that is contained or embedded within a website, the applicant should follow the instructions set forth in Chapter 700, Sections 721.9(F) and 727.3(D).

To register a derivative work, the applicant should describe the new material that the author contributed to the website using appropriate terms, such as "new photographs," "updated text," "revised artwork," "additional music," or the like.

If the applicant intends to register the authorship involved in selecting, coordinating, and/or arranging the content that appears on a website, the applicant may use any of the terms listed below, provided that they accurately describe the copyrightable authorship that appears in the deposit copy(ies). In most cases, the Office will accept combinations or variant forms of these terms, unless they are contradicted by information provided in the deposit copy(ies) or elsewhere in the registration materials.

- Compilation of [specify material that has been selected, coordinated, and/or arranged, *e.g.,* "compilation of text and artwork"].
- Selection, coordination, and/or arrangement of [specify material that has been selected, coordinated, and/or arranged, *e.g.* "selection and arrangement of text and photographs"].

For additional guidance in registering compilation authorship, see Chapter 600, Section 618.6.

NOTE: Websites often contain previously published material, previously registered material, public domain material, or material owned by a third party. If the deposit copy(ies) contain an appreciable amount of unclaimable material, then as discussed in Section 1009.8 the applicant should exclude that material from the claim. For information concerning this procedure, see Section 1009.8.

1009.6(B) Unclear Terminology for an Application to Register Website Content

The applicant should clearly identify the authorship that will be submitted for registration and the claim to copyright in that authorship should be clearly stated. Specifically, the applicant should identify the copyrightable authorship that the author contributed to the website or the website content, preferably using one or more of the terms set forth in Section 1009.6(A). If the claim to copyright is unclear, the registration specialist may communicate with the applicant or may refuse registration. For representative examples of unclear terms that may prompt a communication from the registration specialist, see Chapter 600, Sections 618.8(A)(1) through 618.8(A)(11).

1009.6(C) Unacceptable Terminology for an Application to Register a Website or Website Content

As discussed in Section 1006, a website does not constitute copyrightable subject matter in and of itself. The applicant should not use the term "website," "webpage," "screen," or the like in the Author Created field or the Nature of Authorship space, because these terms are vague, misleading, and fail to identify the particular authorship that the author contributed to the work.

If the applicant asserts a claim in both the copyrightable and uncopyrightable features of a website, the registration specialist may annotate the application to indicate that the registration does not extend to the uncopyrightable features. If the applicant expressly asserts a claim to copyright in any feature of the website that is uncopyrightable, the specialist may communicate with the applicant or may refuse registration if the claim appears to be based solely on those features. Examples of unacceptable terms include the following or any combination of the following:

- Concept
- Design(s)
- Format
- Layout
- Lettering
- Look and feel
- Website
- Website design
- Webpage
- Screen
- Entire work, entire website, or similar terms
- Hyperlinks
- Hyperlink structure
- Menu choices
- User interface
- Game play

1009.7 Claimant

The applicant must provide the name and address of the owner or co-owners of the copyrightable authorship that is claimed in the application. This party is known as the copyright claimant. The claimant(s) may be the author(s) of the work, or a party that owns all of the exclusive rights that initially belonged to the author of that work. If the author and the claimant are not the same person, the applicant should provide a brief statement that explains how the claimant acquired the rights that initially belonged to the author.

When completing an online application the applicant should provide this information on the Author and Claimant screens; when completing a paper application the applicant should provide this information on spaces 2 and 4. For guidance on completing these portions of the application, see Chapter 600, Sections 613 and 619.

Website owners frequently assume that they own the copyright in code or other content that was created for them by an independent contractor, because the owner paid for the content or paid the contractor to create that material. In such cases, the website owner does not own the content unless the contractor agreed to create the content pursuant to a work made for hire agreement or executed a written agreement that assigned the copyright in that material to the website owner. Likewise, a website owner cannot assert a claim in website content if the owner merely owns a physical copy of that content or merely has a nonexclusive license to use that material.

Examples:

- Kari Crow is a web designer who created an illustration for a gardening website. Kari is not an employee of the website owner and she did not transfer ownership of the copyright to that party. Therefore, the applicant should name Kari Crow as the author and claimant for this illustration. If Kari contributed multiple illustrations to the website, each illustration must be registered separately.

- Dizzy Dog LLC owns and operates a website that sells dozens of beats for use on hip hop tracks. The company employs two producers who created these beats for the website. Dizzy Dog LLC should be named as the author and claimant for each work, and in each case the work made for hire box should be checked "yes."

1009.8 Limitation of Claim

As discussed in Section 1008.1, a registration for a website or website content covers the copyrightable material that was created by the author(s) named in the application that is owned by the claimant named in the application, provided that the material is expressly described in the application and is contained in the deposit copy(ies).

A registration for a website or website content does not cover any material that has been previously published or previously registered with the U.S. Copyright Office. Nor does it cover material that is in the public domain or material that is not owned by the copyright claimant. If the website contains an appreciable amount of previously published material, previously registered material, public domain material, or third party material, the applicant should exclude that material from the claim.

- *Previously published material*: Frequently applicants submit websites or website content that contain previously published material, but fail to exclude that material from the claim. If the deposit copy(ies) contain material, that was published on any day or twenty-four period prior to the date of first publication specified in the application, the applicant should exclude that material using the procedure described in Chapter 600, Section 621.8(B). When completing an online application, the applicant should identify the previously published material on the Limitation of Claim screen in the Material Excluded field. When completing a paper application, the applicant should identify this material in space 6(a) under the heading marked Preexisting Material.

- *Previously registered material*: If the deposit copy(ies) contain material that has been previously registered, the applicant should exclude that material from the claim (regardless of whether the material is published or unpublished). Specifically, the applicant should provide the registration number and year of registration for the previously registered material in the Previous Registration field of the online application or in space 5 of the paper application. For guidance in completing this portion of the application, see Chapter 600, Section 621.8(F).

- *Content owned by a third party*: If the deposit copy(ies) contain content that is owned by someone other than the claimant, the applicant should exclude that content from the claim (regardless of whether the content is published or unpublished). When completing an online application, the applicant should identify the third party content in the Material Excluded field. When completing a paper application the applicant should provide this information in space 6(a). For guidance in completing this portion of the application, see Chapter 600, Sections 621.7 and 621.8(B).

- *Public domain material*: If the deposit copy(ies) contain material that is in the public domain, the applicant should identify that material in the Material Excluded field of the online application or in space 6(b) of the paper application. For guidance in completing this portion of the application, see Chapter 600, Sections 621.7 and 621.8(B).

In addition, the applicant should identify the new copyrightable material that the author contributed to the website or the website content. When completing an online application, the applicant should provide this information on the Limitation of Claim screen. Specifically, the applicant should check one or more of the boxes in the New Material Included field that accurately describes the author's contribution. If none of these terms fully describe the new material that the author contributed to the website, the applicant should provide a more specific description in the field marked Other. For guidance on completing this field, see Chapter 600, Section 621.8(C)(1).

When completing a paper application, the applicant should provide this information in space 6(b) under the heading marked Material Added to This Work. For guidance in completing this portion of the application, see Chapter 600, Section 621.8(C)(2).

NOTE: The New Material Included field should be completed only if material has been excluded from the claim in the Material Excluded field. Likewise, space 6(b) of the paper application should be completed only if material has been excluded from the claim in space 6(a).

As a general rule, the information that the applicant provides in the New Material Included field should be identical to the information that the applicant provides in the Author Created field. Likewise, the information that the applicant provides in space 6(a) of the paper application should be identical to the information that that the applicant provides in space 2 under the heading marked Nature of Authorship.

The applicant should only identify the new material created by the author(s) named in the application that is owned by the copyright claimant. The applicant should not

mention any material that is not owned by the claimant, material that will not be submitted for registration, or material that does not appear in the deposit copy(ies). If there is anything in the registration material that casts doubt on the accuracy of the claim, the registration specialist may communicate with the applicant.

Example:

- Alexander Temple writes a blog called "Don't Tread On Me." The blog contains musings about politics, together with photographs created by the Department of Homeland Security, the Department of Defense, and other federal government agencies. Alexander submits an online application along with printouts from his blog. In the application, Alexander asserts a claim in his "website," but he fails to complete the Limitation of Claim screen. The registration specialist will ask the applicant to describe the new material that he contributed as "text" and "compilation of text and photographs" in the Author Created and New Material Included fields. The photographs appear to be in the public domain, because they were created by employees of the U.S. government. Therefore, the specialist will ask the applicant to exclude that material from the claim by checking the box marked "photographs" in the Material Excluded field.

1010 Deposit Requirements for Website Content

This Section provides basic information concerning the deposit requirements for registering a website or website content. For detailed information concerning these requirements, see Chapter 1500.

For information concerning mandatory deposit, see Section 1010.7.

1010.1 Deposit Requirements for Registration

To register a website or website content, the applicant must submit a deposit containing the copyrightable content that is claimed in the application.

When examining the deposit for a website or website content, the U.S. Copyright Office will apply the same rules that apply to any other type of work. For example, the registration specialist will consider the type of authorship that is claimed in the application, whether the work is published or unpublished, and whether the applicant satisfied the applicable deposit requirements for that type of work.

If the work is unpublished, the deposit copy may include all of the content that is owned by the copyright claimant as of the date that the application is submitted. If the work has been published, the deposit copies should include the content as it existed on the date of first publication specified in the application, and the claim should be limited to the content that was first published on the date.

The deposit must contain a complete copy of all the copyrightable authorship that is claimed in the application or appropriate identifying material (if identifying material is

an acceptable form of deposit for that type of work). For example, to register an entire website, the applicant should submit a deposit containing all the authorship that the applicant intends to register, regardless of the number of pages or screens that appear on the site. To register a particular work contained on a website, the applicant should submit an appropriate deposit for that type of work. To register the authorship involved in selecting, coordinating, and/or arranging works on a website, the applicant must submit a deposit that adequately displays the compilation authorship that is claimed in the application.

In all cases, the applicant must submit fixed copy(ies) or phonorecord(s) of the work that the applicant intends to register. The U.S. Copyright Office will not accept a link to a website or other online source that merely provides access to content that continually changes.

The fixed copy(ies) or phonorecord(s) should be submitted in a format that allows the registration specialist to perceive the actual content and context where the work appears on a given website or webpage. In other words, the deposit should show how the content would be perceived when a user accesses that content in the online environment. The specialist may communicate with the applicant or may refuse registration if the applicant submits separate files or folders containing unassembled content or content that has been disassociated from the website or webpage where it originally appeared.

As the technological means of fixing and normalizing websites and their content evolve into easier solutions and standardized formats, the Office will seek to provide additional guidance on the fixation of websites. At the present time, the PDF format standard is the preferred means for submitting websites and website content. For information concerning this format and the methods for submitting the deposit to the Office, see Section 1010.3.

As a general rule, a registration for a website or for website content does not cover any authorship or works that are not included in the deposit. However, there is a limited exception to this rule. A registration for a computer program or database may cover the entire work, even if the applicant submits only a portion of the source code for that program or a representative selection of the records from the database. For information concerning the deposit requirements for these types of works, see Chapter 1500, Sections 1509.1(C) and 1509.1(D).

The registration specialist may communicate with the applicant if the deposit appears incomplete. If the work is relatively short (based on the number of printed pages or downloaded pages that will be submitted), the applicant should submit the entire website and should provide a brief statement confirming that the deposit contains the complete site. This may avoid the need to communicate with the applicant to determine whether the entire work has been submitted. When completing an online application, the applicant may provide this information in the Note to Copyright Office field. When completing a paper application, the applicant may provide this information in a cover letter.

1010.2 Deposit Requirements for Works Published Online and in Hard Copy Format

If the work was published both online and in a hard copy form (*e.g.,* paper, discs, film, or other physically tangible media), the applicant generally should submit two complete copy(ies) or phonorecord(s) of the work as it was first published in the hard copy format. *See* 37 C.F.R. § 202.20(b)(1). For example, if an article was published simultaneously on a website and in a magazine, the applicant must submit two complete copies of the article as it appeared in the magazine. For information concerning the deposit requirements for works published in hard copy formats, see Chapter 1500, Sections 1507.1 and 1508.2.

In particular, the applicant should submit two complete copies of the best edition if the work was published in the United States on or after January 1, 1978. The criteria used to determine the best edition for 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 more information concerning the best edition requirement, see Chapter 1500, Section 1504.

1010.3 Deposit Requirements for Unpublished Works and Works Published Solely Online

In most cases, the applicant does not need to satisfy the best edition requirement in order to register a website or to register a work that has been published solely online (although as discussed in Section 1010.6(H), there is a limited exception to this rule for electronic serials). Instead, the applicant may submit an electronic copy of the work, provided that the applicant submits the deposit in an acceptable file format. A current list of acceptable file formats is posted on the Office's website. In the alternative, the applicant may submit identifying material that adequately represents the authorship claimed in the application.

The preferred formats and methods for submitting the deposit for an unpublished work or a work that is published solely online, in order of preference, are as follows:

- *Uploading electronic files to the electronic registration system*: When submitting an online application through the electronic registration system, the applicant may upload a PDF-A, PDF file, PDF package, or PDF portfolio that contains all of the website content that is claimed in the application. Any audio or audiovisual content should be submitted in separate files. The deposit also should include a note that identifies the URL(s) where such files reside. Additional guidance on uploading files is provided on the Office's website.

- *Submitting electronic files by mail, commercial carrier, courier, or hand delivery*: When submitting an online application or a paper application, the applicant may deposit a PDF-A file, PDF file, PDF package, or PDF portfolio that contains all of the website content that is claimed in the application. Any audio or audiovisual content claimed should be submitted in separate files. All of the files should be burned onto a computer disc, and the deposit should include a note that identifies the URL(s) where the files reside. The disc may be delivered to the Office by mail, commercial

carrier, courier, or hand delivery. For guidance on this procedure, see Chapter 1500, Section 1508.3 through 1508.5.

- *Identifying material*: When submitting an online application or a paper application, the applicant may deposit a printout of all the pages of the website that are claimed in the application, along with a disc or other appropriate media containing any audio or audiovisual content that is included in the claim. In the alternative, the applicant may deposit identifying material in the format that is most appropriate for the type of authorship that is claimed in the application, provided that the identifying material includes all of the authorship being claimed. For example, the applicant may submit printouts for websites that contain text and artwork, but do not contain sound, music, or audiovisual elements. The applicant may submit audio or audiovisual files for websites containing sound, music, or audiovisual elements. A site map may be used as the identifying material for a claim based on the organization of the pages within a website. However, a claim based on the selection, coordination, and/or arrangement of audio or audiovisual files cannot be included in the claim unless the selection, coordination, and/or arrangement of the audio or audiovisual files is provided. In all cases, identifying material may be delivered to the Office by upload, mail, commercial carrier, courier, or hand delivery. For guidance on this procedure, see Chapter 1500, Section 1508.3 through 1508.5.

NOTE: When submitting an online application and delivering the deposit by mail, commercial carrier, courier, or hand delivery, the applicant must attach a shipping slip to each deposit. If the applicant fails to attach a shipping slip to each deposit, the Office will be unable to connect the deposit with the application. For information concerning this procedure, see Chapter 1500, Section 1508.2.

Examples:

- Patrick O'Connor created all the text that appears on a website that describes points of interest in the Shenandoah Valley. Users may view this content, but the terms of service expressly state that the site is only intended for public display. The text may be registered as an unpublished work. Therefore, Patrick may upload this content to the electronic registration system in one or more digital files, provided that the text is submitted in an acceptable format, such as .txt, .pdf, .docx, .wpf, and provided that the files contain all the copyrightable text that is claimed in the application.

- On November 3, 2013 Joseph Andres posted dozens of photographs to a stock photography website that allows users to download or reproduce images for their own personal use. The photographs may be registered as published works. Joseph may upload electronic copies of these images through the electronic registration system, either by submitting a separate application for each photograph or

by submitting an application to register a group of published photographs.

1010.4 Uploading Large Files or Large Numbers of Files to the Electronic Registration System

The electronic registration system will not accept any file that is more than 500 MB in size. Before uploading a file to the system, the applicant should confirm that the file does not exceed this size limit. The system also has a 120 minute "time out" feature that automatically terminates the upload process if it takes more than two hours to complete.

If the applicant intends to upload a large number of files, the Office encourages the applicant to submit the deposit in one or more compressed ZIP files. If the applicant intends to upload a very large file, the Office encourages the applicant to compress the deposit in a ZIP file or to separate the deposit into two or more smaller files. Alternatively, the applicant may upload the deposit during two or more upload sessions; information concerning this procedure is available on the Office's website.

If the applicant is unable to upload the deposit with these options, then as discussed in Section 1010.3, the applicant may fix the deposit copy(ies) on a disc and deliver it to the Office by mail, commercial carrier, courier, or hand delivery, together with a shipping slip that connects the deposit with the online application.

1010.5 The Deposit Material Must Match the Material Claimed in the Application

Frequently, applicants seek to register published website content, but fail to deposit the content that existed on the website as of the date of publication specified in the application. In some cases, the applicant provides the date that the website was first published, but instead of depositing the content that appeared on the site as of that date, the applicant deposits the content that appeared on the website on the date that the application was filed. In other cases, the applicant intends to register the most recent version of a website, but instead of providing the date of first publication for that version, the applicant provides the date that the website first appeared on the internet.

To register material from the initial version or any subsequent version of a published website, the applicant must deposit an acceptable copy or phonorecord of the specific version that the applicant intends to register and the applicant must provide the correct date of first publication for that version. If the date of publication specified in the application does not match the version reflected in the deposit copy(ies), the registration specialist may communicate with the applicant to determine if the correct version has been submitted.

Examples:

- Capitol City Cupcakes owns a website that went live on June 1, 2009. The company submits a copy of all the text, artwork, and other copyrightable content that appeared on the site on June 1, 2009 and states that the content was first published on that date. The registration specialist will register the claim. The registration will

cover the content as it existed on June 1, 2009, but it will not cover any new material that has been added to the site since then.

- DC Doughnuts owns a website that first appeared on the internet on July 1, 2013. A year later the company decides to register all of the photographs, illustrations, and other copyrightable content that appeared on the initial version of the site. The applicant states that the website was first published on July 1, 2013, but submits a copy of the website as it existed on July 1, 2014. The registration specialist will communicate with the applicant to determine if the date of publication is correct, and if so, to request an appropriate copy of the content that appeared on the site as of July 1, 2013.

1010.6 Deposit Requirements for Specific Types of Website Content

1010.6(A) The Initial Version of a Published Website

To register the initial version of a published website, the applicant should submit the relevant webpages as they existed on the date that the initial version was first published.

1010.6(B) Subsequent Versions of a Published Website

To register subsequent versions of a published website, the applicant should submit the relevant webpages as they existed on the date that the subsequent version was first published.

1010.6(C) Revised Website Content

To register new text, new photographs, new artwork, or other content that has been added, modified, or revised on a website, the applicant should submit a complete copy or phonorecord of the new material. The deposit should contain all of the new copyrightable material that is described in the application.

Example:

- Artifax, LLC added a new page to its website that describes the company's products and services. Artifax submits an application to register the "new text" and "new illustrations" that appear on this webpage, along with a PDF file containing the new content. The registration specialist will register the claim.

1010.6(D) Compilations

If the applicant asserts a claim in the selection, coordination, and/or arrangement of material within a website, the compilation authorship must be fully represented in the deposit. *See Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 358 (1991) ("Originality requires only that the author make the selection or arrangement independently . . . and *that it display* some minimal level of creativity) (emphasis added).

For instance, the Office may register a website that contains a compilation of photographs, provided that the author's selection, coordination, and/or arrangement of images is evident in the claim. If the author's contribution is unclear, the registration specialist will communicate with the applicant.

1010.6(E) Hypertext Markup Language (HTML)

To register the HTML for a website, the applicant must deposit the entire HTML.

1010.6(F) Computer Programs Contained or Embedded Within a Website

To register a computer program that is contained or embedded within a website, the applicant must submit the appropriate deposit material for that type of work. For a discussion of the deposit requirements for computer programs, including derivative computer programs and programs that contain trade secret material, see Chapter 1500, Section 1509.1(C).

1010.6(G) Databases Contained or Embedded Within a Website

To register a database that is contained or embedded within a website, the applicant must submit the appropriate deposit material for that type of work.

For a discussion of the deposit requirements for a single-file or multi-file database, see Chapter 1500, Section 1509.1(D). For a discussion of the deposit requirements for registering a group of updates or revisions to a database, see Chapter 1100, Section 1112.7.

1010.6(H) Electronic Serials

As a general rule, the applicant does not need to satisfy the best edition requirement in order to register a website or to register a work that has been published solely online. However, there is a limited exception to this rule for electronic serials published in the United States on or after February 24, 2010. If the U.S. Copyright Office has determined that an electronic serial is subject to the mandatory deposit requirement, the applicant may need to submit two complete copies of the best edition in order to register that serial with the Office. For a definition of "electronic serial" and a discussion of the mandatory deposit requirements for such works, see Section 1010.7.

1010.7 Mandatory Deposit

Mandatory deposit is a statutory requirement for the benefit of the national collection of the Library of Congress. Section 407 of the Copyright Act states that the owner of copyright or the owner of the exclusive right of publication in a work published in the United States shall deposit two copies or phonorecords of the work within three months after publication. 17 U.S.C. § 407(a).

The mandatory deposit requirement generally does not apply to works published in the United States that are available only online. However, there is a limited exception to this rule. Electronic serials published on or after February 24, 2010 are subject to mandatory deposit if the U.S. Copyright Office issues a written demand for a copy or phonorecord of

that work for the use or disposition of the Library of Congress. *See* 37 C.F.R. §§ 202.19(c)(5), 202.24(a).

For purposes of mandatory deposit, an "electronic serial" is defined as "an electronic work published in the United States and available only online, issued or intended to be issued on an established schedule in successive parts bearing numerical or chronological designations, without subsequent alterations, and intended to be continued indefinitely." *Id*. § 202.19(b)(4).

For additional information concerning the mandatory deposit requirements for electronic serials, see Chapter 1500, Section 1511.6.

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COMPENDIUM: Chapter 1100

Registration for Multiple Works

1101 What This Chapter Covers

As a general rule, a registration covers an individual work, and an applicant should prepare a separate application, filing fee, and deposit for each work that is submitted for registration. However, there are several exceptions to this rule, including:

- Registering a collective work together with the separate and independent works contained therein. This option is discussed in Chapter 500, Section 509.1 and Chapter 600, Sections 610.4, 613.8, 618.7, 620.8, and 621.8(D).
- The option for registering a number of works that were published in a single unit of publication. This option is discussed in Section 1103 below.
- Registering a sound recording together with the musical work, dramatic work, or literary work contained in that recording. This option is discussed in Section 1104 below.
- The options for registering a group of related works under Section 408(c)(1) of the Copyright Act, as discussed in Section 1105 and Sections 1106 through 1114 below. At present, the U.S. Copyright Office offers group registration options for the following types of works:
  - Unpublished works.
  - Serials.
  - Newspapers.
  - Newsletters.
  - Contributions to periodicals.
  - Short online literary works
  - Database updates and revisions.
  - Questions, answers, and other items prepared for use in a secure test.
  - Unpublished photographs.
  - Published photographs.

1102 [Reserved]

1103 The Unit of Publication Option

The U.S. Copyright Office has established an administrative procedure that allows an applicant to register a number of works that were physically packaged or bundled together as a single unit by the claimant and first published on the same date. This is known as the "unit of publication" option.

A registration issued under this option covers each work in the unit that is owned by the copyright claimant.

A unit of publication is different from a group registration in that the works in the unit cannot be aggregated simply for the purpose of registration, but rather must have been first distributed to the public in the packaged unit. A unit of publication is also different from a collective work in that the unit is not a compilation of works, but rather a package of separate and distinct copies or phonorecords that are physically bundled together and distributed to the public as a unit, such as a board game containing instructions, a game board, and sculpted playing pieces. In some cases, a unit may contain a compilation or collective work, such as a CD containing sound recordings packaged together with cover art and liner notes.

For additional information concerning the Office's group registration options, see Section 1105. For additional information concerning collective works, see Chapter 500, Section 509.1 and Chapter 600, Sections 610.4, 613.8, 618.7, 620.8, and 621.8(D).

1103.1 What Is a Unit of Publication?

A unit of publication is a package of separately fixed component works that are physically bundled together for distribution to the public as a single, integrated unit, and all of the works are first published in that integrated unit. *See* 37 C.F.R. § 202.3(b)(4).

The following are representative examples of works that may be distributed to the public in a single, integrated unit that may qualify as a unit of publication:

- A board game with playing pieces, game board, and instructions.
- A package of greeting cards.
- A CD packaged with cover art and a leaflet containing lyrics.
- A book published with a CD-ROM.
- A multimedia kit containing a book, a compact disc, and a poster.
- A multi-DVD package with multiple disks containing a motion picture, trailers, and deleted scenes from the motion picture.
- A box set of music CDs.

- A videogame stored on a disc packaged together with an instruction booklet and a pamphlet.
- A computer program stored on a disc packaged together with a booklet containing a user's manual.

1103.1(A) The Unit Must Contain Separately Fixed Component Works

The unit of publication option may not be used to register works that have been fixed in the same medium of expression, such as multiple essays published in the same book.

As a general rule, an applicant should prepare a separate application, filing fee, and deposit for each work that is submitted for registration. The unit of publication option is a narrow and limited exception to this rule. It provides a means for registering multiple works with one submission in cases where multiple submissions would otherwise be required and where no other statutory or regulatory accommodation exists. Often, when multiple items are fixed in the same medium of expression, they may be considered a derivative work, a compilation, or a collective work. If so, there is no need to rely on the unit of publication option, because the statute already provides a means for obtaining a registration. Moreover, if applicants could register multiple works as a unit of publication whenever they happen to be fixed in the same medium of expression, the regulatory accommodation would displace the statutory scheme, and this narrow exception would become the default method for registering published works.

1103.1(B) The Unit Must Contain an Actual Copy or Phonorecord of the Works

The unit must contain an actual copy or phonorecord of the self-contained works. A unit that merely contains a representation of the works does not satisfy this requirement. For example, a box of jewelry containing an actual necklace and an actual set of earrings that are packaged together and sold to the public as a single, integrated unit would be considered a unit of publication. By contrast, a catalog that merely contains photographs of necklaces and earrings that are offered for sale would not be considered a unit of publication, even if members of the public may order these items from the catalog either on an individual basis or as a set. The catalog could be used to register a claim in the selection, coordination, and/or arrangement of the photographs, but not the actual items depicted in those images.

1103.1(C) The Works Must Be Physically Bundled in the Unit

In all cases, the works must be packaged together and distributed to the public in a physical form. Works that are combined and distributed to the public in digital form are not eligible for this option.

The unit of publication option is a narrow accommodation that is intended to address a specific scenario: where multiple works are bundled together in a physical product as a single "unit" and those separate works are first published as a unit. The paradigmatic example is a board game with playing pieces, a game board, and instructions. Each component may be a separate work of authorship: The playing pieces may be sculptural works, the game board may be a pictorial or graphic work, and the instructions may be a literary work. But it would make little sense—and it would be administratively

burdensome—to require separate applications for each work. Imposing such a rule would result in duplicative or incomplete deposits. For example, some applicants might send the entire board game with each application, while others might send each element separately. *See* Compendium of U.S. Copyright Office Practices, 82 Fed. Reg. 45,625, 45,627 (Sept. 29, 2017).

The concerns that prompted the Office to create the unit of publication option are not present in the case of digital products. The problems associated with duplicative deposits are significantly diminished when digital files are uploaded to the electronic registration system. And although it may be relatively easy to determine whether a physical product qualifies as a unit of publication, the same cannot be readily said for digital products, which could be distributed in a single digital file or multiple digital files, or could be published only as a bundle, or both individually and in a bundle. *See id*.

1103.1(D) The Works Must Be Distributed to the Public in the Unit

The self-contained works must be distributed to the public as an integral part of the unit. A unit that merely offers works to the public without distributing actual copies or phonorecords does not satisfy this requirement. Likewise, works that have been physically packaged or bundled for distribution or sale to wholesalers, distributors, retailers, or other intermediaries for the purpose of further distribution, public performance, or display do not satisfy this requirement. For instance, when a record company bundles a compilation of tracks together with cover art and liner notes, and distributes them to the public on a physical album, the album would qualify as a unit of publication. By contrast, when a record company distributes tracks to the public on an individual basis or licenses its entire catalog to a streaming website to facilitate the public performance of those tracks, neither the tracks nor the catalog would qualify as a unit of publication.

1103.1(E) Works That Do Not Qualify as a Unit of Publication

The following are representative examples of works that cannot be registered as a unit publication:

- Works first published online.
- Works that were first published on different dates.
- Works first published on the same date either separately or in different units.
- Works first published as separate and discrete works, even if they were subsequently distributed together in the same unit.
- Works that are initially offered to the general public both individually and as a set.
- Works created as part of the same collection, series, or set that have not been distributed together as a single, integrated unit.

- Works that share the same characters, the same theme, or other similarities that have not been distributed together as a single, integrated unit.
- Works offered to the public as a unit, but never distributed to the public.
- Multiple photographs taken at the same photo shoot.
- Multiple photographs posted on the same website.
- A catalog with photographs of copyrightable works offered for sale, either individually or as a unit.

1103.2 Eligibility Requirements

An applicant may register a group of separately fixed works with one application, one filing fee, and the appropriate deposit copies, provided that the following conditions have been met:

- All of the copyrightable elements must be recognizable as self-contained works.
- All of the works claimed in the application must be first published as a single unit on the same date.
- The copyright claimant for all of the works claimed in the unit must be the same.

See 37 C.F.R. § 202.3(b)(4). For additional guidance concerning the deposit requirements for a unit of publication, see Chapter 1500.

In addition, the claimant in the unit of publication must be the person or entity that physically bundled or caused the bundling of the works and elements together into the integrated unit.

Works that do not satisfy these requirements cannot be registered with the unit of publication option.

An applicant cannot use the unit of publication option to register a number of published and unpublished works. An applicant cannot use this option if the works were published on different dates. An applicant cannot use this option if the works were published in different units or first distributed as separate, individual works. Moreover, the unit cannot be created merely for the purpose of registration; instead it must have been distributed to the public as a single, integrated unit.

The application should expressly state that the applicant is seeking to register a number of works with the unit of publication option. For guidance on completing the application, see Section 1103.4.

An applicant may use this option to register the component works within a unit of publication if the claimant is the author of those works or acquired the copyright in those works through a transfer of ownership, provided that the claimant manufactured,

produced, published, packaged, or otherwise created the single, integrated unit as a whole. In other words, the unit of publication option may be used only if the claimant packaged the unit as a whole. Moreover, the claimant must own the copyright in all the component works that are claimed in the application. If the unit contains component works that are not owned by the claimant, the applicant should exclude those works from the claim using the procedure described in Chapter 600, Section 621.8(B).

A unit of publication may contain one or more collective works. But the unit of publication option is not an appropriate means for registering a collective work or the component works contained therein unless the collective work has been bundled together with other separately fixed component works and has been distributed to the public as a single, integrated unit on the same date. For example, a book of photographs and the images contained therein may be registered as a collective work if (i) the claimant owns the copyright in both the images and the authorship involved in creating the book as a whole, and (ii) if the images have not been previously published or previously registered and if they are not in the public domain. In such cases, the applicant should not use the unit of publication option. For guidance on registering a collective work, see Chapter 500, Section 509.1 and Chapter 600, Sections 610.4, 613.8, 618.7, 620.8, and 621.8(D).

Moreover, the unit of publication option should not be viewed as a group registration option for registering contributions to published collective works. If the applicant is unable to register the component works with the unit of publication option, the applicant may register those works on an individual basis. Specifically, the applicant may prepare a separate application, filing fee, and deposit copies for each component work and may submit these items using the online application or a paper application.

As discussed in Chapter 500, Section 510, the Office generally issues only one registration per work. *See* 37 C.F.R. § 202.3(b)(11). Therefore, when an applicant registers a number of self-contained works with the unit of publication option, the applicant cannot add additional works to that registration at a later date. Likewise, the applicant cannot register the component works within a unit of publication and then obtain separate registrations for those works, unless the applicant satisfies one or more of the exceptions set forth in Chapter 500, Sections 510.2 or 510.3. Works that are excluded from the claim must be registered separately as individual works.

1103.3 Registration Requirements

To register a number of works with the unit of publication option, the applicant must submit a completed application, an appropriate deposit, and the correct filing fee.

The applicant may submit an online application through the electronic registration system, or in the alternative, the applicant may submit a paper application using Forms TX, VA, PA, or SR (but not Form SE). The Office strongly encourages applicants to use the electronic registration system rather than a paper application because online applications are more efficient for both the applicant and the Office. For guidance on completing the online application or the paper application, see Section 1103.4.

If the unit was first published in the United States, the applicant should submit two complete copies or phonorecords of the best edition of the unit. If the unit was first published in another country, the applicant generally should submit one complete copy or phonorecord of the unit as first published or one complete copy or phonorecord of the best edition of the unit. *See* 37 C.F.R. § 202.20(c)(1)(iii), (iv). For a definition and discussion of the best edition requirements, see Chapter 1500, Section 1504. As a general rule, a copy or phonorecord of a published work is considered "complete" if it includes "all elements comprising the applicable unit of publication of the work, including elements that, if considered separately, would not be copyrightable subject matter." *See* 37 C.F.R. § 202.20(b)(2)(ii).

For guidance on submitting the deposit copies, see Chapter 200, Section 204.3 and Chapter 1500, Section 1508.

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

1103.4 Completing the Application

This Section provides guidance for completing an application to register multiple works with the unit of publication option.

Applicants should inform the U.S. Copyright Office that they are seeking to register a number of self-contained works under the unit of publication option. When completing the online application, the applicant should provide this information in the Note to Copyright Office. When completing a paper application, the applicant should provide this information in a cover letter.

If the registration specialist determines that the component works are eligible for registration under the unit of publication option, he or she will add an annotation, such as: "Basis for registration: Unit of publication." This statement will appear on the certificate of registration and the online public record for the claim.

If the specialist determines that the component works are not eligible for registration under this option, he or she may communicate with the applicant to clarify the scope of the claim, ask the applicant to submit a separate application for each work, or refuse registration.

1103.4(A) Type of Work

When completing an application, the applicant should select the class of work that is most appropriate for the works being registered and the authorship that appears in those works. If the works contain more than one type of authorship, the applicant should select the option that is appropriate for the predominant form of authorship in those works.

NOTE: There is an exception to this rule. If the unit of publication contains sound recording authorship, the applicant must select the class for sound recording, regardless of whether sound recording is the predominant form of authorship in the rest of the works.

When completing an online application, the classes are listed under a drop down menu marked Type of Work. When completing a paper application, each class has its own paper form.

- *Literary Works*: When completing an online application, the applicant should select "Literary Work" in the Type of Work field if the works primarily contain nondramatic text, such as poems, short stories, or the like. When completing a paper application, the applicant should use Form TX.

- *Works of the Visual Arts*: When completing an online application, the applicant should select "Work of the Visual Arts" in the Type of Work field if the works primarily contain pictorial, graphic, or sculptural content, such as photographs, drawings, illustrations, models, or the like. When completing a paper application, the applicant should use Form VA.

- *Works of the Performing Arts*: When completing an online application, the applicant should select "Work of the Performing Arts" in the Type of Work field if the works primarily contain music, lyrics, drama, choreography, or other content that is intended to be performed for an audience. When completing a paper application, the applicant should use Form PA.

- *Sound Recordings*: When completing an online application, the applicant must select "Sound Recording" in the Type of Work field if the applicant intends to register works that contain sound recording authorship. When completing a paper application, the applicant must use Form SR.

- *Motion Picture/Audiovisual Material*: When completing an online application, the applicant should select "Motion Picture/AV Work" in the Type of Work field if the works primarily contain motion pictures or other audiovisual content. When completing a paper application, the applicant should use Form PA.

NOTE: A unit of publication may not be registered with the online application for a "single serial issue" or a paper application submitted on Form SE.

1103.4(B) Title

The applicant should provide the primary title of the unit of publication that will be submitted for registration (including any subtitles), even though the "unit" itself is not a work. The applicant should provide this information in the Title of This Work field of the online application.

The titles of the self-contained works that appear within the unit of publication, if any, may be provided in the Contents Title field. If the applicant provides these titles in the application, they will appear on the certificate of registration and the online public record under the heading Contents Title.

Applicants are encouraged to provide a title for each work that is submitted for registration. If a work is known by a particular title, interested parties likely will use

that title to search for the work, and it may be extremely difficult to find a particular work if the applicant fails to provide that information in the application.

The total number of characters that may be provided in the Contents Title field is limited. Applicants are strongly encouraged to provide one title in the field, then click the Save button, and then repeat this process in order to prevent loss of data due to space limitations.

When completing a paper application, the applicant should provide the title for the unit of publication and/or the title(s) of the works contained therein in space 1 of the application. If additional space is needed, the applicant may provide the titles using Form CON. If the applicant provides this information in the application, the title of each work may be included in the certificate of registration and the online public record unless the applicant provides a substantial number of titles on Form CON.

In all cases, the titles of the works contained within the unit of publication should be listed in the application in the same order that they appear in the deposit copies.

For additional guidance in completing the title field/space of the application, see Chapter 600, Sections 610.2 and 610.4.

1103.4(C) Publication / Completion

When registering a number of works with the unit of publication option, all of the works submitted for registration must be physically packaged or bundled together in a single unit and first distributed to the public as a unit.

When completing an online application, the applicant will be asked to provide the date of publication on the Publication/Completion screen. Specifically, the applicant should select "yes" in the drop down menu marked "Has this work been published?" In the field marked "Date of First Publication," the applicant should provide the specific month, day, and year that the unit was distributed to the public for the first time. If the applicant indicates that the works have been published, but fails to provide the specific month, day, and year that publication occurred, the application will not be accepted by the electronic registration system.

When completing a paper application, the applicant should enter the month, day, and year of first publication on space 3(b) under the heading "Date and Nation of First Publication of This Particular Work."

When completing an online application, the applicant should identify the year that the component works were completed on the Publication/Completion screen in the field marked Year of Completion (Year of Creation). When completing a paper application, the applicant should identify the year that the author completed the component works on space 3(a) under the heading "Year in which creation of this work was completed." If the component works were created over a period of thirteen months or more, the applicant should provide the year of completion for the most recent work that will be submitted for registration.

For additional guidance in completing this portion of the application, see Chapter 600, Section 611.1.

1103.4(D) Authors of the Component Works

As discussed in Section 1103.2, an applicant may register the component works within a unit of publication if the claimant is the author of those works or if the claimant has acquired the copyright in those works through a transfer of ownership.

In all cases, the applicant should identify the author or authors of the component works that will be submitted for registration. When completing an online application, the applicant should provide the full name of each author on the Authors screen. If the works were created by more than one author, the applicant should complete the relevant fields, click the Save button, and then repeat this process for the other authors.

The applicant should provide the country of citizenship or domicile for each author named in the application. If the applicant fails to provide this information, the application will not be accepted by the electronic registration system. If the author's citizenship or domicile is unknown, the applicant may select "not known" from the drop down menu.

When completing a paper application, the applicant should identify the author or co-authors of the component work(s) in space 2 under the heading marked Name of Author. If the component works were created by three or more authors, the applicant may identify the other authors on Form CON.

For guidance in providing the name(s) of the author(s) of the component works, see Chapter 600, Section 613.8. For guidance in identifying works created by large numbers of authors, see Chapter 600, Section 613.10(F). For guidance in providing the author's citizenship and domicile, see Chapter 600, Section 617.

If the works contained within the unit of publication qualify as anonymous or pseudonymous works, the applicant may check the appropriate boxes that appear in the anonymous/pseudonymous fields/spaces. For a definition and discussion of anonymous and pseudonymous works, see Chapter 600, Sections 615.1 and 615.2.

For guidance concerning the Year of Birth and Year of Death fields/spaces, see Chapter 600, Section 616.

1103.4(E) Manufacturer, Publisher, Producer, Packager, or Creator of the Unit of Publication

As discussed in Section 1103.2, a unit of publication cannot be created merely for the purpose of registration. Instead, the works must have been packaged and distributed to the public as a single, integrated unit. An applicant may register the component works contained within a unit of publication, provided that the claimant manufactured, produced, published, packaged, or otherwise created the single, integrated unit. In other words, the unit of publication option may be used only if the claimant packaged or bundled the unit as a whole, or caused the unit to be packaged or bundled together.

When completing the online application, the applicant should provide a brief statement in the Note to Copyright Office field indicating that the claimant is the manufacturer, producer, publisher, packager, or other creator of the unit as a whole. When completing a paper application, the applicant may provide this information in a cover letter.

1103.4(F) Author Created / Nature of Authorship

The applicant should provide a brief statement that describes the component works that will be submitted for registration.

If the same author created all the component works within the unit, the applicant should check one or more of the boxes in the Author Created field that accurately describe those self-contained works. For example, if the unit of publication consists of a shrink-wrapped package with a CD-ROM containing a computer program, a booklet containing a user's manual, and cover artwork, the applicant should check the boxes marked "computer program," "text," and "artwork." If the unit of publication consists of a physical album containing music, lyrics, sound recording, artwork, and liner notes, the applicant should check the box marked "sound recording" and in the box marked Other the applicant should state "music," "lyrics," "artwork," and "text of liner notes."

If the component works were created by different authors, the applicant should provide the following information in the online application:

- On the Authors screen the applicant should provide the name of the individual or entity that created one of the component works. For guidance on completing this portion of the application, see Chapter 600, Section 613.9.

- On the Author Created screen, the applicant should check one or more of the boxes that accurately describe the component work(s) that the author contributed to the unit of publication. For example, if the author contributed one or more of the sound recordings within a multimedia kit that contains sound recordings, musical works, text, artwork, and other forms of authorship, the applicant should check the box marked "sound recording." In addition, the applicant should provide the title of that component work (if any) in the field marked Other. Currently, the total amount of text that may be provided in the Author Created/Other field is limited to 100 characters or less. If more space is required, the applicant should provide the additional information in the Note to Copyright Office field.

- On the Claimant screen the applicant should provide an appropriate transfer statement that explains how the claimant obtained the copyright in that work. For guidance on providing a transfer statement, see Chapter 600, Section 620.9.

If the unit contains component works created by other authors, the applicant should repeat this process for each component work that the applicant intends to register.

When completing a paper application, the applicant should provide this information in space 2 under the heading marked Nature of Authorship. If more space is required, the applicant may provide additional information on Form CON.

1103.4(G) Claimants / Transfer Statement

To register a number of works using the unit of publication option, the applicant should provide the name and address of the copyright claimant. *See* 17 U.S.C. § 409(1). For purposes of copyright registration, the copyright claimant must be (i) the author or co-author of all the component works within the unit that are claimed in the application, or (ii) a person or organization that owns all of the rights under copyright that initially belonged to the author or co-authors of those works. *See* 37 C.F.R. § 202.3(a)(3). No other party is entitled to be named as a copyright claimant.

If the same person(s) or organization(s) created all the component works within the unit that are claimed in the application, the applicant may name the author or co-authors as the copyright claimant. In the alternative, the applicant may provide the name of the person or organization that acquired the copyright in those works through a transfer of ownership.

When completing an online application, the applicant should provide the claimant's full name and address on the Claimants screen. When completing a paper application, the applicant should provide this information in space 4 of the application. For guidance on completing this portion of the application, see Chapter 600, Section 619.12.

If the author(s) and the claimant or co-claimants named in the application are not the same person, the applicant should provide a brief transfer statement that explains how the claimant or co-claimants obtained the copyright in the component works. When completing an online application, the applicant should provide this information on the Claimants screen in the field marked Transfer Statement. When completing a paper application, the applicant should provide this information in space 4 under the heading marked Transfer. For guidance on completing this portion of the application, see Chapter 600, Section 620.9.

1103.4(H) Limitation of Claim

As discussed in Section 1103.2, all of the works in a unit of publication must be physically bundled together by the claimant in a single, integrated unit, they must be first published on the same date, and the claimant for all of those works must be the same person or organization.

A claimant may use the unit of publication option only if that party packaged or bundled the unit as a whole, or if that party caused the unit to be packaged or bundled together. Moreover, the unit of publication option cannot be used to register any of the works in the unit that have been previously published or any works that are not owned by the copyright claimant (although such works may be registered separately). If the unit contains previously published material or third party material, the applicant should exclude that material from the claim using the procedure described in Chapter 600, Section 621.8(B). The excluded works must be registered separately as individual works.

If the unit contains material that has been previously registered with the Copyright Office, the applicant should exclude that material from the claim using the procedure described in Chapter 600, Section 621.8(F).

1103.4(I) Rights and Permissions Information

When completing an online application, the applicant may provide the name, address, and other contact information for the person and/or organization who should be contacted for permission to use the works that are registered with the unit of publication option.

For guidance in completing this portion of the online application, see Chapter 600, Section 622.1. At the present time, there is no space for this information on the paper applications.

1103.4(J) Correspondent / Mailing Address for the Certificate of Registration

The applicant should provide the name, email address, telephone number, fax number (if any), and mailing address for the person or persons who should be contacted if the Office has questions or concerns regarding the application. When completing an online application, the applicant should provide this information on the Correspondent screen. When completing a paper application, the applicant should provide this information in space 7(b) under the heading "Person to contact for correspondence about this claim." The Office will send all communications concerning the application to this person at the address provided in the registration record.

In addition, the applicant should provide the name and address where the certificate of registration should be sent. When completing an online application, this information should be provided on the Mail Address screen. When completing a paper application, this information should be provided in space 9 of the application under the heading "Certificate will be mailed in window envelope to this address."

For guidance in completing the Correspondent field/space, see Chapter 600, Section 622.2. For guidance in providing the mailing address for the certificate, see Chapter 600, Section 622.4.

1103.4(K) Special Handling

Special handling is a procedure for expediting the examination of an application. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate of registration. The Office charges an additional fee for this service.

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

1103.4(L) Certification

The application must be certified by one of the author(s) named in the application, by the copyright claimant named in the application, by a party that owns one or more of the exclusive rights in the works, or by a duly authorized agent of one of the foregoing parties.

The person who certifies the application certifies that the information provided in the application is correct to the best of his or her knowledge. Knowingly making a false

representation of a material fact in an application, or in any written statement filed in connection with the application, is a crime that is punishable under 17 U.S.C. § 506(e).

For guidance in completing the Certification field/space, see Chapter 600, Section 624.

1104 The Sound Recording / Recorded Work Option

The U.S. Copyright Office has established an administrative procedure that allows an applicant to register a sound recording and the work embodied in that recording with one application and one filing fee. This is known as the "sound recording/recorded work option."

Specifically, an applicant may register a sound recording together with the musical work, dramatic work, or literary work embodied in that recording, provided that the following conditions have been met:

- The sound recording and the recorded work must be fixed in the same phonorecord.
- Both works must be submitted on the same application.
- The claimant for both works must be the same person or organization.
- Both works must be registered in Class SR.

See 37 C.F.R. § 202.3(b)(1)(iv)(A)-(C).

If the sound recording and the recorded work were created by the same author, that author may be named as the copyright claimant (even if the author does not own any of the exclusive rights in the works). A third party may be named as the copyright claimant if that party owns the copyright in both works, and if the applicant provides a transfer statement explaining how the claimant obtained ownership of those rights.

As a general rule, applicants should use the Standard Application when submitting a claim through the electronic registration system, and they should select the option for "Sound Recording" on the Type of Work screen. When submitting a paper application, applicants should use Form SR. *See* 37 C.F.R. § 202.3(b)(2)(iii).

NOTE: An applicant may register a sound recording and a recorded work using the Single Application. But to do so, the applicant must satisfy all of the eligibility requirements for that form (in addition to the other conditions listed above). *See* 37 C.F.R. § 202.3(b)(2)(i)(B)(2). In particular, the sound recording and the recorded work must be created by the same individual, that individual must be the only person featured in the recording, and that individual must own the copyright in both works. For information concerning these requirements, see Chapter 1400, Section 1406.2.

In all cases, the applicant must submit a phonorecord that contains both the sound recording and the recorded work.

- If the works are unpublished, the applicant should submit one complete phonorecord containing the entire copyrightable content of the sound recording and the recorded work.

- If the works were published in the United States after January 1, 1978, the applicant should submit two complete phonorecords of the best edition of those works.

- If the works were published in the United States between February 15, 1972 and December 31, 1977, the applicant should submit two complete phonorecords of the works as they were first published in this country.

- If the works were published solely in a foreign country, the applicant should submit one complete phonorecord of the works as they were first published in that country.

If the works have been published, the applicant also should submit any visually perceptible material that was published with the phonorecords, such as textual or pictorial material appearing on the album cover, sleeve, or other container. *See* 37 C.F.R. § 202.19(b)(2)(i); 37 C.F.R. § 202.20(b)(2)(i), (v), (c)(1)(i)-(iv).

NOTE: A published sound recording and a published musical work may be registered with this option, but only if the musical work was published solely in phonorecords at the time of registration. If the musical work was published in copies (such as sheet music), published in both copies and phonorecords, or published solely in a motion picture before the claim is submitted to the Office, the applicant must submit a separate application for each work: one application for the sound recording, and another application for the musical work. *See* 37 C.F.R. § 202.20(c)(2)(i)(E), (xii). For additional information concerning the deposit requirements for musical works, see Chapter 1500, Section 1509.2(A).

If the Office determines that the sound recording and recorded work are eligible for registration, it will issue one certificate of registration for both works with a registration number beginning with the prefix SR or SRu (depending on whether the works are published or unpublished).

If the sound recording and recorded work are not eligible for this option, the registration specialist may ask the applicant to submit a separate application, deposit, and filing fee for each work, or he or she may simply refuse registration.

1105 Group Registration

The U.S. Copyright Office has established administrative procedures that allow an applicant to register multiple works in certain limited categories with one application and one filing fee. This procedure is known as a group registration. Where applicable, this may be the most convenient and cost effective way to register multiple works of authorship.

Applicants must decide whether group registration is the optimal means of registering the works at issue. Group registration options have particular requirements, and in some cases, limitations. For example, a registration for a group of related works provides less detailed information about the various works in the group. Applicants should weigh the costs and benefits of these various options in determining whether to register a work on an individual basis or as a group.

1105.1 What Is a Group Registration?

When Congress enacted the Copyright Act of 1976, it authorized the Register of Copyrights to establish "the administrative classes into which works are to be placed for purposes of deposit and registration, and the nature of the copies or phonorecords to be deposited in the various classes specified." 17 U.S.C. § 408(c)(1). In addition, Congress gave the Register the discretion to "require or permit... a single registration for a group of related works." *Id*.

As the legislative history explains, allowing "a number of related works to be registered together as a group represent[ed] a needed and important liberalization of the law." H.R. REP. NO. 94-1476, at 154 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5770. Congress recognized that requiring separate applications "where related works or parts of a work are published separately" may impose "unnecessary burdens and expenses on authors and other copyright owners." *Id*. In some cases, requiring separate applications and a separate filing fee may cause copyright owners to forego registration altogether. *See id*.

If copyright owners do not submit their works for registration, the public record will not contain any information concerning those works. This diminishes the overall value of the registration record, and may deprive the public of historical and cultural artifacts that might otherwise be included in the collections of the Library of Congress.

To address these concerns, the Office asked the public for suggestions and comments concerning the types of related works that might be suitable for group registration, as well as the requirements that should govern each group. *See* Part 202 — Registration of Claims to Copyright, 43 Fed. Reg. 763, 765 (Jan. 4, 1978).

1105.2 Group Registration Options

The U.S. Copyright Office currently offers group registration options for the following types of works:

- Unpublished works.
- Serials.
- Newspapers.
- Newsletters.
- Contributions to periodicals.
- Short online literary works.

- Database updates and revisions.
- Questions, answers, and other items prepared for use in a secure test.
- Unpublished photographs.
- Published photographs.

The Office's decision to provide registration options for groups of related works is entirely discretionary, except for the group registration option for contributions to periodicals, which is mandated by Section 408(c)(2) of the Copyright Act.

1105.3 Registration Requirements

An applicant must satisfy certain requirements to obtain a group registration. The specific requirements for each group registration option are discussed in Sections 1106 (unpublished works), 1107 (serials), 1108 (newspapers), 1109 (newsletters), 1110 (contributions to periodicals), 1111 (short online literary works), 1112 (databases), and 1114 (photographs).

Based on its longstanding experience, the U.S. Copyright Office has determined that examining groups of related works imposes administrative costs and burdens on the Office. To examine these claims in an efficient and cost effective manner, the Office strictly applies the requirements for these group registration options. Moreover, the Office does not allow or provide for group registration of works that are not listed in Section 1105.2 or groups of related works that do not satisfy the requirements set forth in Sections 1106 through 1114. *See* Registration of Claims to Copyright: Group Registration of Serials, 55 Fed. Reg. 50,556, 50,556 (Dec. 7, 1990).

If the Office determines that the relevant requirements have not been met, the registration specialist may refuse to register the claim, and if appropriate, may instruct the applicant to prepare a separate application, filing fee, and deposit for each work and submit them for registration on an individual basis. 37 C.F.R. § 202.4(l). Alternatively, the specialist may communicate with the applicant at his or her discretion, if the specialist determines that the problem(s) with the claim can easily be addressed through correspondence.

Likewise, the Office may cancel a group registration if it subsequently determines that the applicant failed to comply with the relevant requirements for these options. 37 C.F.R. §§ 201.7(c)(4)(xi), 202.4(m). The practices and procedures for cancelling a registration are discussed in Chapter 1800, Section 1807.

1105.4 The Scope of a Group Registration

When the U.S. Copyright Office issues a group registration it prepares one certificate of registration for the entire group and assigns one registration number to that certificate.

A registration for a group of unpublished works, a group of photographs, a group of contributions to periodicals, a group of short online literary works, or a group of secure test items covers the copyrightable authorship in each work that is submitted for

registration, and each one is registered as a separate work. 37 C.F.R. § 202.4(n). A registration for a group of serials, newspapers, or newsletters covers the copyrightable authorship in each issue in the group, and in the case of newspapers and serials, each issue is registered as a separate collective work. *See id*.

This rule is consistent with the statutory scheme. The legislative history makes clear that group registration was "a needed and important liberalization of the law [then] in effect," which to that point had required "separate registrations where related works or parts of a work are published separately." H.R. REP. NO. 94-1476, at 154 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5770. In particular, Congress noted that "the technical necessity for separate applications and fees has caused copyright owners to forego copyright altogether." *Id.* Given that context, it would be anomalous for works registered under a group registration option to be given less protection than if they had been registered with separate applications.

With the exception of a registration for a group of database updates, a group registration does not cover the selection and arrangement of the works, because the group itself is not a work of authorship. For similar reasons, the group as a whole is not considered a compilation or a collective work. Instead, the group is merely an administrative classification created solely for the purpose of registering multiple works with one application and one filing fee. *See* 37 C.F.R. § 202.4(n).

Although an applicant may exercise some judgment in selecting and combining the works within the group, these decisions do not necessarily constitute copyrightable authorship. Instead, the selection of works is based solely on the regulatory requirements for the relevant group registration option, and the combination of those works is merely an administrative accommodation that exists solely for the purposes of registration and the convenience of the applicant.

Likewise, the group is not considered a derivative work. *See id*. When a group of works are combined together for the purpose of facilitating registration those works are not "recast, transformed, or adapted" in any way, and the group as a whole is not "a work based upon one or more preexisting works," because there is no copyrightable authorship in simply following the administrative requirements for a group registration option. *See* 17 U.S.C. § 101 (definition of "derivative work").

Copyright owners who use a group registration option may be entitled to claim a separate award of statutory damages for each work – or each issue in the case of serials, newspapers, or newsletters – that is covered by the registration, because a group registration covers each work or each issue that is submitted for registration (rather than the group as a whole). *See* 17 U.S.C. § 504(c)(1) (stating that a copyright owner may be entitled to recover "an award of statutory damages for all infringements involved in the action, with respect to any one work").

By contrast, a group registration for a database covers the updates or revisions that were added to the database during the period specified in the registration. Copyright owners that use this option are entitled to claim only one award of statutory damages in an infringement action, because the updates or revisions to a database are derivative

compilations, and the statute provides that "all the parts of a compilation or derivative work constitute one work." *See id*.

See generally Group Registration of Short Online Literary Works, 85 Fed. Reg. 37,341 (June 22, 2020); Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,372-73 (Nov. 6, 2017); Secure Tests, 82 Fed. Reg. 52,224, 52,228 (Nov. 13, 2017); Group Registration of Contributions to Periodicals, 81 Fed. Reg. 86,634, 86,641 (Dec. 1, 2016); Group Registration of Photographs, 81 Fed. Reg. 86,643, 86,652-53 (Dec. 1, 2016).

1106 Group Registration of Unpublished Works

This Section discusses the U.S. Copyright Office's practices and procedures for registering a group of unpublished works. When referring to this option, the Office uses the term "GRUW," which stands for "group unpublished works." As discussed in Section 1106.6, this option replaces the registration accommodation for "unpublished collections," which was eliminated effective March 15, 2019. The Office also offers a separate group registration option for unpublished photographs, which is discussed in Section 1114.

GRUW is intended to benefit individual creators and small businesses who otherwise might not register their unpublished works on an individual basis.

When the Office receives a group of unpublished works, it will examine each work to determine if it contains a sufficient amount of copyrightable authorship, and to confirm that the legal and formal requirements for registration have been met. A registration for a group of unpublished works covers the copyrightable authorship in each work that is submitted for registration, and each work is registered as a separate work. 37 C.F.R. § 202.4(n).

If an unpublished work has been registered with the Office it does not have to be registered again if it is subsequently published (although as discussed in Chapter 500, Section 510.1, the Office will register the first published edition of a work even if the unpublished version and the published version are substantially the same). Registering an unpublished work prior to infringement will preserve the copyright owner's ability to seek statutory damages and/or attorney's fees in an infringement action.

If the Office determines that one or more of the works is uncopyrightable, it will refuse to register those works, and issue a registration for the remaining copyrightable works in the group (if any). 37 C.F.R. § 202.4(l). If the applicant disagrees with the refusal, the applicant may appeal that decision by filing a request for reconsideration. For information concerning this procedure, see Chapter 1700.

See generally Group Registration of Unpublished Works, 84 Fed. Reg. 3693 (Feb. 13, 2019); Group Registration of Unpublished Works, 82 Fed. Reg. 47,415 (Oct. 12, 2017).

1106.1 Eligibility Requirements

A group of unpublished works may be registered with the U.S. Copyright Office, provided that the following conditions have been met:

- All of the works in the group must be unpublished.
- All the works must be registered in the same administrative class.
- The group may include no more than ten works (or up to twenty works when registering a sound recording together with the work embodied in that recording).
- The applicant must provide a title for each work.
- All of the works must be created by the same author or the same joint authors, the authorship statement for each author or joint author must be the same, and the author or joint authors must be named as the claimant for each work.

See 37 C.F.R. § 202.4(c)(1)-(2), (4)-(5), (7).

Works that do not satisfy these requirements cannot be registered with this group registration option.

See generally Group Registration of Unpublished Works, 82 Fed. Reg. 47,415, 47,416-18 (Oct. 12, 2017).

1106.1(A) The Group Must Be Limited to Unpublished Works

An applicant cannot use this option to register a group of published and unpublished works. If any of the works have been published, the applicant should not include those works in the claim. The applicant is responsible for determining if the works are unpublished, and generally, the U.S. Copyright Office will accept that determination unless it is contradicted by the information contained within the registration materials. For a definition and discussion of publication, see Chapter 1900.

See Group Registration of Unpublished Works, 82 Fed. Reg. 47,415, 47,417 (Oct. 12, 2017).

1106.1(B) Works That May Be Registered with this Option

This option may be used to register the following types of unpublished works:

- Individual works.
- Joint works.
- Derivative works.

37 C.F.R. § 202.4(c)(3).

By contrast, this option cannot be used to register the following works, because they contain multiple works of authorship or because claims involving these types of works are too complex for this option:

- Compilations.

- Collective works.
- Databases.
- Websites.
- Architectural works.
- Secure tests.

Id. §§ 202.4(c)(3), 202.11(c)(2), 202.13(c)(1).

1106.1(C) The Number of Works That May Be Included in the Group

Generally, an applicant may include up to ten unpublished works in each claim, but there is a limited exception to this rule for sound recordings. Specifically, this option may be used to register up to ten sound recordings together with the musical work, literary work, or dramatic work embodied in each recording if the following conditions have been met:

- The author/claimant(s) for the sound recording and the work embodied in each recording must be the same person or organization.
- Both works must be embodied in the same phonorecord.
- The works must be submitted for registration in Class SR.

See 37 C.F.R. §§ 202.3(b)(2)(i)(B)*(2)*, 202.4(c)(2).

To be clear, an applicant may register a group of sound recordings that each contains one musical work, dramatic work, or literary work. But they may not register recordings that contain a combination of musical, dramatic, and literary works.

In all cases, the applicant must satisfy the other requirements for this group registration option. In particular, each sound recording and the works embodied in those recordings must be created by the same author or joint authors, and the author(s) must be named as the copyright claimant for all of the works. For example, an applicant may register a group of songs and sound recordings jointly written and performed by Peter and Paul, but may not register a song written by Peter and Paul together with a recording performed solely by Mary.

See Group Registration of Unpublished Works, 82 Fed. Reg. 47,415, 47,417 & n.8 (Oct. 12, 2017).

1106.1(D) The Works Must Be Registered in the Same Administrative Class

The U.S. Copyright Office will assign one registration number to a certificate of registration for a group of unpublished works. The prefix for this number will be based on the administrative classification that best describes the works in the group (TXu for

literary works, VAu for visual art works, PAu for performing arts works, and SRu for sound recordings).

All of the works in the group must be registered in the same administrative class. 37 C.F.R. § 202.4(c)(1). For example, an applicant could register a group of unpublished poems, essays, and short stories, because each work would be classified as a "literary work" for purposes of registration. By contrast, an applicant could not register a group of unpublished stories, photographs, and songs, because these works do not fit within the same administrative class.

When completing the application, applicants should select the administrative class that would be most appropriate for the predominant type of authorship in each work. For example, when registering a group of comic strips that contain a substantial amount of artwork combined with some text, applicants should select the class for "visual arts works." When registering a group of illustrated short stories that contain a substantial amount of text combined with some drawings, applicants should select the class for "literary works." If the types of authorship in each work are roughly equal – as in the case of a children's book – applicants may select the class that would be appropriate for either type of authorship. *See* 37 C.F.R. § 202.3(b)(2)(iii).

NOTE: There is a limited exception to this rule for claims involving sound recordings. As discussed in Section 1104, a group of sound recordings may be registered together with the musical work, literary work, or dramatic work embodied in each recording. But to do so, all of the works must be registered in Class SR, which is the administrative class for sound recordings.

See Group Registration of Unpublished Works, 82 Fed. Reg. 47,415, 47,417 (Oct. 12, 2017).

1106.1(E) The Author and Claimant for Each Work Must Be the Same

All of the works in the group must be created by the same author or the same joint authors. For example, an applicant may submit ten songs created solely by Peter, or ten songs created jointly by Peter, Paul, and Mary.

By contrast, an applicant may not register five songs created by Peter together with five songs created by Peter, Paul, and Mary. In this situation, the applicant would need to separate the songs into two groups and submit a separate application for each group: one application for the songs created solely by Peter, and a separate application for the songs created jointly by Peter, Paul, and Mary.

In addition, the author or joint authors must be named as the copyright claimant for each work in the group. For instance, if an applicant submitted five songs created by Peter, that individual must be named as the claimant for each song. If an applicant submitted five songs jointly created by Peter, Paul, and Mary, those individuals must be named as co-claimants for each song.

To be clear, the author or co-authors must be named as the claimant or co-claimants for all of the works being registered – even if the author(s) do not own any of the rights in those works.

This facilitates the examination by allowing the registration specialist to focus on the works themselves, rather than the ownership of each work. Moreover, it is consistent with the basic principle that an author may always be named as the copyright claimant, and the Office's longstanding view that an author may be named as a claimant even if that person does not own any of the exclusive rights when the claim is submitted. 37 C.F.R. § 202.3(a)(3)(i); 42 Fed. Reg. 48,944, 48,945 (Sept. 26, 1977).

See generally Group Registration of Unpublished Works, 82 Fed. Reg. 47,415, 47,418 (Oct. 12, 2017).

1106.2 Application Requirements

To register a group of unpublished works the applicant must complete and submit the online application designated for a "Group of Unpublished Works." 37 C.F.R. § 202.4(c)(8). If an applicant attempts to register multiple unpublished works with the Standard Application or a paper form, the registration specialist may register the first copyrightable work listed in the application or the first copyrightable work uploaded to the electronic registration system. In addition, the specialist may add an annotation stating that the registration only extends to the title listed in the certificate, remove the titles and deposits for the remaining works from the record, and notify the applicant that the registration extends only to the title listed in the certificate and the remaining works may be registered by submitting an appropriate application, deposit, and fee.

1106.3 Filing Fee Requirements

The applicant must submit the correct filing fee for this group registration option. *See* 37 C.F.R. §§ 201.3(c), 202.4(c). The current fee is set forth in the U.S. Copyright Office's fee schedule under the heading "Registration of a claim in a group of unpublished works."

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

1106.4 Deposit Requirements

This Section discusses the deposit requirements for registering a group of unpublished works.

Applicants must submit one complete copy or phonorecord of each work that is included in the group, and each work must be submitted in an electronic format. Applicants should not submit physical copies or physical phonorecords, such as print-outs, photocopies, CDs, DVDs, or the like. *See* 37 C.F.R. § 202.4(c)(9).

Specifically, applicants must upload each work to the electronic registration system as a separate electronic file, and each file must be uploaded in an acceptable file format. A current list of acceptable file formats is posted on the Office's website, along with guidance on how to upload the files.

When completing the application, applicants must provide a title for each work in the group. As discussed in Section 1106.5(B), the file name assigned to each electronic file should match the corresponding title provided in the application. If the titles and file names do not match each other, the registration specialist may communicate with the applicant (which will delay the registration decision), the specialist may remove the mismatched titles and files from the registration record, or the specialist may simply refuse registration.

Example:

- Annette Cole intends to register three songs titled "The Birthday Party," "The Dinner Party," and "The Wedding Party." She plans to upload these songs in three separate mp3 files. Annette should provide the following information in the application, and the digital files she uploads to the Copyright Office should be named as follows:

Titles Listed in the Application	File Names for the Digital Uploads
The Birthday Party	the_birthday_party.mp3
The Dinner Party	the_dinner_party.mp3
The Wedding Party	the_wedding_party.mp3

For additional guidance on file naming convention, consult the help text that accompanies the GRUW application. In all cases, the works must be submitted in an orderly manner and the size of each upload must not exceed 500MB. Applicants may compress the works to comply with this limitation.

The U.S. Copyright Office recognizes that there may be cases where an author may not have a digital copy of his or her works or may find it difficult to create a digital copy for purposes of seeking a group registration. If an applicant is unable to upload a particular work to the electronic system, the applicant may request special relief from the deposit requirements.

A request for special relief must be made in writing, and it should explain why the applicant is unable to upload a digital copy of the works. The Office may grant a request for special relief, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. *See* 37 C.F.R. §§ 202.4(c)(10), 202.20(d)(1)(iii), (iv).

For a general discussion of special relief, see Chapter 1500, Section 1508.8.

1106.5 Completing the Application: Group Registration of Unpublished Works

As discussed in Section 1106.2, applicants must use the online application for a "Group of Unpublished Works" as a condition for seeking a group registration. This Section provides guidance for completing the application.

NOTE: The U.S. Copyright Office offers a separate application that may be used to register a group of unpublished photographs. For information concerning this application, see Section 1114.2.

The application may be submitted by the author/claimant, the owner of any of the exclusive rights in the works, or a duly authorized agent of these parties. *See* 37 C.F.R. § 202.4(c)(8).

To access the application, applicants should select the phrase "Register a Group of Unpublished Works," which appears on the home page of the electronic registration system. The system will generate a brief statement describing the eligibility requirements for this option. If these requirements have been met, the applicant should check the box that appears next to the following statement: "I agree that I have read, understood, and meet all eligibility requirements described above for filing the selected Group Registration."

NOTE: In exceptional cases, the Office may waive the online filing requirement, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. 37 C.F.R. § 202.4(c)(10). A request to waive this requirement must be made in writing. It should explain why the applicant is unable to use the online application, and it should be sent to the following address:

Associate Register of Copyrights and
Director of Registration Policy & Practice
Registration Program
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559

1106.5(A) Type of Works

As discussed in Section 1106.1(D), all of the works must be registered in the same administrative class.

When completing the application, applicants should review the administrative classes listed in the drop down menu marked "Type of Work." The system will generate a brief statement describing each class.

The applicant should select the class that best describes the works being registered. Once a selection has been made, the applicant should check the box that appears next to the following statement: "Click the box to confirm that you have read the description above and selected the entry that best describes the 'type of work' you are registering."

If the works do not fit within the same administrative class, the applicant should prepare a separate application for each type of work. For example, poems are considered "literary works" and cartoons are considered "works of the visual arts." Thus, if the author created five poems and five cartoons, the applicant should prepare one application for the poems (selecting the option for *Literary Work*) and a separate application for the cartoons (selecting the option for *Work of the Visual Arts*).

NOTE: There is a limited exception to this rule for claims involving sound recordings. As discussed in Section 1106.1(D), a group of sound recordings may be registered together with the musical work, literary work, or dramatic work embodied in each recording. But to do so, the applicant must select the administrative class for "sound recordings."

1106.5(B) Titles of the Works

The applicant must provide a title for each work in the group. Guidance for completing this portion of the application is provided in the help text that accompanies the "Titles" screen. If the applicant fails to provide titles, the registration specialist may communicate with the applicant (which will delay the registration decision) or may refuse registration.

A title for the group as a whole will be added automatically by the electronic registration system. The U.S. Copyright Office will use this title to identify the registration in its online public record. The group title will consist of the title of the first work listed in the application followed by the phrase "and [1, 2, 3, 4, 5, 6, 7, 8, or 9] Other Unpublished Works" (depending on how many works are submitted).

As mentioned in Section 1106.5(G), claims in the selection, coordination, or arrangement of the group as a whole are not permitted on the application. If the applicant provides a "collection" title, the specialist will remove that term without communicating with the applicant.

The applicant should upload a complete copy or phonorecord of each work in the group. As discussed in Section 1106.4, the file name assigned to each work should match the corresponding title given on the "Titles" screen. If the titles and file names do not match each other, the specialist may ask the applicant to resubmit the files (which will delay the registration decision), the specialist may remove the mismatched titles and files from the registration record, or the specialist may simply refuse registration.

Example:

- Brad Ashley intends to register three songs titled "Memorial Day," "Independence Day," and "Labor Day." He plans to upload these songs in three separate mp3 files. The Office will accept:

Titles Listed in the Application	File Names for the Digital Uploads
Memorial Day	memorial_day.mp3

Titles Listed in the Application	File Names for the Digital Uploads
Independence Day	independence_day.mp3
Labor Day	labor_day.mp3

The Office will not accept:

Titles Listed in the Application	File Names for the Digital Uploads
Memorial Day	memorial_day.mp3
Independence Day	fourth_of_july.mp3
Labor Day	labor_day.mp3

In the second situation, the Office will remove the title "Independence Day" from the application and will remove "fourth_of_july.mp3" from the deposit. The Office will issue a registration that covers the two remaining songs: "Memorial Day" and "Labor Day."

1106.5(C) Year of Completion / Year of Creation

The applicant should identify the year that the works were completed. If all of the works were completed in the same year, the applicant should enter that year in the space provided on the Completion screen. If the works were completed over an extended period of time, the applicant should provide the year of completion for the most recent work in the group. For example, if the author completed the works in 2016, 2017, and 2018, the applicant should state "2018."

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

1106.5(D) Authors / Claimants

As discussed in Section 1106.1(E), all of the works must be created by the same author or the same joint authors, and the author or joint authors must be named as the copyright claimant for each work.

The applicant should identify the author or joint authors on the Author/Claimant screen – unless the author created the works anonymously or used his or her pseudonym on the works and does not want to reveal his or her real name in the registration record.

For guidance in completing the Author/Claimant screen, consult the help text that accompanies this portion of the application. For information concerning anonymous and pseudonymous works, see Section 1106.5(E).

1106.5(E) Anonymous and Pseudonymous Works

A work is "anonymous" if the author is not identified on the copies or phonorecords of that work. A work is "pseudonymous" if the author is identified on the copies or phonorecords solely by a fictitious name, pen name, stage name, or other pseudonym. If the author's real name appears on the copies or phonorecords, the work is neither anonymous nor pseudonymous, even if the author does not want to reveal his or her identity in the registration record.

Applicants may register a group of anonymous works or pseudonymous works with this option. But to do so, the works must be identified as such in the application, and all of the works must be created anonymously or they must be created under the same pseudonym. 37 C.F.R. § 202.4(c)(6). For example, an applicant could register four stories by "Anonymous" or four stories by "Mark Twain" (a.k.a. Samuel Clemens), but an applicant could not register all of these stories with the same application.

If the author's name does not appear on any of the works – and if the author does not want to reveal his or her identity in the registration record – the applicant should check the box indicating that the works were created anonymously. The term "Anonymous" will be added automatically to the field for the author's "First Name." The field for the Author's "Last Name" should be left blank.

If the author's pseudonym appears on all of the works – and if the author does not want to reveal his or her identity in the registration record – the applicant should check the box indicating that the works are pseudonymous, and should provide the author's pseudonym in the fields for the author's "First Name" and "Last Name."

Ordinarily, the copyright for an anonymous or pseudonymous work endures for a term of 95 years from the year of publication or 120 years from the year of creation, whichever expires first. 17 U.S.C. § 302(c). However, if the author's real name or identity is revealed in the registration record, the copyright will endure until 70 years after the author's death. *Id.*; *see also* H.R. REP. NO. 94-1476, at 137 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5753.

IMPORTANT NOTE: If the author does not want to reveal his or her identity in the registration record, the applicant should not include the author's real name anywhere in the application, including the Author/Claimant, Correspondent, Mail Certificate, and Certification screens. If the author's real name is included in the application it will become part of the public record, and it cannot be removed once the U.S. Copyright Office has issued a registration.

If the author wants to reveal his or her identity in the registration record, the applicant should enter the author's first and last name in the fields provided, and the boxes for anonymous and pseudonymous works should be left blank. If the author would like to

include his or her legal name and pseudonym in the registration record, the applicant should do the following:

- Provide the author's legal name in the "First Name/Last Name" fields.
- Leave the Pseudonym box unchecked.
- Provide the author's pseudonym in the "Note to Copyright Office" field on the certification screen. For example, the applicant may state "Author's pseudonym 'Mark Twain' appears on the copies of these works."

For additional guidance on pseudonyms, consult the help text that accompanies the GRUW application.

If some – but not all – of the works are anonymous or pseudonymous, the applicant may register all of the works with the same application. But to do so, the author must disclose his or her identity in the registration record. For example, if the author created three paintings, and if her real name appears on the first painting, her pseudonym appears on the second, and no name appears on the third, the paintings could be registered together. But the author would have to include her real name in the registration record for all three paintings.

For additional information concerning anonymous and pseudonymous works, see Chapter 600, Section 615.

1106.5(F) Works Made for Hire

An unpublished work may be registered as a "work made for hire" if it satisfies the statutory definition for such works, and if it is identified as such in the application. 37 C.F.R. § 202.4(c)(6). Specifically, this option may be used to register (i) a group of works created by an employee acting within the scope of his or her employment, or (ii) a group of works specially ordered or commissioned for use as a contribution to a collective work or one of the other types of works listed in the statutory definition, provided that the parties expressly agree in a written instrument signed by them that each work shall be considered a "work made for hire."

If the works satisfy these requirements, the employer or the party that ordered or commissioned the works should be named as the author of each work in the group, and that person or organization should be named as the claimant for those works. 37 C.F.R. § 202.4(c)(6).

NOTE: An applicant may register an unpublished work that was jointly created by an individual and an organization. But because the works must be created by the same author or joint authors, and because the author(s) must be named as the copyright claimant, a work created for an organization pursuant to a work made for hire agreement cannot be registered together with a work created by an individual who assigned his or her rights to the organization through a transfer of ownership.

For additional information concerning works made for hire, see Chapter 500, Section 506.

1106.5(G) Author Created

The applicant must provide a brief statement that describes the copyrightable authorship that the author contributed to each work.

If the works were created by two or more authors, then as discussed in Section 1106.1, the authorship statement for each author must be exactly the same.

For example, if the author created ten pieces of jewelry, the applicant should select the option for "unpublished jewelry designs." If two authors jointly created the jewelry designs, the applicant should use the same term to describe each author's contribution to the works. For additional examples that illustrate this practice, consult the help text that accompanies the application.

If the terms provided in the author created field do not describe each and every work in the group, the applicant should prepare a separate application for each type of work. For instance, if the author created three drawings and two figurines, the applicant should separate the works into two groups and prepare one application for the drawings (which would be described as "unpublished illustrations") and another application for the figurines (which would be described as "unpublished sculptural works").

NOTE: Although an applicant may exercise some judgment in selecting and arranging the works that are included within the group, those decisions do not necessarily constitute copyrightable authorship. Often times, the selection is based on the regulatory requirements for this option, and the combination of those works is merely an administrative accommodation that facilitates the examination of each work. For this reason, applicants may not assert a claim in the selection, coordination, and/or arrangement of the group as a whole when they complete the application. And the group as a whole is not considered a compilation or a collective work. 37 C.F.R. § 202.4(c)(7), (n).

1106.5(H) Limitation of Claim

If the works contain an appreciable amount of material that has been previously published or previously registered, the applicant should exclude that material from the claim. Likewise, applicants should disclaim material that is owned by a third party or material that is in the public domain.

Specifically, the applicant should briefly describe this material on the Limitation of Claim screen in the field marked Material Excluded. The U.S. Copyright Office will assume that the applicant intends to register all copyrightable aspects of the works that have not been expressly disclaimed in this portion of the application.

If the material was previously registered with the U.S. Copyright Office, the applicant should also provide the registration number and year of registration that has been assigned to that material. If the Office issued multiple registrations for this material, the applicant should provide the number and year for the most recent registration.

For additional information concerning the U.S. Copyright Office's practices and procedures for limiting the scope of a copyright claim, see Chapter 600, Section 621.

1106.5(I) Rights and Permissions Information

The applicant may provide the name, address, and other contact information for the person and/or organization who should be contacted for permission to use the works that are being registered. Providing this information is optional, and the application will be accepted even if the Rights & Permissions Information screen is left blank.

For guidance in completing this portion of the application, see Chapter 600, Section 622.1.

1106.5(J) Correspondent / Mailing Address for the Certificate of Registration

The applicant should provide the name, email address, telephone number, fax number (if any), and mailing address for the person or persons who should be contacted if the U.S. Copyright Office has questions or concerns regarding the application. This information should be provided on the Correspondent screen.

In addition, the applicant should provide the name and address where the certificate of registration should be sent. This information should be provided on the Mail Address screen.

IMPORTANT NOTE: If the applicant checked the box on the Author/Claimant screen indicating that the works are anonymous or pseudonymous, and if the author does not want to reveal his or her identity in the registration record, then as discussed in Section 1106.5(E), the author should not provide his or her real name in the of the application. Instead, the applicant should provide contact information for the author's duly authorized agent, or the author should provide a pseudonym if the author is completing the application on his or her own behalf.

For guidance in completing this portion of the application, see Chapter 600, Sections 622.2 and 622.4.

1106.5(K) Special Handling

Special handling is a procedure for expediting the examination of an application. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate of registration. The Office charges an additional fee for this service.

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

1106.5(L) Certification

The application must be certified by the author/claimant named in the application, by the owner of one or more of the exclusive rights in the issues, or by a duly authorized agent of the author/claimant or the owner of exclusive rights.

The person who certifies the application certifies that the information provided in the application is correct to the best of his or her knowledge. Knowingly making a false representation of a material fact in an application, or in any written statement filed in connection with the application, is a crime that is punishable under 17 U.S.C. § 506(e).

When completing the Certification screen, the applicant should provide the first and last name of the individual who certified the application in the space marked Name of Certifying Individual. There is no need to date the certification; the date will be added automatically when the application is received. 37 C.F.R. § 202.3(c)(3)(iv).

In addition, the applicant should check the appropriate box indicating whether this person is the author/claimant, an owner of the exclusive rights in the works, or an authorized agent of the author/claimant or an owner of exclusive rights.

IMPORTANT NOTE: If the applicant checked the box on the Author/Claimant screen indicating that the works are anonymous or pseudonymous, and if the author does not want to reveal his or her identity in the registration record, then as discussed in Section 1106.5(E), the author should not provide his or her real name in the certification field. Instead, the application should be certified by the author's duly authorized agent or an owner of the exclusive rights in the works. Alternatively, the author may provide his or her pseudonym in the certification field if the author is completing the application on his or her own behalf.

1106.6 Unpublished Collections Eliminated March 15, 2019

As mentioned in Sections 1106 and 1114, the registration accommodation for "unpublished collections" was eliminated effective March 15, 2019. This option has been replaced by the group registration option for unpublished works (GRUW) and the group registration option for unpublished photographs (GRUPH).

The "unpublished collections" accommodation was established when the Office first promulgated regulations implementing the Copyright Act of 1976. It established a procedure for registering multiple "self-contained works" as a "single work" "on a single application and upon payment of a single registration fee." *See* Part 202 – Registration of Claims to Copyright, 43 Fed. Reg. 965, 966 (Jan. 5, 1978). The regulation provided that "[i]n the case of unpublished works, all copyrightable elements that are otherwise recognizable as self-contained works, and are combined in a single unpublished 'collection'" "shall be considered a single work." 37 C.F.R. § 202.3(b)(4)(i) (1978).

Additional information concerning the unpublished collections option is available in prior versions of the *Compendium*. *See Compendium of U.S. Copyright Office Practices* § 1106 (3d ed. 2017); *Compendium of Copyright Office Practices* § 607.02 (2d ed. 1988); *Compendium of Copyright Office Practices* at S-6 (1st ed. 1973). For information concerning the elimination of this option, see Group Registration of Unpublished Works, 82 Fed. Reg. 47,415 (Oct. 12, 2017) and Group Registration of Unpublished Works, 84 Fed. Reg. 3693 (Feb. 13, 2019).

1107 Group Registration of Serials

This Section discusses the U.S. Copyright Office's practices and procedures for registering a group of serials. When referring to this option, the Office uses the term "GRSE," which stands for "group serials."

For guidance on registering a single issue of a serial publication, see Chapter 700, Section 712. For information concerning the group registration options for newspapers and newsletters, see Sections 1108 and 1109. For an overview of the similarities and differences between the group registration options for serials, newspapers, and newsletters, see Section 1116. For information concerning the group registration option for contributions to periodicals, see Section 1110.

See generally Group Registration of Newsletters and Serials, 83 Fed. Reg. 61,546 (Nov. 30, 2018); Group Registration of Serials, 83 Fed. Reg. 22,896 (May 17, 2018); Registration of Claims to Copyright: Group Registration of Serial Issues Filed Electronically, 77 Fed. Reg. 66,920 (Nov. 8, 2012); Registration of Claims to Copyright: Group Registration of Serials, 55 Fed. Reg. 50,556 (Dec. 7, 1990).

1107.1 What Is a Serial?

For purposes of this group registration option, a serial is defined as a work that is issued or intended to be issued on an established schedule in successive parts bearing numerical or chronological designations that are intended to be continued indefinitely. Examples include periodicals (including newspapers), annuals, the journals and proceedings of societies, and other similar works. *See* 37 C.F.R. § 202.3(b)(1)(v).

1107.2 Eligibility Requirements

A group of serials may be registered with the U.S. Copyright Office, provided that the following conditions have been met:

- Each issue in the group must be a serial as defined in Section 1107.1.
- The group must contain at least two issues.
- Each issue must be an all-new collective work that has not been previously published. These requirements are discussed in Sections 1107.2(A) and 1107.2(C) below.
- Each issue must be fixed and distributed as a discrete, self-contained collective work, as described in Section 1107.2(D).
- Each issue must be a work made for hire.
- The author(s) and the copyright claimant(s) for each issue must be the same person or organization.
- The claim to copyright must be limited to the collective work, as discussed in Section 1107.2(B).

- All of the issues must be published under the same continuing title.
- The serial generally must be published at intervals of a week or longer, such as a weekly or monthly publication.
- All of the issues must be published within a period of three months within the same calendar year (*e.g.*, January 1st through March 31st, February 1st through April 30th, October 1st through December 31st, etc.), and the applicant must specify the date of publication for each issue in the group.

See 37 C.F.R. § 202.4(d)(1)(i)-(v).

Serials that do not satisfy these requirements cannot be registered using this group registration option.

If the applicant is unable to register a particular issue using this group registration option, the applicant may submit a separate application for that issue using the online application for a "Single Serial Issue" or a paper application submitted on Form SE. For information concerning the procedures for registering a single issue of a serial publication, see Chapter 700, Section 712.

1107.2(A) The Collective Work Requirement

A serial must be a collective work to qualify for this group registration option. 37 C.F.R. § 202.4(d)(1)(iii).

A serial will be considered a collective work if it contains "a number of contributions" that constitute "separate and independent works in themselves," and if the contributions "are assembled into a collective whole" "in such a way that the resulting work as a whole constitutes an original work of authorship." 17 U.S.C. § 101 (definition of "collective work" and "compilation").

For example, a journal that contains multiple articles, photographs, and illustrations could be considered a collective work if those contributions are selected, coordinated, and arranged in a sufficiently creative manner. By contrast, a monthly publication would not satisfy this requirement if the publisher simply combined all of the articles from a particular source and republished them in chronological order.

1107.2(B) Collective Work Authorship

A collective work contains two different types of authorship:

- The compilation authorship in creating each issue, which involves selecting, coordinating, and/or arranging a number of separate and independent works and assembling them into a collective whole; and
- The authorship in the separate and independent works included within each issue, such as articles, photographs, illustrations, or other contributions.

As a general rule, a registration for a collective work covers the authorship involved in creating the issue as a whole. It also covers the individual contributions contained within the collective work if they were first published in that issue, and if they are fully owned by the copyright claimant when the claim is submitted.

1107.2(C) All New Collective Works

A serial may qualify as an "all-new" collective work if it contains a sufficient amount of compilation authorship that has not been previously published. In other words, there must be a sufficient amount of new expression in the selection, coordination, and arrangement of the articles, photographs, illustrations, or other content appearing in each issue. Whether the content itself is entirely new is irrelevant to this determination. For example, an issue that contains a brand new selection, coordination, and arrangement of content could be considered "all-new," even if that individual content has been previously published in that serial – such as advertisements appearing in previous issues.

1107.2(D) Discrete, Self-Contained Collective Works

Each issue in the group must be fixed and distributed as a discrete, self-contained collective work. 37 C.F.R. § 202.4(d)(1)(iii).

An applicant may satisfy this requirement if the serial as a whole is fixed in a tangible medium of expression, and if the content of each issue does not change once it has been distributed. For example, a publisher that hand-delivers each issue to its subscribers, or distributes them through newsstands or other retail outlets, would satisfy this requirement because the serial is clearly fixed and distributed in a physical format. A publisher that emails an electronic serial to its subscribers may satisfy this requirement if each issue contains a fixed selection of content, such as a PDF version of a physical publication. Similarly, a publisher that allows its subscribers to download an eSerial from its website may satisfy this requirement if each issue is distributed as a collective work and the content of each issue does not change once it has been distributed.

By contrast, a website would not satisfy this requirement. Websites typically add, archive, and/or replace content on a continuing basis. As such, they are not fixed and distributed as discrete, self-contained works. Moreover, these updates are rarely distributed on an established schedule, and rarely contain numerical or chronological designations distinguishing one update from the next. For this reason, websites are not considered "serials" for purposes of registration.

If a serial contains content that appears in both the issue itself and on the publisher's website, the registration may cover that material if it was first published in the serial issue, is fully owned by the claimant at registration, and if the registration specialist can access and view that material in the context where it appears within the issue. Any content that appears on the publisher's website – but does not appear within the issues themselves – must be registered separately.

See Group Registration of Serials, 83 Fed. Reg. 22,896, 22,898 (May 17, 2018); Group Registration of Newsletters and Serials, 83 Fed. Reg. 61,546, 61,547 (Nov. 30, 2018); Group Registration of Serials, 84 Fed. Reg. 60,918 (Nov. 12, 2019).

1107.3 Application Requirements

A group of serials may be registered with the U.S. Copyright Office by submitting the online application designated for "Serial Issues." The Office will not accept claims that are submitted with a paper application or with the Standard Application designated for a "Single Issue Serial" or a "Literary Work." *See* 37 C.F.R. § 202.4(d)(2).

The application may be submitted by the author/claimant for the serial issues, the owner of any of the exclusive rights in the issues, or a duly authorized agent of these parties. *See* 37 C.F.R. § 202.4(d)(2).For guidance on completing the online application, see Section 1107.6.

1107.4 Filing Fee Requirements

The applicant must submit the correct filing fee for this group registration option. *See* 37 C.F.R. § 202.4(d). The current fee is set forth in the U.S. Copyright Office's fee schedule under the heading "Registration of a group of serials (per issue, with minimum two issues)."

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

1107.5 Deposit Requirements

This Section discusses the deposit requirements for registering a group of serials.

1107.5(A) Digital Copies Required

Applicants should submit a digital copy of each issue, regardless of whether the serial is published in a physical or electronic form. 37 C.F.R. § 202.4(d)(3)(i). The issues should be uploaded to the electronic registration system in PDF format, and the applicant should prepare a separate PDF file for each issue in the group.

Example:

- *Feline Fancy* is published on a monthly basis. To register the issues for January, February, and March, the applicant should submit three PDF files containing a complete copy of each issue.

The entire content of each issue should be contained within the same electronic file (including the cover, if any), and the content should be assembled in an orderly form with the pages shown in sequential reading order.

The PDF files should be viewable and searchable, and they must be free of any access restrictions, such as password protection, watermarks, or other Digital Rights Management (DRM).

The PDF files should contain embedded fonts, meaning that the fonts used in each issue should be included within the file itself. If the fonts are embedded, the registration specialist should be able to see the fonts that appeared in each issue when it was

originally published. Consult the help text that accompanies the online application for guidance in determining whether the fonts have been properly embedded.

See 37 C.F.R. § 202.4(d)(3)(i).

1107.5(B) File Naming Convention for Digital Copies

If an ISSN number has been assigned to the serial, the PDF files should be named using the following convention:

- GRSE_[ISSN number]_[date of publication YYYYMMDD].pdf

For example, the file name for an issue published on April 13, 2019 under ISSN 1234-5678 would be "GRSE_ 12345678_ 20190413.pdf."

Applicants should include underscores between each element of the file name, but leave out the hyphen in the middle of the ISSN number. Be sure to include two digits for both the month and day, such as 01, 02, 03, etc. (not 1, 2, 3, etc.).

If an ISSN has not been assigned to the serial, the publisher may request a number from the U.S. ISSN Center. To do so, complete the ISSN application form and make a PDF copy of the front page of one issue (including the masthead or nameplate) and any internal page that contains the editorial bloc, masthead, and publisher information. The completed form and a PDF copy of these two pages should be emailed to issn.application@loc.gov.

If the publisher has applied for an ISSN but has not received it yet, state "pending" in the file name for each issue as follows:

- GRSE_pending_[date of publication YYYYMMDD].pdf

Alternatively, the publisher may name the PDF files using the following convention:

- GRSE_[title_of_serial]_[date of publication YYYYMMDD].pdf

Do not include any special characters in the file name. For example, the file name for a serial titled *Labradors & Golden Retrievers* published on June 1, 2019 would be issue "GRSE_ labradors_golden_retrievers_ 20190601.pdf" (omitting the ampersand).

1107.5(C) Uploading the Digital Files

The applicant should upload each issue to the electronic registration system. The applicant may submit all the files during the same upload session, and all the files may be uploaded at the same time. They do not need to be uploaded one by one. For step-by-step instructions on how to upload files to the electronic registration system, consult the tutorial on the U.S. Copyright Office's website.

IMPORTANT NOTE: The file size for each PDF must not exceed 500 MB. If necessary, the files may be compressed to fit within this limit, but applicants should not submit the issues in a compressed file, such as a .cab, .rar, or .zip file.

1107.5(D) Special Relief

As a general rule, the U.S. Copyright Office will not accept physical copies, such as a print copy of each issue. Likewise, the Office will not accept digital copies that have been saved onto a flash drive, disc, or other electronic storage device.

The Office recognizes that there may be cases where a publisher may not have a digital copy of their issues or may find it difficult to create a digital copy for purposes of seeking a group registration. If an applicant is unable to upload a particular issue to the electronic system, the applicant may request special relief from the deposit requirements. 37 C.F.R. § 202.4(d)(4).

A request for special relief must be made in writing, and it should explain why the applicant is unable to upload digital files that satisfy the deposit requirements described in Section 1107.5(A). The Office may grant a request for special relief, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. *See* 37 C.F.R. § 202.20(d)(1)(iii), (iv).

Requests for special relief will be considered on a case-by-case basis. But the fact that a serial is published in a physical form does not necessarily mean that a request will be granted. Serials are typically created using digital publishing software, even though the issue itself may be distributed in a physical form. The Office may accept an electronic file that was used to create the physical copy, if it contains a complete copy of the issue and satisfies the other legal and formal requirements for this group registration option.

For a general discussion of special relief, see Chapter 1500, Section 1508.8.

1107.6 Completing the Application: Group Registration of Serials

This Section provides guidance for completing the online application designated for a group of "Serial Issues."

As discussed in Section 1107.3, applicants must use this form as a condition for seeking a group registration. If an applicant attempts to use a paper application or the Standard Application designated for a "Single Issue Serial" or a "Literary Work," the U.S. Copyright Office will refuse registration and instruct the applicant to submit a new application, filing fee, and deposit through the electronic registration system.

NOTE: The online application does not contain spaces where the applicant can provide information regarding the individual contributions appearing within each issue, such as title, author, or copyright transfer information. The certificate of registration and the online public record for a group registration will identify only the title, author/claimant, and publication information for each issue in the group.

See Group Registration of Serials, 83 Fed. Reg. 22,896, 22,899 (May 17, 2018).

1107.6(A) Type of Group

When completing the online application, the applicant should begin by clicking the phrase "Register Certain Groups of Published Works," which appears on the home page of the electronic registration system. Next the applicant should select "Serial Issues" from the drop down menu that appears on the Type of Group screen.

Once a selection has been made, the system will generate a brief statement describing the eligibility requirements for this group registration option. If these requirements have been met, the applicant should check the box that appears next to the following statement: "I agree that I have read, understood, and meet all eligibility requirements described above for filing the selected Group Registration."

1107.6(B) Identifying the Serial

The applicant should provide the title of the serial exactly as it appears on the deposit copies. The applicant should provide this information on the Title screen in the field marked Serial Title. For guidance on providing the volume number, issue number, and publication date for each issue, see Section 1107.6(E).

NOTE: All of the issues should be published under the same continuing title. The applicant should complete the field marked Previous/Alternative Title only (i) if the serial was previously published under a different title, (ii) if the serial is known by a different title or by a title that is written in a different language, or (iii) if a person would likely search for the serial in the U.S. Copyright Office's records under a different title.

1107.6(C) International Standard Serial Number (ISSN)

If an International Standard Serial Number ("ISSN") has been assigned to the serial, the applicant may provide this information on the Title screen. Specifically, the applicant should select ISSN from the drop down menu marked ISN Type and provide the relevant number in the field marked International Standard Number.

If an ISSN is included in the application, the number will appear on the certificate of registration, and in the online public record for the claim. The U.S. Copyright Office will not review the ISSN to determine if it matches the number appearing on the deposit copies. Therefore, applicants should ensure that the number is entered correctly.

For a general discussion of ISSN numbers, see Chapter 600, Section 612.6(C).

1107.6(D) Nation of First Publication / Author's Citizenship

The applicant should identify the country where the issues were first published by selecting one of the countries listed in the drop down menu marked Nation of Publication. The U.S. Copyright Office will use this information to determine whether the issues are eligible for copyright protection in the United States. If the applicant fails to provide a nation of first publication, the application will not be accepted by the electronic registration system. If the nation of first publication is unknown, the applicant may select "not known" from the drop down menu.

For a definition and discussion of the nation of first publication, see Chapter 600, Section 612. For a definition and discussion of the author's citizenship, see Chapter 600, Section 617.

1107.6(E) Volume, Number, Issue Date, and Date of Publication

As discussed in Section 1107.2, the applicant must include at least two issues in the group. The issues generally must be published at intervals of a week or longer. And the issues must be published within a three-month period within the same calendar year.

The group option may be used to register serials that are published every week, every two weeks, every month, or every other month. It also may be used if the publisher occasionally distributes multiple issues during the same week, such as when a "special" issue is published in addition to a regularly scheduled issue. However, this option cannot be used to register issues that are published on a quarterly, semi-annual, or annual basis, or issues that are published in different years. *See* Group Registration of Serials, 83 Fed. Reg. 22,896, 22,898 n.7 (May 17, 2018).

The applicant should provide the volume, number, and issue date (if any) that appears on the copy of each issue in the group. In addition, the applicant should provide the date of publication (month, day, and year) for each issue.

To provide this information, the applicant should select "New" on the Title screen, enter the title and nation of publication in the fields provided, and then select "Save." Next the applicant should select "New" and enter the publication date for the earliest issue in the group. The date that appears on that issue (if any) should be entered in the field marked "Issue Date." If a volume number or other numerical designation appears on the issue, the applicant should provide that information in the fields marked "volume" and number." The applicant should select "Save" and repeat this process for the rest of the issues in the group.

On occasion, a serial may be published in one month, but may contain an issue date for the following month, such as when an issue published in December contains an issue date for January of the following year. As a general rule, the registration specialist will accept a claim if the publication dates given in the application fall within a three month period within the same calendar year – even if they do not match the dates that appear on the deposit copies. See Group Registration of Serials, 83 Fed. Reg. 61,546, 61,547 (Nov. 30, 2018).

For a general discussion of publication issues, see Chapter 600, Section 612.

1107.6(F) Author / Claimant

As discussed in Section 1107.2, each issue in the group must be created as a work made for hire, the issues must be created by the same author, and the author and the copyright claimant must be the same person or organization.

The applicant should provide the author/claimant's full name and address on the Author/Claimant screen.

Each issue must be an all-new collective work that has not been published before, and the claim in each issue must be limited to the collective work. When the application is submitted, the term "collective work authorship" will be added automatically to the form.

The registration specialist will examine each issue as a whole to determine if it contains sufficient compilation authorship to warrant registration. And the specialist will review each issue to determine whether it contains "a number of contributions" constituting "separate and independent works in themselves." 17 U.S.C. § 101 (definition of "collective work"); Group Registration of Serials, 82 Fed. Reg. 22,896, 22,899 (May 17, 2018).

As discussed in Section 1107.2(B), a claim in the "collective work" covers the compilation authorship involved in creating each issue as a whole, including the selection, coordination, and/or arrangement of the individual contributions appearing within the issue. A claim in the "collective work" also covers the authorship in the individual articles, photographs, illustrations, or other contributions included within each issue – if they were first published in that issue and if they are fully owned by the author/claimant when the application is filed.

1107.6(G) Rights and Permissions Information

The applicant may provide the name, address, and other contact information for the person and/or organization who should be contacted for permission to use the issues that are included in the group. Providing this information is optional, and an application will be accepted even if the Rights & Permissions screen is left blank.

For guidance in completing this portion of the application, see Chapter 600, Section 622.1.

1107.6(H) Correspondent / Mailing Address for the Certificate of Registration

The applicant should provide the name, email address, telephone number, fax number (if any), and mailing address for the person or persons who should be contacted if the U.S. Copyright Office has questions or concerns regarding the application. The applicant should provide this information on the Correspondent screen. The Office will send all communications to this person at the address provided in the registration record.

In addition, the applicant should provide the name and address where the certificate of registration should be sent. This information should be provided on the Mail Address screen.

For guidance in completing the Correspondent field/space, see Chapter 600, Section 622.2. For guidance in providing the mailing address for the certificate, see Chapter 600, Section 622.4.

1107.6(I) Special Handling

Special handling is a procedure for expediting the examination of an application. The U.S. Copyright Office offers this service in certain circumstances where a copyright

owner or other interested parties have a compelling reason for the expedited issuance of a certificate of registration. The Office charges an additional fee for this service.

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

1107.6(J) Certification

The application must be certified by the author/claimant named in the application, by the owner of one or more of the exclusive rights in the issues, or by a duly authorized agent of the author/claimant or the owner of one or more of the exclusive rights in the issues.

The person who certifies the application certifies that the information provided in the application is correct to the best of his or her knowledge. Knowingly making a false representation of a material fact in an application, or in any written statement filed in connection with the application, is a crime that is punishable under 17 U.S.C. § 506(e).

When completing an online application, the applicant should provide the first and last name of the individual who certified the application in the space marked Name of Certifying Individual. In addition, the applicant should check the box that reads, "I certify that I am the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights of this work and that the information given in this application is correct to the best of my knowledge." There is no need to date the certification; the date will be added automatically when the application is received by the U.S. Copyright Office. *See* 37 C.F.R. § 202.3(c)(3)(iv).

1107.7 Scope of Protection for Serial Issues Registered Under the Group Registration Option

A registration for a group of serial issues covers each issue in the group, and each issue is registered as a separate collective work. 37 C.F.R. § 202.4(n).

As discussed in Section 1107.2(A), a group registration may cover the articles, photographs, illustrations, or other contributions appearing within each issue. Specifically, the registration covers the individual contributions if they were first published in those issues and if the contributions were fully owned by the copyright claimant when the claim was submitted. If the contributions were not fully owned by the copyright claimant, or if they were previously published, then the group registration will not extend to those contributions. This may have several consequences in an infringement action. First, a group registration may be used to satisfy the statutory requirements for instituting an infringement action involving any of the issues that were included within the group, or any of the individual contributions appearing within those issues—provided that the claimant fully owned those contributions at the time the application was submitted, and provided that the contributions were first published in one of those issues. *See* 17 U.S.C. § 411(a).

Second, the group as a whole is not considered a compilation, a collective work, or a derivative work. Instead, the group is merely an administrative classification created solely for the purpose of registering multiple issues with one application and one filing fee. The chronological selection, coordination, and arrangement of the issues within the

group is entirely dictated by the regulatory requirements for this option. Likewise, when a group of serials are combined for the purpose of facilitating registration, those issues are not "recast, transformed, or adapted" in any way, and the group as a whole is not "a work based upon one or more preexisting works," because there is no copyright authorship in simply collecting a group of issues that were published within a three month period. 17 U.S.C. § 101 (definition of "derivative work").

See generally Group Registration of Serials, 83 Fed. Reg. 22,896, 22,899 (May 17, 2018).

1108 Group Registration of Newspaper Issues

This Section discusses the U.S. Copyright Office's practices and procedures for registering a group of newspaper issues. When referring to this option, the Office uses the term "GRNP," which stands for "group newspapers."

For guidance on registering a single issue of a newspaper, see Chapter 700, Section 712.2. For information concerning the group registration options for serials and newsletters, see Sections 1107 and 1109. For a general overview of the similarities and differences between the group registration options for serials, newspapers, and newsletters, see Section 1116. For information concerning the group registration option for contributions to periodicals, see Section 1110.

See generally Group Registration of Newspapers, 84 Fed. Reg. 60,917 (Nov. 12, 2019); Group Registration of Newspapers, 84 Fed. Reg. 3698 (Feb. 13, 2019); Group Registration of Newspapers, 83 Fed. Reg. 4144 (Jan. 30, 2018); Group Registration of Newspapers, 82 Fed. Reg. 51,369 (Nov. 6, 2017); *see also* H.R. REP. NO. 94-1476, at 154 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5770 (citing "the various editions or issues of a daily newspaper" as an example of a group of related works that might qualify for group registration).

1108.1 What Is a Newspaper?

For purposes of this group registration option, a newspaper is defined as a periodical that is mainly designed to be a primary source of written information on current events, either local, national, or international in scope. A newspaper contains a broad range of news on all subjects and activities and is not limited to any specific subject matter. Newspapers are intended for either the general public or a particular ethnic, cultural, or national group. *See* 37 C.F.R. § 202.4(e)(1).

Newspapers are considered "periodicals" for purposes of registration. A periodical is "a collective work that is issued or intended to be issued on an established schedule in successive issues that are intended to be continued indefinitely. In most cases, each issue will bear the same title, as well as numerical or chronological designations." 37 C.F.R. § 202.4(b)(3).

The group registration option may be used to register any newspaper that satisfies this definition, regardless of whether the Library of Congress has selected that newspaper for its collections. *See* Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,371 (Nov. 6, 2017).

1108.2 Eligibility Requirements

A group of newspaper issues may be registered with the U.S. Copyright Office, provided that the following conditions have been met:

- Each issue in the group must be a newspaper, as defined in Section 1108.1.
- Each issue must be an all-new collective work that has not been published before (except in cases where earlier editions of the same issue are submitted together with the final edition). These requirements are discussed in Sections 1108.2(A) and 1108.2(C) below.
- Each issue must be fixed and distributed as a discrete, self-contained collective work, as described in Section 1108.2(D).
- The claim in each issue must be limited to the collective work, as discussed in Section 1108.2(B).
- Each issue must be a work made for hire, and the author and claimant for each issue must be the same person or organization.
- All the issues must be published under the same continuing title.
- All the issues must be published within the same calendar month and they must bear issue dates within that month.
- The applicant must identify the earliest and latest date that the issues were published.

See 37 C.F.R. § 202.4(e)(1)-(4).

Newspapers that do not satisfy these requirements cannot be registered using this group registration option. *See* Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,371 (Nov. 6, 2017).

If the applicant is unable to register a particular issue with this option, the applicant may submit a separate application for that issue using the online application for a "Single Serial Issue" or a paper application submitted on Form SE. For information concerning the procedures for registering a single issue of a serial publication, see Chapter 700, Section 712.2.

1108.2(A) The Collective Work Requirement

A newspaper must be a collective work to qualify for the group registration option. 37 C.F.R. § 202.4(e)(2).

A newspaper will be considered a collective work if it contains "a number of contributions" that constitute "separate and independent works in themselves," and if the contributions "are assembled into a collective whole" "in such a way that the

resulting work as a whole constitutes an original work of authorship." 17 U.S.C. § 101 (definition of "collective work" and "compilation").

For example, a newspaper that contains multiple articles, photographs, illustrations, and advertisements could be considered a collective work if those contributions are selected, coordinated, and arranged in a sufficiently creative manner. By contrast, a work that that contains a single article and a single photograph would not be considered a collective work, because it does not contain a sufficient number of contributions. H.R. REP. NO. 94-1476, at 122 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5737.

1108.2(B) Collective Work Authorship

Newspapers are, by definition, collective works, and as such, they contain two different types of authorship:

- The compilation authorship in creating each issue, which involves selecting, coordinating, and/or arranging a number of separate and independent works and assembling them into a collective whole; and

- The authorship in the separate and independent works included within each issue, such as articles, photographs, illustrations, or other contributions.

As a general rule, a registration for a collective work covers the authorship involved in creating the collective work as a whole. It also covers the individual contributions contained within the collective work if they are fully owned by the copyright claimant and if they were first published in that work.

When the registration specialist reviews a group registration claim, he or she will examine the issues as a whole to determine if they contain sufficient compilation authorship to warrant registration. And the specialist will review the issues to determine if they contain "a number of contributions" constituting "separate and independent works in themselves." 17 U.S.C. § 101 (definition of "collective work").

If the claim is approved, the registration will cover the compilation authorship involved in creating each issue as a whole, as well as the authorship in the individual articles, photographs, illustrations, or other contributions appearing within each issue – if they were first published in those issues and if they are fully owned by the author/claimant when the application is filed. By contrast, if an issue contains contributions that are not fully owned by the author/claimant, and/or if they were previously published, the registration will not extend to those contributions.

See Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,372-73 (Nov. 6, 2017).

1108.2(C) All New Collective Works

A newspaper may qualify as an "all-new" collective work if it contains a sufficient amount of new compilation authorship. In other words, there must be a sufficient amount of new expression in the selection, coordination, and arrangement of the articles, photographs, illustrations, or other content appearing in each issue. The fact that the content itself is entirely new is irrelevant to this determination. For example, an

issue could be considered "all-new" if it contains a brand new selection, coordination, and arrangement of content, even if that individual content has been previously published in the newspaper – such as advertisements appearing in previous issues. *See* Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,372 (Nov. 6, 2017).

1108.2(D) Discrete, Self-Contained Collective Works

Each newspaper issue in the group must be fixed and distributed as a discrete, self-contained collective work. 37 C.F.R. § 202.4(e)(2).

An applicant may satisfy this requirement if the newspaper as a whole is fixed in a tangible medium of expression, and the content of each issue does not change once it has been distributed. For example, a publisher that hand-delivers each issue to its subscribers, or distributes them through newsstands, vending machines, or other retail outlets, would satisfy this requirement because the newspaper is clearly fixed and distributed in a physical format. A publisher that emails an electronically printed ("ePrint") newspaper to its subscribers may satisfy this requirement if each issue contains a fixed selection of content, such as a PDF version of a physical publication. Similarly, a publisher that allows its subscribers to download an ePrint newspaper from its website may satisfy this requirement if each issue is distributed as a collective work and the content of each issue does not change once it has been distributed.

By contrast, a newspaper website would not satisfy this requirement. Newspaper websites typically add, archive, and/or replace content on a continuing basis. As such, they are not fixed and distributed as discrete, self-contained works. Moreover, these updates are rarely distributed on an established schedule, and rarely contain numerical or chronological designations distinguishing one update from the next. For this reason, websites are not considered "newspapers" for purposes of registration.

See Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,373 (Nov. 6, 2017).

1108.3 Application Requirements

To register a group of newspaper issues the applicant must complete and submit the online application designated for this group option. The U.S. Copyright Office will not accept claims that are submitted with the Standard Application or a paper form. 37 C.F.R. § 202.4(e)(5).

For guidance on completing the online application, see Section 1108.6.

1108.4 Filing Fee Requirements

The applicant must submit the correct filing fee for this group registration option. 37 C.F.R. § 202.4(e). The current fee is set forth in the U.S. Copyright Office's fee schedule under the heading "Registration of a claim in a group of newspapers or a group of newsletters."

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

1108.5 Deposit Requirements

This Section discusses the deposit requirements for registering a group of newspaper issues.

1108.5(A) Digital Copies Required

In all cases, applicants must submit a digital copy of each issue, and must upload these copies through the electronic registration system. *See* 37 C.F.R. § 202.4(e)(6)(i), (ii)(A). The specific requirements for these digital deposits are discussed in Sections 1108.5(A)(1) through 1108.5(A)(4).

1108.5(A)(1) Final Edition Required; Early Editions and Local Editions Permitted

Applicants must upload a complete copy of the final edition of each issue published during the month specified in the application. 37 C.F.R. § 202.4(e)(6)(i).

If two or more editions were published on the same date, the applicant may submit the earlier edition(s) together with the final edition. Applicants also may include "local" editions of the newspaper if they were published within the same metropolitan area, such as the Brooklyn, Bronx, Manhattan, Queens, and Staten Island editions of a New York City newspaper. *See id.*; *see also* H.R. REP. NO. 94-1476, at 153 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5769 (authorizing "exceptions or special provisions" for "multipart newspaper editions").

Applicants may not combine "national" or "regional" editions that were distributed outside a given metropolitan area, because they typically have different ISSN numbers, and thus, are considered different newspapers. To register a national or regional edition of a particular newspaper, applicants should submit a separate application, filing fee, and deposit for those issues. *See* Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,370 n.3 (Nov. 6, 2017).

Examples:

- The morning edition and final edition of the *Providence Post* could be registered as a group.
- The Manhattan, Long Island, and Sussex editions of the *New York Examiner* could be registered as a group.
- The East Coast and West Coast editions of *Show Biz Daily* could not be registered as a group, although they could be registered as two separate groups.

In all cases, the early, local, and final editions for a particular date should be arranged in sequential reading order, and they should be combined within the same digital file (assuming the file does not exceed the 500 MB file size requirement discussed in Section 1108.5(A)(4) below). *See* 82 Fed. Reg. at 51,375.

1108.5(A)(2) PDF Format Required

The issues must be submitted in PDF format, and the applicant must upload a separate PDF file for each issue in the group. The issues should be assembled within each PDF in an orderly form with the pages arranged in sequential reading order.

Example:

- The *Daily Planet* published thirty-one issues in the month of January. To register these issues, the applicant should submit thirty-one PDF files containing a complete copy of the final edition of each issue published during that month.

The PDF files must be viewable and searchable, and they must be free of any access restrictions, such as password protection, watermarks, or other Digital Rights Management (DRM).

The PDF files must contain embedded fonts, meaning that the fonts used in each issue should be included within the file itself. If the fonts are embedded, the registration specialist should be able to see the fonts that appeared in each issue when it was originally published. Consult the help text that accompanies the online application for guidance in determining whether the fonts have been properly embedded.

See 37 C.F.R. § 202.4(e)(6)(ii)(A); Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,375 (Nov. 6, 2017).

1108.5(A)(3) File Naming Convention

Each PDF file should be named using the following convention:

- GRNP_[ISSN number]_date of publication_YYYYMMDD].pdf

For example, the file name for an issue published on March 1, 2018 under ISSN 1234-5678 would be "GRNP_ 12345678_ 20180301.pdf."

As mentioned in Section 1108, "GRNP" is an abbreviation for "group newspapers." The Library of Congress will use this term to identify the source of these PDF files and to distinguish them from copies received from other sources.

Applicants should include underscores between each element of the file name, but leave out the hyphen in the middle of the ISSN number. Be sure to include two digits for both the month and day, such as 01, 02, 03, etc. (not 1, 2, 3, etc.).

If an ISSN has not been assigned to the newspaper, the publisher may request a number from the U.S. ISSN Center. To do so, complete the ISSN Newspaper Application Form and make a PDF copy of the front page of one issue (including the masthead or nameplate) and any internal page that contains the editorial bloc, masthead, and publisher information. The completed form and a PDF copy of these two pages should be emailed to issngrnp@loc.gov with the subject line "Group Registration of Newspapers."

If the publisher has applied for an ISSN but has not received it yet, state "pending" in the file name for each issue as follows:

- GRNP_pending_[date of publication YYYYMMDD].pdf

See 37 C.F.R. § 202.4(e)(6)(ii)(A); Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,375 (Nov. 6, 2017).

1108.5(A)(4) Uploading the Digital Files

The applicant must upload each issue to the electronic registration system, and each issue must be contained in a separate PDF file.

The applicant may submit all the files during the same upload session, and all the files may be uploaded at the same time. They do not need to be uploaded one by one. For step-by-step instructions on how to upload files to the electronic registration system, consult the tutorial on the U.S. Copyright Office's website.

IMPORTANT NOTE: The file size for each PDF must not exceed 500 MB. If necessary, the files may be compressed to fit within this limit, but applicants should not submit the issues in a compressed file, such as a .cab, .rar, or .zip file.

See 37 C.F.R. § 202.4(e)(6)(ii)(A); Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,375 (Nov. 6, 2017).

1108.5(B) Special Relief from the Deposit Requirements

If the PDF files do not comply with the technical requirements described in Sections 1108.5(A)(1) through 1108.5(A)(4), the Copyright Acquisitions Division ("CAD") may contact the publisher and ask for replacement files. If the publisher does not provide replacement files, CAD will notify the Literary Division, which will review the publisher's future submissions for similar deficiencies and may refuse registration if there are similar defects. *See* Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,375 (Nov. 6, 2017).

The U.S. Copyright Office recognizes that there may be cases where a publisher may not have a digital copy of their issues or may find it difficult to create a digital copy for purposes of seeking a group registration. If an applicant is unable to upload a particular issue to the electronic system, the applicant may request special relief from the deposit requirements. *See id*. at 51,375, 51,376.

A request for special relief must be made in writing, and it should explain why the applicant is unable to upload digital files that satisfy the deposit requirements described in Section 1108.5(A). The Office may grant a request for special relief, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. *See* 37 C.F.R. § 202.20(d)(1)(iii), (iv).

Requests for special relief will be considered on a case-by-case basis. But the fact that a newspaper is published in a physical form does not necessarily mean that a request will

be granted. Newspapers are typically created using digital publishing software, even though the issue itself may be distributed in a physical form. The Office may accept an electronic file that was used to create the physical copy, if it contains a complete copy of the issue and satisfies the other legal and formal requirements for this group registration option.

For a general discussion of special relief, see Chapter 1500, Section 1508.8.

1108.6 Completing the Application: Group Registration of Newspaper Issues

This Section provides guidance for completing the online application for a group of newspaper issues.

The application may be submitted by the author/claimant for the newspaper issues, the owner of any of the exclusive rights in the issues, or a duly authorized agent of these parties. *See* 37 C.F.R. § 202.4(e)(5).

As discussed in Section 1108.3, applicants must use this form as a condition for seeking a group registration. If an applicant attempts to use the Standard Application or a paper application, the U.S. Copyright Office will refuse registration and instruct the applicant to submit a new application, filing fee, and deposit through the electronic registration system. *See* Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,374 (Nov. 6, 2017).

NOTE: The application for group newspapers does not contain spaces where the applicant can provide information regarding the individual contributions appearing within each issue, such as title, author, or copyright transfer information. The certificate of registration and the online public record for a group registration will only identify the title, author/claimant, and publication information for the earliest and most recent issues in the group.

1108.6(A) Type of Group

The applicant should begin by clicking the phrase "Register Certain Groups of Published Works," which appears on the home page of the electronic registration system. Next, the applicant should select "Daily Newspapers" from the options listed in the drop down menu marked Type of Group.

NOTE: Although the application is labeled "daily newspapers," this form may be used to register any newspaper that satisfies the definition set forth in Section 1108.1, regardless of whether issues are published on a daily basis. *See* Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,371 (Nov. 6, 2017).

Once a selection has been made, the system will generate a brief statement describing the eligibility requirements for this group registration option. If these requirements have been met, the applicant should check the box that appears next to the following statement: "I agree that I have read, understood, and meet all eligibility requirements described above for filing the selected Group Registration."

1108.6(B) Identifying the Newspaper

The applicant should provide the title of the newspaper exactly as it appears on the deposit copies, including any subtitle(s). As mentioned in Section 1108.2, the title that appears on each issue must be the same.

The applicant should identify the month and year that the issues were published. As mentioned in Section 1108.2, all the issues must be published within the same calendar month and the same calendar year.

In addition, the applicant should identify the city and state where the newspaper was published. If the issues were not published in a particular city or state, the applicant may provide the name of the country where the issues were published.

The applicant should provide this information on the Title screen in the fields marked "Title of Newspaper," "City/State," and "Month/Year." If the applicant fails to complete this portion of the application, the claim will not be accepted by the electronic registration system.

If the applicant intends to submit "local editions" that were published within the same metropolitan area, the applicant should identify the city, town, or municipality served by that newspaper. For example, the applicant should state "New York, NY" when registering the Brooklyn, Bronx, Manhattan, Queens, and Staten Island editions of a New York City newspaper.

If a specific edition statement appears on each issue (such as "Late Edition" or "Final Edition"), this information may be provided on the title screen in the field marked "Edition." Likewise, if the Sunday and daily editions are published under different titles (but under the same ISSN) the applicant may identify each edition in this portion of the application.

1108.6(C) International Standard Serial Number (ISSN)

As discussed in Section 1108.5(A), applicants must upload a digital copy of each issue, and the file-name for each issue must include the ISSN that has been assigned to the newspaper.

Applicants are encouraged to provide this number in the application itself. Specifically, the number may be provided on the Title screen in the field marked "ISSN." If the ISSN is included in this portion of the application, it will appear on the certificate of registration, and in the online public record for the claim.

The U.S. Copyright Office will not review the ISSN to determine if it matches the number appearing on the deposit copies (if any). Therefore, applicants should ensure that the number is entered correctly.

1108.6(D) Publication Dates for the Issues in the Group

All of the issues must be published within the same month and the same year, and the applicant must provide the date of publication for the earliest and most recent issues in

the group. If the issues were published in different months or different years, the registration specialist will refuse to register the claim. *See* Group Registration of Newspapers, 82 Fed. Reg. 51,369, 51,372 (Nov. 6, 2017).

This information should be provided on the Publication screen in "MM/YYYY" format. For example, if the issues were published on a daily basis in March 2018, the applicant should enter "03/01/2018" for the earliest issue in the group and "03/31/2018" for the most recent issue in the group. If the applicant fails to complete this portion of the application, the claim will not be accepted by the electronic registration system.

1108.6(E) Nation of First Publication

The applicant should identify the nation where the issues were first published. This information should be provided on the Publication screen by selecting one of the countries listed in the drop down menu marked Nation of Publication.

The U.S. Copyright Office will use this information to determine if the issues are eligible for copyright protection in the United States. If the applicant fails to provide a nation of first publication, the application will not be accepted by the electronic registration system. If the nation of first publication is unknown, the applicant may select "not known" from the drop down menu.

For a definition and discussion of nation of first publication, see Chapter 600, Section 612.

1108.6(F) Number of Issues in the Group

The applicant must submit a complete copy of the final edition of each issue that was published during the month specified in the application. On the Publication screen, the applicant should specify the total number of issues that will be submitted by selecting the appropriate number from the drop down menu marked "Number of Issues in This Group."

The U.S. Copyright Office will use this information to verify that a PDF copy of each issue has been received. If the applicant fails to complete this portion of the application, the claim will not be accepted by the electronic registration system.

1108.6(G) Author / Claimant

Each issue in the group must be a work made for hire, and the author(s) and the claimant(s) must be the same person or organization. The applicant should provide the author/claimant's name and address in the relevant fields on the Author/Claimant screen.

Each issue must be an all-new collective work that has not been published before, and the claim in each issue must be limited to the collective work. When the application is submitted, the term "collective work authorship" will be added automatically to the form.

As discussed in Section 1108.2(B), a claim in the "collective work" covers the compilation authorship involved in creating each issue as a whole, including the selection, coordination, and/or arrangement of the individual contributions appearing within the issue. A claim in the "collective work" also covers the authorship in the individual articles, photographs, illustrations, or other contributions included within each issue – if they were first published in that issue and if they are fully owned by the author/claimant when the application is filed.

1108.6(H) Rights and Permissions Information

The applicant may provide the name, address, and other contact information for the person and/or organization who should be contacted for permission to use the issues that are included in the group. Providing this information is optional, and the application will be accepted even if the Rights & Permissions Information screen is left blank.

For guidance in completing this portion of the application, see Chapter 600, Section 622.1.

1108.6(I) Correspondent / Mailing Address for the Certificate of Registration

The applicant should provide the name, email address, telephone number, fax number (if any), and mailing address for the person or persons who should be contacted if the U.S. Copyright Office has questions or concerns regarding the application. This information should be provided on the Correspondent screen.

In addition, the applicant should provide the name and address where the certificate of registration should be sent. This information should be provided on the Mail Address screen.

For guidance in completing this portion of the application, see Chapter 600, Sections 622.2 and 622.4.

1108.6(J) Special Handling

Special handling is a procedure for expediting the examination of an application. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate of registration. The Office charges an additional fee for this service.

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

1108.6(K) Certification

The application must be certified by the author/claimant named in the application, by the owner of one or more of the exclusive rights in the issues, or by a duly authorized agent of the author/claimant or the owner of one or more of the exclusive rights in the issues.

The person who certifies the application certifies that the information provided in the application is correct to the best of his or her knowledge. Knowingly making a false representation of a material fact in an application, or in any written statement filed in connection with the application, is a crime that is punishable under 17 U.S.C. § 506(e).

When completing the Certification screen, the applicant should provide the first and last name of the individual who certified the application in the space marked Name of Certifying Individual. In addition, the applicant should check the box that reads, "I certify that I am the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights of this work and that the information given in this application is correct to the best of my knowledge." There is no need to date the certification; the date will be added automatically when the application is received. *See* 37 C.F.R. § 202.3(c)(3)(iv).

1108.7 Scope of Protection for Newspaper Issues Registered Under the Group Registration Option

A registration for a group of newspaper issues covers each issue in the group, and each issue is registered as a separate collective work. 37 C.F.R. § 202.4(n). This may have several consequences in an infringement action.

First, a group registration may be used to satisfy the statutory requirements for instituting an infringement action involving any of the newspaper issues that were included within the group, or any of the individual contributions appearing within those issues—provided that the copyright claimant fully owned those contributions at the time the application was submitted, and provided that the contributions were first published in one of those issues. *See* 17 U.S.C. § 411(a).

Second, a group registration may also be used to satisfy the plaintiff's burden of proof by providing a presumption of validity for each registered issue. Specifically, a certificate of registration "constitute[s] prima facie evidence of the validity of the copyright and of the facts stated in the certificate." 17 U.S.C. § 410(c). A group registration thus creates a presumption that the claimant owns the copyright in each issue listed in the certificate, and a presumption that the copyright law protects each issue as a whole.

Finally, the group as a whole is not considered a compilation, a collective work, or a derivative work. Instead, the group is merely an administrative classification created solely for the purpose of registering multiple collective works with one application and one filing fee. The chronological selection, coordination, and arrangement of the issues within the group is entirely dictated by the regulatory requirements for this option. Likewise, when a group of newspaper issues are combined for the purpose of facilitating registration, those works are not "recast, transformed, or adapted" in any way, and the group as a whole is not "a work based upon one or more preexisting works" because there is no copyright authorship in simply collecting a month of issues and arranging them in chronological order. 17 U.S.C. § 101 (definition of "derivative work").

1109 Group Registration of Newsletters

This Section discusses the U.S. Copyright Office's practices and procedures for registering a group of newsletter issues. When referring to this option, the Office uses the term "GRNL," which stands for "group newsletters."

For guidance on registering a single issue of a serial publication, see Chapter 700, Section 712. For information concerning the group registration options for serials and newspapers, see Sections 1107 and 1108. For a general overview of the similarities and differences among the group registration options for serials, newspapers, and newsletters, see Section 1116. For information concerning the group registration option for contributions to periodicals, see Section 1110.

See generally Group Registration of Newsletters and Serials, 83 Fed. Reg. 61,546 (Nov. 30, 2018); Group Registration of Newsletters, 83 Fed. Reg. 22,902 (May 17, 2018); Registration of Claims to Copyright; Group Registration of Daily Newsletters, 64 Fed. Reg. 29,522 (June 1, 1999); Registration of Claims to Copyright; Group Registration of Daily Newsletters, 60 Fed. Reg. 15,874 (Mar. 28, 1995).

1109.1 What Is a Newsletter?

For purposes of this group registration option, a newsletter is defined as a serial that is published and distributed by mail, electronic media, or other medium, including paper, email, or download. (The term "serial" is defined in Section 1107.1.) The serial must contain news or information that is chiefly of interest to a special group, such as trade and professional associations, colleges, schools, or churches. Newsletters are typically sold by subscription, but they are not sold on newsstands or through other retail outlets. *See* 37 C.F.R. § 202.4(f)(1)(i).

1109.2 Eligibility Requirements

A group of newsletter issues may be registered with the U.S. Copyright Office, provided that the following conditions have been met:

- Each issue in the group must be a newsletter as defined in Section 1109.1.
- The group must contain at least two issues.
- Each issue must be an all-new collective work or an all-new issue that has not been published before. This requirement is discussed below in Section 1109.2(A).
- Each issue must be fixed and distributed as a discrete, self-contained work, as described in Section 1109.2(B).
- The author(s) and the copyright claimant(s) for all of the issues must be the same person or organization.
- Each issue must be published under the same continuing title.

- Each issue must be published in the same calendar month and bear issue dates within that month, and the applicant must identify the earliest and most recent date that the issues were published during that month.

See 37 C.F.R. § 202.4(f)(1)(i)-(v).

Newsletters that do not satisfy these requirements cannot be registered using this group registration option.

If the applicant is unable to register a particular issue using the group registration option for newsletters, the applicant may submit a separate application for that issue using the online application for a "Single Issue Serial" or a paper application submitted on Form SE. For information concerning the procedures for registering a single issue of a serial publication, see Chapter 700, Section 712.2.

1109.2(A) Each Work Must Be an All-New Issue or an All-New Collective Work

A newsletter may be eligible for group registration if it qualifies as an "all-new" issue or an "all-new" collective work. 37 C.F.R. § 202.4(f)(1)(iii).

A newsletter will be considered a collective work if it contains "a number of contributions" that constitute "separate and independent works in themselves," and if the contributions "are assembled into a collective whole" "in such a way that the resulting work as a whole constitutes an original work of authorship." 17 U.S.C. § 101 (definition of "collective work" and "compilation"). For example, a newsletter that contains multiple articles, photographs, illustrations, and advertisements could be considered a collective work if those contributions are selected, coordinated, and arranged in a sufficiently creative manner.

An issue that contains a single article and a single photograph would not be considered a collective work, because it does not contain a sufficient number of contributions. H.R. REP. NO. 94-1476, at 122 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5737. Nevertheless, an issue may still be eligible for group registration if it satisfies the other requirements set forth in Section 1109.2.

In this respect, the newsletter option differs from the group registration options for serials and newspapers. To register a group of serials or newspapers, each issue in the group must be a collective work. By contrast, a publisher may register a group of newsletters, regardless of whether the issues satisfy the statutory definition for a collective work.

A newsletter may qualify as an "all new" collective work if it contains a sufficient amount of new compilation authorship. In other words, there must be new expression in the selection, coordination, and/or arrangement of the articles, photographs, or other content appearing in each issue. Whether the content itself is entirely new is irrelevant to this determination. For instance, an issue that contains a brand new selection, coordination, and arrangement of content could be considered "all new," even if that content has been previously published in the newsletter, such as advertisements appearing in previous issues.

See Group Registration of Newsletters, 83 Fed. Reg. 22,902, 22,903-04 (May 17, 2018).

1109.2(B) Discrete, Self-Contained Works

Each newsletter issue must be fixed and distributed as a discrete, self-contained work. 37 C.F.R. § 202.4(f)(1)(iii). A newsletter may satisfy this requirement if the issue as a whole is fixed in a tangible medium of expression, and the content of each issue does not change once it has been distributed. For example, a publisher that mails a newsletter to its subscribers would satisfy this requirement, because the issue is clearly fixed and distributed in a physical format. A publisher that emails an electronically printed ("ePrint") newsletter to its subscribers may satisfy this requirement if each issue contains a fixed selection of content, such as a PDF version of a physical publication. Similarly, a publisher that allows its subscribers to download an ePrint newsletter from its website may satisfy this requirement if each issue is distributed as a self-contained work and if the content of each issue does not change once it has been downloaded.

By contrast, a newsletter website would not satisfy this requirement. Websites typically add, archive, and/or replace content on a continuing basis. As such, they are not fixed and distributed as discrete, self-contained works. Moreover, these updates are rarely distributed on an established schedule, and rarely contain numerical or chronological designations distinguishing one update from the next. For this reason, websites are not considered "newsletters" for purposes of registration.

See Group Registration of Newsletters, 83 Fed. Reg. 22,902, 22,904 (May 17, 2018).

1109.3 Application Requirements

To register a group of newsletter issues the applicant must complete and submit the online application designated for this group option. The U.S. Copyright Office will not accept claims that are submitted with the Standard Application or a paper form. 37 C.F.R. § 202.4(f)(2).

For guidance on completing the online application, see Section 1109.6.

1109.4 Filing Fee Requirements

The applicant must submit the correct filing fee for this group registration option. *See* 37 C.F.R. § 202.4(f). The current fee is set forth in the U.S. Copyright Office's fee schedule under the heading "Registration of a claim in a group of newspapers or a group of newsletters."

For information concerning the methods for paying the filing fee, see Chapter 1400, Sections 1412.4 and 1412.5.

1109.5 Deposit Requirements

This Section discusses the deposit requirements for registering a group of newsletter issues.

1109.5(A) Digital Copies Required

Applicants should submit a digital copy of each issue, regardless of whether the newsletter is published in a physical or electronic form. 37 C.F.R. § 202.4(f)(3). The issues should be uploaded to the electronic registration system in PDF format, and the applicant should prepare a separate PDF file for each issue in the group.

Example:

- The American Association of Gastroenterology published eight issues in the month of January. To register these issues, the applicant should submit eight PDF files containing a complete copy of each issue.

The entire content of each issue should be contained within the same electronic file (including the cover, if any), and the content should be assembled in an orderly form with the pages shown in sequential reading order.

The PDF files should be viewable and searchable, and they must be free of any access restrictions, such as password protection, watermarks, or other Digital Rights Management (DRM).

The PDF files should contain embedded fonts, meaning that the fonts used in each issue should be included within the file itself. If the fonts are embedded, the registration specialist should be able to see the fonts that appeared in each issue when it was originally published. Consult the help text that accompanies the online application for guidance in determining whether the fonts have been properly embedded.

See 37 C.F.R. § 202.4(f)(3).

1109.5(B) File Naming Convention

If an ISSN number has been assigned to the newsletter, the PDF files should be named using the following convention:

- GRNL_[ISSN number]_[date of publication YYYYMMDD].pdf

For example, the file name for an issue published on January 15, 2019 under ISSN 1234-5678 would be "GRNL_ 12345678_ 20190115.pdf."

Applicants should include underscores between each element of the file name, but leave out the hyphen in the middle of the ISSN number. Be sure to include two digits for both the month and day, such as 01, 02, 03, etc. (not 1, 2, 3, etc.).

If an ISSN has not been assigned to the newsletter, the publisher may request a number from the U.S. ISSN Center. To do so, complete the ISSN application form and make a PDF copy of the front page of one issue (including the masthead or nameplate) and any internal page that contains the editorial bloc, masthead, and publisher information. The completed form and a PDF copy of these two pages should be emailed to issn.application@loc.gov.

If the publisher has applied for an ISSN but has not received it yet, state "pending" in the file name for each issue as follows:

- GRNL_pending_[date of publication YYYYMMDD].pdf

Alternatively, the publisher may name the PDF files using the following convention:

- GRNL_[title_of_newsletter]_[date of publication YYYYMMDD].pdf

Do not include any special characters in the file name. For example, the file name for a newsletter titled *Gas Storage Bulletin & Report* published on August 1, 2018 would be issue "GRNL_ gas_storage_bulletin_report_20180801.pdf" (omitting the ampersand).

1109.5(C) Uploading the Digital Files

The applicant must upload each issue to the electronic registration system. The applicant may submit all the files during the same upload session, and all the files may be uploaded at the same time. They do not need to be uploaded one by one. For step-by-step instructions on how to upload files to the electronic registration system, consult the tutorial on the U.S. Copyright Office's website.

IMPORTANT NOTE: The file size for each PDF must not exceed 500 MB. If necessary, the files may be compressed to fit within this limit, but applicants should not submit the issues in a compressed file, such as a .cab, .rar, or .zip file.

1109.5(D) Special Relief

As a general rule, the U.S. Copyright Office will not accept physical copies, such as a print copy of each issue. Likewise, the Office will not accept digital copies that have been saved onto a flash drive, disc, or other electronic storage device. Group Registration of Newsletters, 83 Fed. Reg. 22,902, 22,903 (May 17, 2018).

The Office recognizes that there may be cases where a publisher may not have a digital copy of their issues or may find it difficult to create a digital copy for purposes of seeking a group registration. If an applicant is unable to upload a particular issue to the electronic system, the applicant may request special relief from the deposit requirements. 37 C.F.R. § 202.4(f)(4).

A request for special relief must be made in writing, and it should explain why the applicant is unable to upload digital files that satisfy the deposit requirements described in Section 1109.5(A). The Office may grant a request for special relief, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. *See* 37 C.F.R. § 202.20(d)(1)(iii), (iv).

Requests for special relief will be considered on a case-by-case basis. But the fact that a newsletter is published in a physical form does not necessarily mean that a request will be granted. Newsletters are typically created using digital publishing software, even though the issue itself may be distributed in a physical form. The Office may accept an electronic file that was used to create the physical copy, if it contains a complete copy of

the issue and satisfies the other legal and formal requirements for this group registration option.

For a general discussion of special relief, see Chapter 1500, Section 1508.8.

1109.6 Completing the Application: Group Registration of Newsletter Issues

This Section provides instructions for completing the online application for a group of newsletter issues.

The application may be submitted by the author/claimant for the newsletter issues, the owner of any of the exclusive rights in the issues, or a duly authorized agent of these parties. *See* 37 C.F.R. § 202.4(f)(2).

As discussed in Section 1109.3, applicants must use this form as a condition for seeking a group registration. If an applicant attempts to use the Standard Application or a paper application, the U.S. Copyright Office will refuse registration and instruct the applicant to submit a new application, filing fee, and deposit through the electronic registration system.

NOTE: The application for group newsletters does not contain spaces where the applicant can provide information regarding the individual contributions appearing within each issue, such as title, author, or copyright transfer information. The certificate of registration and the online public record for a group registration will only identify the title, author/claimant, and publication information for the earliest and most recent issues in the group.

See Group Registration of Newsletters, 83 Fed. Reg. 22,902, 22,905 (May 17, 2018); Group Registration of Newsletters and Serials, 83 Fed. Reg. 61,546, 61,547 (Nov. 30, 2018).

1109.6(A) Type of Group

The applicant should begin by clicking the phrase "Register Certain Groups of Published Works," which appears on the home page of the electronic registration system. Next, the applicant should select "Daily Newsletters" from the options listed in the drop down menu marked Type of Group.

NOTE: Although the application is labeled "daily newsletters," this form may be used to register any newsletter, even if it is not published on a daily basis.

Once a selection has been made, the system will generate a brief statement describing the eligibility requirements for this group registration option. If these requirements have been met, the applicant should check the box that appears next to the following statement: "I agree that I have read, understood, and meet all eligibility requirements described above for filing the selected Group Registration."

1109.6(B) Identifying the Newsletter

The applicant should provide the title of the newsletter exactly as it appears on the deposit copies, and should identify the month and year that the issues were published. As discussed in Section 1109.2, the title that appears on each issue must be the same, and the issues must be published in the same calendar month and the same calendar year.

In addition, applicants are encouraged to identify the city and state where the newsletter was published. If the issues were not published in a particular city or state, this field may be left blank.

1109.6(C) International Standard Serial Number (ISSN)

As discussed in Section 1109.5(A), applicants must upload a digital copy of each issue, and if an International Standard Serial Number ("ISSN") has been assigned to the newsletter, the applicant should include the ISSN in the file name for each issue. If an ISSN has not been assigned to the newsletter, the publisher may request a number from the U.S. ISSN Center, as discussed in Section 1109.5(B).

Applicants are encouraged to provide the ISSN in the application itself. If the number is entered on the Title screen in the field marked "ISSN", it will appear on the certificate of registration, and in the online public record for the claim.

The U.S. Copyright Office will not review the ISSN to determine if it matches the number appearing on the deposit copies. Therefore, applicants should ensure that the number is entered correctly.

1109.6(D) Publication Dates for the Issues in the Group

As discussed in Section 1109.2, the issues must be published within the same month and the same year, and the applicant must provide the date of publication for the earliest and most recent issues in the group. This information should be provided on the Publication screen in "MM/DD/YYYY" format. For example, if the issues were published every Tuesday and Thursday in December 2018, the applicant should enter "12/04/2018" for the earliest issue in the group and "12/27/2018" for the most recent issue.

1109.6(E) Nation of First Publication

The applicant should identify the nation where the issues were first published. This information should be provided on the Publication screen by selecting one of the countries listed in the drop down menu marked Nation of Publication.

The U.S. Copyright Office will use this information to determine if the issues are eligible for copyright protection in the United States. If the applicant fails to provide a nation of first publication, the application will not be accepted by the electronic registration system. If the nation of first publication is unknown, the applicant may select "not known" from the drop down menu.

For a definition and discussion of nation of first publication, see Chapter 600, Section 612.

1109.6(F) Number of Issues in the Group

As discussed in Section 1109.5(A), the applicant must submit a complete copy of each issue in the group. On the Publication screen, the applicant should specify the total number of issues that will be submitted by selecting the appropriate number from the drop down menu marked "Number of Issues in this Group." The U.S. Copyright Office will use this information to verify that a PDF copy of each issue has been received.

1109.6(G) Author / Claimant

As discussed in Section 1109.2, all the issues in the group must be created by the same author, and the author and the copyright claimant must be the same person or organization.

The applicant should provide the author/claimant's name and address in the relevant fields on the Author/Claimant screen. In addition, the applicant should provide a brief statement on the Author/Claimant screen that best describes the author/claimant's contribution to each issue.

If each issue is a collective work, the applicant may state "collective work" or "collective work authorship" in the "Other" space. A claim in the "collective work" covers the compilation authorship involved in creating the issue as a whole, including the selection, coordination, and/or arrangement of the contributions within each issue. It also covers the authorship in the individual articles, photographs, illustrations, or other contributions – if they were first published in the issue and if they are fully owned by the author/claimant when the application is filed.

Alternatively, the applicant may assert a claim in the collective work and the individual contributions by stating "collective work authorship" in the "Other" space and by checking the box for "contribution(s) by the same author and claimant."

If the applicant states that the newsletter is a collective work, the registration specialist will examine each issue as a whole to determine if it contains sufficient compilation authorship to warrant registration. And the specialist will review the issue to determine whether it contains "a number of contributions" constituting "separate and independent works in themselves." 17 U.S.C. § 101 (definition of "collective work"); Group Registration of Newsletters, 82 Fed. Reg. 22,902, 22,904 (May 17, 2018).

If the newsletter is not a collective work (as described in Section 1109.2(A)) or if these terms do not fully describe the copyrightable authorship that the author/claimant contributed to each issue, the applicant may provide a more specific description in the space marked Other.

1109.6(H) Rights and Permissions Information

The applicant may provide the name, address, and other contact information for the person and/or organization who should be contacted for permission to use the issues

that are included in the group. Providing this information is optional, and the application will be accepted even if the Rights & Permissions Information screen is left blank.

For guidance in completing this portion of the application, see Chapter 600, Section 622.1.

1109.6(I) Correspondent / Mailing Address for the Certificate of Registration

The applicant should provide the name, email address, telephone number, fax number (if any), and mailing address for the person or persons who should be contacted if the U.S. Copyright Office has questions or concerns regarding the application. This information should be provided on the Correspondent screen.

In addition, the applicant should provide the name and address where the certificate of registration should be sent. This information should be provided on the Mail Address screen.

For guidance in completing this portion of the application, see Chapter 600, Sections 622.2 and 622.4.

1109.6(J) Special Handling

Special handling is a procedure for expediting the examination of an application. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate of registration. The Office charges an additional fee for this service.

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

1109.6(K) Certification

The application must be certified by the author/claimant named in the application, by the owner of one or more of the exclusive rights in the issues, or by a duly authorized agent of the author/claimant or the owner of one or more of the exclusive rights in the issues.

The person who certifies the application certifies that the information provided in the application is correct to the best of his or her knowledge. Knowingly making a false representation of a material fact in an application, or in any written statement filed in connection with the application, is a crime that is punishable under 17 U.S.C. § 506(e).

When completing the Certification screen, the applicant should provide the first and last name of the individual who certified the application in the space marked Name of Certifying Individual. In addition, the applicant should check the box that reads, "I certify that I am the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights of this work and that the information given in this application is correct to the best of my knowledge." There is no need to date the certification; the date will be added automatically when the application is received.

1109.7 Scope of Protection for Newsletter Issues Registered Under the Group Registration Option

A registration for a group of newsletter issues covers each issue in the group, and each issue is registered as a separate issue or a separate collective work, as the case may be. 37 C.F.R. § 202.4(n).

As discussed in Section 1109.6(G), a registration for a collective work may cover the articles, photographs, illustrations, or other contributions appearing within that work. Specifically, a group registration covers the individual contributions if they were first published in the newsletter and if the contributions were fully owned by the copyright claimant when the application was filed. If the contributions were not fully owned by the copyright claimant, or if they were previously published, then the group registration will not extend to those contributions.

This may have several consequences in an infringement action. First, a group registration may be used to satisfy the statutory requirements for instituting an infringement action involving any of the newsletter issues that were included within the group. Likewise, it may be used to enforce the copyright in any of the individual contributions appearing within an issue that qualifies as a collective work—provided that the claimant fully owned those contributions when the application was submitted, and provided that they were first published in one of those issues.

Second, the group as a whole is not considered a compilation, a collective work, or a derivative work. Instead, the group is merely an administrative classification created solely for the purpose of registering multiple issues with one application and one filing fee. The chronological selection, coordination, and arrangement of the issues within the group are entirely dictated by the regulatory requirements for this option. Likewise, when two or more newsletters are combined for the purpose of facilitating registration, those newsletters are not "recast, transformed, or adapted" in any way, and the group as a whole is not "a work based upon one or more preexisting works," because there is no copyright authorship in simply collecting a group of issues that were published within the same month. 17 U.S.C. § 101 (definition of "derivative work").

See generally Group Registration of Newsletters, 82 Fed. Reg. 22,902, 22,905 (May 17, 2018).

1110 Group Registration for Contributions to Periodicals

Section 408(c)(2) of the Copyright Act directs the Register of Copyrights to establish a procedure "specifically permitting a single registration for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, within a twelve-month period, on the basis of a single deposit, application, and registration fee…." 17 U.S.C. § 408(c)(2). The U.S. Copyright Office refers to this group registration option as "GRCP."

A registration for a group of contributions to periodicals covers each contribution in the group, and each contribution is registered as a separate work. 37 C.F.R. § 202.4(n).

For a general overview of the similarities and differences between the options for registering a group of contributions to periodicals, a group of published photographs, and a group of unpublished works, see Section 1117.

For guidance on registering a newspaper, newsletter, or other types of serials, see Sections 1107 through 1109.

See generally Group Registration of Contributions to Periodicals, 82 Fed. Reg. 29,410 (June 29, 2017); Group Registration of Contributions to Periodicals, 81 Fed. Reg. 86,634, 86,641 (Dec. 1, 2016); Registration of Claims to Copyright: Group Registration of Contributions to Periodicals, 67 Fed. Reg. 10,329 (Mar. 7, 2002).

1110.1 What Is a Contribution to a Periodical?

For purposes of this group registration option, a contribution to a periodical is defined as a separate and independent work that has been published in a periodical. Examples include an article published in a newspaper, a photograph published in a magazine, an illustration published in a journal, and other similar works.

A periodical is defined as "a collective work that is issued or intended to be issued on an established schedule in successive issues that are intended to be continued indefinitely. In most cases, each issue will bear the same title, as well as numerical or chronological designations." 37 C.F.R. § 202.4(b)(3).

An applicant may be permitted to register articles, blog entries, artwork, photographs, or other contributions that were first published in an electronically printed ("ePrint") publication if that publication fits within the definition of a "periodical." An ePrint publication may be considered a periodical for purposes of registration if it is fixed and distributed online or via email as a self-contained work, such as a digital version of a tangible newspaper, magazine, newsletter, or similar publication. For example, many companies publish electronic newsletters that contain articles on a particular subject, and distribute these publications to their subscribers either online or via email. An article published in an ePrint newsletter could be considered a contribution to a periodical if each issue of the newsletter is fixed and distributed as a self-contained work and if the content of each issue does not change once it has been distributed.

As a general rule, websites are not considered periodicals for purposes of registration. Websites are typically updated on a continual basis rather than an established schedule. The updates are rarely made in successive issues that can be recognized as discrete, self-contained collective works, and they rarely contain numerical or chronological designations that distinguish one update from the next. For these reasons, an applicant may register a group of articles that were first published in a print or ePrint edition of a magazine. Likewise, an applicant may register a group of articles that were first published in a print or ePrint magazine and simultaneously published on the publisher's website. But an applicant may not register a group of articles that were published solely on a website unless that site satisfies the definition for a periodical.

See Group Registration of Contributions to Periodicals, 82 Fed. Reg. 29,410, 29,412 (June 29, 2017); Group Registration of Contributions to Periodicals, 81 Fed. Reg. 86,634,

86,638-39 (Dec. 1, 2016); Mandatory Deposit of Published Electronic Works Available Only Online, 75 Fed. Reg. 3863, 3865 (Jan. 25, 2010).

1110.2 Eligibility Requirements

A group of contributions that have been published in a periodical may be registered with the U.S. Copyright Office, provided that the following conditions have been met:

- All of the contributions in the group must be created by the same individual.
- The copyright claimant for all the contributions must be the same person or organization.
- The contributions must not be works made for hire.
- Each work must be first published as a contribution to a periodical.
- All of the contributions must be first published within a twelve-month period (*e.g.*, January 1, 2010 through December 31, 2010, February 1, 2011 through January 31, 2012, September 15, 2013 through September 14, 2014, etc.).
- If any of the contributions were published before March 1, 1989, those works must bear a separate copyright notice, the notice must contain the copyright owner's name (or an abbreviation by which the owner can be recognized or a generally known alternative designation for the owner), and the name that appears in each notice must be the same.

See 37 C.F.R. § 202.4(g)(1)-(5); Group Registration of Contributions to Periodicals, 81 Fed. Reg. 86,634, 86,638-39 (Dec. 1, 2016).

Works that do not satisfy these requirements cannot be registered using this group registration option.

The regulation establishing this option became effective on January 1, 1978. Contributions published before that date are not eligible for group registration. *See* Part 202—Registration of Claims to Copyright, Copyright Registrations, 43 Fed. Reg. 965, 966 (Jan. 5, 1978).

1110.3 Application Requirements

To register a group of contributions to periodicals the applicant must complete and submit the online application designated for this group option. The U.S. Copyright Office will not accept claims that are submitted on a paper form. 37 C.F.R. § 202.4(g)(6).

For guidance on completing the online application, see Section 1110.7.

1110.4 Filing Fee Requirements

The applicant must submit the correct filing fee for this group registration option. The current fee is set forth in the U.S. Copyright Office's fee schedule under the heading

"Registration of a claim in a group of contributions to periodicals." *See* 37 C.F.R. §§ 201.3(c)(3), 202.4(g).

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

1110.5 Deposit Requirements

This Section discusses the deposit requirements for registering a group of contributions to periodicals.

Applicants must submit one complete copy of each contribution that is included in the group. The copies must be submitted in a digital format, and the contributions must appear in the precise form in which they were first published in the periodical. 37 C.F.R. § 202.4(g)(7).

Applicants may satisfy this requirement by submitting any of the following:

- They may submit one complete copy of the entire issue of the periodical in which the contribution was first published.
- If the contribution was first published in a newspaper, they may submit one complete copy of the entire section of the newspaper where the contribution was first published.
- They may submit one complete copy of the particular pages within the periodical where the contribution was first published.

See id.; *see also* Group Registration of Contributions to Periodicals, 81 Fed. Reg. 86,634, 86,639-40 (Dec. 1, 2016).

Requiring applicants to submit a copy of the contributions in the precise form in which they were first published is consistent with the legislative history, which states that "[a]s a general rule the deposit of more than a tear sheet or similar fraction of a collective work is needed to identify the contribution properly and to show the form in which it was published." H.R. REP. NO. 94-1476, at 153 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5769. It also serves an evidentiary purpose. It gives the registration specialist an opportunity to compare the deposit with the title, date of publication, issue number, page number, or other information that is set forth in the application (although in practice specialists do not conduct this type of analysis for every contribution in the group). If a particular contribution becomes involved in litigation, the deposit could be used to verify that the work was published in a particular periodical on a particular date. *See* Group Registration of Contributions to Periodicals, 81 Fed. Reg. at 86,640.

In all cases, applicants must submit a digital copy of each contribution. Specifically, each contribution must be contained in a separate electronic file in PDF, JPG, TIFF, or any other electronic format that has been approved by the Office. 37 C.F.R. § 202.4(g)(7). A current list of acceptable file formats is posted on the Office's website. The electronic files must be uploaded to the electronic registration system, preferably in a .zip file

containing all the files. The size of each uploaded file must not exceed 500 megabytes, although applicants may digitally compress the files to comply with this requirement. *See id*. Guidance on how to upload the files is available on the Office's website.

Many publishers distribute electronic replicas of their periodicals in downloadable or printable formats. Applicants may be able to create a digital copy of their contributions by printing or downloading them from the publisher's website or by requesting a copy directly from the publisher. Alternatively, applicants may be able to create digital copies by scanning their contributions with a multi-function printer or scanner, or by photographing them with a smartphone and saving each image as an electronic file. *See* Group Registration of Contributions to Periodicals, 82 Fed. Reg. 29,410, 29,4111-12 (June 29, 2017).

The Office recognizes that there may be rare cases where an author does not have access to these resources. Applicants who are unable to submit their contributions in the precise form in which they were first published may request special relief from the deposit requirements. Likewise, applicants may request special relief if they are unable to submit a digital copy of their contributions or unable to upload them through the electronic system. *Id*. §§ 202.4(g)(8), 202.20(d)(1)(iii), (iv).

A request for special relief must be made in writing, and it should explain why the applicant is unable to submit copies that satisfy the deposit requirements described above. The Office may grant a request for special relief in exceptional cases, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. *See id*. § 202.4(g)(8).

For a general discussion of special relief, see Chapter 1500, Section 1508.8.

1110.6 When May an Application for a Group Registration Be Filed?

An applicant may register all the contributions created by the same individual and published within a twelve-month period, provided that he or she complies with the requirements set forth in 37 C.F.R. § 202.4 and the other relevant regulations described in Sections 1110.2 through 1110.5.

That said, the U.S. Copyright Office encourages applicants to submit their claims on a quarterly basis (*i.e.*, every three months), instead of submitting them on an annual or semi-annual basis. A contribution to a periodical must be registered in a timely manner to seek statutory damages and attorney's fees in an infringement action. Specifically, an author may seek these remedies if the contribution was registered (i) before the infringement began, or (ii) within three months after the first publication of that work. *See* 17 U.S.C. § 412.

To secure these benefits, applicants should submit their claims within three months after the date of publication for the earliest contribution in the group. By doing so, authors will preserve their ability to seek statutory damages and attorney's fees for any infringements that may occur after the effective date of registration, as well as any infringements that may occur within three months after the publication of each work in the group.

For example, if the first contribution was published on June 1, 2017, and the last contribution was published on September 1, 2017, it would be advisable to submit a complete application, deposit, and filing fee on or before September 1, 2017. By doing so, the author will preserve his or her ability to seek these remedies for any infringements that began after the effective date of registration (*i.e.*, after September 1, 2017), as well as any infringements that began within three months after the date of publication for each contribution in the group.

See Group Registration of Contributions to Periodicals, 81 Fed. Reg. 86,634, 86,639 (Dec. 1, 2016).

1110.7 Completing the Application: Group Registration of Contributions to Periodicals

This Section provides guidance for completing the online application for a group of contributions to periodicals.

The application may be submitted by the author or claimant for the contributions, the owner of any of the exclusive rights in the contributions, or a duly authorized agent of these parties. *See* 37 C.F.R. § 202.4(g)(6).

As discussed in Section 1110.3, applicants must use the online application as a condition for seeking a group registration. If an applicant attempts to use a paper application, the U.S. Copyright Office will refuse registration and instruct the applicant to resubmit the claim using the online application. *See* Group Registration of Contributions to Periodicals, 82 Fed. Reg. 29,410, 29,410-11 (June 29, 2017).

NOTE: In exceptional cases, the Office may waive the online filing requirement, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. 37 C.F.R. § 202.4(g)(8). An applicant may submit a request to waive this requirement in writing. It should explain why the applicant is unable to use the online application, and it should be sent to the following address:

Associate Register of Copyrights and
Director of Registration Policy & Practice
Registration Program
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559

See Group Registration of Contributions to Periodicals, 82 Fed. Reg. 29,410, 29,411 (June 29, 2017).

1110.7(A) Type of Group

To register a group of contributions to periodicals with the online application, the applicant should begin by clicking the phrase "Register Certain Groups of Published Works," which appears on the home page of the electronic registration system.

Next the applicant should select the type of group being registered from the options listed in the drop down menu marked Type of Group.

For contributions to periodicals, the applicant should select the option that best describes the authorship that appears in the majority of the contributions.

- *Contributions to Periodicals TX:* The applicant should select this option if the contributions primarily contain nondramatic text, such as articles, news stories, columns, features, reviews, editorials, essays, fiction, verse, quizzes, puzzles, advertising copy, or the like.

- *Contributions to Periodicals VA:* The applicant should select this option if the contributions primarily contain pictorial or graphic material, such as photographs, drawings, illustrations, cartoons, comic strips, prints, paintings, art reproductions, charts, diagrams, maps, pictorial advertisements, or the like.

If the contributions contain multiple types of authorship the applicant should select the option that best describes the predominant form of authorship in the contributions. For example, if most of the contributions contain nondramatic text combined with a few photographs, the applicant should select *Contributions to Periodicals TX*. If most of the contributions contain illustrations with a small amount of nondramatic text, the applicant should select *Contributions to Periodicals VA*. If the types of authorship are roughly equal, the applicant may choose the option that would be appropriate for the majority of the contributions. *See* 37 C.F.R. § 202.4(g)(6).

Once a selection has been made, the system will generate a brief statement that describes the eligibility requirements for this group registration option. If these requirements have been met, the applicant should check the box that appears next to the following statement: "I agree that I have read, understood, and meet all eligibility requirements described above for filing the selected Group Registration."

1110.7(B) Identifying the Works Included within the Group

Section 408(c)(2)(B) of the Copyright Act states that contributions to periodicals may be registered as a group, provided that "the application identifies each work separately, including the periodical containing it and its date of first publication." 17 U.S.C. § 408(c)(2)(B).

As discussed in Section 1110.2, all the contributions must be published within a twelve-month period (*e.g.*, May 1, 2012 through April 30, 2013). When completing the application, applicants are encouraged to list the contributions in chronological order.

Although the contributions must be published within a twelve-month period, the works may be published in different periodicals and on different dates. Currently there is no limit on the total number of contributions that may be submitted, although applicants must include at least two contributions in each claim. *See* Group Registration of Contributions to Periodicals, 81 Fed. Reg. 86,634, 86,639 (Dec. 1, 2016).

1110.7(B)(1) Identifying the Contributions

The applicant should provide a title for each contribution within the group, and in each case the title should be provided exactly as it appears in the deposit copies. The applicant should provide this information on the Title screen in the field marked Title of Contribution. If the applicant fails to complete this portion of the application, the claim will not be accepted by the electronic registration system.

If the contribution was published without a title, the applicant should provide a descriptive title that identifies the general subject matter of the work or any other relevant information that a person searching the U.S. Copyright Office's records would likely include in his or her search request.

If the contributions were published as part of a series of works by the same author, such as an advice column, an editorial column, a cartoon strip, or the like, the applicant may provide the title for that series (if any). This information may be provided on the Title screen in the field marked Series Title.

In addition, the applicant should provide the year of completion for the most recent contribution in the group. For example, if the author completed the contributions in 2015, 2016, and 2017, the applicant should state "2017" on the Title screen in the field marked Year of Completion. For additional guidance on completing this portion of the application, see Chapter 600, Section 611.

1110.7(B)(2) Identifying the Periodicals

For each contribution in the group, the applicant should provide the title of the periodical where that contribution was first published. Specifically, this information should be provided on the Title screen in the field marked Title of Periodical.

In addition, applicants should provide the volume, number, issue date, and ISSN number (if any) for each periodical, as well as the page number(s) (if any) where the contribution appeared within that periodical.

In each case, the applicant should provide the precise date of first publication (month, day, and year) for the periodical. This information should be provided on the Title screen in the field marked Date of First Publication. For guidance in completing this portion of the application, see Chapter 600, Section 612.

The applicant should identify the country where the periodical was published for the first time by selecting one of the countries listed in the drop down menu marked Nation of First Publication. The registration specialist may use this information to determine if the contributions are eligible for copyright protection in the United States. If the nation of first publication is unknown, the applicant may select "not known" from the drop down menu.

If the applicant fails to provide a title for the periodical, or the date and nation of first publication, the application will not be accepted by the electronic registration system.

1110.7(C) Identifying the Author

As discussed in Section 1110.2, all of the contributions in the group must be created by the same author and the author must be an individual.

The applicant should provide the author's full name on the Author screen in the fields marked First Name/Last Name.

If the author's real name does not appear on any of the contributions in the group, and if the author does not want to reveal his or her identity in the registration record, the applicant may check the box marked anonymous and state "Anonymous" in the First Name/Last Name fields.

If the author does not want to reveal his or her real name in the registration record, the applicant may check the box marked pseudonymous, and provide the author's pseudonym in the Pseudonym field and the First Name/Last Name fields, but only if (i) all the contributions were published under the author's pseudonym, and (ii) the author's real name does not appear anywhere in the contributions.

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

The applicant should identify the author's nationality and/or domicile in the fields marked Citizenship and Domicile. The registration specialist may use this information to determine if the contributions are eligible for copyright protection in the United States. For a definition and discussion of nationality and domicile, see Chapter 600, Section 617. If the author's nationality or domicile are unknown, the applicant may select "not known" from the drop down menu.

If the applicant fails to complete the First Name/Last Name fields, or the citizenship and domicile fields, the application will not be accepted by the electronic registration system.

The applicant may provide the year that the author was born, and if the author is deceased the applicant may provide the year that the author died. This information may be useful in identifying the author within the Office's records. However, this information is optional and an application will be accepted even if these fields are left blank.

1110.7(D) Identifying the Copyrightable Material that the Author Created

The applicant should identify the authorship that will be submitted for registration. To do so, the applicant should check one or more of the boxes in the field marked Author Created that accurately describe the copyrightable material being registered. The options include:

- Text
- Photographs
- Illustrations

If these terms do not fully describe the material being registered, the applicant should provide a more specific description in the field marked Other.

For additional guidance on completing this portion of the application, see Chapter 600, Section 618.4(A).

1110.7(E) Identifying the Copyright Claimant

To register a group of contributions to periodicals, the applicant should provide the name and address of the copyright claimant. *See* 17 U.S.C. § 409(1). As discussed in Section 1110.2, the claimant for all the contributions must be the same person or organization.

For purposes of copyright registration, the claimant must be (i) the author of the contributions, or (ii) the person or organization that owns all of the rights under copyright that initially belonged to the author. *See* 37 C.F.R. § 202.3(a)(3). No other party is entitled to be named as a copyright claimant.

When naming the author as the copyright claimant, the applicant should provide the author's full name and address in the field marked Individual Claimant. However, if the applicant stated "Anonymous" or provided the author's pseudonym in the First Name/Last Name fields on the Author screen, the applicant should provide this same information in the corresponding fields on the Claimants screen.

The applicant may name the person or organization that owns all of the rights that initially belonged to the author, but only if that party owns the copyright in all the contributions. If the claimant is an individual, the applicant should provide the claimant's full name and address in the field marked Individual Claimant. If the claimant is a legal entity, the applicant should provide this information in the field marked Organization.

If the author and the claimant are not the same person, the applicant should provide a brief statement that explains how the claimant obtained the copyright in the contributions. The applicant should provide this information by selecting one of the statements listed in the drop down menu marked Transfer Statement. If these statements do not fully describe the transfer, the applicant may provide a more specific statement in the field marked Transfer Statement Other. Currently, the total amount of text that may be provided in this field is limited to 100 characters.

For additional guidance on completing the claimant fields, see Chapter 600, Section 619.12. For guidance on completing the transfer fields, see Chapter 600, Section 620.9.

1110.7(F) Rights and Permissions Information

The applicant may provide the name, address, and other contact information for the person and/or organization who should be contacted for permission to use the contributions. Providing this information is optional, and an application will be accepted even if the Rights & Permissions Information screen is left blank.

For guidance in completing this portion of the application, see Chapter 600, Section 622.1.

1110.7(G) Correspondent / Mailing Address for the Certificate of Registration

The applicant should provide the name, email address, telephone number, fax number (if any), and mailing address for the person or persons who should be contacted if the U.S. Copyright Office has questions or concerns regarding the application. This information should be provided on the Correspondent screen.

In addition, the applicant should provide the name and address where the certificate of registration should be sent. This information should be provided on the Mail Address screen.

For guidance in completing this portion of the application, see Chapter 600, Sections 622.2 and 622.4.

1110.7(H) Special Handling

Special handling is a procedure for expediting the examination of an application. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate of registration. The Office charges an additional fee for this service.

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

1110.7(I) Certification

The application must be certified by the author or claimant named in the application, by the owner of one or more of the exclusive rights in the contributions, or by a duly authorized agent of the author, claimant, or owner of one or more of the exclusive rights in the contributions.

The person who certifies the application certifies that the information provided in the application is correct to the best of his or her knowledge. Knowingly making a false representation of a material fact in an application, or in any written statement filed in connection with the application, is a crime that is punishable under 17 U.S.C. § 506(e).

When completing the Certification screen, the applicant should provide the first and last name of the individual who is certifying the application in the space marked Name of Certifying Individual. In addition, the applicant should check the box that reads, "I certify that I am the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights of this work and that the information given in this application is correct to the best of my knowledge." There is no need to date the certification in an online application; the date will be added automatically when the application is received by the U.S. Copyright Office. *See* 37 C.F.R. § 202.3(c)(3)(iv).

1110.8 Contributions That Do Not Satisfy the Group Registration Requirements

If an article, blog, social media post, or other online work cannot be registered as a contribution to a periodical, it may be possible to register those works using the group registration option for short online literary works. For guidance on this option, see Section 1111.

Photographers who are unable to register their works as a contribution to a periodical may be able to use the group registration option for published photographs. For guidance on this option, see Section 1114.

If the contributions have not been published yet, it may be possible to register them as a group of unpublished works. For a discussion of this option, see Section 1106.

For a general overview of the similarities and differences between the options for registering a group of contributions to periodicals, a group of published photographs, and a group of unpublished works, see Section 1117.

Alternatively, the applicant may register a particular article, photograph, illustration, or other contribution on an individual basis. Specifically, the applicant may prepare a separate application, filing fee, and deposit for each contribution and may submit these items through the electronic registration system or with a paper application.

1111 Group Registration of Short Online Literary Works

This Section discusses the U.S. Copyright Office's practices and procedures for registering a group of short online literary works. When referring to this option, the Office uses the term "GRTX."

GRTX is intended to benefit individual writers who create short-form works that are published on websites or online platforms that are typically updated on a daily basis.

When the Office receives a group of short online literary works, it will examine each work to determine if it contains a sufficient amount of copyrightable text, and to confirm that the legal and formal requirements for registration have been met. A group registration covers the copyrightable text in each literary work that is submitted for registration, and each literary work is registered as a separate work. 37 C.F.R. § 202.4(j), (n).

If the Office determines that one or more of the works is uncopyrightable, it will refuse to register those works, and issue a registration for the remaining copyrightable works in the group (if any). *Id.* § 202.4(l). If the applicant disagrees with the refusal, the applicant may appeal that decision by filing a request for reconsideration. For information concerning this procedure, see Chapter 1700.

See generally Group Registration of Short Online Literary Works, 83 Fed. Reg. 65,612 (Dec. 21, 2018); Group Registration of Short Online Literary Works, 85 Fed. Reg. 37,341 (June 22, 2020).

1111.1 What Is a Literary Work?

"Literary works" are works "expressed in words, numbers, or other verbal or numerical symbols or indicia . . . ." 17 U.S.C. § 101. This category includes a wide variety of textual works, such as fiction, nonfiction, poetry, articles, blogs, and social media posts. These types of works usually explain, describe, or narrate a particular subject, theme, or idea through the use of prose or verse, rather than dialog or dramatic action. Generally, these types of works are intended to be read; they are not intended to be performed before an audience.

1111.2 What Is a Short Online Literary Work?

A "short online literary work" is a work consisting of text that contains at least 50 but no more than 17,500 words that was published as part of a website or online platform. 37 C.F.R. § 202.4(j)(1).

To qualify for this group registration option, a literary work must contain a sufficient number of words, and the work cannot be comprised mainly of numbers or other verbal or numerical symbols or indicia. Examples of works that typically satisfy this requirement include poems, short stories, articles, essays, columns, blog entries, and social media posts.

A work will be considered an "online" literary work if it was first published on the internet. For example, this requirement may be satisfied if a copy or copies of the work were first distributed to the public as part of a newspaper website, social media website, or social networking platform. It may be satisfied if a copy or copies of the work were first distributed on a website or platform that is protected by a password or paywall. Likewise, a work may be eligible for this option if copies were simultaneously published both on the internet and in a physical form. By contrast, a work would not qualify for this option if the copies were distributed solely in a physical form or were distributed in a physical form prior to being published on the internet.

Because each work must be published "as part" of a website or online platform, the website or platform itself would not qualify for this option; only the discrete works that are published on a website or platform are eligible. Likewise, the following types of works cannot be registered with this option, even if they contain 50 to 17,500 words and even if they were first published online:

- Emails
- Podcasts
- Audiobooks
- Computer programs
- Compilations
- Collective works

See 37 C.F.R. § 202.4(j)(1); Group Registration of Short Online Literary Works, 85 Fed. Reg. 37,341, 37,342, 37,344 & n.33 (June 22, 2020); Group Registration of Short Online Literary Works, 83 Fed. Reg. 65,612, 65,613-14 & n. 28 (Dec. 21, 2018).

1111.3 Eligibility Requirements

A group of short online literary works may be registered with the U.S. Copyright Office, provided that the following conditions have been met:

- Each work in the group must be a "short online literary work," as defined in Section 1111.2.
- The group may include no more than 50 works.
- All of the works must be first published online as part of a website or online platform.
- All of the works must be first published within three consecutive calendar months.
- The applicant must provide the earliest publication date and most recent publication date for the works in the group.
- The applicant must provide a title for each work and a title for the group as a whole.
- All of the works must be written by the same individual or jointly written by the same individuals.
- The works cannot be works made for hire.
- The author or joint authors must be named as the copyright claimant(s) for each work, and the claim must be limited to the "text" that appears in each work.

Works that do not satisfy these requirements cannot be registered with this group registration option. The Office reserves the right to refuse any application that does not comply with these requirements, or to modify the claim to make it compliant without communicating with the applicant.

See 37 C.F.R. § 202.4(j)(1)-(5); Group Registration of Short Online Literary Works, 85 Fed. Reg. 37,341, 37,342-44 (June 22, 2020).

1111.3(A) All of the Works Must Be Short Online Literary Works

Each work in the group must be a "short online literary work" and the claim must be limited to the "text" that appears in each work. When the application is submitted, the term "text" will be added automatically by the electronic registration system.

The following types of works cannot be registered with this option:

- Photographs, artwork, illustrations, logos, or other types of pictorial, graphic, or sculptural works.
- Musical works or sound recordings.
- Motion pictures or audiovisual works.

- Dramatic works, choreographic works, or pantomimes.

The U.S. Copyright Office will accept digital files that contain text combined with another form of authorship. But claims in any accompanying "artwork," "photograph," or any form of authorship other than "text" will not be permitted on the application and may not be added during the examination process or with a supplementary registration. Likewise, the Office will not accept claims in the selection, coordination, or arrangement of the group as a whole. 37 C.F.R. § 202.4(j)(1).

If an applicant uploads files that contain text and a separate group of files that contain photographs, graphic designs, videos, or any other work that is not a "short online literary work," the registration specialist will refuse to register the entire claim.

Likewise, the specialist may refuse registration if the application names an author who did not write any of the text that appears in the works, such as an illustrator, photographer, or other individual who merely added pictorial or graphic content to the works.

See Group Registration of Short Online Literary Works, 85 Fed. Reg. 37,341, 37,344 (June 22, 2020); Group Registration of Short Online Literary Works, 83 Fed. Reg. 65,612, 65,613 (Dec. 21, 2018).

1111.3(B) The Number of Works That May Be Included in the Group

An applicant may submit up to 50 short online literary works with each application. If an applicant includes more than 50 titles in the application or more than 50 works in the deposit, the registration specialist may accept the first 50 works and remove the rest from the record, or alternatively, the specialist may refuse to register the entire claim.

See 37 C.F.R. § 202.4(j)(1); Group Registration of Short Online Literary Works, 83 Fed. Reg. 65,612, 65,614 (Dec. 21, 2018).

1111.3(C) The Number of Words in Each Work

A literary work may qualify for this option if it contains at least 50 words and no more than 17,500 words. The 50-word threshold is intended to exclude short phrases and slogans and other short forms of expression that contain less than a paragraph of text. The 17,500-word limit is intended to exclude novels, novellas, and similar lengthy works that are not typically created or updated on a rapid and continuing basis.

NOTE: The 50 word limit applies only to the eligibility requirements for this group registration option. It is not intended to establish a general threshold for evaluating the copyrightability of literary works.

As discussed in Section 1111.6, the applicant must prepare and submit a sequentially numbered list specifying the title, file name, publication date, and word count for each work. The registration specialist will use this information to determine if the works contain an acceptable number of words. If a particular work contains less than 50 words or more than 17,500 words, the specialist will remove that work from the record.

See 37 C.F.R. § 202.4(j)(1); Group Registration of Short Online Literary Works, 85 Fed. Reg. 37,341, 37,342-43 (June 22, 2020); Group Registration of Short Online Literary Works, 83 Fed. Reg. 65,612, 65,613-14 (Dec. 21, 2018).

1111.3(D) All the Works Must Be First Published Online within Three Consecutive Calendar Months

As discussed in Section 1111.2, all of the works must be first published as part of a website or online platform. The works may be published on the same site or different sites, but they must be published within three consecutive calendar months. They do not need to be published within the same calendar year.

Example:

- Jamelle Worthington published five social media posts on Facebook, Reddit, and LinkedIn on January 28, February 28, and March 28, 2020. She may register all of these posts with the same application.

  Jamelle also published two articles on politico.com and thehill.com on December 31, 2019 and April 1, 2020. Jamelle cannot register these two articles and the five social media posts with the same application, because they were not published within three consecutive calendar months.

This option may only be used to register published literary works. It cannot be used to register a group of unpublished literary works. Likewise, it cannot be used to register a mix of published and unpublished literary works. If any of the works have not been published at the time of submission, the applicant should not include those works in the claim.

The applicant is responsible for determining if the works have been published online, and generally, the U.S. Copyright Office will accept that determination unless it is implausible or contradicted by information provided in the registration materials or in the Office's records or by information that is known to the registration specialist.

The person or entity who owns the copyright in a literary work determines whether that work should be published. If the author or copyright owner decides to publish a particular work on the internet, that party decides when, where, and how that work should be published. For purposes of registration, a short online literary work is published on the specific month, day, and year that a copy or multiple copies of that work are distributed to the public for the first time.

A literary work is also published when one or more copies of that work are offered to a group of persons for the first time for purposes of further distribution or public display. For instance, a work may be published when a writer offers one copy of that work to social media websites or social networking platforms along with a license to further distribute or publicly display that work. However, the mere public display of a literary work, in and of itself, does not constitute publication.

See 37 C.F.R. § 202.4(j)(1), (2); Group Registration of Short Online Literary Works, 85 Fed. Reg. 37,341, 37,344 (June 22, 2020); Group Registration of Short Online Literary Works, 83 Fed. Reg. 65,612, 65,614, 65,615 (Dec. 21, 2018).

1111.3(E) The Author and Claimant for Each Work Must Be the Same Individual

The text that appears in each work must be written by the same individual. If the text was co-written by two or more individuals, then each and every work in the group must be jointly created by those same individuals.

For example, an applicant may submit 10 articles written solely by Joanna. Likewise, an applicant may submit 10 articles written jointly by Joanna and Chip.

By contrast, an applicant may not register fifteen blog posts written solely by Joanna together with seven blog posts written jointly by Joanna and Chip. Likewise, the same application may not be used to register fifteen social media posts written by Joanna and the comments on each post that were written by Luis. In each case, the applicant would need to separate the works into different groups and submit a separate application for each group: One application for the fifteen posts written solely by Joanna; a separate application for the seven posts written jointly by Joanna and Chip; and a separate application for the comments written solely by Luis.

The U.S. Copyright Office will strictly enforce this requirement. If the author information for each and every work is not the same, the registration specialist will refuse to register the entire claim.

In all cases, the author or joint authors must be named as the copyright claimant for each work in the group. For instance, if an applicant submitted five essays written solely by Chanda, that individual must be named as the claimant for each work. If an applicant submitted 20 essays co-written by Chanda and Caleb, those individuals must be named as the co-claimants for each work.

To be clear, the author or joint authors must be named as the claimant or co-claimants for all of the works being registered – even if the author(s) no longer own any of the rights in those works.

This facilitates the examination by allowing the registration specialist to focus on the works themselves, rather than the ownership of each work. Moreover, it is consistent with the basic principle that an author may always be named as the copyright claimant, and the Office's longstanding view that an author may be named as a claimant even if that person does not own any of the exclusive rights when the claim is submitted. 37 C.F.R. § 202.3(a)(3)(i); Applications for Registration of Claim to Copyright under Revised Copyright Act, 42 Fed. Reg. 48,944, 48,945 (Sept. 26, 1977).

If another person or entity has acquired the copyright in one or more of the works, the copyright owner may add that information to the public record by recording the assignment, exclusive license, or other document that identifies the current owner of the works.

See 37 C.F.R. § 202.4(j)(3); Group Registration of Short Online Literary Works, 85 Fed. Reg. 37,341, 37,343-44 (June 22, 2020).

1111.4 Application Requirements

To register a group of short online literary works the applicant must complete and submit the online application designated for this group option. The Office will not accept claims that are submitted with the Standard Application or a paper form. 37 C.F.R. § 202.4(j)(6).

For guidance on completing the online application, see Section 1111.7.

1111.5 Filing Fee Requirements

The applicant must submit the correct filing fee for this group registration option. *See* 37 C.F.R. §§ 201.3(c), 202.4(j). The current fee is set forth in the U.S. Copyright Office's fee schedule under the heading "Registration of a claim in a group of short online literary works."

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

1111.6 Deposit Requirements

This Section discusses the deposit requirements for registering a group of short online literary works. Applicants must submit one complete copy of each work that is included in the group. All of the works must be assembled in an orderly manner. Specifically, each work must be contained in a separate digital file, each file must be saved in an acceptable file format, and all of the files must be submitted in the same format. A current list of acceptable file formats is posted on the U.S. Copyright Office's website.

In addition, applicants must upload a sequentially numbered list specifying the title, file name, publication date, and word count for each work. The Office has developed a fillable form that may be used to create this list, which is discussed in more detail in Section 1111.7(A).

When completing the application, applicants must provide a separate title for each work in the group. The titles entered in the application must match the corresponding file names for the digital files that are submitted to the Office. And the titles provided in the application must match the corresponding titles and file names specified in the aforementioned list. If the titles and file names do not match each other, the registration specialist may refuse to register the entire claim.

Example:

- Annette Cole intends to register three blog posts titled "The Birthday Party," "The Dinner Party," and "The Wedding Party." She plans to upload these works in three separate .pdf files. Annette should enter the

following information in the application, and her files should be named as follows:

Titles Listed in the Application	File Names for the Digital Copies of the Works
The Birthday Party	the_birthday_party.pdf
The Dinner Party	the_dinner_party.pdf
The Wedding Party	the_wedding_party.pdf

The digital files must be combined in a single .zip folder containing all of the works being registered. The applicant must upload the .zip folder to the electronic registration system. The size of the .zip folder must not exceed 500 megabytes; if necessary, the digital files may be compressed to comply with this limitation.

The list containing the titles, file names, publication date, and word counts for each work should be uploaded in Excel (.xls, .xlsx) or Portable Document Format (PDF). The file name for the list must include the case number that has been assigned to the application, and the title that has been assigned to the group. For additional information concerning this requirement, see Section 1111.7(A).

Each file must contain the complete text of each work as it was first published online, but submitting a screenshot of the website or online platform is not required. Applicants may submit the text, disassociated from the context and formatting of the website or online platform where it was first published, as long as the text itself is identical to the text that was first published online.

IMPORTANT NOTE: The Office will not accept:

- Digital files with file names that do not match the titles entered in the application.
- A PDF or other digital file that contains multiple works.
- Digital files that are uploaded one-by-one, instead of being uploaded in a single .zip folder.
- A .zip folder containing more than 50 files.
- A .zip folder containing files that have been saved in an unacceptable file format.
- Physical copies, such as print-outs or digital copies that have been saved on an electronic storage device, such as a disc or thumb drive.

For step-by-step instructions on how to upload the list and the digital files to the electronic registration system, consult the tutorial on the U.S. Copyright Office's website.

See 37 C.F.R. § 202.4(j)(7), (8); Group Registration of Short Online Literary Works, 85 Fed. Reg. 37,341, 37,345 (June 22, 2020); Group Registration of Short Online Literary Works, 83 Fed. Reg. 65,612, 65,615-16 (Dec. 21, 2018).

1111.7 Completing the Application: Group Registration of Short Online Literary Works

This Section provides guidance for completing the online application for a group of short online literary works.

The application may be submitted by the author/claimant, the owner of any of the exclusive rights in the works, or a duly authorized agent of these parties. *See* 37 C.F.R. § 202.4(j)(6).

As discussed in Section 1111.4, applicants must use this form as a condition for seeking a group registration. If an applicant attempts to use the Standard Application or a paper application, the U.S. Copyright Office will refuse registration and instruct the applicant to submit a new application, filing fee, and deposit through the electronic registration system.

In exceptional cases, the Office may waive the online filing requirement, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. 37 C.F.R. § 202.4(j)(9). Because this group option may only be used to register online works, the Office expects that waivers will be rare.

A waiver request must be made in writing. It should explain why the applicant is unable to use the online application, and it should be sent to the following address:

Associate Register of Copyrights and
Director of Registration Policy & Practice
Registration Program
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559

See Group Registration of Short Online Literary Works, 85 Fed. Reg. 37,341, 37,345 (June 22, 2020).

1111.7(A) Preparing the List of Titles, File Names, Publication Dates, and Word Counts

As discussed in Section 1111.6, the applicant must prepare and submit a sequentially numbered list specifying the title, file name, publication date, and word count for each work.

The U.S. Copyright Office will use the list to examine and document the claim. For example, registration specialists may use the list to count the number of electronic files

that are included in the deposit to confirm that it matches the number of works claimed in the application. They may use the list to confirm that each work contains at least 50 but no more than 17,500 words. The list may be used to identify the publication date for each work. In addition, the Office may use the list to locate and retrieve a particular deposit in the event it is needed for litigation or other legitimate purposes.

The titles and file names provided in this list, and the titles entered in the "Titles of the Works" section of the application must match each other. And the file names provided in the list must match the file names for the digital copies that are uploaded through the Office's electronic registration system. If the file names for the digital copies or file names entered in the list do not match the titles listed in the application, the registration specialist may refuse to register the entire claim.

Example:

- Sarah Morningstar intends to register three short stories titled "The Cat and the Fiddle," "What a Good Boy Am I," and "Jill Came Tumbling After." She plans to submit these stories in three separate .PDF files. Sarah should enter the following titles in the application, and the files should be named as follows:

Titles Listed in the Application	File Names for the Digital Copies of the Works
The Cat and the Fiddle	the_cat_and_the_fiddle.pdf
What a Good Boy Am I	what_a_good_boy_am_i.pdf
Jill Came Tumbling After	jill_came_tumbling_after.pdf

Applicants are strongly encouraged to use the fillable form posted on the Office's website to create this list. And applicants are encouraged to prepare this list before completing the online application. Doing so will make it easier to complete the "Titles of the Works" section of the application, which is discussed in Section 1111.7(I) below.

Guidance for completing the fillable form is provided in the help text and video tutorial that accompany the application. Applicants may access these resources using the following links:

- Fillable form
- Help text for completing the fillable form
- Video tutorial for completing the fillable form

As discussed in Section 1111.6, the list should be submitted in Excel (.xls, .xlsx) or Portable Document Format (PDF). The file name for the list must include the case number that has been assigned to the application, and the title that has been assigned to the group. For example, if the title of the group is "Rebeka Martin Blog Posts (June-August 2020)," if the case number is 1-11111111111, and if the list will be submitted in Excel format, then the file should be named using the following convention:

- Rebeka Martin Blog Posts (June-August 2020) case number 1-11111111111.xls

For guidance in locating the case number, consult the help text that accompanies the application. For guidance in selecting a title for the group, see Section 1111.7(C).

1111.7(B) Type of Group

When completing the online application, the applicant should begin by clicking the phrase "Register Certain Groups of Published Works," which appears on the home page of the electronic registration system. Next the applicant should select "Short Online Literary Works" from the drop down menu that appears on the Type of Group screen.

Once a selection has been made, the system will generate a brief statement describing the eligibility requirements for this group registration option. If these requirements have been met, the applicant should check the box that appears next to the following statement: "I agree that I have read, understood, and meet all eligibility requirements described above for filing the selected Group Registration."

1111.7(C) Title of the Group

To register a group of short online literary works, the applicant must provide a title for the group as a whole. This information should be provided in the field marked "Title of Group" on the "Group Title/Publication and Completion Information" screen. As discussed in Sections 1111.6 and 1111.7(A), the group title should also be included in the file name for the list of titles, file names, publication dates, and word counts, and it should be provided on this same screen in the field marked "File Name for List."

Applicants may provide any title that reasonably identifies the group as a whole. For example, the U.S. Copyright Office will accept a title that identifies the author, type of works, and dates that the works were published online, such as "Keisha Smith Facebook Posts (May through July 2020)." Or the Office will accept a title that identifies the subject matter of the works, such as "Online Dispatches from the Coronavirus Pandemic."

If the applicant plans to submit two or more group registration applications, the same title may be used in each application followed by the phrase "Group 1 of 2," "Group 2 of 2," etc.

Example:

- Charles Donovan Social Media Posts (September-November 2020) Group 1 of 2.
- Charles Donovan Social Media Posts (September-November 2020) Group 2 of 2.

1111.7(D) Number of Works in the Group

On the Title screen, the applicant should specify the total number of works that will be submitted with the claim. To do so, the applicant should select the appropriate number from the drop down menu marked "Number of Works in this Group." The U.S. Copyright Office will use this information to verify that the number of files received matches the number of titles listed in the application and the number of works specified in the list of titles, file names, publication dates, and word counts.

1111.7(E) Year of Completion

The applicant should identify the year that the author completed these works. This information should be provided in the Year of Completion field on the "Group Title/Publication and Completion Information" screen. If the works were written in the same year, the applicant should enter that year in the space provided. If the works were written over a period of two or more years, the applicant should provide the year of creation for the most recent work in the group. For example, if the works were completed in 2019 and 2020, the applicant should state "2020."

1111.7(F) Earliest / Latest Publication Date

The applicant must provide the earliest and most recent publication date for the works in the group. This information should be provided on the "Group Title/Publication and Completion Information" screen in the fields marked "Earliest Publication Date for the Works in this Group" and "Latest Publication Date for the Works in this Group." The publication dates should be provided in "MM/DD/YYYY" format. The "earliest publication date" is the earliest date that one of the works was first published online. The "latest publication date" is the most recent date that one of the works was first published online. For example, if the works were first published online in 2020 on March 1st, 2nd, and 3rd, the applicant should enter "03/01/2020" and "03/03/2020" in the spaces provided.

1111.7(G) Nation of First Publication

In the field marked "Nation of First Publication," the applicant should provide the name of country where the works were published for the first time. The registration specialist may use this information to determine if the works are eligible for copyright protection in the United States.

To identify the nation of publication, the applicant should select the appropriate country from the drop down menu on the Title screen. If the nation of publication is unknown, the applicant may select "not known." If the works were first published in different

countries, the applicant may provide that information in the Note to Copyright Office field of the application.

1111.7(H) File Name for the List

After submitting the application and paying the filing fee, the applicant must upload a list containing the title, file name, publication date, and word count for each work. The file name for this list must be entered in the field marked "File Name for List" on the "Group Title/Publication and Completion Information" screen. The registration specialist will use this information to connect the list with the relevant application and to distinguish it from the digital copies of the individual works.

NOTE: As discussed in Sections 1111.6, 1111.7(A), and 1111.7(C), the file name for the list must include the case number that has been assigned to the application, and the group title that was entered in the "Title of Group" field. For guidance in locating the case number, consult the help text that accompanies the application. For guidance in selecting a title for the group, see Section 1111.7(C).

1111.7(I) Titles of the Individual Works

As discussed in Section 1111.6, the applicant must submit a list containing the title, file name, publication date, and word count for each work in the group. In addition, the applicant must enter a title for each work in the application itself.

The titles for the individual works must be provided on the "Titles of the Works" screen in the field marked "Titles of Works Being Registered." For step-by-step instructions on how to copy information from the list of titles and paste it into the application, consult the help text and video tutorial that accompany the application.

The titles entered in this part of the application must match the corresponding file names for the digital copies that are uploaded through the Office's electronic registration system. And they must match the corresponding titles and file names specified in the aforementioned list. If the titles and file names do not match each other, the registration specialist may refuse to register the entire claim.

Example:

- Asher Bradley intends to register three poems titled "Memorial Day," "Independence Day, and "Labor Day." He plans to upload these poems in three separate PDF files. The Office will accept:

Titles Listed in the Application	File Names for the Digital Copies of the Works
Memorial Day	memorial_day.pdf
Independence Day	independence_day.pdf

Titles Listed in the Application	File Names for the Digital Copies of the Works
Labor Day	labor_day.pdf

The Office will not accept:

Titles Listed in the Application	File Names for the Digital Uploads
Memorial Day	memorial_day.pdf
Independence Day	fourth_of_july.pdf
Labor Day	labor_day.pdf

If a title has not been assigned to a particular work, the applicant may enter an identifying or descriptive phrase. The phrase could identify the author, date, and/or general subject matter of the work, such as "Blog entry by Li Ann Wei" or "Visit to Singapore (September 9, 2020)." Or the title could identify the website or platform where the work was first published online, such as "newyorktimes.com tech section (October 3, 2020)."

1111.7(J) Authors / Claimants

As discussed in Section 1111.3(E), all of the works must be written by the same individual, and that individual must be named as the copyright claimant for each work. If all of the works were co-written by two or more individuals, those individuals must be named as the joint authors and copyright claimants for each work.

NOTE: As discussed in Section 1111.3, works made for hire are not eligible for this group registration option. This includes works created by corporate authors, and works written by individual authors that were specially ordered or commissioned by another party as a work made for hire.

The applicant should identify the author or joint authors on the Author/Claimant screen. If all of the text was written by the same individual, the applicant should provide that person's name and address in the spaces marked "Individual Author." If the text was co-written by two or more joint authors, the applicant should provide the name, address, and other requested information for each individual.

If the author is deceased, the applicant must provide the year that individual died. Providing the author's year of birth is optional, although this information may be useful

in identifying the person who created the works. If the author's year of birth is given, it will be included in the online public record for the claim.

For additional guidance in completing the Author/Claimant screen, consult the help text that accompanies this portion of the application.

NOTE: If the author created the works anonymously or used his or her pseudonym on the works and does not want to reveal his or her real name in the registration record, see Section 1111.7(K).

1111.7(K) Anonymous and Pseudonymous Works

A work is "anonymous" if the author is not identified on the copies of that work. A work is "pseudonymous" if the author is identified on the copies solely by a fictitious name, pen name, or other pseudonym. If the author's real name appears on the copies, the work is neither anonymous nor pseudonymous, even if the author does not want to reveal his or her identity in the registration record.

If the author's name does not appear on any of the works – and if the author does not want to reveal his or her identity in the registration record – the applicant should check the box indicating that the works were created anonymously. The fields for the Author's "First Name" and "Last Name" should be left blank.

If the author's pseudonym appears on all of the works and the author's legal name does not appear on any of the works– and if the author does not want to reveal his or her identity in the registration record – the applicant should check the box indicating that the works are pseudonymous, and should provide the author's pseudonym in the field marked "Pseudonym."

Ordinarily, the copyright for an anonymous or pseudonymous work endures for a term of 95 years from the year of publication or 120 years from the year of creation, whichever expires first. 17 U.S.C. § 302(c). However, if the author's real name or identity is revealed in the registration record, the copyright will endure until 70 years after the author's death. *Id.*; *see also* H.R. REP. NO. 94-1476, at 137 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5753.

IMPORTANT NOTE: If the author does not want to reveal his or her identity in the registration record, the applicant should not include the author's real name anywhere in the application, including the Author/Claimant, Correspondent, Mail Certificate, and Certification screens. If the author's real name is included in the application it will become part of the public record, and it cannot be removed once the U.S. Copyright Office has issued a registration.

If the author wants to reveal his or her identity in the registration record, the applicant should provide the author's legal name in the "First Name/Last Name" fields.

If some – but not all – of the works are anonymous or pseudonymous, the applicant may register all of the works with the same application. But to do so, the author must disclose his or her identity in the registration record. For example, if the author wrote 10 short stories, and if her real name appears on two of those stories, she may register

all of them with the same application. But the author would have to include her real name in the registration record for all 10 stories.

For additional information concerning anonymous and pseudonymous works, see Chapter 600, Section 615.

1111.7(L) The Author's Country of Citizenship or Domicile

In all cases, the applicant should identify the author's country of citizenship and/or domicile. The registration specialist may use this information to determine if the works are eligible for copyright protection in the United States.

To do so, the applicant should select the name of the relevant country from the drop down menus on the Author/Claimant screen. If the author's nationality or domicile are unknown, the applicant may select "not known."

For a definition and discussion of nationality and domicile, see Chapter 600, Section 617.

1111.7(M) Limitation of Claim

If the works contain an appreciable amount of material that has been previously published or previously registered, the applicant should exclude that material from the claim. Likewise, applicants should disclaim material that is owned by a third party or material that is in the public domain.

Specifically, the applicant should briefly describe this material on the Limitation of Claim screen in the field marked Material Excluded. The U.S. Copyright Office will assume the applicant intends to register all copyrightable aspects of the works that have not been expressly disclaimed in this portion of the application.

If the material was previously registered with the U.S. Copyright Office, the applicant should also provide the registration number and year of registration that has been assigned to that material. If the Office issued multiple registrations for this material, the applicant should provide the number and year for the most recent registration.

For additional information concerning the U.S. Copyright Office's practices and procedures for limiting the scope of a copyright claim, see Chapter 600, Section 621.

1111.7(N) Rights and Permissions Information

The applicant may provide the name, address, and other contact information for the person and/or organization who should be contacted for permission to use the works that are being registered. Providing this information is optional, and the application will be accepted even if the Rights & Permissions Information screen is left blank. Information entered in this section will appear in the public record.

For guidance in completing this portion of the application, see Chapter 600, Section 622.1.

1111.7(O) Correspondent / Mailing Address for the Certificate of Registration

The applicant should provide the name, email address, telephone number, fax number (if any), and mailing address for the person or persons who should be contacted if the U.S. Copyright Office has questions or concerns regarding the application. This information should be provided on the Correspondent screen.

In addition, the applicant should provide the name and address where the certificate of registration should be sent. This information should be provided on the Mail Address screen.

IMPORTANT NOTE: If the applicant checked the box on the Author/Claimant screen indicating that the works are anonymous or pseudonymous, and if the author does not want to reveal his or her identity in the registration record, then as discussed in Section 1111.7(K), the author should not provide his or her real name anywhere in the application. Instead, the applicant should provide contact information for the author's duly authorized agent, or the author should provide a pseudonym if the author is completing the application on his or her own behalf.

For guidance in completing this portion of the application, see Chapter 600, Sections 622.2 and 622.4.

1111.7(P) Special Handling

Special handling is a procedure for expediting the examination of an application. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate of registration. The Office charges an additional fee for this service.

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

1111.7(Q) Certification

The application must be certified by the author/claimant named in the application, by the owner of one or more of the exclusive rights in the works, or by a duly authorized agent of the author/claimant or the owner of exclusive rights.

The person who certifies the application certifies that the information provided in the application is correct to the best of his or her knowledge. Knowingly making a false representation of a material fact in an application, or in any written statement filed in connection with the application, is a crime that is punishable under 17 U.S.C. § 506(e).

When completing the Certification screen, the applicant should provide the first and last name of the individual who certified the application in the space marked "Name of the Individual Certifying this Application." There is no need to date the certification; the date will be added automatically when the application is received. 37 C.F.R. § 202.3(c)(3)(iv).

IMPORTANT NOTE: If the applicant checked the box on the Author/Claimant screen indicating that the works are anonymous or pseudonymous, and if the author does not

want to reveal his or her identity in the registration record, then as discussed in Section 1111.7(K), the author should not provide his or her real name in the certification field. Instead, the application should be certified by the author's duly authorized agent or an owner of the exclusive rights in the works. Alternatively, the author may provide his or her pseudonym in the certification field if the author is completing the application on his or her own behalf.

1112 Group Registration of Database Updates and Revisions

This Section discusses the U.S. Copyright Office's current practices and procedures for registering a group of updates or revisions to a database.

This group registration option may be used to register a specific version of a database that existed on a particular date and/or the subsequent updates or revisions to that database within a three-month period. It may be used to register a group of updates or revisions to a single-file or a multi-file database, regardless of whether prior versions of the database have been registered before.

This Section also discusses the Office's current practices and procedures for registering updates or revisions to a database that predominantly consists of photographs.

As discussed below, the Office allows applicants to register groups of photographs, provided that certain requirements have been met. The procedures for registering a group of photographs are discussed in Section 1114, and the procedures for registering photographs that have been published as a contribution to a periodical are discussed in Section 1110. Individual photographers may use any of these options to register their images, but they cannot use the group registration option for photographic databases, even if their images have been included in a database that consists predominantly of photographs. The group registration option for photographic databases is only available for database owners, such as stock photography agencies and other copyright owners that wish to register the authorship involved in creating the database, as well as the photographs within the database that were authored by or transferred to the copyright claimant. *See* Deposit Requirements for Registration of Automated Databases that Predominantly Consist of Photographs, 77 Fed. Reg. 40,268, 40,269 & n.1 (July 9, 2012).

Databases pose special problems for the Office because they are constantly changing and the updates or revisions typically contain small increments of information. Due to the processing costs and administrative burdens involved with examining these types of works, the Office applies this regulation narrowly and does not apply this group registration option to other groups of related works. In particular, this option cannot be used to register the updates or revisions to a website or a computer program. While a website may be used to access a database and a computer program may be used to manipulate the information within a database, these works are not databases as defined in Section 1112.1 below.

See generally Registration of Claims to Copyright, Registration and Deposit of Databases, 54 Fed. Reg. 13,177 (Mar. 31, 1989).

1112.1 What Is a Database?

Following an extensive rulemaking, the U.S. Copyright Office concluded that a database created or published on a particular date and any subsequent updates and revisions to that database may qualify as a "group of related works" under Section 408(c)(1) of the Copyright Act. The Office explained that "factors such as [the] size, complexity and technological characteristics" of these works, as well as their "rapidly changing content" "distinguish the automated database from other groups of related works." *See* Registration of Claims to Copyright, Registration and Deposit of Databases, 54 Fed. Reg. 13,177, 13,178 (Mar. 31, 1989).

For purposes of copyright registration, a database is defined as a compilation of digital information comprised of data, information, abstracts, images, maps, music, sound recordings, video, other digitized material, or references to a particular subject or subjects. In all cases, the content of a database must be arranged in a systematic manner, and it must be accessed solely by means of an integrated information retrieval program or system with the following characteristics:

- A query function must be used to access the content.
- The information retrieval program or system must yield a subset of the content, or it must organize the content based on the parameters specified in each query.

A single-file database is a database comprised of one data file that contains a group of data records pertaining to a common subject, regardless of the size or amount of the data that the records contain. A multi-file database is a database comprised of separate and distinct groups of data records covering multiple subjects. A data record contains all the information related to a particular unit of information within a database. A data file is defined as a group of data records pertaining to a common subject matter, regardless of the size of the records or the amount of data they contain. 37 C.F.R. § 202.20(c)(2)(vii)(D)(2).

As a general rule, databases are considered machine-readable works because they are fixed or published in optical discs, magnetic tapes, or similar storage media, and as a result they cannot be perceived without the aid of a machine or device. *See* 37 C.F.R. § 202.20(c)(2)(vii).

1112.2 The Scope of a Group Registration for a Database

The legislative history for the Copyright Act states that "computer data bases" may be protected by copyright "to the extent that they incorporate authorship in the programmer's expression of original ideas, as distinguished from the ideas themselves." H.R. REP. NO. 94-1476, at 54 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5667.

When examining a database, the principle question that the U.S. Copyright Office must consider is whether the selection, coordination, and/or arrangement of data or other component elements within the database is sufficiently creative to warrant registration. A database and/or the updates or revisions to that database typically contain the following forms of authorship:

- The selection authorship involved in choosing the material or data that is included in the database.
- The coordination authorship involved in classifying, categorizing, ordering, or grouping the material or data.
- The arrangement authorship involved in determining the placement or arrangement of the material or data within the database as a whole.

Each form of authorship may provide a basis for registering a database, provided that the selection, coordination, and/or arrangement is sufficiently creative.

If the work is registrable as a database, the registration may cover the component elements that appear within the database, such as photographs, sound recordings, or videos, provided that (i) the claimant owns the copyright in those elements, (ii) there is a sufficient amount of creative expression in those elements, and (iii) those elements have not been previously published or previously registered. (In no case may a claimant register elements that are in the public domain.) However, the copyrightable component elements are not sufficient – in and of themselves – to support a database registration unless the selection, coordination, and/or arrangement of those elements with the database is also sufficiently creative.

A group of updates or revisions should be submitted for group registration only if the updates or revisions meet the statutory standard for an original work of authorship. If they do not "satisfy the original work of authorship standard for copyright protection, then no new registration is necessary or warranted." Registration of Claims to Copyright, Registration and Deposit of Databases, 54 Fed. Reg. 13,177, 13,179 (Mar. 31, 1989). "Where the Office determines that only a few minor revisions have been made in the representative deposit, registration will be subject to question, and absent more justification, will be denied." *Id.*

In all cases, the author's selection, coordination, and/or arrangement must be evident in the deposit material. If the identifying material or the descriptive statement do not demonstrate that the updates or revisions constitute an original work of authorship, the Office may communicate with the applicant or may refuse to register the claim.

1112.3 The Scope of a Group Registration for a Photographic Database

As a general rule, the U.S. Copyright Office encourages photographers, stock photography companies, database providers, and other interested parties to register their works using the group registration options for published or unpublished photographs, rather than the group registration for photographic databases.

A registration for a photographic database covers the authorship involved in selecting, coordinating, and arranging the content of the database as a whole. It also may cover the individual photographs within the database if the photographers transferred the exclusive rights in their respective works to the owner of the database, and if the selection, coordination, and arrangement of those photographs is sufficiently creative. If the selection, coordination, or arrangement of the photographs in the database or its

updates is not sufficiently creative using an objective standard, the registration specialist will refuse registration.

Photographers often display their works on websites and distribute them in catalogs. But as discussed in Section 1112, websites and catalogs are not considered databases for purposes of registration. If the Office determines that a particular website or catalog does not qualify as a database, it will refuse to register that work as a photographic database or as a group of updates or revisions to a database.

Moreover, registering photographs as part of a photographic database may limit the copyright owner's ability to seek certain remedies in an infringement action. The Copyright Act states that a copyright owner may be entitled to recover "an award of statutory damages for all infringements involved in [an infringement] action, with respect to any one work," but "[f]or purposes of this subsection all parts of a compilation . . . constitute one work." 17 U.S.C. § 504(c)(1).

A database is – by definition — a compilation. *See Alaska Stock, LLC v. Houghton Mifflin Harcourt Publishing Co.*, 747 F.3d 673, 676 (9th Cir. 2014) (concluding that a photographic database is a collective work). Consequently, when a group of photographs is registered as a database, the copyright owner may be entitled to seek only one award of statutory damages for the database as a whole – rather than a separate award for each photograph – even if the defendant infringed all the photographs covered by the registration.

By contrast, when a copyright owner registers a group of photographs under GRUPH or GRPPH, the registration covers each photograph in the group, but the group itself is not considered a compilation. 37 C.F.R. § 202.4(n). Therefore, any claim for infringement of those photographs would not be subject to the limitation set forth in Section 504(c)(1) of the Copyright Act.

See generally Group Registration of Photographs, 81 Fed. Reg. 86,643, 86,645, 86,654 (Dec. 1, 2016).

1112.4 Eligibility Requirements

An applicant may use this group registration option to register a group of updates or revisions to a database, provided that the following conditions have been met:

- The updates or revisions must be original works of authorship.
- The updates or revisions must be added to a database as defined in Section 1112.1.
- All the updates or revisions to the database must have the same general title.
- The subject and general content of the updates or revisions must be similar.
- The organization of the updates or revisions must be similar.
- All the updates or revisions must be owned by the same copyright claimant.

In addition, the applicant must satisfy the following conditions if the database is unpublished:

- The database and/or the updates or revisions to the database must be fixed solely in machine-readable copies.
- The database and/or the updates or revisions must be created within a three-month period within a single calendar year (*e.g.*, February 1, 2007 through April 30, 2007; May 1, 2008 through July 31, 2008; September 1, 2009 through November 30, 2009).

If the database has been published, the applicant must satisfy the following conditions:

- The database and/or the updates or revisions must be published solely in machine-readable copies.
- The database and/or the updates or revisions must be published within a three-month period within a single calendar year (*e.g.*, June 1, 2011 through August 31, 2011; July 1, 2010 through September 30, 2010; September 1, 2012 through November 30, 2012).
- If the database was published before March 1, 1989, each update or revision must bear a separate copyright notice, the notice must contain the copyright owner's name (or an abbreviation by which the owner can be recognized or a generally known alternative designation for the owner), and the name that appears in each notice must be the same.

See 37 C.F.R. § 202.3(b)(5)(i)(A)-(F).

Databases, updates, or revisions that do not satisfy these requirements cannot be registered using this group registration option.

1112.5 Application Requirements

As a general rule, the applicant must use a paper application to register a database and/or a group of updates or revisions to that database. *See* 37 C.F.R. § 202.3(b)(5)(ii)(A). Unlike most group registration options, applicants do not need to use a special form. Instead, the applicant should use the form that is most appropriate for the subject matter of the works that appear in the database. *See id*. For example, if the works in the database consist primarily of words, numbers, or other verbal or numerical symbols or indicia, the applicant should use Form TX. If the works consist predominantly of photographs, the applicant should use Form VA. For guidance on completing the paper application, see Section 1112.8.

There is a limited exception to this rule. A database that consists predominantly of photographs and/or the updates or revisions to that database may be registered with an online application as a result of a pilot project. *See* 37 C.F.R. § 202.3(b)(5)(ii)(A). Before completing an online application, the applicant must contact the Visual Arts Division at (202) 707-8202 to coordinate the filing and to obtain proper guidance concerning the

information that should be included in the application and the proper method for submitting the deposit copies. Applicants will be permitted to file an online application for a database that consists predominantly of photographs only if they obtain authorization from the Visual Arts Division and follow the instructions from the Division. *See* Registration of Claims to Copyright, 76 Fed. Reg. 4072, 4075 (Jan. 24, 2011).

1112.6 Filing Fee Requirements

The applicant must submit the correct filing fee for this group registration option. *See* 37 C.F.R. § 202.3(b)(5)(ii)(B).

The current fee for registering a group of updates or revisions to a non-photographic database is set forth in the U.S. Copyright Office's fee schedule under the heading "Registration of updates or revisions to a database that predominantly consists of non-photographic works."

The current fee for registering a photographic database is set forth in the Office's fee schedule under the heading "Registration for a database that predominantly consists of photographs and updates thereto."

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

1112.7 Deposit Requirements

This Section discusses the deposit requirements for registering a database and/or a group of updates or revisions to that database. All applicants must comply with these requirements, regardless of whether they intend to register the updates or revisions for a single-file database or a multi-file database.

These requirements are intended to alleviate some of the administrative burdens involved with examining a group of related works. In developing these requirements, the Office also considered the unique factors that distinguish databases from other types of works, such as "frequent updates; incremental changes, which are sometimes minor; the absence of a hard-copy record of the changes in general; and the tendency to commingle copyrightable and uncopyrightable matter." Registration of Claims to Copyright, Registration and Deposit of Databases, 54 Fed. Reg. 13,177, 13,178-79 (Mar. 31, 1989).

1112.7(A) Databases That Do Not Consist Predominantly of Photographs

This Section discusses the deposit requirements for a database that does not consist predominantly of photographs.

In all cases, the applicant should prepare and submit a brief statement that describes the database. The specific requirements for this descriptive statement are discussed in Section 1112.7(C).

The applicant does not need to submit a complete copy of the entire database. Instead, the applicant should gather a representative portion of the database using one of the

methods discussed below and should submit one copy of that material to the U.S. Copyright Office in a form that is visually perceptible without the aid of a machine or device. *See* 37 C.F.R. § 202.20(c)(2)(vii)(D).

As discussed in Section 1112.3, all the updates or revisions in the group must be created or published within a three-month period within the same calendar year. The applicant should select a representative date from that three-month period and gather fifty pages or fifty data records that appeared in the database on that date. *See* 37 C.F.R. § 202.20(c)(2)(vii)(D)(5). The pages or records should be marked to show the copyrightable updates or revisions that were created or published on the selected date. The applicant does not need to specify every copyrightable change that appears in these pages or records. However, the applicant should identify a sufficient amount of new material to demonstrate that the updates or revisions constitute an original work of authorship. *See* Registration of Claims to Copyright, Registration and Deposit of Databases, 54 Fed. Reg. 13,177, 13,178-79 (Mar. 31, 1989).

Alternatively, the applicant may select a representative date from the three-month period, and gather fifty pages or fifty data records that appeared in the database on that date. The pages or records must consist entirely of new copyrightable material that was created or published on the selected date. In addition, the applicant should submit a cover letter confirming that the pages or records are comprised entirely of new copyrightable material that was created or published on the same date. *See id.*

In all cases, the applicant should write the name of the database on the first page or the first record that is included in the deposit material.

If the database has been fixed in a CD-ROM and if the group of updates or revisions can be discerned from that format, the applicant may submit one complete copy of the entire CD-ROM package, including a complete copy of any accompanying operating software and instructional manual. 37 C.F.R. § 202.20(c)(2)(xix). If the registration specialist is unable to access the CD-ROM or unable to determine whether new copyrightable material was added to the database during the three-month period specified in the application, he or she will ask the applicant to submit a representative portion of the database using one of the methods discussed above.

If the database has been fixed or published in a CD-ROM and if the Office previously issued a group registration for that database, the applicant may submit a CD-ROM containing subsequent updates or revisions to that same database, provided that the descriptive statement (i) identifies the new material that was added to the database during the period specified in the application, and (ii) confirms that the updates or revisions are similar to the updates or revisions specified in the previous registration.

The deposit may be delivered by mail, commercial carrier, courier, or hand delivery to the Public Information Office. Packages that are delivered to the U.S. Copyright Office by mail or commercial carrier will be irradiated to destroy possible contaminants, such as anthrax. This process may damage CD-ROMs or other discs. To avoid this result, applicants are strongly encouraged to send these types of materials in boxes rather than envelopes. For additional guidance on delivering items to the Office, see Chapter 1500, Section 1508.2.

1112.7(B) Databases That Predominantly Consist of Photographs

This Section discusses the minimum deposit requirements for a database that consists predominantly of photographs. In some cases, the Visual Arts Division may ask the applicant to submit additional deposit material, particularly when the claim is submitted using the electronic registration system. For specific guidance, applicants should contact the Visual Arts Division at (202) 707-8202.

In all cases, the applicant should prepare and submit a brief statement that describes the database. The specific requirements for this descriptive statement are discussed in Section 1112.7(C).

If the applicant intends to register the photographs that were added to the database during the period specified in the application, the applicant must submit a copy of each photograph that is included in the claim. *See* 37 C.F.R. § 202.20(c)(2)(vii)(D)(8).

The applicant must submit the photographs in a digital form, and each photograph must be submitted in JPEG, GIF, or TIFF formats.

In addition, the applicant must submit a sequentially numbered list containing the title and file name for each photograph in the group. The title and file name for a particular photograph may be the same. If the photographs have been published, the list must provide the month and year of publication for each photograph. The U.S. Copyright Office has developed a template that may be used to create this list, which is discussed in more detail in Section 1114.6(A).

The list must be submitted in an Excel format (.xls), Portable Document Format (PDF), or other electronic file format approved by the Visual Arts Division. The file name for the list must contain the title of the database. It should also include the case number that has been assigned to the claim by the electronic registration system. This number appears near the top of each screen of the online application. (If the claim is submitted on a paper application, a case number is not required.)

Examples:

- Online application:
    - *Title of database*: North American Wildlife.
    - *Case number*: 1-62883927239.
    - *File name for the numbered list:* northamericanwildlifecasenumber162883927239.xls
- Paper application:
    - *Title of database*: South American Landscapes.
    - *File name for the numbered list:* southamericanlandscapes.pdf

The applicant may upload the digital files to the electronic registration system, preferably in a .zip file containing all the files, provided that the applicant (i) obtains prior authorization from the Visual Arts Division, and (ii) submits the online application and the deposit copies after consulting with, and under the supervision of, that Division.

Alternatively, the applicant may save the digital files on a physical storage device, such as a flash drive, CD-R, or DVD-R, and may deliver the device to the U.S. Copyright Office along with the required shipping slip generated by the electronic registration system by mail, commercial carrier, courier, or hand delivery to the Public Information Office. For additional guidance on these delivery options, see Chapter 1500, Section 1508.2.

If the applicant intends to register the authorship involved in selecting, coordinating, and/or arranging the photographs that appear in the database, but does not intend to register the individual photographs, the applicant should submit a representative portion of the database using one of the methods described in Section 1112.7(A).

See generally Group Registration of Photographs, 81 Fed. Reg. 86,643 (Dec. 1, 2016); Deposit Requirements for Registration of Automated Databases That Predominantly Consist of Photographs, 76 Fed. Reg. 5106 (Jan. 28, 2011); Registration of Claims to Copyright, 76 Fed. Reg. 4072 (Jan. 24, 2011).

1112.7(C) Descriptive Statement

In all cases, the applicant must submit a brief typed or printed statement containing the following information:

- The title of the database.
- The name and address of the copyright claimant.

- A subtitle, date of creation, or date of publication (if any) that may be used to distinguish any separate or distinct data files within the database.

- The name and content of each separate data file, including its subject, the origin(s) of the data, and the approximate number of data records that it contains.

- The nature and frequency of the changes in the database and the location within the database or the separate data files where the changes appear. When describing the nature of the changes, applicants should clearly articulate the authorship claimed in these changes.

If the database contains a copyright notice, the descriptive statement should provide the following information:

- If the notice is in a machine-readable format, the applicant should provide the exact content of the notice and indicate the manner and frequency with which it is displayed (*e.g.*, at a terminal when a user signs on, continuously on the terminal display, on printouts from the database, etc.).

- If the notice appears on copies of the database or on magnetic tape reels or the containers for those reels, the applicant should submit a photocopy or other sample of the notice.

See 37 C.F.R. § 202.20(c)(2)(vii)(D)(5)-(7).

1112.8 Completing the Application: Group Registration of Databases

This Section provides guidance for registering a database and/or a group of updates or revisions using Forms TX or VA.

The U.S. Copyright Office has established a pilot program for applicants who wish to register databases that consist predominantly of photographs using the electronic registration system. As discussed in Section 1112.4, applicants must contact the Visual Arts Division for authorization to use the online application and for guidance in completing the application and submitting the deposit copies.

As discussed in Section 1112.3, the updates or revisions in the group must be created or published within a period of three months or less. The application may be submitted on the last day of this period or anytime thereafter (regardless of whether the applicant uses the online registration system or a paper application). However, if the application is received before the last day of the period specified in the application, the registration specialist will communicate with the applicant.

1112.8(A) Space 1: Title

The applicant should provide the title of the database on space 1 of the application under the heading marked Title of This Work. The title should be provided together with the following statement: "Group registration for database titled [*insert the title of the database*]."

As discussed in Section 1112.3, all the updates or revisions in the group must be created or published within a three-month period within the same calendar year. This period should be specified on space 1 of the application under the heading marked Title of This Work, preferably in the following format: "Updates and revisions from [*insert first date in the period*] to [*insert the last day in the period*]."

As discussed in Section 1112.7(A), the applicant should select a representative date from the period specified in the Title of This Work space, and submit fifty pages or fifty data records that were added to the database on that date. The applicant should provide that date in space 1 under the heading marked Publication as a Contribution, preferably in the following format: "Representative Date: [*insert month, day, and year*]." In addition, the applicant should specify the frequency that updates or revisions are made to the database (*e.g.*, daily, weekly, monthly, etc.).

If the applicant is unable to submit fifty records from a specific date, the applicant may submit a selection of records that were added to the database on multiple dates. In this situation, the applicant may provide a range of dates in space 1, preferably in the following format: "Representative Dates: [*insert month(s), day(s), and year here*]."

NOTE: There is no need to complete the Publication as a Contribution space if the database consists predominantly of photographs.

1112.8(B) Space 2: Name of Author / Nature of Authorship

In space 2(a) the applicant should provide the full name of the author who created the updates or revisions for the database, as well as the author's country of citizenship and/or domicile.

If the updates or revisions were created by more than one author, the applicant may list the other authors on spaces 2(b) and 2(c) or on Form CON, although providing this information is optional.

If the updates or revisions were created as works made for hire, the applicant should check the box marked "yes" that appears under the heading "was this contribution to the work a 'work made for hire'?"

For guidance in providing the Author's Name, see Chapter 600, Section 613.9. For guidance in providing the author's citizenship and domicile, see Chapter 600, Section 617. For a definition and discussion of works made for hire, see Chapter 500, Section 506.

The applicant should identify the copyrightable authorship that the author contributed to the updates or revisions. The applicant should provide this information in space 2(a) under the heading marked Nature of Authorship.

The Office may accept any of the terms listed below, provided that they accurately describe the copyrightable authorship that appears in and is supported by the deposit copy. In most cases, the Office will accept combinations or variant forms of these terms, unless they are contradicted by information provided in the deposit copies or elsewhere in the registration materials.

- Compilation of data.
- Compilation of database information.
- Compilation of photographs.
- Compilation of artwork.
- Compilation and text.
- Revised and updated compilation.
- Text of database.

NOTE: The applicant should also submit a separate descriptive statement that describes the selection, coordination, and/or arrangement that the author contributed to the database. For information concerning this requirement, see Section 1112.7(C).

The authorship that the applicant intends to register should be clearly identified in the application and the descriptive statement, and the claim to copyright in that authorship should be clearly stated. If the claim is unclear, the registration specialist may communicate with the applicant or may refuse registration. Examples of unclear terms include the following or any combination of the following:

- Data dictionary.
- Data insertion.
- Data layout or format.
- Data manipulation.
- Database features.

If the applicant asserts a claim in both the copyrightable and uncopyrightable features of the database, the registration specialist may annotate the application to indicate that the registration does not extend to the uncopyrightable features. If the applicant asserts a claim to copyright in any storage medium or any feature of the database that is uncopyrightable, the specialist may communicate with the applicant or may refuse registration if the claim appears to be based solely on those features. Examples of unacceptable terms include the following or any combination of the following:

- Database design.
- Database interface.
- Database structure.
- Data system.

For additional guidance in completing the Nature of Authorship space, see Chapter 600, Section 618.4(B).

1112.8(C) Space 3(a): Year in which Creation of This Work Was Completed

As discussed in Section 1112.3, the updates or revisions must be completed within a three-month period within a single calendar year.

In space 3(a) the applicant should provide the year that the author completed the specific updates or revisions that will be submitted for registration. The applicant should not provide a year of completion for the first version of the database or any updates or revisions that are not included in the group.

1112.8(D) Space 3(b): Date and Nation of First Publication of This Particular Work

If the updates or revisions have been published, the applicant should provide the last date (month, day, and year) that updates or revisions were published during the time period specified in the Publication as a Contribution space. If the updates or revisions have not been published, this portion of the application should be left blank.

For a general discussion of publication issues, see Chapter 600, Section 612.

1112.8(E) Space 4: Copyright Claimant(s)

As discussed in Section 1112.3, the copyright in the updates and revisions must be owned by the same claimant. The applicant should provide the claimant's full name and address in space 4 of the application. For guidance on completing this portion of the application, see Chapter 600, Section 619.

If the author(s) and the claimant named in the application are not the same person, the applicant should provide a brief transfer statement that explains how the claimant obtained the copyright in the updates or revisions in the group. This information should be provided in space 4 under the heading marked Transfer. For guidance on completing this portion of the application, see Chapter 600, Section 620.9.

1112.8(F) Spaces 5 & 6: Previous Registration / Derivative Work or Compilation

If the updates or revisions contain an appreciable amount of material that has been previously registered with the U.S. Copyright Office, the applicant should exclude that material from the claim using the procedures described in Chapter 600, Section 621.8(F). If the updates or revisions contain an appreciable amount of material that has been previously published, material that is not owned by the copyright claimant, or material that is in the public domain, the applicant should exclude that material from the claim using the procedures described in Chapter 600, Sections 621.8(A) through 621.8(C).If the updates or revisions do not contain previously registered material, previously published material, public domain material, or material owned by a third party, this portion of the application may be left blank.

1112.8(G) Space 8: Certification

The applicant should certify and date the application on space 8 under the heading marked "Signature." The Office will accept a handwritten, printed, or typed signature. If the signature is handwritten, the first and last name of the person who certified the application should be typed or printed on the space marked "Typed or printed name and date." In addition, the applicant should check one of the boxes indicating whether he or she is an author of the work, the copyright claimant, an owner of one or more of the exclusive rights in the works, or a duly authorized agent of one of the foregoing persons. 37 C.F.R. § 202.3(c)(2)(i).

The application should be certified and submitted to the U.S. Copyright Office on or after the last date specified in space 1 of the application under the heading marked Title of This Work. If the application is certified or submitted before the last date specified in the Title of This Work space, the registration specialist may communicate with the applicant.

For additional guidance in completing the Certification space, see Chapter 600, Section 624.

1112.8(H) Spaces 7 & 9: Correspondent and Mailing Address for the Certificate

For guidance in completing the Correspondent space, see Chapter 600, Section 622.2. For guidance in providing the mailing address for the certificate, see Chapter 600, Section 622.4.

1112.9 Effective Date of Registration for a Group of Revisions or Updates to a Database

As discussed in Section 1112.3, all the updates or revisions in the group must be created or published within a three month period within the same calendar year. As discussed in Section 1112.8, the application may be submitted on the last day of this period or anytime thereafter.

The U.S. Copyright Office will assign an effective date of registration based on the date that the Office received the application, filing fee, and the deposit material, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration. 17 U.S.C. § 410(d).

Example:

- Farmers & Mechanics Bank submitted an application to register the updates and revisions that were made to its database between January 1, 2010 and March 31, 2010. The Office received the application and the filing fee on May 1, 2010, along with a printout containing fifty records from the database. On May 2, 2010, the Office received the descriptive statement for this claim. The Office

will issue a group registration with an effective date of registration of May 1, 2010.

For a general discussion of effective date of registration, see Chapter 600, Section 625.

1112.10 Databases That Do Not Satisfy the Group Registration Requirements

If the applicant is unable to use this group registration option, it may be possible to register the database as it existed on a particular date. A registration for a specific version of a database does not cover any subsequent updates or revisions that may be made to the database (regardless of whether the database is published or unpublished). For information on the practices and procedures for obtaining a registration for a specific version of a single-file or multi-file database, see Chapter 700, Section 727.

1113 [Reserved]

1114 Group Registration of Photographs

This Section discusses the U.S. Copyright Office's practices and procedures for registering a group of photographs. The Office has established a group registration option for unpublished photographs, and a separate group registration option for published photographs. When referring to these options, the Office uses the terms "GRUPH" and "GRPPH," respectively.

NOTE: The group registration option for unpublished photographs replaces the registration accommodation for "unpublished collections," which was eliminated effective March 15, 2019. For additional information concerning this change, see Section 1106.6.

When the Office receives a group of photographs, it will examine each photo to determine if it contains a sufficient amount of copyrightable authorship, and to confirm that the legal and formal requirements for registration have been met. A registration for a group of photographs covers the copyrightable authorship in each photo that is submitted for registration, and each photo is registered as a separate work. 37 C.F.R. § 202.4(n).

If an unpublished photograph has been registered with the Office it does not have to be registered again if it is subsequently published (although as discussed in Chapter 500, Section 510.1, the Office will register the first published edition of a work even if the unpublished version and the published version are substantially the same). Registering an unpublished photograph prior to infringement will preserve the copyright owner's ability to seek statutory damages and/or attorney's fees in an infringement action.

For guidance on registering a single photograph, see Chapter 900, Section 909. For information concerning the option for registering a group of photos that have been published as contributions to periodicals, see Section 1110. For a general overview of the similarities and differences between the options for registering a group of photographs and a group of contributions to periodicals, see Section 1117.

See generally Group Registration of Photographs, 83 Fed. Reg. 2542 (January 18, 2018); Group Registration of Photographs, 81 Fed. Reg. 86,643 (Dec. 1, 2016); *see also* H.R. REP. NO. 94-1476, at 154 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5770 (citing "a group of photographs by one photographer" as an example of a group of related works that might qualify for group registration).

1114.1 Eligibility Requirements

A group of photographs may be registered with the U.S. Copyright Office, provided that the following conditions have been met:

- All the works in the group must be photographs.
- All of the photographs must be either published or unpublished. An applicant may not submit a group that includes both published and unpublished photographs.
- The group may include no more than 750 photographs, and the application must specify the total number of photographs that are included in the group.
- All the photographs must have been created by the same author.

  NOTE: The photographs may be registered as works made for hire (i) if they were created for the same party, (ii) if that party is named as the author of each photo, and (iii) if all the photos are identified in the application as "works made for hire."

- The copyright claimant for each photograph must be the same person or organization.
- The applicant must provide a title for the group as a whole,

In addition, the applicant must satisfy the following condition when registering a group of published photographs:

- All the photographs must be first published within the same calendar year, and the application must specify the earliest and most recent date that the photographs were first published during that year.

See 37 C.F.R. § 202.4(h)(1)-(4), (h)(6)-(7), (i)(1)-(4), (i)(6)-(7).

Photographs that do not satisfy these requirements cannot be registered using these options.

The group registration options for published and unpublished photographs are mutually exclusive of each other. An applicant may register a group of unpublished photos if all the images are unpublished, and may register a group of published photos if all the images were published in the same calendar year. But an applicant may not combine published and unpublished photos in the same submission, or combine photos that were published in different years.

The person or entity who owns the copyright in a photograph determines whether that work should be published. If the author or copyright owner decides to publish a particular photograph, that party decides when, where, and how that work should be published. For purposes of registration, a photograph is published on the specific month, day, and year that a copy or multiple copies of that work are distributed to the public for the first time.

For example, a photograph may be published when a photographer sends one or more copies of that work to a client. By contrast, the mere public display of a photograph – either by the author, copyright owner, or a third party – does not constitute publication in and of itself.

Example: Photos Published through the Authorized Distribution of One or More Copies of the Work

- On May 1st Parker Peters took 600 photos of the President. Later that day he transmitted one copy of each photo to the publisher of the *Daily Trumpet*, along with a license to distribute or display each image.

  On May 2nd the publisher posted one photo on its website. On May 3rd the publisher used a second photo in its social media feed. On November 4th the publisher printed a third photo on the front page of its newspaper. (The publisher saved the rest of the photos for possible use on a future date.)

  All 600 photos were published on May 1st when Parker sent copies of these images to the publisher. The fact that the publisher distributed or displayed three photos on May 2nd, May 3rd, and November 4th (and saved the rest) is irrelevant to the publication status of the works.

A photograph is also published when one or more copies of that work are offered to a group of persons for the first time for purposes of further distribution or public display. For instance, a photo may be published when a photographer offers one copy of that work to agencies, wire services, and websites, along with a license to further distribute or publicly display that image. But as mentioned above, the mere public display of a photograph, in and of itself, does not constitute publication.

- Example: Photos Published by Offering One or More Copies of the Work to a Group of Persons for the Purpose of Further Distribution or Public DisplayOn January 20th Adam Ansel took 500 photos at the Inauguration. Later that day he offered these photos to the Associated Press (AP) and United Press International (UPI), along with a license to further distribute or publicly display each image.

> Pursuant to this license, AP and UPI offered all of the images to their clients, but no one expressed interest in using them.
>
> All 500 photos were published on January 20th when Adam offered them to a group of persons (namely, the wire services) for purposes of further distribution or public display. The fact that the photos were never publicly displayed or distributed to members of the public is irrelevant to the publication status of the works.

As discussed above, GRUPH and GRPPH may be used to register photographs, but they cannot be used to register any other type of work. For example, the Office will not accept an application that combines photographs with text, illustrations, or other types of artwork.

Another key requirement is that the group must contain no more than 750 photographs. If an applicant exceeds this limit, the registration specialist may register the first 750 photos identified in the title list and remove the rest of the photos from the record, or alternatively, he or she may simply refuse registration.

1114.2 Application Requirements

To register a group of unpublished photographs, the applicant must complete and submit the online application designated for "unpublished photographs." To register a group of published photographs, the applicant must complete and submit the online application designated for "published photographs." The U.S. Copyright Office will not accept these types of claims if they are submitted with the Standard Application or a paper form. 37 C.F.R. § 202.4(h)(8), (i)(8).

For guidance on completing the online applications, see Section 1114.6.

1114.3 Filing Fee Requirements

The applicant must submit the correct filing fee for these group registration options. *See* 37 C.F.R. § 202.4(h), (i).

The current fee for registering a group of photographs is set forth in the U.S. Copyright Office's fee schedule under the headings "Registration of a claim in a group of published photographs or a claim in a group of unpublished photographs."

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

1114.4 Deposit Requirements

This Section discusses the deposit requirements for registering a group of photographs.

1114.4(A) Digital Photographs and Mandatory Title List

In all cases, applicants must submit a digital copy of each photograph that is included in the group, and each photo must be submitted in a JPEG, GIF, or TIFF format. The U.S.

Copyright Office will not accept photos submitted in other digital formats, such as PDF, or physical copies, such as prints or contact sheets.

In addition, applicants must submit a sequentially numbered list containing the title and file name for each photo, and in the case of published photographs, the month and year of publication for each photo. The list may be submitted in Excel (.xls, .xlsx), Portable Document Format (PDF), or any other format that has been approved by the Visual Arts Division. The Office has developed a template that may be used to create this list, which is discussed in more detail in Section 1114.6(A).

See 37 C.F.R. § 202.4(h)(9), (i)(9).

1114.4(B) Submitting the Digital Files and Mandatory Title List

The U.S. Copyright Office strongly encourages applicants to combine the digital photos and the title list in a .zip file and upload that file to the electronic registration system. The size of each uploaded file must not exceed 500 megabytes, although the photos may be digitally compressed to comply with this limitation.

Alternatively, applicants may save the digital photos and the title list on a physical storage device, such as a flash drive, CD-R, or DVD-R, and deliver that device to the Office. However, this will significantly delay the examination of the claim.

A physical storage device must be submitted together with an appropriate shipping slip. To create a shipping slip, the applicant should complete the online application and pay the filing fee. Next, the applicant should select the "Create Shipping Slip" button at the bottom of the Case Summary screen, and then open the link and print the shipping slip. For step-by-step instructions on how to create a shipping slip, consult the Office's video tutorials for published and unpublished photographs.

The shipping slip must be included in the package containing the physical storage device. If the applicant fails to include a shipping slip the Office will be unable to connect the deposit with the appropriate application. In such cases, the applicant will be required to pay an additional fee to search for the deposit and connect it with the application. If the deposit cannot be located, the applicant will be required to resubmit the deposit, which will change the effective date of registration for the group registration.

The physical storage device and shipping slip may be delivered to the Office by mail, by commercial carrier (such as Federal Express or United Parcel Service), by courier, or by hand delivery to the Public Information Office. Packages that are delivered to the Office by mail, commercial carrier, or courier will be irradiated to destroy possible contaminants, such as anthrax. This process may damage files stored on electronic media. To avoid this result, applicants are strongly encouraged to send physical storage devices in boxes rather than envelopes. For additional guidance on these delivery options, see Chapter 1500, Section 1508.2.

1114.4(C) Special Relief from the Deposit Requirements

The U.S. Copyright Office recognizes that there may be cases where a photographer may not have a digital copy of his or her photos or may find it difficult to create a digital copy for purposes of seeking a group registration. If a photographer is unable to submit his or her photos in a digital format, the applicant may request special relief from the deposit requirements.

A request for special relief must be made in writing, and it should explain why the photographer is unable to submit digital files that satisfy the deposit requirements described in Section 1114.4(A). The Office may grant a request for special relief, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. *See* 37 C.F.R. § 202.20(d)(1)(iii), (iv).

For a general discussion of special relief, see Chapter 1500, Section 1508.8.

1114.5 When May an Application for a Group Registration Be Filed?

The U.S. Copyright Office will register a group of photographs, provided that the applicant complies with the requirements set forth in Sections 1114.1 through 1114.4.

An application for a group registration may be filed at any time, but a photograph must be registered in a timely manner in order to seek statutory damages and attorney's fees in an infringement action. Specifically, a copyright owner may seek these remedies if the photograph was registered (i) before the infringement commenced or (ii) within three months after the first publication of that work. *See* 17 U.S.C. § 412.

In the case of unpublished photographs, the Office strongly encourages applicants to register their photos before sharing them with any other party. By doing so, applicants will preserve the copyright owner's ability to seek statutory damages and attorney's fees in subsequent infringement disputes involving those works.

In the case of published photographs, the Office strongly encourages applicants to submit their claims every three months (instead of filing on an annual or semi-annual basis), and in each case, to file the claim within three months after the earliest publication date specified in the application. *See* Registration of Claims to Copyright, Group Registration of Photographs, 65 Fed. Reg. 26,162, 26,164 (May 5, 2000).

Example: Photos Published through the Authorized Distribution of One or More Copies of the Work

- John Olsen is a wedding photographer. On April 1st John posted 100 photos from a bridal shower in a password-protected folder on his website. On May 1st he posted 50 photos from the bachelor party. On June 1st he posted 600 photos from the wedding day. In each case, John sent the bride and groom a link and a temporary

password for this folder, and gave them a license to download and retain a copy of each image.

On July 1st the couple downloaded 10 photos from the bridal shower, on July 15th they downloaded 5 photos from the bachelor party, and on July 31st they downloaded all but one of the photos from the wedding day. The couple never shared the photos with anyone else.

All of the photos were published when John made them available for distribution to the couple in the password-protected folder:

- The 100 photos from the bridal shower were published when they were made available for distribution on April 1st.
- The 50 photos from the bachelor party were published when they were made available for distribution on May 1st.
- The 600 photos from the wedding day were published when they were made available for distribution on June 1st.

The fact that the couple actually downloaded 10 photos on July 1st, 5 photos on July 15th, and 599 photos on July 31st (and ignored the rest) is irrelevant to the publication status of these works. The fact that the couple never shared the photos with anyone else is also irrelevant.

On August 1st, John submitted an application to register these 750 photographs (together with the correct filing fee and the proper deposit copies) and stated that 100 images were published on April 1st, 50 were published on May 1st, and 600 were published on June 1st. The Office issued a group registration with an effective date of registration of August 1st.

If a third party infringed all of these photographs on July 1st, John should be able to claim statutory damages and attorney's fees for the photos from the bachelor party and the wedding day, because those images were published on May 1st or June 1st, and they were registered less than three months later on August 1st. However, John would not be able to claim these remedies for the photos from the bridal shower, because those images were published on April 1st and registered more than three months later on August 1st.

1114.6 Completing the Application: Group Registration of Photographs

This Section provides guidance for completing the online application for a group of unpublished photographs and the online application for a group of published photographs. It also provides guidance for preparing the list of titles that must be included with the submission.

The application and title list may be submitted by the author, the copyright claimant, the owner of any of the exclusive rights in the photographs, or a duly authorized agent of one of these parties. *See* 37 C.F.R. § 202.4(h)(8), (i)(8).

As discussed in Section 1114.2, applicants must use the online application as a condition for seeking a group registration. If an applicant attempts to use the Standard Application or a paper application, the U.S. Copyright Office will refuse registration and instruct the applicant to resubmit the claim using the appropriate form. This will require a new filing fee and deposit and will result in a later effective date of registration.

NOTE: In exceptional cases, the Office may waive the online filing requirement, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. 37 C.F.R. § 202.4(h)(11), (i)(11). A request to waive this requirement must be made in writing. It should explain why the applicant is unable to use the online application, and it should be sent to the following address:

Associate Register of Copyrights and
Director of Registration Policy & Practice
Registration Program
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559

1114.6(A) Preparing the Title List

As discussed in Section 1114.4(A), the applicant must prepare and submit a sequentially numbered list specifying the title and file name for each photograph in the group. In the case of published photographs, the list also must specify the month and year of publication for each photo.

The title may consist solely of numbers and letters that were automatically assigned by the camera or a unique identifier that has been assigned to the image by a third party, such as the PLUS Registry. The U.S. Copyright Office strongly discourages applicants from stating "untitled," "no title," or the like, because interested parties typically search for works by title and it may be impossible to locate a particular photo unless a meaningful title has been provided.

The Office will use the list to examine and document the claim, particularly in cases where the applicant does not provide title or publication information in the application itself. For example, the Office may use the list to count the number of photos that are included in the deposit to confirm that it matches the number of photos claimed in the application. In the case of published photographs, the list may be used to identify the month and year of publication for each photo in the group. In addition, the Office may use the list to locate and retrieve the deposit in the event it is needed for litigation or other legitimate purposes.

The title and file name for a particular photograph may be exactly the same or entirely different. But the file name provided on the list must correspond to the file name for the

actual photograph that is included in the deposit. If they do not match each other, the registration specialist may ask the applicant to exclude that photo from the claim, or he or she may simply refuse registration.

Applicants are strongly encouraged to use the Office's template to create this list. Applicants are also encouraged to prepare this list before they complete the online application. Doing so will make it easier to complete the "title" section of the application, which is discussed in Section 1114.6(D) below.

Guidance for completing the template is provided in the help text and video tutorials that accompany each application. Applicants may access these resources using the following links:

- Template / help text / video tutorial for unpublished photographs
- Template / help text / video tutorial for published photographs

As discussed in Section 1114.4(A), the list may be submitted in Excel (.xls, .xlsx), Portable Document Format (PDF), or any other format that has been approved by the Visual Arts Division. The file name for the list should include the case number that has been assigned to the application, and the title that has been assigned to the group of photographs. For example, if the title of the group is "Baxter Wedding Photos," if the case number is 1-6283927239, and if the list will be submitted in Excel format, then the file should be named using the following convention:

- Baxter wedding photos case number 1-6283927239.xls

For guidance in locating the case number, consult the help text that accompanies each application. For guidance in selecting a title for the group of photographs, see Section 1114.6(C).

1114.6(B) Type of Group

To access the online application, applicants should select the phrase "Register a Group of Photographs," which appears on the home page of the electronic registration system.

If the photographs are unpublished, the applicant should select the option for "Unpublished Photographs" from the drop down menu on the Type of Group screen. If the photographs have been published, the applicant should select the option for "Published Photographs."

Once a selection has been made, the system will generate a brief statement that describes the eligibility requirements for each option. If these requirements have been met, the applicant should check the box that appears next to the following statement: "I agree that I have read, understood, and meet all eligibility requirements described above for filing the selected Group Registration."

1114.6(C) Title of the Group

To register a group of photographs, the applicant must provide a title for the group as a whole. This information should be provided on the Title screen in the space marked "Title of Group." As discussed in Sections 1114.4(A) and 1114.6(O), this title should also be included in the file name for the title list and in the field marked "File Name for Required Numbered List of Photographs" on the Certification screen.

Applicants may provide any title that reasonably identifies the group as a whole. For example, the U.S. Copyright Office will accept a title that identifies the photographer and the month/year the photos were taken, such as "Jack Jackson's Photos May through July 2018." The Office will accept a title that identifies the subject matter of the photos, such as "Tropical Images from Hawaii." If the photographer created the photos for a particular client or project, the applicant may include that information in the title of the group, such as "Photos Taken for ABC Advertising Company." If the photographer shot several groups of photos for the same client or project and plans to submit a separate application for each group, the applicant may use the same title in each application followed by the phrase "Group 1 of 2," "Group 2 of 2," etc.

1114.6(D) Title and Publication Information for Each Photograph

As discussed in Section 1114.4(A), applicants must prepare and submit a list containing the title and file name for each photograph in the group. And in the case of published photographs, the list must specify the month and year of publication for each photo.

The U.S. Copyright Office encourages applicants to include the month, day, and year of publication, although the specific day on which a particular photograph was published is not required for purposes of registration. If the applicant does not include this information, the actual publication date may be need to be proven in court in the event that photo is infringed.

Likewise, applicants are encouraged – but not required – to enter this same information in the application itself. For step-by-step instructions on how to copy the information from the title list and paste it into the application, consult the help text and video tutorials that accompany each application.

If the applicant provides title and publication information in the application, that information will appear on the certificate of registration and in the online public record for the claim. This will improve the quality of the record by making this information more accessible to the public. If the registration is issued within five years after the publication of a particular photograph, the certificate will create a legal presumption that the photo was published in the month and year specified in that record. *See* 17 U.S.C. § 410(c).

If the applicant provides titles and publication information in the title list, but does not include that information in the application, that information will not appear on the certificate or the online public record (although the Office will keep a copy of the list in its files). In such cases, the registration specialist will add an annotation to the record, such as: "Regarding title: Deposit contains complete list of titles that correspond to the individual photographs included in this group."

1114.6(E) Number of Photographs in the Group

On the Title screen, the applicant should specify the total number of photographs that will be submitted with the claim. To do so, the applicant should select the appropriate number from the drop down menu marked "Number of Photos in Group." The U.S. Copyright Office will use this information to verify that the number of photos specified in the title list matches the number of files that have been received.

1114.6(F) Year of Completion

The applicant should identify the year that the photographs were created. This information should be provided on the Title screen in the Year of Completion field. If the photos were taken in the same year, the applicant should enter that year in the space provided. If the photos were taken over an extended period of time, the applicant should provide the year of creation for the most recent photo in the group. For example, if the photos were taken in 2016, 2017, and 2018, the applicant should state "2018."

1114.6(G) Earliest / Latest Publication Date

When registering a group of published photographs, the applicant must provide the date of publication for the earliest and most recent photos in the group. This information should be provided on the Title screen in the fields marked "Earliest Publication Date in Group" and "Latest Publication Date in Group."

NOTE: These fields only appear in the application for published photographs. They do not appear in the application for unpublished photographs.

The "earliest publication date" is the earliest date that the photos were published during the year specified in the application. The "latest publication date" is the most recent date that the photos were published during the year specified in the application. For example, if the photos were published in 2018 on March 1st, 2nd, and 3rd, the applicant should enter "03/01/2018" and "03/03/2018" in the spaces provided.

Example: Photos Published through the Authorized Distribution of One or More Copies of the Work

- Lois Lang is a commercial photographer. On February 26, 2018 she took 600 photos for her client's upcoming advertising campaign. On February 27th Lois sent an electronic proof sheet to her client, and stated that the images could not be used without her permission.

  On February 28th the client selected 30 photos for potential use in their advertising campaign. After retouching the images, Lois sent the client 5 digital prints on March 1st, 10 digital prints on March 2nd, and 15 digital prints on March 3rd. In each case, Lois gave her client a license to use these 30 photos for one year.

  On April 1st the client posted one of the photos on its website. On April 2nd the client used another photo in its social media feed. On April 3rd the client

used another photo in a billboard advertisement. (The rest of the photos were never used.)

These 30 photos were published when Lois sent a copy of each work to her client on March 1st, 2nd, and 3rd along with a license to use these images. The fact that the client used three of the photos on April 1st, 2nd, and 3rd (but did not use any of the others) is irrelevant to the publication status of the works.

Lois may register these 30 photos using the group registration option for published photographs. When completing the application, Lois should enter "03/01/2018" in the field marked "earliest publication date" and "03/03/2018" in the field marked "latest publication date."

NOTE: The rest of the photos on the electronic proof sheet have not been published yet. Although Lois sent her client a copy of these works, the client did not have permission to use those images. Thus, if Lois decided to register these photos, she should use the group registration option for unpublished photographs.

In all cases, the publication dates should be provided in "MM/DD/YYYY" format, and as discussed in Section 1114.1, the photos must be published in the same calendar year. If the applicant provides a different year in the "earliest" and "latest" fields, the claim will not be accepted by the electronic registration system.

If the exact date of publication is unknown, the applicant may provide a qualifying statement in the Note to Copyright Office field, such as "approximately," "on or about," "on or before," "not later than," or the like. The registration specialist will add this statement to the registration record with an annotation, such as: "Regarding publication: Application states 'earliest publication on or about April 13, 2017; latest publication not later than June 14, 2017.'"

1114.6(H) Nation of Publication

When registering a group of published photographs, the applicant should identify the country where the photos were published for the first time. The registration specialist may use this information to determine if the photos are eligible for copyright protection in the United States.

To identify the nation of publication, the applicant should select the appropriate country from the drop down menu on the Title screen. If the nation of publication is unknown, the applicant may select "not known." If the photographs were published in different countries, the applicant may provide that information in the application in the Note to Copyright Office field.

NOTE: The "Nation of First Publication" field only appears in the application for published photographs. It does not appear in the application for unpublished photographs.

1114.6(I) Identifying the Author of the Photographs

As discussed in Section 1114.1, all of the photographs must be created by the same author.

When an individual photographer shoots a photo, that person is generally considered the author of that work. However, when a photographer is hired to shoot a photo as a work made for hire, the person or organization that hired the photographer or the party that ordered or commissioned the photo is considered the author of that work.

1114.6(I)(1) Photos Shot by an Individual Photographer

If an individual photographer shot each photo in the group – and if the photographer *did not* shot those photos for another party as works made for hire – then the photographer should be named as the author. Specifically, the applicant should provide the photographer's full name on the Author screen in the fields marked "First Name/Last Name."

If the photographer is deceased, the applicant should provide the year that individual died. Providing the photographer's year of birth is optional, although this information may be useful in identifying the specific person who shot the photos. If the photographer's year of birth is given, it will be included in the online public record for the claim.

If the photographer's real name does not appear on any of the photos, and if the photographer does not want to reveal his or her identity in the registration record, the applicant may check the box marked "Anonymous" and leave the "First Name/Last Name" fields blank.

If the photographer's pseudonym appears on all the photos, and if the photographer does not want to reveal his or her real name in the registration record, the applicant may check the box marked "Pseudonymous" and provide the photographer's pseudonym in the "Pseudonym" field.

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

1114.6(I)(2) Photos Created as Works Made For Hire

As discussed in Section 1114.1, a group of photographs may be registered as works made for hire (i) if all the photos were created for the same party, (ii) if that party is named as the author of each photo, and (iii) if all the photos are identified in the application as "works made for hire."

NOTE: If these requirements have been met, the photos may be registered together even if they were shot by different photographers.

If each photograph in the group is a work made for hire, then the party that hired the photographer or the party that ordered or commissioned the photos should be named

as the author of those works (rather than the photographer who actually shot each image).

For purposes of registration, a photograph is considered a work made for hire if it was shot by an employee acting within the scope of his or her employment. A photograph may also be considered a work made for hire if it was specially ordered or commissioned by a third party, if the photographer and the third party expressly agree in a writing signed by both parties that the photograph shall be considered a work made for hire, and if the photograph was specially ordered or commissioned for use as:

- A contribution to a collective work
- A part of a motion picture or other audiovisual work.
- Answer material for a test.
- Instructional text, which is defined as a photograph prepared for publication and with the purpose of use in systemic instructional activities.
- A supplementary work, which is defined as a photograph prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as pictorial illustrations or answer material for tests.

17 U.S.C. § 101 (definition of "work made for hire").

If the employer or commissioning party is an organization, the applicant should provide that entity's name on the Author screen in the field marked "Organization." If the employer or commissioning party is an individual, the applicant should provide that individual's name in the field marked "Individual." In both cases, the applicant should answer "yes" to the question "Is this author's contribution a work made for hire?"

NOTE: When registering a group of photos as works made for hire, there is no need to identify the individual photographer(s) who actually shot each image.

As discussed in Section 1114.6(K), an applicant may register a group of photographs if the claimant obtained all of the exclusive rights in those works through a transfer of ownership. But an applicant may not combine photos created as works made for hire with photos obtained through a transfer of ownership. For example, if an advertising agency hired a photographer to create a group of photos, and if the agency acquired another group of photos taken by the same photographer through an assignment of copyright, the agency would have to separate those photos into two groups and submit a separate application for each group: One application naming the advertising agency as the author with the work made for hire question answered "yes," and the other with the photographer named as the author, an appropriate transfer statement, and the work made for hire question answered "no."

1114.6(I)(3) The Author's Country of Citizenship or Domicile

In all cases, the applicant should identify the author's country of citizenship and/or domicile. The registration specialist may use this information to determine if the photos are eligible for copyright protection in the United States.

To do so, the applicant should select the name of the relevant country from the drop down menus on the Author screen. If the author's nationality or domicile are unknown, the applicant may select "not known."

For a definition and discussion of nationality and domicile, see Chapter 600, Section 617.

1114.6(J) Identifying the Copyrightable Material that the Author Created

In all cases, the claim will be limited to "photographs" and that term will be added automatically to the application by the electronic registration system. The system will not accept claims in "digital editing," "compilation," or any other form of authorship other than "photographs." Likewise, applicants will not be allowed to add other forms of authorship to the claim during the examination process or with a supplementary registration.

NOTE: To assert a claim in "digital editing" applicants may submit a separate application and a separate filing fee for each photograph (rather than submitting a group of photographs under GRUPH or GRPPH). In appropriate cases, applicants may assert a claim in a "compilation" of photographs by registering them as part of a collective work, such as a book of photographs, an exhibition catalog, a calendar, or the like.

1114.6(K) Identifying the Copyright Claimant

To register a group of photographs, the applicant should provide the name and address of the copyright claimant. *See* 17 U.S.C. § 409(1). As discussed in Section 1114.1, the claimant for all the photos must be the same person or organization.

For purposes of copyright registration, the claimant must be (i) the author of the photos, or (ii) the person or organization that owns all of the rights under copyright that initially belonged to the author. *See* 37 C.F.R. § 202.3(a)(3).

When naming the author as the copyright claimant, the applicant should provide the author's name and address on the Claimants screen. This information should be provided in the field marked "Individual Claimant" if the author is an individual photographer, or if the photos were created for an individual as a work made for hire. If the photos were created for a legal entity, this information should be provided in the field marked "Organization."

Alternatively, the applicant may provide the name and address of the person or organization that owns the copyright in all of the photos.

If the author and the claimant are not the same person or entity, the applicant should provide a brief statement that explains how the claimant obtained ownership of the copyright. To do so, the applicant should select one of the statements listed in the drop

down menu marked Transfer Statement. If these statements do not fully describe the transfer, the applicant may provide a more specific statement in the field marked Transfer Statement Other. The total amount of text that may be provided in this field is limited to 100 characters.

For additional guidance on completing the claimant fields, see Chapter 600, Section 619.12. For guidance on completing the transfer fields, see Chapter 600, Section 620.9.

1114.6(L) Rights and Permissions Information

The applicant may provide the name, address, and other contact information for the person and/or organization who should be contacted for permission to use the photographs. Providing this information is optional, and an application will be accepted even if the Rights & Permissions Information screen is left blank.

For guidance in completing this portion of the application, see Chapter 600, Section 622.1.

1114.6(M) Correspondent / Mailing Address for the Certificate of Registration

The applicant should provide the name, email address, telephone number, fax number (if any), and mailing address for the person or persons who should be contacted if the U.S. Copyright Office has questions or concerns regarding the application. This information should be provided on the Correspondent screen.

In addition, the applicant should provide the name and address where the certificate of registration should be sent. This information should be provided on the Mail Address screen.

For guidance in completing this portion of the application, see Chapter 600, Sections 622.2 and 622.4.

1114.6(N) Special Handling

Special handling is a procedure for expediting the examination of an application. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate of registration. The Office charges an additional fee for this service.

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

1114.6(O) Certification

The application must be certified by the author, the copyright claimant, an owner of one or more of the exclusive rights in the photographs, or a duly authorized agent of the author, claimant, or owner of one or more of the exclusive rights in the photos.

The person who certifies the application certifies that the information provided in the application is correct to the best of his or her knowledge. Knowingly making a false

representation of a material fact in an application, or in any written statement filed in connection with the application, is a crime that is punishable under 17 U.S.C. § 506(e).

When completing the Certification screen, the applicant should provide the first and last name of the individual who certified the application in the space marked Name of Certifying Individual. In addition, the applicant should check the box that reads, "I certify that I am the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights of this work and that the information given in this application is correct to the best of my knowledge." There is no need to date the certification; the date will be added automatically when the application is received. 37 C.F.R. § 202.3(c)(3)(iv).

As discussed in Section 1114.6(A), the applicant must prepare and submit a list containing the title and file name for each photograph in the group. The file name for this list should be entered in the space provided on the Certification screen. The U.S. Copyright Office will use this information to connect the list with the relevant application and to distinguish it from the digital copies of the individual photos.

1114.7 Photographs That Do Not Satisfy the Group Registration Requirements for GRUPH or GRPPH

If the applicant is unable to use these group registration options, it may be possible to register the photographs using the group registration options for unpublished works or contributions to periodicals. *See* Sections 1106 and 1110.

Alternatively, the applicant may register a particular photograph on an individual basis. Specifically, the applicant may prepare a separate application, filing fee, and deposit for each photograph and may submit these items through the electronic registration system or with a paper application. For guidance on registering an individual photograph, see Chapter 900, Section 909.

1115 [Reserved]

1116 Serials, Newspapers, and Newsletters at a Glance

This Section provides an overview of the similarities and differences between the group registration options for serials, newspapers, and newsletters.

For information concerning the specific requirements for these group registration options, see Sections 1107 (serials), 1108 (newspapers), and 1109 (newsletters).

Group Registration Requirements	Serials	Newspapers	Newsletters
Type of work	Each issue must be a serial, as defined in Section 1107.1	Each issue must be a newspaper, as defined in Section 1108.1	Each issue must be a newsletter, as defined in Section 1109.1

Group Registration Requirements	Serials	Newspapers	Newsletters
Collective work	Each issue must be a collective work	Each issue must be a collective work	Each issue may be a collective work or a serial that does not qualify as a collective work
Are the issues new?	Each issue must be an all-new collective work	Each issue must be an all-new collective work	Each issue must be all-new collective work or an all new issue that has not been published before
Publication	Each issue must be published	Each issue must be published	Each issue must be published
Frequency of publication	The serial generally must be published at intervals of a week or longer	n/a	n/a
Number of issues in the group	The group must include at least two issues	The group must include all the issues published within the calendar month specified in the application	The group must include at least two issues published during the calendar month specified in the application
Number of months covered by the group	The group may include up to three months of issues	All the issues must be published within the same calendar month	All the issues must be published within the same calendar month
Publication within the same calendar year	All the issues must be published within the same calendar year	All the issues must be published within the same calendar year	All the issues must be published within the same calendar year
Title	All the issues must be published under the same title	All the issues must be published under the same title	All the issues must be published under the same title

Group Registration Requirements	Serials	Newspapers	Newsletters
Author	The author for all the issues must be the same person or organization	The author for all the issues must be the same person or organization	The author for all the issues must be the same person or organization
Claimant	The claimant for all the issues must be the same person or organization	The claimant for all the issues must be the same person or organization	The claimant for all the issues must be the same person or organization
Work made for hire	Each issue must be a work made for hire	Each issue must be a work made for hire	Each issue may be created by an individual author or they may be created as a work made for hire
Claim to copyright	The claim to copyright must be limited to the collective work	The claim in each issue must be limited to the collective work	The claim to copyright may include the authorship involved in creating the newsletter as a whole and the authorship involved in creating the contributions to the newsletter
Application requirements	The applicant must use the online application designated for a group of serial issues.	The applicant must use the online application designated for a group of newspaper issues	The applicant must use the online application designated for a group of newsletter issues
Deposit copies	The applicant must submit one complete copy of each issue. Each issue must be uploaded in a digital format, and each file must be uploaded to the electronic registration system	The applicant must submit one complete copy of each issue, each issue must be submitted in a digital format, and each file must be uploaded to the electronic registration system	The applicant must submit one complete copy of each issue, each issue must be submitted in a digital format, and each file must be uploaded to the electronic registration system

1117 Photographs at a Glance

The following chart provides an overview of the similarities and differences between the group registration options for unpublished photographs, published photographs, contributions to periodicals, photographic databases, and unpublished works. For an in-depth discussion of these issues, see Group Registration of Photographs, 81 Fed. Reg. 86,643, 86,653-54 (Dec. 1, 2016).

For information concerning the specific requirements for these group registration options, see Sections 1106, 1110, 1112, and 1114.

Registration Requirements	Group Registration of Unpublished Photographs	Group Registration of Published Photographs	Group Registration of Contributions to Periodicals	Group Registration of Photographic Databases	Group Registration of Unpublished Works
Type of work	Each work must be a photograph	Each work must be a photograph	The claim may include literary works or visual art works, such as photographs	The database may include photographs and other types of content	The claim may include any type of work, but they must be the same type of work (*e.g.*, six short stories, not two short stories, two poems, and two songs)
Application requirements	The applicant must use the online application designated for group registration of unpublished photographs	The applicant must use the online application designated for group registration of published photographs	The applicant must submit the online application designated for group registration of contributions to periodicals	The applicant may use a paper application, or may use the online application with prior authorization from the Visual Arts Division	The applicant must use the online application designated for group registration of unpublished works
Number of photographs in the application	The applicant may include up to 750 photographs in the group.	The applicant may include up to 750 photographs in the group.	No limit on the number of works that may be included in the group	No limit on the number of photographs that may be included in the group	The applicant may include up to ten works in the group

Registration Requirements	Group Registration of Unpublished Photographs	Group Registration of Published Photographs	Group Registration of Contributions to Periodicals	Group Registration of Photographic Databases	Group Registration of Unpublished Works
Author	All the photographs must be created by the same author	All the photographs must be created by the same author	All the works must be created by the same individual author	The photographs do not have to be created by the same author	All the works must be created by the same author or the same co-authors
Claimant	The claimant for all the photographs must be the same person or organization	The claimant for all the photographs must be the same person or organization	The claimant for all the works must be the same person or organization	The claimant for all the photographs must be the same person or organization	The claimant for all the works must be the same person or organization
Work made for hire	The photographs may be created as a work made for hire	The photographs may be created as a work made for hire	The works cannot be created as a work made for hire	The photographs may be created as a work made for hire	The works may be created as a work made for hire
Publication	All the photographs in the group must be unpublished	All the photographs in the group must be published	All the works must be published	All the photographs must either be published or unpublished	All the works must be unpublished

Registration Requirements	Group Registration of Unpublished Photographs	Group Registration of Published Photographs	Group Registration of Contributions to Periodicals	Group Registration of Photographic Databases	Group Registration of Unpublished Works
Publication within a twelve-month period	n/a	All the photographs must be published within the same calendar year (*e.g.,* January through December 2011; February through June 2012; September through October 2013, etc.)	All the works must be published within a twelve-month period (*e.g.*, January 1, 2010 through December 31, 2010; February 1, 2011 through January 31, 2012; September 15, 2013 through September 14, 2014, etc.)	All the photographs must be unpublished, or they must be published within a three-month period within the same calendar year	n/a
Date of publication	n/a	Applicant must provide the month, day, and year of publication for the earliest and most recently published photos in the group, and the month/year of publication for the rest of the photos	Applicant must provide the month, day, and year of publication for each work	*See* Section 1112.8(D)	n/a
Medium of publication	n/a	The photographs may be first published in any medium	All the works must be first published as a contribution to a periodical	The photographs must be fixed or published solely in the form of machine-readable copies	n/a

Registration Requirements	Group Registration of Unpublished Photographs	Group Registration of Published Photographs	Group Registration of Contributions to Periodicals	Group Registration of Photographic Databases	Group Registration of Unpublished Works
Deposit requirements	One digital copy of each photograph	One digital copy of each photograph	One digital copy of (i) the specific page(s) from the periodical where the contribution was first published, or (ii) the entire section of the newspaper where the contribution was first published, or (iii) one digital copy of the entire periodical where the contribution was first published	*See* Section 1112.7(B)	One digital copy of each work
Deposit submission	Copies may be uploaded to the electronic registration system or submitted on a physical storage device	Copies may be uploaded to the electronic registration system or submitted on a physical storage device	Copies must be uploaded to the electronic registration system	Copies may be uploaded to the electronic registration system or submitted on a physical storage device	Copies must be uploaded to the electronic registration system

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Mask Works

1201 What This Chapter Covers

This Chapter covers issues related to the examination and registration of mask works fixed in semiconductor chip products (referred to as "mask works"). Mask works are protected pursuant to the Semiconductor Chip Protection Act ("SCPA") of 1984, 17 U.S.C. §§ 901-914, as implemented in Chapter 9 of the Copyright Act.

1202 What Is a Mask Work?

A "'mask work' is "a series of related images, however fixed or encoded — (A) having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and (B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product." 17 U.S.C. § 901(a)(2).

1203 Mask Work Protection Distinguished from Copyright Protection

Mask works are not protected by copyright law. Instead, Congress enacted the SCPA to provide *sui generis* protection for mask works. The legal requirements for mask work protection differ from those for copyright protection in terms of eligibility, ownership rights, registration procedures, term, and remedies for rights violations.

1204 Protectable Mask Works

A mask work is protectable under Chapter 9 of the Copyright Act if it (i) is fixed in a semiconductor chip product, (ii) contains protectable expression, (iii) is original, (iv) meets the required criteria for eligibility, and (v) is registered. 17 U.S.C. § 902.

1204.1 Fixation in a Semiconductor Chip Product

One required element for protection of a mask work is that the mask work must be fixed in a semiconductor chip product. A mask work is "fixed" in a semiconductor chip product "when its embodiment in the product is sufficiently permanent or stable to permit the mask work to be perceived or reproduced from the product for a period of more than transitory duration." 17 U.S.C. § 901(a)(3).

A "semiconductor chip product" is defined as "the final or intermediate form of any product — (A) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and (B) intended to perform electronic circuitry functions." 17 U.S.C. § 901(a)(1).

1204.2 Originality

A mask work must be original to be protectable. The House Report on the Semiconductor Chip Protection Act of 1984 provides that a mask work is "original" if it is the independent creation of an author and was not copied from another source. H.R. REP. NO. 98-781, at 17 (1984). The mask work cannot consist solely of "designs that are staple, commonplace, or familiar in the semiconductor industry, or variations of such designs, combined in a way that, considered as a whole, is not original." 17 U.S.C. § 902(b)(2).

1204.3 Protectable Expression

A mask work must contain protectable expression. Protectable expression in a mask work extends to the three-dimensional images or patterns formed on or in the layers of metallic, insulating, or semiconductor material and fixed in a semiconductor chip product, *i.e.*, the "topography" of the "chip."

Although these images or patterns are purely functional features, they are nevertheless protected, provided that a mask work is neither dictated by a particular electronic function nor results from one of only a few available design choices that will accomplish that function.

Protection for mask works does not "extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery" associated with a mask work, "regardless of the form in which it is described, explained, illustrated, or embodied in such work." 17 U.S.C. § 902(c).

1204.4 Eligibility Based on Nationality of Owner or Nation of First Commercial Exploitation

Any original mask work fixed in a semiconductor chip product by or under the authority of the mask work owner is eligible for protection if it meets one of the following criteria:

1. On the date the mask work is registered with the U.S. Copyright Office or the date the mask work is first commercially exploited anywhere in the world, whichever occurs first, the owner of the mask work is:

    - A national or domiciliary of the United States; or
    - A national, domiciliary, or sovereign authority of a foreign nation that is a party with the United States to a treaty affording protection to mask works; or
    - A stateless person;

2. The mask work is first commercially exploited in the United States; or

3. The mask work comes within the scope of a Presidential proclamation extending protection to mask works of nationals and domiciliaries of a foreign country and to works first commercially exploited in that country, on the basis of a finding that mask works protected under Chapter 9 of the U.S. Copyright Act are also protected

in the particular foreign country, either under the principle of reciprocity or under the principle of national treatment.

17 U.S.C. § 902(a).

To "commercially exploit" a mask work means "to distribute to the public for commercial purposes a semiconductor chip product embodying the mask work; except that the term includes an offer to sell or transfer a semiconductor chip product only when the offer is in writing and occurs after the mask work is fixed in the semiconductor chip product." 17 U.S.C. § 901(a)(5).

NOTE: All countries that are members of the World Trade Organization ("WTO") became eligible for mask work protection on June 1, 1996, under Presidential Proclamation 6780, which was issued on March 23, 1995. Additionally, that proclamation extended mask work protection to Australia, Canada, Japan, Switzerland, and the member states of the European Community as of July 1, 1995. *See* Proclamation No. 6780, 60 Fed. Reg. 15,844 (Mar. 27, 1995). A complete and current list of WTO members is maintained on the WTO's website.

1204.5 Registration

Applicants must register a claim in a mask work to secure the protections discussed below in Section 1207. For detailed information on how to register a claim in a mask work see Sections 1210 through 1214 below.

1204.5(A) Registration Required Within Two Years of First Commercial Exploitation

To secure protection of a mask work for the entire ten-year term, owners must register their works with the U.S. Copyright Office within two years of the date on which the mask work is first commercially exploited, otherwise protection will be lost. 17 U.S.C. § 908(a). For example, a claim in a mask work that was first commercially exploited on March 15, 2013 must be received in the U.S. Copyright Office prior to or on March 15, 2015 in order to be protected.

1204.5(B) Effective Date of Registration

The effective date of registration of a claim to protection in a mask work is the date on which an acceptable application, deposit of identifying material, and appropriate filing fee are received in the U.S. Copyright Office. 17 U.S.C. § 908(e).

1204.5(C) Benefits of Registration

In addition to providing the protection discussed below in Section 1207, registration of a claim in a mask work provides the following benefits:

- A certificate of registration for a mask work issued by the U.S. Copyright Office constitutes *prima facie* evidence of the facts stated in the certificate and that the applicant has met the requirements for protection.

- After a certificate of registration has been issued by the Office, the owner of the mask work or the exclusive licensee of all rights in the mask work may institute a civil action for infringement provided the infringement occurred after the commencement of the term of protection.

17 U.S.C. §§ 908(f), 910.

1205 Ineligible Mask Works

1205.1 *De Minimis* Authorship

Sections 902(b)(1) and (2) of the Act state that protection shall not be available to a mask work that is not original or that consists of designs that are staple, commonplace, or familiar in the semiconductor industry, or variations of such designs, combined in a way that, considered as a whole, is not original. The Office may question applications for mask works that appear to be very simple (consisting of only a few electronic components) if the Nature of Contribution statement or the deposit material indicate that the mask work is unoriginal, staple, commonplace, or familiar. The Office will refuse registration if it is clear from the deposit materials or from statements given in space 8 of the application that the mask work is unoriginal, staple, commonplace, or familiar.

1205.2 Claim Received More Than Two Years After the Date of First Commercial Exploitation

As discussed in Section 1204.5(A), protection of a mask work is lost if a claim is not registered within two years of the date of first commercial exploitation of the mask work. Thus, the Office will refuse any claims received more than two years after the date of first exploitation. The Office will deem a claim timely received if the Office receives an acceptable completed application, deposit, and filing fee within the two-year period.

1206 Term of Protection

Protection for a mask work commences on the date the mask work is registered with the U.S. Copyright Office or the date that the mask work is first commercially exploited anywhere in the world, whichever occurs first. Protection lasts for ten years (terminating at the end of the tenth calendar year after it began). 17 U.S.C. § 904.

1207 Exclusive Rights in Mask Works

During the term of protection, the mask work owner has the following exclusive rights:

- To reproduce the mask work by optical, electronic, or any other means;
- To import or distribute a semiconductor chip product in which the mask work is embodied; and
- To induce or knowingly to cause another person to do any of the acts described immediately above.

17 U.S.C. § 905.

1207.1 Limitation on Exclusive Rights: Reverse Engineering

Chapter 9 permits reverse engineering of a mask work "solely for the purposes of teaching, analyzing, or evaluating the concepts or techniques embodied in the mask work or in the circuitry, logic flow, or organization of components used in the mask work." The person who performs legitimate reverse engineering can incorporate the results in an original mask work intended for distribution. 17 U.S.C. § 906(a).

1207.2 Limitation on Exclusive Rights: First Sale

Purchasers of semiconductor chip products have the right to use and redistribute the chip products freely but not to reproduce the mask works embodied in the semiconductor chip product without the permission of the owner of the rights in the mask work. 17 U.S.C. § 906(b).

1208 Ownership in Mask Works

The owner of a mask work is:

- The initial owner of the mask work, or
- The person who has obtained all of the rights in the mask work by transfer.

37 C.F.R. § 211.4(b)(2)(ii).

1208.1 Transfer of Ownership and Licensing of Rights in Mask Works

The owner of the exclusive rights in a mask work may transfer all of the rights or license all or fewer than all of the rights. A transfer or license must be in writing and signed by the owner of the rights or by a duly authorized agent of the owner. The exclusive rights in a mask work also can be transferred by one of the following:

- Operation of law.
- Terms of a will.
- Intestate succession.

17 U.S.C. § 903(b).

1208.2 Recordation of Documents Related to Transfer and Licensing of Rights

Documents related to the transfer of ownership in all of the rights in a mask work, or the licensing of one or more of the rights in a mask work may be recorded with the U.S. Copyright Office. For information on the recordation of documents related to ownership in a mask work, see Chapter 2300, Section 2309.

1208.3 Ownership by the U.S. Government and Its Employees

Federal protection does not extend to any mask work created by U.S. government employees as part of their official duties. The U.S. government, however, is not precluded from receiving and holding rights in a mask work. 17 U.S.C. § 903(d).

1209 Notice

The owner of a protectable mask work may affix a notice of ownership to mask works in a manner and location that gives reasonable notice of the claim to protection. 17 U.S.C. § 909.

Notice is not a condition for protection of a mask work, but when properly affixed to a work, will provide *prima facie* evidence of notice of protection. 17 U.S.C. § 909(a).

1209.1 Content of Notice

To serve as *prima facie* evidence of notice of protection, the form of the notice shall consist of:

- The words "mask work," the symbol *M*, or Ⓜ (the letter M in a circle); and
- The name of the owner(s) of the rights in the mask work or an abbreviation by which the name is recognized or generally known.

17 U.S.C. § 909(b).

1209.2 Location of Notice

The following specific methods of affixation and positions of the notice are acceptable:

- A gummed or other label securely affixed or imprinted upon the package or other container used as a permanent receptacle for the semiconductor chip product; or
- A notice imprinted or otherwise affixed in or on the top or other visible layer of the product.

37 C.F.R. § 211.6.

1210 Registration Procedures

Generally, only one registration of a claim is permitted for the same version of a mask work fixed in either (i) an intermediate form of any semiconductor chip product, or (ii) a final form of any semiconductor chip product. 37 C.F.R. § 211.4(c)(1). Notwithstanding that general rule, owners of mask works that are created by adding metal-connection layers to unpersonalized gate arrays may separately register the entire unpersonalized gate array as well as any custom metallization layers. 37 C.F.R. § 211.4(c)(2).

1210.1 Registration in Most Complete Form Required

Owners seeking registration of a mask work must submit the entire original mask work in its most complete form as fixed in a semiconductor chip product, with the exception of entire unpersonalized gate arrays and custom metallization layers (which may be registered separately). 37 C.F.R. § 211.4(c)(2). The "most complete form" means the stage of the manufacturing process that is closest to completion. 37 C.F.R. § 211.4(e).

1210.2 What to File: Required Elements for Registration

Applications to register claims in mask works must contain the following three elements to be considered complete:

- A completed paper application using Form MW;
- A nonrefundable filing fee; and
- A deposit that contains identifying material.

37 C.F.R. § 211.4(b).

1210.2(A) Form MW

Applicants must use Form MW to register a claim in a mask work. This form is available on the U.S. Copyright Office's website, and for free upon request to the Public Information Office.

Applicants also may request a hard copy Form MW from the U.S. Copyright Office's Public Information Office by using one of the following forms of contact information:

- *By telephone:* (202) 707-9100.
- *In Person:* James Madison Building, Public Information Office, Room LM-401, Monday through Friday, between the hours of 8:30 a.m. – 5:00 p.m. Eastern Time, except on federal holidays.
- *By U.S. Mail:* Library of Congress, U.S. Copyright Office, 101 Independence Avenue SE, Washington, DC 20559-6000.

All forms submitted to the Office must be clear and legible and suitable for automatic feeding through a photocopier. Forms not meeting this requirement will be returned.

For information on completing Form MW and the Office's practices regarding the examination of the application, see Section 1212 below.

1210.2(B) Filing Fee

The current filing fee is set forth in the Office's fee schedule under the heading "Registration of a claim in a mask work (Form MW)."

For information concerning the methods for paying this filing fee, see Chapter 1400, Sections 1412.4 and 1412.5.

1210.2(C) Deposit of Identifying Material

The required deposit for a mask work consists of identifying material ("ID material"). The Register of Copyrights has broad authority to specify the identifying material to be deposited in connection with the claim for registration. In recognition of the need to preserve trade secrets or avoid public disclosure of sensitive information embodied in various identifying materials, the Office's regulations provide different deposit options, depending upon whether the mask work has been commercially exploited and whether the deposit contains trade secret material. The U.S. Copyright Office encourages the fullest disclosure of the mask work within the deposit options established by the regulation. 37 C.F.R. § 211.5.

For more information on how to prepare the deposit for a mask work, see Section 1213 below.

1211 Who May File Form MW?

An application to register a claim in a mask work may be filed by (i) the owner of the mask work or (ii) her or his authorized agent. 37 C.F.R. § 211.4(b)(2).

1212 Completing the Application

This Section provides tips on how to complete each section of Form MW.

1212.1 Space 1: Title of this Work

The title should clearly identify the mask work being claimed.

1212.1(A) Symbols in the Title

The applicant should provide a title comprised of alphanumeric letters and numbers. Common keyboard symbols may also be accepted, but if the title includes less frequently used symbols, such as Greek letters, the symbols will be identified as "[symbol]" in the record.

1212.1(B) Descriptive Titles

Titles that are merely descriptive are acceptable.

Examples:

- A title that describes the intended uses of the mask work.
- A title that describes the functions that the mask work performs.

1212.1(C) Title for More Than One Mask Work Given

Only one mask work may be registered on a single application form with one set of chips. However, in cases where the mask works are substantially identical (*i.e.,* the differences are *de minimis*), the U.S. Copyright Office will allow applicants to refer to substantially identical mask works in the "Additional Information" space of Form MW/CON (a continuation form for Form MW). For example, the applicant may state "Mask work substantially identical to those contained in [titles of other mask works]."

The deposit, however, must be limited to the single mask work identified in space 1 (*i.e.,* only one set of visual representations, and one set of four chips).

1212.1(D) Variance Between the Title in Space 1 and Titles/Numbers Appearing on the Deposit

As a general rule, the U.S. Copyright Office will not automatically question variances between the title provided on the application and titles/numbers appearing on the deposit, unless other circumstances suggest an error. Ordinarily, the Office will annotate space 1 with an indication of the title/number appearing on the deposit. If the registration specialist communicates with the applicant for other reasons, however, he or she may ask the applicant to confirm that the correct materials have been deposited.

1212.2 Space 2: Nature of Deposit

The applicant should complete this space in all cases by describing what is contained in the deposit material.

Examples:

- Composite plot.
- Four chips and composite plot.
- Four chips and seventeen single layer plots.

1212.2(A) Space 2 Is Blank or Incomplete

Space 2 asks the applicant to describe the nature of the deposit, *i.e.,* a short description of the object deposited as ID material. If space 2 is blank or incomplete, the registration specialist may annotate space 2 without contacting the applicant when the nature of the deposit is clear from reviewing the deposit materials.

Example:

- If only "plots" appears in space 2, and chips have also been deposited, the registration specialist may annotate space 2 with "and four chips" and space 5 with "Added by Copyright Office."

1212.2(B) No Numeric Totals Required

The applicant may identify the number of individual layer plots or semiconductor chip products contained in the ID material (although providing this information is optional). For example, "plots and chips" is an acceptable description.

1212.2(C) Variance in Number of Chips

If the number of chips deposited differs from the number indicated in space 2, the registration specialist will annotate space 2 with the number actually deposited.

1212.2(D) Chips Deposited for Non-Commercially Exploited Mask Work

For mask works that have not been commercially exploited, the applicant may include chips in the ID material (although this is optional). Should the applicant choose to deposit chips without stating so on the application, the registration specialist will add this information to space 2 without communicating with the applicant.

1212.2(E) Variance in Number of Plots

If the deposit contains a different number of plots than is indicated in space 2, the registration specialist will communicate with the applicant.

1212.2(F) Space 2 Refers to a "Composite Plot," but Individual Layer Plots Deposited (or *Vice Versa*)

If the application refers to composite plot(s) and the deposit contains individual layer plot(s) or *vice versa*, and it is clear that the correct plot(s) has been deposited, the registration specialist will annotate space 2 to reflect the correct nature of the deposit.

1212.3 Space 3: Name(s) and Address(es) of Current Owner(s)

The applicant must provide the name(s) and address(es) of the owner(s) of the mask work. As mentioned in Section 1208, the owner of a mask work is either the initial owner or a person who has obtained all of the exclusive rights in the mask work by transfer. A transferee of less than all of the exclusive rights, or the licensee of all or less than all of these rights, is not considered an owner.

1212.3(A) Omission of Name of Owner(s)

If the applicant fails to provide the name of the owner(s) in space 2, the registration specialist will communicate with the applicant to obtain that information, which may delay the examination of the application.

1212.3(B) Omission of Address

If the applicant fails to provide an address in space 2, but provides an address in spaces 9 or 12, and it is reasonable to assume that it is the current owner's address, the registration specialist may accept the application. If there is any doubt that the current owner's address appears elsewhere on the application, the registration specialist will

communicate with the applicant to verify the correct address and may annotate space 3 with the correct information.

1212.3(C) More Than One Current Owner in Space 3

More than one owner may be identified in space 3, but the information must be clear and complete. If the names are not clearly separated or are otherwise incomplete, the registration specialist will communicate with the applicant to ascertain the correct information and, if the information is illegible, will ask the applicant to complete a new Form MW and Form MW/CON.

1212.4 Space 4: Citizenship or Domicile of Current Owner(s)

The nation of citizenship or domicile of the current owner(s) provided in space 4 establishes eligibility only if the mask work has not been commercially exploited. If the applicant states that the mask work has been commercially exploited, space 6 or space 7 will determine whether eligibility has been established. For more information on eligibility, see Section 1204.4 above.

1212.5 Space 5: Derivation of Ownership

Space 5 provides three boxes, "a (____)," and "b (____)," and "c (____)." This space should be completed as follows, depending on the ownership status of the applicant:

- The applicant should check box "a" if the owner is the employer of a person who created the mask work within the scope of his or her employment.
- The applicant should check box "b" if the owner acquired the rights by transfer from the creator, employer or legal representative.
- The applicant should check box "c" if the owner is the legal representative of the deceased or legally incapacitated creator.

1212.5(A) Neither Box "a" Nor "b" Is Checked

It is acceptable to leave space 5 blank only if the current owner is a living individual who created the mask work, *i.e.,* not a legal entity or deceased person. If the owner acquired ownership as the employer of the creator or by transfer from the original owner, the applicant must check box "a" and/or box "b."

1212.5(B) Both Boxes "a" and "b" Are Checked

Both boxes "a" and "b" may be correctly checked if the owner acquired the rights to the mask work by transfer (box "b") and then modified the work (box "a"), or if the owner developed the mask work in association with another entity and the other entity transferred its rights to the owner identified in the application.

1212.5(C) Acquisition of Rights by Transfer (Box "b")

Box "b" should be checked if ownership was obtained by a written transfer. To be effective, a transfer of a mask work must be by a written instrument that has been

signed by the owner or the owner's authorized agent. 17 U.S.C. § 903(b). The U.S. Copyright Office does not require the applicant to deposit the document of transfer, although the applicant may record the document with the Office. For more information on recordation, see Chapter 2300, Section 2309.

1212.6 Space 6: Date and Nation of First Commercial Exploitation

If the mask work has been commercially exploited, then the applicant must provide the complete date of first commercial exploitation in space 6. If the applicant has left space 6 blank, the registration specialist may communicate with the applicant to determine whether the mask work has been commercially exploited and will amend and annotate space 6, as appropriate, which will delay the examination of the application.

As discussed in Section 1205.2, a claim received more than two years from the date of first commercial exploitation is ineligible for registration. If, however, the two-year period ends on a day on which the U.S. Copyright Office does not receive mail (*e.g.,* a Sunday or government holiday), the two-year period is extended to the next business day.

1212.6(A) Incomplete Date of First Commercial Exploitation

Applicants must provide a complete date of first commercial exploitation (month, day, and year). An approximation is acceptable so long as it is complete. To be acceptable, a complete approximate date should be prefaced by one of the following statements:

- On or about
- Approximately
- No later than
- No earlier than

1212.6(B) Date but No Nation Provided

If the first commercial exploitation of the mask work has occurred, the applicant must provide the nation of first commercial exploitation to establish eligibility.

1212.6(C) Nation but No Date Provided

If the applicant provides a nation of first commercial exploitation without providing a date of first commercial exploitation, the U.S. Copyright Office will communicate with the applicant to determine whether first commercial exploitation has occurred.

1212.6(D) Future Date of First Commercial Exploitation

If the applicant provides a date of commercial exploitation that is later than the date on which the claim was received by the U.S. Copyright Office, the registration specialist will communicate with the applicant to clarify the facts of exploitation. If the date has passed and is confirmed to be correct, the specialist will annotate the application to state that

the date has been confirmed. If first commercial exploitation has occurred, but on a different date, the specialist will correct the date and annotate the application accordingly. If the mask work has not yet been commercially exploited, the specialist will delete the date and nation of first commercial exploitation and annotate the application accordingly.

1212.6(E) Applicant Left Space 6 Blank, but Completed Space 7

If space 6 is incomplete or blank but space 7 is complete, the registration specialist will communicate with the applicant to determine whether the mask work has been commercially exploited. The specialist will amend and annotate space 6 or 7 to reflect, as appropriate, the accurate information.

1212.7 Space 7: Citizenship or Domicile of Owner at the Time of First Commercial Exploitation

An applicant should complete this space only if eligibility has not been, or cannot be, established in Space 4 (Citizenship or Domicile of Current Owner), or Space 6 (Nation of First Commercial Exploitation). For more information on eligibility see Section 1204.4 above.

1212.8 Space 8: Nature of Contribution

Applicants must complete this space. The applicant should describe the new, original contribution to the mask work made by the claimed owner. In addition, the applicant should identify any preexisting mask work(s) that the mask work being claimed is based on or incorporates. For purposes of registration, a preexisting mask work is a previously commercially exploited or previously registered mask work.

Examples:

- Entirely new mask work.
- Revised version of previous registered mask work entitled XYZ500.
- Improved layout of previously exploited Maxi Chip.

1212.8(A) Description Indicates That the Mask Work Is “Original” or “Entirely New”

If the mask work is not based on a preexisting mask work, the applicant may state “original” or “entirely new” or the like. The registration specialist will not question such a statement unless information elsewhere in the registration materials suggests otherwise.

1212.8(B) Mask Work Is Based on or Incorporates a Preexisting Mask Work

If the mask work for which protection is sought is based on or incorporates a preexisting mask work, the applicant may make note of that in space 8, in addition to stating the new, original contribution that forms the basis of the claim. In such cases, the preexisting mask work may be described simply by the title or previous registration number.

Examples:

- Modification of mask work contained in MW 12,348.
- Modification of XJ254.

1212.8(C) Description Limits the Claim with No Indication of Preexisting Material

The U.S. Copyright Office's regulations require applicants to register a single claim in the most complete form of the mask work in existence at the time of registration, so long as the elements claimed are original and have not previously been commercially exploited or previously been registered. Applicants may not divide a single mask work into multiple registrations unless different portions of the mask work were first commercially exploited on different dates. *See* 37 C.F.R. § 211.4(d). There is one exception: a 1991 amendment to the regulations permits separate registrations of an unpersonalized gate array and the custom metallization layer(s) despite the existence of a completed final form that combines the two. 37 C.F.R. § 211.4(c)(2).

1212.8(D) Description Clearly Presents a Claim in the Functions or Uses of the Semiconductor Chip Product Embodying the Mask Work

A description of the mask work that clearly presents a claim in the functions or uses of the semiconductor chip product embodying the mask work goes beyond the scope of protection. *See* 17 U.S.C. § 902(c). In such cases, the registration specialist will communicate with the applicant to amend space 8 so that it clearly limits the claim to the mask work contained within the chip.

1212.8(E) Description Contains Technical Terminology

An applicant can include technical terminology that includes descriptions of functionality in the contribution of authorship statement if it is clear that the applicant is not claiming protection for authorship beyond the scope of mask work protection. *See* 17 U.S.C. § 902(c).

1212.9 Space 9: Contact Person for Correspondence about the Claim

In space 9, the applicant should provide the name and address of the person the Office should contact if the registration specialist has questions or concerns regarding the claim. If space 9 is blank or incomplete, the specialist will register the claim if it is otherwise acceptable and there is no need to correspond with the applicant, and if an address is provided in space 12. If no address is provided the registration specialist will communicate with the applicant to obtain the address, which may delay the examination of the application.

1212.10 Space 11: Certification

The application must contain a handwritten, typed, or printed signature certifying that the applicant is authorized to submit the application and that the statements made are correct to the best of that person's knowledge. If the signature is handwritten it must be accompanied by the typed or printed name of that person.

A signature anywhere within the boundaries of space 11 is acceptable; signatures outside space 11 are unacceptable.

The applicant may be either the owner of the mask work or the duly authorized agent of the owner. 37 C.F.R. § 211.4(b)(2).

A certification date is not required. However, if the application provides a certification date later than the receipt date or precedes the date of first commercial exploitation, the registration specialist will communicate with the applicant to confirm the facts stated on the application.

1212.11 Space 12: Mail Certification To

Applicants must complete this space to ensure prompt delivery of the certificate of registration. If it is left blank and the U.S. Copyright Office received other claims from the same applicant with space 12 is completed, the registration specialist may add the same address with an annotation and may register the claim without communicating with the applicant. If the address can be determined with certainty from space 4, space 6, or from a cover letter, the specialist may add that address to space 12 with an annotation without communicating with the applicant. Otherwise, the registration specialist will communicate with the applicant to obtain the correct address, provided a telephone number, mailing address, or email address has been given in space 9 of the application.

1213 Preparing the Deposit Material

The required deposit material for mask works is identifying material. The required contents of the ID material vary depending on (i) whether the work has been commercially exploited, or (ii) whether the work contains trade secrets.

As stated above in Section 1204.4, commercial exploitation is defined as the distribution of a semiconductor chip product embodying a mask work to the public for commercial purposes. The term includes an offer to sell or transfer the mask work when the offer is in writing and occurs after the mask work is fixed in the semiconductor chip product. 17 U.S.C. § 901(a)(5).

Where an applicant makes a claim that the identifying materials normally required to be deposited contain information that is subject to trade secret protection, certain material may be withheld from the deposit of identifying material.

A discussion of identifying material for commercially exploited mask works containing trade secrets is set forth in Section 1213.2 below. A discussion of identifying material for mask works that have not been commercially exploited but contain trade secret material is set forth in Section 1213.4 below.

All visually perceptible representations should be reproduced at a magnification sufficient to reveal the basic circuitry design of the mask work and should be at least twenty times the actual size. Poor resolution plots will be questioned, which could delay the effective date of registration. Large visually perceptible materials are acceptable if they can be folded or cut into a roughly 8½ inches by 11 inches format and are storable in a 12 inches by 15 inches envelope.

Titles should be placed on all identifying materials so that applications and deposit materials can be matched.

1213.1 ID Material for Commercially Exploited Mask Works

For a commercially exploited mask work, the applicant is required to submit the following as identifying material:

- Four chips (dies) as first commercially exploited; and
- One full set of visually perceptible representations of each layer of the mask work.

37 C.F.R. § 211.5(b)(1). The U.S. Copyright Office will accept the deposit of loose chips in plastic containers or plastic bags, defective chips (commonly marked with a dot on the surface of the chip), and chips in pronged housings. The Office will not accept the deposit of chips in wafer format. Chips that do not appear to be integrated into a semiconductor substrate will be questioned.

Regarding the visually perceptible representations, the applicant may elect to deposit plastic color overlays, composite plots, or photographs of each layer of the mask work, or any combination thereof. *Id.*

1213.2 ID Material for Commercially Exploited Mask Works Containing Trade Secrets

If the commercially exploited mask work contains trade secrets, the identifying material should consist of:

- Four chips as first commercially exploited;
- Color overlays, plots, or photographs for all other layers; and
- Special "identifying portions" for no more than two of each of the five layers of the mask work in which trade secrecy is claimed.

Specifically, the identifying portions should consist of (i) a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, or (ii) visually perceptible representations, such as sets of plastic color overlay sheets, drawings or plots in composite form on a single sheet or on separate sheets, or photographs of each layer of the masks in which portions maintained under a claim of trade secrecy are blocked out, provided that the remaining portions are greater than the blocked out portions. 37 C.F.R. § 211.5(c)(1)(i)-(ii).

1213.3 ID Material for Mask Works That Have Not Been Commercially Exploited: Mask Work Contains More Than Twenty Percent of Intended Final Form

If a mask work has not been commercially exploited and if the contribution in which registration is sought represents twenty percent or more of the area of the intended final form, the applicant is required to submit one full set of either plastic color overlays or composite plots of each layer of the semiconductor chip product. In addition, the applicant may deposit up to four representations of the most complete form as fixed in a

chip product, although chips (dies) are not required for registration. 37 C.F.R. § 211.5(b)(2)(i).

NOTE: Regarding the visually perceptible representations, the applicant may elect to deposit plastic color overlays, composite plots, or photographs of each layer of the mask work, and any combination thereof.

1213.4 Mask Works Not Commercially Exploited Containing Trade Secrets

If a mask work that has not been commercially exploited contains trade secrets, the ID material should consist of:

- A single photograph of the top or other visible layers of the mask work with the sensitive information maintained under a claim of trade secrecy blocked out, provided the blocked out portions do not exceed the remaining portions; and
- Special "identifying portions" for any layer or layers in which trade secrecy is claimed.

Specifically, the identifying portions should consist of (i) a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, or (ii) visually perceptible representations (plastic color overlays, composite plots) in which portions maintained under a claim of trade secrecy are blocked out, provided that the portions remaining are greater than the portions blocked out. 37 C.F.R. § 211.5(c)(2)(i)(A)-(B), (ii).

1213.5 Mask Works Not Commercially Exploited: Mask Work Contains Less Than Twenty Percent of Intended Final Form

Where the mask work for which registration is sought represents less than twenty percent of the area of the intended final form of the chip product, the deposit must include a visually perceptible representation of the work that reveals the totality of the mask work contribution to a person trained in the state of the art. The representation may consist of any combination of the following:

- Plastic color overlay sheets.
- Drawings or plots in composite form.
- Photograph(s) of the entire mask set.

If needed, additional explanatory material may accompany the visually perceptible representation to identify all the elements in the mask work contribution. 37 C.F.R. § 211.5(b)(2)(i).

1213.6 Special Relief from Deposit Requirements for Mask Works

On a case-by-case basis, the Register of Copyrights may decide to grant special relief from the deposit requirements. Requests for special relief must be made in writing to:

Associate Register of Copyrights and Director of Registration Policy & Practice
U.S. Copyright Office
P.O. Box 70400
Washington, DC 20024-0400

The applicant may also send special relief requests by fax to (202) 707-3698.

The request must contain the following:

- The specific reasons why the request should be granted.
- A proposal for an alternative form of deposit.
- The signature of the applicant.

37 C.F.R. § 211.5(d).

1213.7 Deposit Retention

Identifying material deposited to support an application to register a claim in a mask work, whether the claim is registered or refused, becomes the property of the U.S. government. The U.S. Copyright Office will retain copies of all deposits for registered claims for the entire term of protection. 37 C.F.R. § 211.5(e).

1214 Submitting the Application, Filing Fee, and Identifying Material

Applicants may submit Form MW, the filing fee, and the identifying material deposit in person or by U.S. mail, by commercial carrier, such as Federal Express or United Parcel Service, or by courier, to the following addresses:

- *By U.S. Mail or commercial carrier:* Library of Congress, U.S. Copyright Office –MW, 101 Independence Avenue SE, Washington DC 20559.
- *In person:* James Madison Building, Public Information Office, Room LM-401, Monday through Friday, between the hours of 8:30 a.m. – 5:00 p.m. Eastern Time, except on federal holidays.
- *By courier:* Congressional Courier Acceptance Site (CCAS), 2nd and D Streets NE, Washington, DC, between the hours of 8:30 a.m. – 4:30 p.m. Eastern Time, except on federal holidays.

NOTE: Couriers will receive a dated receipt from CCAS rather than the U.S. Copyright Office. The Office will consider the date of receipt at CCAS as the date of receipt in the Office. A courier may deliver up to ten items at a time. Packages accepted at CCAS may not exceed four by fourteen by eighteen inches in size. Larger packages will not be accepted by CCAS. In such cases, the courier will be directed to deliver these packages to the offsite mail processing center.

1215 Special Handling

Expedited processing of an application to register a claim in a mask work is referred to as "special handling," and may be granted at the discretion of the Register of Copyrights in cases involving pending or prospective litigation, customs matters, or contract deadlines. For details, see *Special Handling* (Circular 10).

1216 Correction or Amplification of a Completed Registration

Except for errors or omissions made by the U.S. Copyright Office, no corrections or amplifications can be made to the information contained in the registration record for a completed mask work registration. In particular, a supplementary registration cannot be used to correct or amplify the information set forth in this type of registration. 37 C.F.R. § 211.4(f). If the Office made an error or omission in preparing the certificate, the owner of the mask work should contact the Office in writing using the form posted on the Office's website. If appropriate, the Office will correct the mistake and issue a new certificate to the correspondent named in the certificate.

A document purporting to correct or amplify the information in a completed registration may be recorded in the Office if it is signed by the owner of the mask work or by the owner's duly authorized agent. 37 C.F.R. § 211.4(f). For information on how to record a document, see Chapter 2300, Section 2309.

1217 Reconsideration of Refusals to Register

The requirements for reconsideration of refusals to register copyright claims (which are prescribed in 37 C.F.R. § 202.5) apply to requests to reconsider refusals to register claims in mask works. *See* Chapter 1700 (Administrative Appeals).

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Vessel Designs

1301 What This Chapter Covers

This Chapter provides information on the U.S. Copyright Office's practices and procedures for examining and registering claims to vessel designs and for recording documents related to them. Vessel designs are protected pursuant to the Vessel Hull Design Protection Act of 1998 ("VHDPA"), as amended by the Vessel Hull Design Protection Amendments of 2008, and codified as Chapter 13 of the Copyright Act.

1302 Vessel Design Protection Distinguished from Copyright Protection

Vessel design protection is not a form of copyright protection. Congress enacted the VHDPA to provide a new, separate form of special protection for vessel designs in response to the needs of the boat industry, not as an amendment to the copyright law. The legal requirements for vessel design protection differ from those for copyright protection in terms of eligibility for protection, ownership rights, registration procedures, term of protection, and remedies for rights violations.

Vessel designs — the overall shape and form of a water craft's deck or hull — are useful articles and, as such, cannot be protected by copyright law. *See* Section 1303.7. Ornamental two- and three-dimensional decorations on or in the surfaces of the deck or hull might be copyrightable, but the deck and hull themselves are not.

Chapter 13 of Title 17 does not provide, extend, or limit copyright protection for drawings, models, or statuaries of vessels. For more information on protection for ornamental designs, drawings, and other visual arts works, see Chapter 900. For a general discussion of useful articles, see Chapter 900, Section 924.

1303 Definitions

1303.1 Deck

A "deck" is "the horizontal surface of a vessel that covers the hull, including exterior cabin and cockpit surfaces, and exclusive of masts, sails, yards, rigging, hardware, fixtures, and other attachments." 17 U.S.C. § 1301(b)(7).

1303.2 Hull

A "hull" is "the exterior frame or body of a vessel, exclusive of the deck, superstructure, masts, sails, yards, rigging, hardware, fixtures, and other attachments." 17 U.S.C. § 1301(b)(4).

1303.3 Make Public

A vessel design is made public "when an existing useful article embodying the design is anywhere publicly exhibited, publicly distributed, or offered for sale or sold to the public by the owner of the design or with the owner's consent." 17 U.S.C. § 1310(b).

1303.4 Mold

A "mold" is "a matrix or form in which a substance for material is used, regardless of whether the matrix or form has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information." 17 U.S.C. § 1301(b)(6).

1303.5 Original

A vessel design is "original" if "it is the result of the designer's creative endeavor that provides a distinguishable variation over prior work pertaining to similar articles which is more than trivial and has not been copied from another source." 17 U.S.C. § 1301(b)(1).

1303.6 Plug

A "plug" is "a device or model used to make a mold for the purpose of exact duplication, regardless of whether the device or model has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information." 17 U.S.C. § 1301(b)(5).

1303.7 Useful Article

A "useful article" is "a vessel hull or deck, including a plug or mold, which in normal use has an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article which normally is part of a useful article shall be deemed to be a useful article." 17 U.S.C. § 1301(b)(2).

1303.8 Vessel

A vessel is "a craft that is designed and capable of independently steering a course on or through water through its own means of propulsion; and that is designed and capable of carrying and transporting one or more passengers." 17 U.S.C. § 1301(b)(3).

1304 Protectable Vessel Designs

Chapter 13 of Title 17 protects original designs for vessels that are designed and capable of (i) independently steering a course on or through water through its own means of propulsion, and (ii) carrying and transporting one or more passengers. 17 U.S.C. § 1301. Specifically, Chapter 13 protects the original design of the shape of a vessel hull, deck, or a combination of the two, which makes the article in which the design is incorporated attractive or distinctive in appearance to the purchasing or using public. 17 U.S.C. § 1301(a)(1). This protection includes a plug or mold. 17 U.S.C. § 1301(a)(2). Designers are allowed the option of protecting the hull alone, the deck alone, or the hull and the deck in combination.

1304.1 Originality Requirement

To be original, a vessel design must be the result of the designer's creative endeavor providing a distinguishable variation over prior work, and that variation must be "more than merely trivial" and not "copied from another source." 17 U.S.C. § 1301(b)(1).

1304.2 Fixation Requirement

An original vessel design must be embodied in an actual vessel. The law does not protect vessel designs that exist only in models, drawings, or representations. *See* 17 U.S.C. § 1302(5).

1304.3 Revision, Adaptation, or Rearrangement

Protection is available for a design that is a substantial revision, adaptation, or rearrangement of preexisting or ineligible design aspects or matter. Protection for a substantial revision, adaptation, or rearrangement does not extend to any subsisting protection in subject matter employed in the design. 17 U.S.C. § 1303.

1304.4 Registration Requirement and Making Public Requirement

An original vessel design is not protected until it is made public or until the U.S. Copyright Office publishes a registration for the design, whichever date is earlier.

If a design is made public, an application for registration must be filed no later than two years from the date on which the design was made public for the design to retain protection. 17 U.S.C. § 1302(5).

Making a design public includes publicly exhibiting it, distributing it, offering it for sale, or selling it to the public, whether inside or outside of the United States, with the design owner's consent. 17 U.S.C. § 1310(b).

Vessel designs that have not been made public may be protected under Chapter 13 of Title 17, provided that the Office has registered the design.

1305 Ineligible Designs

1305.1 No Retroactive Protection

Protection extends only to vessel designs made public on or after October 28, 1998, the effective date of the VHDPA. *See* 17 U.S.C. § 1332. The VHDPA does not protect designs made public before that date.

1305.2 Unoriginal Designs

Protection does not extend to any vessel design that is:

- Not original.
- Staple or commonplace, such as a standard geometric figure, a familiar symbol, an emblem, or a motif, or another shape, pattern, or configuration which has become standard, common, prevalent, or ordinary.
- Different from a staple or commonplace design, such as a standard geometric figure, a familiar symbol, an emblem, or a motif, or another shape, pattern, or configuration which has become standard, common, prevalent, or ordinary only in insignificant details or in elements which are variants commonly used in the relevant trades.
- Dictated solely by a utilitarian function of the article that embodies it.

17 U.S.C. § 1302(1)-(4).

1305.3 Ineligible Vehicles and Other Useful Articles

Protection does not extend to any vessel design that is not embodied in a "vessel," such as:

- Sea planes
- Paddle boards
- Surf boards
- Barges
- Floatable military shooting targets

1305.4 Designs Made Public More Than Two Years Prior to Application for Registration

A vessel design must be registered within two years of being made public or it will lose protection because a design that is embodied in a vessel "that was made public by the designer or owner in the United States or a foreign country more than two years before the date of application for registration" of the design is ineligible for protection. 17 U.S.C. § 1302(5).

1305.5 Designs Protected by Design Patents

Vessel designs may not be protected under Chapter 13 of Title 17 if they have design patent protection under Title 35 of the United States Code. 17 U.S.C. § 1329. Vessel design protection under Chapter 13 ceases if and when a U.S. design patent is issued for the design.

1306 Term of Protection

1306.1 Term of Protection for Designs Registered with the U.S. Copyright Office

Protection for a registered vessel design lasts ten years from the earlier of (i) the date a registration is published by the U.S. Copyright Office, or (ii) the date the design was first "made public," whichever is earliest. 17 U.S.C. §§ 1304, 1305(a). The term of protection lasts until the end of the calendar year in which it expires. 17 U.S.C. § 1305(b). As noted in Section 1305.5, protection may terminate earlier if a design patent is issued before the ten-year term expires.

1306.2 Term of Protection for Designs Registered in a Foreign Territory: Priority Claims

If an application is made to register the same design by or on behalf of the same owner in a foreign jurisdiction that provides similar protection to U.S. citizens, that filing has the same effect as if the application is filed in the United States on the date of the foreign filing, provided that the U.S. application is filed within six months of the earliest date of any such foreign filing. 17 U.S.C. § 1311.

1307 Exclusive Rights of Owner

During the term of protection, the vessel design owner has the exclusive rights to:

- Make, have made, or import, for sale or for use in trade, any useful article embodying that design; and
- Sell or distribute for sale or for use in trade any useful article embodying that design.

17 U.S.C. § 1308.

A vessel design owner may initiate an action for infringement of these rights provided that the U.S. Copyright Office has issued a certificate of registration for the design. 17 U.S.C. §§ 1309, 1321(a).

1308 Ownership in Vessel Designs

The intellectual property right in a vessel design vests in one of the following:

- The designer;
- The designer's legal representative(s), if the designer is deceased or legally incapacitated;
- If the design was made within the regular scope of the designer's employment, the employer for whom the designer created the design; or
- A person to whom the rights of the designer or of such employer have been transferred.

The person in whom the property right vests is considered the owner of the design.

17 U.S.C. § 1320(a).

1308.1 Allowable Transfers, Grants, Conveyances, and Mortgages

The rights in a protectable design may be assigned, granted, conveyed, or mortgaged by the owner to another person or entity. Such an assignment, grant, conveyance or mortgage must be in a writing that is signed by the owner, or it may be bequeathed by will. 17 U.S.C. § 1320(b).

1308.2 Discretionary Recordation of Transfers

Although recordation of transfers is not a condition for protection, the first transfer of ownership shall be void against a subsequent purchaser or mortgagee who obtained the transfer for valuable consideration, unless the first transfer is recorded with the U.S. Copyright Office within three months after it is executed or before the date of a subsequent purchase or mortgage. 17 U.S.C. § 1320(d).

The same conditions and procedures for recording transfers of copyright ownership and other documents pertaining to copyright apply to the recordation of documents pertaining to vessel design protection under Chapter 13. For more information on how to record such documents, see Chapter 2300, Section 2309.

1309 Vessel Design Notice

1309.1 Notice Is Mandatory

Notice on a vessel design is mandatory. Once a design has been made public, a "notice" of design protection must be placed on all vessels that embody the design. 17 U.S.C. § 1306(a). The design notice must be affixed to a location on the vessel in a manner that provides "reasonable notice," as described below in Section 1309.4, that the vessel contains a protected design. 17 U.S.C. § 1306(b).

1309.2 Required Notice Elements

The elements of a design notice must consist of the following:

- The words "Protected Design", the abbreviation "Prot'd Des.", the symbol Ⓓ (*i.e.*, the letter "D" in a circle), or the symbol "*D*";
- The year in which protection for the design commenced; and
- The name of the owner, an abbreviation by which the owner can be recognized, or a generally accepted alternative designation of the owner.

For registered designs, the registration number may be used in place of both (i) the year in which protection for the design commenced, and (ii) the name of the owner or a

generally accepted alternative designation of the owner. 17 U.S.C. § 1306(a); 37 C.F.R. § 212.4(b).

1309.3 Name or Distinctive Identification of Owner

A distinctive identification of the owner may be substituted for the actual name of the owner, provided that the distinctive identification is recorded with the U.S. Copyright Office prior to registration of the design marked with the distinctive identification. 37 C.F.R. § 212.4(c).

To record a distinctive identification of an owner of a vessel design with the Office, the applicant must submit a document that contains the following information:

- The name and address of the owner;
- A statement of the owner that she or he is entitled to use the distinctive identification;
- A statement or description of the identification; and
- The recordation filing fee.

37 C.F.R. § 212.5. The current fee is set forth in the Office's fee schedule under the heading "Recordation of Documents." For information concerning the methods for paying this fee, see Chapter 1400, Sections 1412.4 and 1412.5.

The document and fee should be mailed to the following address:

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

1309.4 Placement of Notice

A vessel design notice must be "located and applied as to give reasonable notice of design protection" while the vessel "is passing through its normal channels of commerce." 17 U.S.C. § 1306(b); 37 C.F.R. § 212.4(a)(1). Further, the notice must be "legible under normal conditions of use, and affixed in such a manner and position that, when affixed, it may be viewed upon reasonable examination." The notice does not need to be permanently embossed or engraved into the vessel hull or deck, provided it is affixed in a manner that it is not likely to become unattached or illegible under normal conditions of use. 37 C.F.R. § 212.4(a)(2).

Examples of acceptable notice locations include:

- In close proximity to the hull identification number;
- In close proximity to the driver's helm console such that it is in plain view from the console;
- If the vessel is twenty feet in length overall or less, in close proximity to the capacity marking plate or notice; or
- In close proximity to the make and/or model designation of the vessel.

37 C.F.R. § 212.4(d).

1310 Importance of Registration

1310.1 Registration Required for Ten-Year Protection

To secure protection of a vessel design for the entire ten-year term, owners must file an application to register the design with the U.S. Copyright Office within two years of the date on which the design was first "made public." Otherwise, protection under Chapter 13 will be lost. 17 U.S.C. § 1310(a)-(b). For example, a claim in a vessel design that was first made public on October 31, 2013 must be received in the Office prior to or on October 31, 2015 to be protected.

1310.2 Benefits of Registration

After the U.S. Copyright Office issues a certificate of registration, the owner of the vessel design or the exclusive licensee of all rights in the vessel design may institute a civil action for infringement, provided the infringement occurred after the commencement of the term of protection. 17 U.S.C. § 1321(a).

Further, a certificate of registration for a vessel design issued by the Office constitutes *prima facie* evidence of the facts stated in the certificate. 17 U.S.C. § 1314.

1311 Registration Procedures

The required elements for registration of vessel designs are set forth in Section 1311.1 below. *See* 17 U.S.C. § 1310; 37 C.F.R. § 212.3(b).

1311.1 Required Elements for Registration

An application to register a vessel design must contain the following elements:

- A completed paper application using Form D-VH;
- A nonrefundable filing fee; and
- Deposit material.

1311.2 Who May File the Application?

An application to register a claim in a vessel design may be filed by (i) the owner or owners of the design, or (ii) the duly authorized agent or representative of the owner or owners of the design. 17 U.S.C. § 1310(c), (e); 37 C.F.R. § 212.3(c).

1311.3 Form D-VH

Applicants must use Form D-VH to register a claim in a vessel design and must use Form D-VH/CON to provide additional information, if necessary. A single Form D-VH may cover one or more designs on a single make or model of a vessel, but the applicant must use a separate continuation Form D-VH/CON for each of the related designs. An applicant must submit separate applications to register multiple designs that are contained on different makes and models of a vessel.

Form D-VH may only be used to register a claim in a vessel design. It cannot be used to register a claim in any other type of work.

Examples:

- The U.S. Copyright Office will refuse a claim in "technical drawings" of a vessel filed on Form D-VH. A separate copyright claim in drawings may be recommended. For more information on the copyrightability and registrability of claims in drawings, see Chapter 900, Section 922.

- The Office will refuse a claim in "boat design" filed on Form VA and will inquire whether a claim based on "vessel design" may be filed on Form D-VH.

- The Office will refuse a claim for a nautical or maritime "furniture design" filed on Form D-VH. A separate registration for a copyright claim in furniture design may be recommended. For more information on the registration of copyright claims in the design of a useful article, see Chapter 900, Section 924.

- The Office will refuse a Form D-VH that claims in "vessel design, technical drawings, and advertising photos." The Office will limit the Form D-VH to any eligible vessel design shown in the drawings and photographs. A separate registration for a copyright claim in the drawings and photographs may be recommended. For more information on the registration of copyright claims in drawings and photographs, see Chapter 900, Section 909 and 922.

Forms D-VH and D-VH/CON are both available on the U.S. Copyright Office's website.

Applicants also may request a hard copy of these forms from the U.S. Copyright Office's Public Information Office as follows:

- *By telephone:* (202) 707-9100.
- *In Person:* James Madison Building, Public Information Office, Room LM-401, Monday through Friday, between the hours of 8:30 a.m. – 5:00 p.m. Eastern Time, except on federal holidays.
- *By U.S. Mail:* Library of Congress, U.S. Copyright Office, 101 Independence Avenue, SE, Washington DC 20559-6000.

All forms submitted to the Office must be clear and legible and suitable for automatic feeding through a photocopier. The Office will return forms that do not meet this requirement.

For information on completing Form D-VH, see Section 1312 below.

1311.4 Filing Fees

The current filing fee is set forth in the Office's fee schedule under the heading "Registration of a claim in a vessel design (Form D-VH)."

For information concerning the methods for paying this fee, see Chapter 1400, Sections 1412.4 and 1412.5.

1311.5 Deposit Material

The applicant must submit deposit with the application, consisting of photographs or drawings that contain all of the claimed aspects of the vessel design.

For information concerning the deposit requirements see Section 1313 below.

1312 Completing the Application

The U.S. Copyright Office evaluates vessel design applications for completeness and sufficiency of the required elements. For detailed information on the registration of vessel designs, see 17 U.S.C. §§ 1310-1315 and the regulations on vessel designs in 37 C.F.R. Part 212.

1312.1 Space 1: Title

The title of a vessel design is comprised of the make and model of the vessel. In space 1, applicants must provide the make and model of the vessel that embodies the claimed design. This information is used to identify and catalog the design.

The make and model information typically consists of the following:

- The name of the manufacturer.
- The model identification, including any descriptive information, such as the general categorization or type of the vessel that is useful to identify the vessel.

If a design is embodied in multiple vessels with different makes and models, applicants should list each make and model for each vessel.

Examples:

- "Tracker Tahoe Q 5 runabout."
- "Ranger Comanche 518VX bass boat."

1312.2 Space 2: Design

In space 2, applicants should provide a detailed but brief description of the claim for which registration is sought. Space 2 is divided into three subparts:

- The type or style of the design for which registration is sought.
- A brief general statement setting forth the salient features of the design.
- A description of any preexisting design used in the design for which a registration is sought.

1312.2(A) Space 2A: Type or Style

In space 2A, applicants should identify the type of design for which protection is sought. The description should be general and, where possible, conform to accepted industry classifications, such as:

- Fiberglass tri-hull
- Aluminum pontoon

1312.2(B) Space 2B: Salient Features

In space 2B the applicant may provide a brief description of the salient features of the design. 17 U.S.C. § 1310(d). Providing this information is optional, however, the U.S. Copyright Office advises applicants to complete space 2B to create a clearer record and clearer identification of the claim.

If a description is provided, it should clearly identify the design for which protection is sought.

Examples:

- "Design of transom."
- "Configuration of deck."

1312.2(C) Space 2C: Prior Designs

Applicants should complete space 2C only if the claimed design revises, adapts, or rearranges a prior design. In such cases, space 2C should contain a clear description of the prior design with sufficient detail to distinguish the prior design from the new design, as well as a description of the revisions, adaptations, or rearrangements that resulted in the new design.

If the claimed design is not based on a prior design, applicants should leave space 2C blank.

1312.3 Space 3: Identify the Designer

In space 3, the applicant should provide the name of the person or persons whose creative endeavors have resulted in the creation of the claimed design.

The name of the employer of the designer(s) may be entered instead of the individual designer or designers if:

- The design was created in the regular scope of an individual designer's employment; and
- The individual authorship of the design is too difficult or impossible to ascribe because, for instance, multiple employee-designers contributed to the creation of the design.

17 U.S.C. § 1310(g). In such cases, the applicant must check the box provided in space 3 which affirms that the design was created during the scope of an author's or authors' employment, and provide the name and address of the employer.

1312.4 Space 4: Identify the Owner if Different from the Designer

If the designer identified in space 3 is not the owner of the claimed design, applicants must provide the name of the owner of the design in space 4. If the designer in space 3 is the owner of the design, applicants should leave space 4 blank or write "N/A."

1312.5 Space 5: Priority Claims

A claimed design that was previously filed in a foreign country within six months of submitting the U.S. application is referred to as a "priority claim." *See* Section 1306.2. In such cases, the effective date of registration in the United States will be the same as the date of registration in the foreign country provided that the following conditions are satisfied:

- The country where foreign registration was made provides similar protection to U.S. citizens; and
- The law of the foreign country where previous registration was made provides protection for vessel designs of U.S. citizens similar to the protection provided in 17 U.S.C. Chapter 13.

17 U.S.C. § 1311.

If a priority claim exists at the time registration is sought, the applicant must provide information on that claim in space 5, including (i) the country, (ii) date of application, and (iii) a serial number. In addition, applicants must submit the following information:

- A certified copy of the foreign application;
- If the foreign application is in a language other than English, a translation of the foreign application, along with a signed statement by the translator that the translation is accurate; and
- If requested by the U.S. Copyright Office, proof that the foreign country in which the prior application was filed extends similar protection to designs owned by U.S. citizens, or designs for which claims are filed.

37 C.F.R. § 212.3(h).

1312.6 Space 6: Date Made Public

As discussed in Section 1303.3, a vessel design is "made public" under one of the following conditions:

- It was publicly exhibited anywhere;
- It was publicly distributed; or
- It was offered for sale or sold to the public under the owner's authorization.

17 U.S.C. § 1310(b). If the design was made public prior to submission of the application, the applicant should check "yes" to the Made Public question, and provide the month, day, and year of public exhibition or distribution.

If the design was not made public prior to registration, the applicant should leave space 6 blank.

1312.7 Space 7: Contact Person

In space 7, the applicant should provide contact information for the person who can provide additional information regarding the application in the event the U.S. Copyright Office needs additional information. Contact information consists of the following:

- Name.
- Mailing address.
- Email address (if any).
- Daytime phone number.
- Facsimile number (if any).

The Office will not reject an application if space 7 is left blank, but the application may be delayed if the Office needs to communicate with the applicant and correct contact information is not provided in space 7 or elsewhere in the registration materials.

1312.8 Space 8: Deposit Account Information

The applicant should provide deposit account information in space 8 only if the applicant has an existing deposit account with the U.S. Copyright Office. Otherwise, space 8 should be left blank.

For more information on how to establish a deposit account with the Office, see *How to Obtain and Maintain a Copyright Office Deposit Account* (Circular 5).

1312.9 Space 9: Certification and Sworn Statements

To obtain a registration of a vessel design, the applicant or the applicant's duly appointed agent or representative must certify the declaration in space 9. It is not necessary to have the declaration provided in space 9 notarized.

Willfully making false statements in the application is punishable by fine or imprisonment, or both, and may jeopardize the validity of the application and any resulting registration.

1312.9(A) Space 9: Location of Design Notice

If the design has been made public with a design notice as prescribed in 17 U.S.C. § 1306, the content and location of the notice on the vessel must be disclosed in space 9. For information regarding the placement of the notice, see Section 1309.4. If a distinctive identification of the owner has been recorded with the U.S. Copyright Office and is used instead of the design notice, the applicant should disclose this information in space 9.

1312.9(B) Space 9: Certificate Mailing Address

In Space 9, applicants should provide the name and address of the person or entity designated to receive a certificate of registration. To avoid delays in mailing, applicants should type or handwrite the name and address clearly, because the U.S. Copyright Office will mail the certificate in a window envelope that displays the address exactly as it appears on the application.

1313 Deposit Material

As stated above in Section 1311.5, the applicant must submit deposit material with the application. The deposit material must contain no more than two photographs or drawings on a single sheet of paper, and no more than three 8 ½ inches by 11 inches sheets of paper per basic application fee. Photographs and drawings should not be combined on a single sheet.

1313.1 Views and Use of Perspective

The drawings or photographs should contain a sufficient number of views to make an adequate disclosure of the appearance of the design, *i.e.*, front, rear, right and left sides, top, and bottom. The applicant may submit up to six different views or depictions of the design.

While not required, the U.S. Copyright Office suggests that applicants submit perspective views to show clearly the appearance and shape of the three-dimensional designs. *See* 37 C.F.R. § 212.3(e)(2); 17 U.S.C. § 1310(h) ("The application for registration shall be accompanied by two copies of … [a] pictorial representation of the useful article embodying the design, having one or more views, adequate to show the design ….").

1313.2 Photographic Deposit Requirements

Deposit material containing photographs must satisfy the following requirements:

- The photographs must be mounted on plain, unlined 8 ½ inches by 11inches paper;
- The photographs must be developed on double-weight photographic paper;
- There can be no more than two photographs per sheet of paper;
- The photographs must be of a high enough quality to clearly show the details of the design; and
- The U.S. Copyright Office must be able to reproduce the photographs as submitted on a certificate of registration, should a registration be issued.

37 C.F.R. § 212.3(e)(4).

1313.3 Drawing Deposit Requirements

If the applicant submits deposit material that contains drawings, the deposit material must satisfy the following requirements:

- Only black ink is acceptable;
- The drawing must be submitted on 8 ½ inches by 11inches unruled paper;
- The drawing must contain the appropriate amount of surface shading to clearly show the character and contour of all surfaces of any three-dimensional aspects of the design; and
- Surface shading should not be solid black, unless that depicts the color black in the design.

37 C.F.R. § 212.3(e)(3).

1313.4 Use of Broken Lines in Drawings

The applicant should use broken lines to depict structures that are not part of the claimed design. The broken lines should not intrude upon or cross the depiction of the claimed design, nor should the broken lines be of a heavier weight than the lines that depict the claimed design.

If a broken line must intrude or cross the depiction of the claimed design to depict the environmental structure, that drawing must be submitted in addition to one that clearly shows the claimed design without the intrusion of broken lines. 37 C.F.R. § 212.3(e)(3)(ii)-(iii).

1314 Submitting the Application, Filing Fee, and Deposit Material

An applicant may submit Form D-VH, D-VH/CON, the filing fee, and the deposit material in person or by U.S. mail, by commercial carrier, such as Federal Express or United Parcel Service, or by courier to the following addresses:

- *By U.S. mail or commercial carrier:* Library of Congress, U.S. Copyright Office–VH, 101 Independence Avenue, SE, Washington, DC 20559.
- *In person:* James Madison Building, Public Information Office, Room LM–401, Monday through Friday, between the hours of 8:30 a.m. – 5:00 p.m. Eastern Time, except on federal holidays.
- *By courier:* Congressional Courier Acceptance Site ("CCAS"), 2nd and D Streets, NE, Washington, DC, between the hours of 8:30 a.m. – 4:30 p.m. Eastern Time, except on federal holidays.

NOTE: Couriers will receive a dated receipt from CCAS, rather than the U.S. Copyright Office. The Office will consider the date of receipt at CCAS as the date of receipt in the Office. A courier may deliver up to ten items at a time. Packages accepted at CCAS may not exceed 4" x 14" x 18" in size. Larger packages will not be accepted by CCAS; in such cases, the courier will be directed to deliver these packages to the offsite mail processing center.

1315 Publication of Registration Certificate and Effective Date of Registration

When a claim is registered, the U.S. Copyright Office issues a certificate of registration that includes a reproduction of the drawings or other pictorial representations of the design. 17 U.S.C. § 1314.

Once a registration is made, the Office publishes a notification that the registration was made. The Office does so by posting the notification on its website.

The effective date of registration of a claim to protection in a vessel design is the date on which the Office publishes the registration. 17 U.S.C. §§ 1313(a), 1315.

1316 Reconsideration of Refusal to Register

If the U.S. Copyright Office refuses to register a design, the applicant may seek reconsideration by filing a written request within three months of the refusal. 17 U.S.C. § 1313(b). To exercise this option, the applicant should follow the procedures set forth in 37 C.F.R. § 202.5 and Chapter 1700, Section 1703.1. If the Office upholds its refusal to register, the applicant may seek judicial review of the final refusal. 17 U.S.C. § 1321(b).

1317 Certificate of Correction for a Completed Registration

If the U.S. Copyright Office makes a clerical or typographical error in preparing the certificate of registration for a vessel design, the owner of the vessel design should contact the Public Information Office in writing using the form posted on the Office's website. If appropriate, the Office will correct the error and will issue a new certificate to the correspondent named in the certificate.

If the applicant made a clerical or typographical error in the application for registration, the owner of the registered design or its duly authorized agent may submit an application for a certificate of correction using Form DC together with the appropriate filing fee. *See* 37 C.F.R. § 212.8(a)(3), (c). The current filing fee for a certificate of correction is listed on the Office's fee schedule under the heading "Correction of a design registration: Form DC." For information concerning the methods for paying this fee, see Chapter 1400, Sections 1412.4 and 1412.5.

The Office will issue a certificate of correction only in cases in which the applicant made clerical or typographical errors. The Office has no authority and no procedure for allowing vessel design owners to supplement the deposit material for a registration for a vessel design, to amplify the facts or information set forth in the registration, or to correct material mistakes in the registration. *See* 17 U.S.C. § 1319. To correct substantive, material factual errors or omissions in the registration or to correct, supplement, or amplify the deposit material, the owner of the design must submit a new application using Form D-VH.

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Applications and Filing Fees

1401 What This Chapter Covers

To seek a copyright registration for a work of authorship, an applicant must submit a completed application, deposit copy(ies), and filing fee.

This Chapter provides a general overview of the types of applications that may be used to register or preregister a work of authorship created or first published on or after January 1, 1978. It also discusses the filing fees for applying to register or preregister a work. For a detailed discussion of the U.S. Copyright Office's registration practices, see the following chapters:

- For information on how to complete an application for a basic registration, see Chapter 600.
- For information on how to complete an application for a group registration, see Chapter 1100.
- For information on how to complete an application to register a mask work or vessel design, see Chapters 1200 and 1300.
- For information on how to complete an application for a preregistration, see Chapter 1600.
- For information on how to complete an application for a supplementary registration, see Chapter 1800.
- For information on how to complete an application for a renewal registration, see Chapter 2100.
- For information concerning the deposit requirements, see Chapter 1500.

1402 Applications

1402.1 Statutory Basis for the Application

Section 408(a) of the Copyright Act provides that a copyright owner or the owner of any of the exclusive rights in a work may seek a registration by delivering an application, filing fee, and an appropriate deposit to the U.S. Copyright Office. The Copyright Act gives the Register of Copyrights the authority to establish administrative classes of works for registration, to create application forms, and to specify the information that should be included in the application. *See* 17 U.S.C. §§ 408(a), 408(c)(1), 409, 702.

Pursuant to this authority, the U.S. Copyright Office has created five administrative classes for purposes of registration, namely, nondramatic literary works (Class TX),

works of the visual arts (Class VA), works of the performing arts (Class PA), sound recordings (Class SR), and serials (Class SE). The Office has created different versions of its online application and paper applications for each class of works. Registration is administered by the Office's Registration Program, which includes three divisions: Literary, Performing Arts, and Visual Arts. Applications are assigned to one of these divisions, depending on the classification of the work.

NOTE: The administrative classes are solely for administrative purposes, and they have no bearing on the substantive subject matter of copyright or the exclusive rights provided by the copyright law. *See* 17 U.S.C. § 408(c)(1).

Applicants should use the form that is most appropriate for the type of work being registered. If the work contains more than one type of authorship, applicants should use the form that corresponds to the predominant type of copyrightable authorship in that work. For example, if the claim involves a children's book that includes both text and illustrations, the applicant should use the application that corresponds to the predominant form of authorship in the book. If the book contains only a few illustrations, the applicant should use the appropriate application for a Literary Work. If the book mostly contains illustrations with a small amount of text, the applicant should use the appropriate application for a Work of the Visual Arts. If the types of authorship are roughly equal, the applicant may use the application that would be appropriate for either type of authorship. *See* 37 C.F.R. § 202.3(b)(2)(iii).

NOTE: When registering a sound recording, the applicant must use the appropriate application for sound recording authorship, regardless of whether the sound recording is the predominant form of authorship in the work. *See id.*

1402.2 Statutory Requirements for Applications

Section 409 of the Copyright Act states that "[t]he application for copyright registration shall be made on a form prescribed by the Register of Copyrights." 17 U.S.C. § 409. Although the Register of Copyrights has been given discretion in how to organize and establish the requirements for the Standard Application and paper applications (which are discussed in Sections 1403 and 1404 below), Section 409 also sets forth certain elements that must be contained in these forms:

1. The name and address of the copyright claimant;

2. In the case of a work other than an anonymous or pseudonymous work, the name and nationality or domicile of the author or authors, and, if one or more of the authors is dead, the dates of their deaths;

3. If the work is anonymous or pseudonymous, the nationality or domicile of the author or authors;

4. In the case of a work made for hire, a statement to this effect;

5. If the copyright claimant is not the author, a brief statement of how the claimant obtained ownership of the copyright;

6. The title of the work, together with any previous or alternative titles under which the work can be identified;

7. The year in which creation of the work was completed;

8. If the work has been published, the date and nation of its first publication; and

9. In the case of a compilation or derivative work, an identification of any preexisting work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered.

17 U.S.C. § 409(1-9). The statute also allows the Register to request additional information in the application. Specifically, it grants the Register broad authority to require "any other information [that] bear[s] upon the preparation or identification of the work or the existence, ownership, or duration of the copyright." *Id.* § 409(10).

The Office offers other applications that request some — but not all — of the information listed in Section 409, such as the Single Application (which is discussed in Section 1405). These specialized forms do not request all of the information listed in Section 409, because in order to use them certain types of information cannot be present in the claim. For example, an applicant cannot use the Single Application to register a work created by an individual author who transferred his or her copyright to another party. Thus, there is no need to request "a brief statement of how the claimant obtained ownership of the copyright" in this form.

Section 408(c)(1) of the Copyright Act authorizes the Register to establish an administrative procedure for registering a group of related of works. Section 408(d) authorizes the Register to establish a procedure for issuing a supplementary registration to correct or amplify the information given in an existing registration. And Section 408(f)(1) authorizes the Register to establish a procedure for issuing a preregistration for unpublished works that are being prepared for commercial distribution.

Congress gave the Register the discretion to develop an appropriate application for these types of records. *See* 17 U.S.C. § 408(c)(1), (d), (f)(1). The specific requirements for the various group registration options that the Office currently offers are discussed in Chapter 1100, the requirements for a supplementary registration are discussed in Chapter 1800, and the requirements for preregistration are discussed in Chapter 1600.

1402.3 Types of Applications

The U.S. Copyright Office offers the types of applications described below. An applicant should choose an appropriate application based on whether he or she is seeking a basic registration, a group registration, a supplementary registration, a renewal registration, a GATT registration, or a preregistration. For a definition and discussion of each type of record, see Chapter 200, Section 202.1.

An application for a *basic registration* covers a work of authorship created or first published on or after January 1, 1978 or an unpublished work created prior to January

1, 1978 and still protected by copyright. For this type of registration, the applicant should use one of the following applications:

- *Standard Application* and *Paper Applications*. These applications may be used to register the following types of works:

  – A work by one author.

  – A *joint work*.

  – A *work made for hire*.

  – A *derivative work*.

  – A *compilation*.

  – A *collective work*.

  – Multiple published works, provided that (i) they are owned by the same person or organization, and (ii) they are physically bundled together for distribution to the public as a single, integrated unit, and they are first published in that integrated unit. This is known as the "unit of publication" option. For a definition of a "unit of publication" and a detailed discussion of this option, see Chapter 1100, Section 1103.4.

    NOTE: This registration accommodation is not available using the online application for a "single serial issue" or a paper application submitted on Form SE.

  - A sound recording and the musical work, dramatic work, or literary work embodied in that recording, provided that (i) the works are embodied in the same phonorecord, (ii) the claimant for both works is the same person or organization, and (iii) the works are submitted for registration in Class SR.

    NOTE: This type of claim must be registered with the online application for a "sound recording" or a paper application submitted on Form SR. For additional information concerning this option, see Chapter 500, Section 511.

    See 37 C.F.R. § 202.3(b)(2)(i)(A), (ii)(A). For additional information concerning the Standard Application, see Section 1403. For information concerning the Office's paper applications, see Section 1404.

- *Single Application*. This application may be used to register one work created by one person, provided that the copyright in the work is solely owned by that individual. It also may be used to register a sound recording and the musical work, dramatic work, or literary work embodied in that recording if certain requirements have been met. For additional information concerning this application, see Section 1405.

- An application for a group registration may be used to register a claim to copyright in a group of related works, such as a group of unpublished works, a group of serials, newspapers, or newsletters, a group of contributions to periodicals, a group of short online literary works, or a group of published or unpublished photographs. This type of application may also be used to register a group of updates or revisions to a database, or a group of questions, answers, or other items prepared for use in a secure test. The Office has created specific applications that must be used to seek a group registration. For information concerning these forms, see Section 1406.

- An application for a *supplementary registration* may be used to correct errors or amplify information in an existing registration that is incorrect or incomplete. For information concerning these forms see Section 1407.

- An application for a *renewal registration* may be used to register a limited class of works that were first published or initially registered prior to January 1, 1978. For information concerning these forms, see Section 1408.

- An application for a *GATT registration* may be used to register a copyright claim in a foreign work that was restored to copyright protection in the United States under the 1994 Uruguay Round Agreements Act. For information concerning this form, see Section 1409.

- An application for a *preregistration* may be used to preregister an unpublished work that is being prepared for commercial distribution. For information concerning this form, see Section 1410.

1403 The Standard Application

The Standard Application is an online form that may be submitted through the U.S. Copyright Office's electronic registration system. For specific information on how to complete the various fields in this application, see Chapter 600.

The Office offers different versions of this application, which may be used to register for the following types of works:

- *Literary works* include nondramatic literary works, such as fiction, nonfiction, poetry, an individual article, a textbook, a reference work, a directory, a catalog, advertising copy, a compilation of information, a computer program, a textual work made available online, or a database.

- *Works of the visual arts* include pictorial, graphic, or sculptural works, such as two-dimensional or three-dimensional works of fine, graphic, or applied art, photographs, prints, art reproductions, maps, technical drawings, or architectural works.

- *Works of the performing arts* include musical works (either with or without lyrics), dramatic works (such as a screenplay, play, or other script), pantomimes, and choreographic works.

- *Sound recordings* are works that contain sound recording authorship. An applicant must select the option for "sound recording" if he or she intends to register that element of the work with the Standard Application (even if the work also contains other types of authorship, such as music or lyrics). If the applicant does not intend to register sound recording authorship, the work should be registered using the form that would be appropriate for the predominant type of copyrightable authorship in that work (even if it happens to contain one or more sound recordings). Likewise, the applicant should not select the option for "sound recording" if the applicant intends to register the sounds accompanying a motion picture or other audiovisual work.

  NOTE: The Office only registers sound recordings that were fixed on or after February 15, 1972. For information concerning this issue, see Chapter 800, Section 803.5(D).

- *Motion picture/audiovisual works* include feature films, documentary films, animated films, television shows, videos, videogames, or other audiovisual works, such as slide presentations. This category also applies if the applicant intends to register the sounds that accompany a motion picture or other audiovisual work.

- *Single serial issue* refers to a single issue of a serial publication (*e.g.*, a single issue of a magazine, a single volume of a journal, etc.). The Standard Application also may be used to register a single serial issue together with the individual contributions appearing within that issue, if they are fully owned by the claimant when the claim is submitted, and if they have not been published or registered before. If the applicant intends to register an individual contribution, but does not intend to register the issue as a whole, the applicant should use the appropriate form for a "Literary Work" or a "Work of the Visual Arts." For a detailed discussion of single issue serials, see Chapter 700, Section 712.

The Standard Application may not be used to seek a supplementary registration, a renewal registration, or a registration for a restored work, a mask work, or a vessel design. *See* Streamlining the Single Application and Clarifying Eligibility Requirements, 83 Fed. Reg. 5227, 5229 (Feb. 6, 2018).

Likewise, this form may not be used to register a group of related works, unless it is expressly permitted under the Office's regulations. Specifically, the Standard Application may be used to register a group of secure test items. 37 C.F.R. § 202.13(c)(1). It also may be used to register a group of updates or revisions to a photographic database, but only if the applicant has obtained prior authorization from the Visual Arts Division. *See id.* § 202.3(b)(5)(ii)(A).

1404 Paper Applications

The U.S. Copyright Office strongly encourages applicants to use the Standard Application rather than a paper application. Claims submitted through the electronic registration system can be examined more quickly and efficiently, and as a result, the Office charges a lower filing fee for the Standard Application. However, the Office will accept paper applications for claims involving the following types of works:

- *Form TX* may be used to seek a basic registration for a nondramatic literary work, such as fiction, nonfiction, poetry, an individual article, a textbook, a reference work, a directory, a catalog, advertising copy, a compilation of information, a computer program, textual works made available online, or a database.

- *Form VA* may be used to seek a basic registration for a pictorial, graphic, or sculptural work, including two-dimensional or three-dimensional works of fine, graphic, and applied art, photographs, print or art reproductions, maps, and technical drawings.

  NOTE: A paper application may not be used to register an architectural work. To register this type of work, applicants must use the Standard Application.

- *Form PA* may be used to register musical works (either with or without lyrics), dramatic works (such as a screenplay, play, or other script), pantomimes, choreographic works, or motion pictures and other audiovisual works (such as feature films, documentary films, animated films, television shows, videos, or videogames).

- Form SR must be used if the applicant intends to register sound recording authorship with a paper application, even if the work contains additional types of authorship, such as music or lyrics. If the applicant does not intend to register a sound recording, Form SR should not be used (even if the work contains one or more sound recordings). Likewise, the applicant should not use Form SR if the applicant intends to register the sounds accompanying a motion picture or other audiovisual work.

  NOTE: The Office only registers sound recordings that were fixed on or after February 15, 1972. For information concerning this issue, see Chapter 800, Section 803.5(D).

- *Form SE* may be used to register a single issue of a serial publication (*e.g.*, magazines, journals). This form also may be used to register a serial together with the individual contributions appearing within that issue, if they are fully owned by the claimant when the claim is submitted, and if they have not been published or registered before. If the applicant only intends to register an individual contribution with a paper application, the applicant should use Form TX, Form VA, or Form PA instead of Form SE. For a detailed discussion of single issue serials, see Chapter 700, Section 712.

- *Form MW* must be used to register a claim in a mask work that is fixed in a semiconductor chip product by or under the authority of the owner of the mask work. A mask work is a series of related images, however fixed or encoded, having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product, and in which the relation of the images to one another is such that each image has the pattern of the surface of one form of the semiconductor chip product. For more information on mask works, see Chapter 1200.

- *Form D-VH* must be used to register a claim in a vessel design. These forms apply only to water crafts that are designed and capable of (i) independently steering a course on or through water by themselves or via propulsion, and (ii) transporting one or more passengers. For more information on vessel designs, see Chapter 1300.

When preparing a paper application applicants must use the official forms that are provided by the Office. The information provided on the application must be legible and should be typewritten or printed in black ink. If an applicant needs more space, he or she may provide additional information with a continuation sheet submitted on Form CON.

The applications listed above may not be used to seek a supplementary registration, a renewal registration, or a registration for a restored work. *See* Streamlining the Single Application and Clarifying Eligibility Requirements, 83 Fed. Reg. 5227, 5229 (Feb. 6, 2018).

Likewise, these forms may not be used to register a group of related works, unless it is expressly permitted under the Office's regulations. Specifically, Form VA may be used to register a group of updates or revisions to a photographic database, and Form TX must be used to register a group of updates or revisions to any other type of database. *See id.* § 202.3(b)(5)(ii)(A).

1405 The Single Application

The Single Application is an online form designed for authors who file the simplest kind of claims. The U.S. Copyright Office charges a lower filing fee for this application, which is intended to benefit individual creators and encourage them to register their works.

This application may be used to register one work by one author that is solely owned by that individual. It also may be used to register one sound recording and one musical work, literary work, or dramatic work if certain requirements have been met. For detailed information concerning these requirements see Sections 1405.1 through 1405.7 below.

If the Office determines that a particular work does not satisfy these requirements, it will refuse registration and instruct the applicant to resubmit the claim using the Standard Application. If the applicant wishes to proceed with the claim, he or she must submit a new application, filing fee, and another copy or phonorecord of the work. The effective date of registration will be based on the date that the new submission is received by the Office.

See generally Streamlining the Single Application and Clarifying Eligibility Requirements, 83 Fed. Reg. 66,627 (Dec. 27, 2018); Streamlining the Single Application and Clarifying Eligibility Requirements, 83 Fed. Reg. 5227 (Feb. 6, 2018); Single Application Option, 78 Fed. Reg. 38,843 (June 28, 2013).

1405.1 Who May File the Single Application?

To access the Single Application, the applicant must log into the electronic registration system and select the link designated for claims involving "one work by one author."

Before proceeding with this form, the applicant must confirm that he or she has read and understood the eligibility requirements that govern the Single Application. For guidance on how to complete the various fields in this application, applicants should consult *Using the Single Application (Circular 11)* and the help text that accompanies this form.

A Single Application may be certified and submitted by the individual who created the work. But the U.S. Copyright Office recognizes that many authors are not familiar with the electronic registration system, and some individual creators may prefer to have an authorized agent submit the application on their behalf. Therefore, the Office will accept an application that has been certified and submitted by a duly authorized agent, provided that the agent is identified in the Correspondent section of the form. *See* 37 C.F.R. § 202.3(c)(1), (3)(i). If the Office determines that a third party filed a Single Application, but failed to identify itself in the form, the Office will refuse to register the claim. *See* Streamlining the Single Application and Clarifying Eligibility Requirements, 83 Fed. Reg. 5227, 5229 (Feb. 6, 2018).

1405.2 Eligibility Requirements

An applicant may register a claim with the Single Application, provided that the following conditions have been met:

- The claim must be limited to one work.
- The work must be created by one individual.
- All of the content appearing in the work must be created by that same individual.
- The individual must be the sole owner of all rights in the work.

See 37 C.F.R. § 202.3(b)(2)(i)(B)*(1)*.

As a general rule, the Single Application may be used to register only one work by one author, but there is a limited exception for sound recordings. Specifically, this application may be used to register one sound recording and one musical work, literary work, or dramatic work—notwithstanding the fact that a sound recording and the work embodied in that recording are separate works. To do so, applicants must satisfy the following conditions (in addition to the other requirements listed above):

- The author of the sound recording and the work embodied in that recording must be the same individual.
- That individual must own the copyright in both works.
- That individual must be the only person featured in the sound recording.
- The works must be embodied in the same phonorecord.
- The works must be submitted for registration in Class SR.

See 37 C.F.R. § 202.3(b)(2)(i)(B)*(2)*.

These requirements are discussed in more detail in Sections 1405.4 through 1405.7. Works that do not satisfy these requirements cannot be registered with the Single Application.

See generally Streamlining the Single Application and Clarifying Eligibility Requirements, 83 Fed. Reg. 5227, 5228 (Feb. 6, 2018).

1405.3 Works That Cannot Be Registered with the Single Application

The Single Application cannot be used to register the following types of works:

- Works made for hire.
- Works created by two or more authors.
- Works with more than one owner.

In particular, this form cannot be used to register the following works, because they contain multiple works of authorship or because these claims tend to be very complex:

- Collective works.
- Databases.
- Websites.
- Choreographic works.
- Architectural works.
- Secure tests.
- A unit of publication.
- Two or more works that may be eligible for a group registration.

See 37 C.F.R. § 202.3(b)(2)(i)(B)*(3)*.

To register claims involving these works, applicants must submit a Standard Application, a paper application, or one of the applications described in Section 1406.

Applicants may not use the Single Application if the deposit contains material created by two or more authors (even if they only intend to register material created by one of those individuals). For the same reason, this application may not be used to register a derivative work based on a preexisting work by a different author. And a work created solely by one individual cannot be registered with the Single Application if the author

transferred his or her rights to another party, if the work is co-owned by two or more parties, or if the author is deceased.

For additional information concerning these restrictions, see Sections 1405.4 through 1405.7.

See generally Streamlining the Single Application and Clarifying Eligibility Requirements, 83 Fed. Reg. 5227, 5229 (Feb. 6, 2018); Single Application Option, 78 Fed. Reg. 38,843, 38,844 (June 28, 2013).

1405.4 The One Work Requirement

The Single Application may be used to register one work, provided that the applicant satisfies the other eligibility requirements for this form.

The following are representative examples of works that may qualify as one work for purposes of the Single Application:

Literary Works:

- One poem.
- One short story.
- One essay.

Visual Art Works:

- One photograph.
- One fabric design.
- One sculpture.
- One piece of jewelry (not a collection or set of multiple jewelry pieces).
- One illustration (not multiple illustrations on the same page).
- One technical drawing of one object.

Dramatic Works, Audiovisual Works, and Motion Pictures

- One stage play.

- One screenplay.
- One "selfie video" featuring one person.

Musical Works and Sound Recordings

A song and a sound recording are separate works. Therefore, the Single Applicant may be used to register:

- One song containing music and lyrics.
    - The applicant may submit sheet music to register the music and lyrics of one song if the same individual is the author/owner of both the music and lyrics of the song.
- One sound recording.
    - The applicant may register a sound recording if the same individual is the author/owner of the sound recording, and if that individual is the only performer featured in the recording.

As discussed in Section 1405.2, a musical work and a sound recording may both be registered with the Single Application if the following requirements have been met:

- One song consisting of music, lyrics, and sound recording.
    - The applicant must submit a recording of the song, the same individual must be the author/owner of the music, lyrics, and the sound recording, and that individual must be the only performer featured in the recording.
- One musical arrangement and one sound recording.
    - The applicant must submit a recording of the musical arrangement, the same individual must be the author/owner of both the arrangement and the sound recording, and that individual must be the only performer featured in the recording.

The following are representative examples of works that do *not* qualify as a one work for purposes of the Single Application:

- Two poems.
- Two articles.

- Two or more illustrations on a single page.
- Two or more drawings on separate pages.
- A portfolio of photographs.
- A collection or set containing multiple pieces of jewelry.
- Two or more songs.
- A song and liner notes.
- Two or more sound recordings.
- Different versions of a sound recording.
- More than one version of a script or treatment.
- A collective work, such as an album, periodical, newspaper, magazine, newsletter, journal, anthology, book of poems or short stories, or any other work that contains a number of separate and independent works.
- Multiple contributions to a collective work.
- Two or more works physically bundled together by the claimant for distribution to the public as a single, integrated unit and first published in that integrated unit, such as a box of greeting cards, a book published with a CD-ROM, a box set of music CDs, or a board game with printed instructions, playing pieces, and a game board. (For a definition and discussion of the unit of publication option, see Chapter 1100, Section 1103.)
- Two or more works that may be registered using a group registration option. (For information concerning this procedure, see Chapter 1100.)
- A multi-part work, such as a series of books or photographs.
- A website.

1405.5 The One Author Requirement

The Single Application may be used to register one work created by one individual, provided that the applicant satisfies the other eligibility requirements for this form.

The following are representative examples of works created by one person:

- One essay written and solely owned by Simone Stucker.
- One children's book containing text and illustrations created and solely owned by Franklin Hooker.
- One photograph taken and solely owned by Douglas Brewer.
- One sound recording containing music written, recorded, and solely owned by Felicia Driver.
    - **NOTE**: Felicia must be the author/owner of both the music and the sound recording, and she must be the only performer in the recording.
- One song containing music and lyrics written and solely owned by Edward Boxer.
    - **NOTE**: If the applicant submits a recording of the song, Edward must be the author/owner of both the song and the sound recording, and he must be the only performer in the recording, such as a songwriter's solo performance of the song.

As discussed in Section 1405.3, the Single Application may not be used if the work was created by two or more individuals or if it was created as a joint work. (For a definition and discussion of joint works, see Chapter 500, Section 505.) The following are representative examples of works created by more than one author that are not eligible for this form:

- One comic book containing text written by one individual and illustrations drawn by another individual.
- One screenplay co-written by two individuals.
- One song containing music written by one individual and lyrics written by another individual.
- One sound recording containing music written by one individual and performed by another individual.
- Any sound recording created by two or more performers or musicians.
- Any motion picture or other audiovisual work that includes directing, editing, writing, or other authorship by more than one person.

Likewise, the Single Application may not be used to register a work created by or on behalf of a company, an organization, or any other legal entity, or a work created as a

work made for hire. (For a definition and discussion of works made for hire, see Chapter 500, Section 506.) The following are representative examples of works that do not qualify as a work created by an individual author:

- One piece of jewelry created by Phoebe Snow Designs, Inc.
- One photograph taken by an employee of Sue Saint Marie Studios.
- One song specially ordered or commissioned by Smooth Ride Music, LLC for use as a contribution to a collective work.
- One videogame created by the employees of the Chessie Katz game development company.

1405.6 The One Owner Requirement

The Single Application may be used to register one work by one author if that individual is the sole owner of the copyright in that work, and if the applicant satisfies the other eligibility requirements for this form.

An applicant may not use the Single Application if the copyright or any of the exclusive rights in the work are owned or co-owned by two or more individuals. This form may not be used if the copyright is owned by a company, an organization, or other legal entity. It may not be used if the author transferred the copyright or any of the exclusive rights to a third party, either by written agreement or by operation of law. Likewise, this form may not be used if the author is deceased. (For a discussion of copyright ownership and transfers, see Chapter 600, Sections 619 and 620.)

The following are representative examples of works that cannot be registered with the Single Application, because they are owned or co-owned by more than one party, or because the works are not solely owned by the author:

- One stage play co-owned by the composer and the librettist of the work.
- One song written by a composer who transferred the copyright to his music publishing company.
- One sound recording co-owned by the artists and musicians who performed the work.
- One article written by a freelance writer who assigned the copyright to her closely held company.
- A published novel by an author in which the publisher has acquired an exclusive license in the right of reproduction and distribution.

- One photograph taken by a photographer who granted the exclusive right of reproduction to a stock photography service and therefore no longer owns all of the rights in the work.

- One treatment written by a screenwriter who gave a motion picture studio the exclusive right to produce his work as a motion picture and therefore no longer owns all of the rights in the work.

1405.7 Content Requirements

The Single Application may be used to register one work if all of the content was created by the same individual, and if the applicant satisfies the other eligibility requirements for this form.

The following are representative examples of works that satisfy this requirement:

- One travel book containing text, illustrations, and photographs created by Christopher Wren.

- One song containing music and lyrics created by Danielle Running Horse.

  - **NOTE**: If the applicant submits a recording of the song, Danielle must be the author/owner of both the song and the sound recording, and she must be the only performer featured in the recording.

- A musical work and sound recording created by Alicia Fox.

  - **NOTE**: Alicia must be the sole author/owner of both the sound recording and the musical work, and she must be the only performer featured in the recording.

- One nature video containing script, direction, cinematography, and narration by Jonathan Bass.

- A translation by a single author of a work that is in the public domain.

The Single Application may not be used if the work contains material created by two or more authors, even if the applicant does not intend to name the other authors in the application and does not intend to claim their contributions in the application.

The following are representative examples of works containing material created by two or more authors that cannot be registered with this form:

- A novel written by one individual with an introduction and an afterword written by two other individuals.

- A translation by a different author of a work that is not in the public domain.
- An album containing music, lyrics, liner notes, and sound recordings created by three different individuals.
- A sound recording containing a song written by one individual that was performed by a different individual.
- A musical work created by one individual embodied in a sound recording created by a different author.
- A motion picture that includes directing, editing, writing, or other authorship by more than one person.

1406 Group Registration Applications

As a general rule, applicants should file separate applications, deposit copy(ies), and filing fees for each work they seek to register. In certain limited circumstances, there are options available for registering groups of related works with one application, one filing fee, and one set of deposit copies. All of these group registration options have specific application requirements, which are discussed below.

1406.1 Group Registration of Unpublished Works (GRUW)

In certain cases, an applicant may register up to ten unpublished works with one application, one filing fee, and one set of deposit copies. An applicant also may register up to ten unpublished sound recordings and ten musical works, literary works, or dramatic works if certain requirements are met. In both cases, the applicant must use the online application designated for "unpublished works." The Standard Application or a paper application may not be used for this type of claim.

For information concerning the registration requirements for a group of unpublished works, see Chapter 1100, Section 1106. For guidance in completing the online application, see Chapter 1100, Section 1106.5.

1406.2 Group Registration of Serials (GRSE)

As mentioned in Section 1403, serials are works issued, or intended to be issued, in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. This category includes but is not limited to periodicals (including newspapers), magazines, bulletins, newsletters, annuals, blogs, journals, and proceedings of societies.

In certain cases, an applicant may register a group of serials with one application, one filing fee, and one set of deposit copies. To do so, the applicant must use the online application designated for "Serial Issues." The Standard Application for a "Literary Work" or a "Single Serial Issue" or a paper application may not be used to register this type of claim.

For information concerning the registration requirements for a group of serial issues, see Chapter 1100, Sections 1107.2 through 1107.5. For guidance in completing the online application, see Chapter 1100, Section 1107.7.

1406.3 Group Registration of Newspapers (GRNP)

Newspapers are periodicals that are mainly designed to be a primary source of written information on current events. A newspaper contains a broad range of news on all subjects and activities, and is not limited to any specific subject matter. They are intended either for the general public or a particular ethnic, cultural, or national group.

In certain cases, an applicant may register a group of newspaper issues with one application, one filing fee, and one set of deposit copies. To do so, the applicant must use the online application designated for "daily newspapers." The Standard Application or a paper application may not be used to register this type of claim.

For information concerning the registration requirements for a group of newspaper issues, see Chapter 1100, Section 1108. For guidance in completing the online application, see Chapter 1100, Section 1108.6.

1406.4 Group Registration of Newsletters (GRNL)

Newsletters are a specific type of serial that are published and distributed by mail or electronic media at least two days per week and contain information chiefly of interest to a special group, such as trade and professional associations, schools, colleges, and churches. Newsletters generally are available by subscription, but are not available on newsstands.

In certain cases, an applicant may register a group of newsletters with one application, one filing fee, and one set of deposit copies. To do so, the applicant must use the online application designated for "daily newsletters." The Standard Application or a paper application may not be used to register this type of claim.

For information concerning the registration requirements for a group of newsletter issues, see Chapter 1100, Section 1109. For guidance in completing the online application, see Chapter 1100, Section 1109.7.

1406.5 Group Registration of Contributions to Periodicals (GRCP)

In certain cases, an applicant may register a group of works that were first published as contributions to periodicals. To do so, the applicant must use the online application designated for this group registration option. The Standard Application or a paper application may not be used to register this type of claim. For more information about exceptional cases eligible for waiving the online filing requirement, see Section 1411.

For information concerning the registration requirements for a group of contributions to periodicals, see Chapter 1100, Section 1110. For guidance in completing the online application, see Chapter 1100, Section 1110.7.

1406.6 Group Registration of Short Online Literary Works (GRTX)

In certain cases, an applicant may register a group of short online literary works. To do so, the applicant must use the online application designated for this option. The Standard Application or a paper application may not be used for this type of claim. For information about exceptional cases eligible for waiving the online filing requirement, see Section 1411.

For information concerning the registration requirements for a group of short online literary works, see Chapter 1100, Section 1111. For guidance in completing the application for this type of claim, see Chapter 1100, Section 1111.7.

1406.7 Group Registration of Published Photographs (GRPPH) and Group Registration of Unpublished Photographs (GRUPH)

In certain cases, applicants may register a group of photographs with one application, one filing fee, and one set of deposit copies. If the photographs have been published, the applicant must use the online application designated for "published photographs." If the photographs have not been published, the applicant must use the application designated for "unpublished photographs." The Standard Application or a paper application may not be used to register these types of claims.

For information concerning the registration requirements for a group of photographs, see Chapter 1100, Section 1114. For guidance in completing these applications, see Chapter 1100, Section 1114.6.

1406.8 Group Registration of Database Updates or Revisions

In certain cases, applicants may register a group of updates or revisions to a database with one application, one filing fee, and one set of deposit copies.

To register a photographic database, the applicants may use a paper application submitted on Form VA. Alternatively, applicants may use the Standard Application, but only if they have obtained prior authorization from the Visual Arts Division.

To register any other group database claim, the applicant must use a paper application. For information concerning the registration requirements for a group of updates or revisions to a database, see Chapter 1100, Section 1112. For guidance in completing the application, see Chapter 1100, Section 1112.8.

1406.9 Group Registration of Questions, Answers, and Other Items Prepared for Use in a Secure Test (GRSTQ)

In certain cases, an applicant may register a group of questions, answers, and other items that have been prepared for use in a secure test. To do so, applicants must use the Standard Application. A paper application may not be used for this type of claim.

For guidance in completing the application, see *Copyright Registration of Secure Tests and Test Items (Circular 64)*.

1407 Supplementary Registration: Online Application / Form CA

Supplementary registrations correct or amplify the information that is set forth in an existing registration.

- A correction is appropriate if certain information in a basic registration was incorrect at the time that the basic registration was made.

- An amplification is appropriate if the applicant intends: (i) to add certain information that could have been given, but was omitted at the time of registration, such as where a co-author is omitted; (ii) to identify changes in certain facts that have occurred since the registration, such as a change in the title of the work; or (iii) to provide explanations that clarify information given in the registration, such as when a statement of authorship in the version being registered is not sufficiently explicit on the original application.

An application for a supplementary registration is not appropriate: (i) if the work has been revised; (ii) to reflect corrections that have been made to statements appearing on the copy(ies) or phonorecords of the work; (iii) as a substitute for a renewal registration; (iv) as a substitute for recording a transfer or other document pertaining to copyright ownership; or except in certain circumstances (v) if a work was registered as unpublished but was actually published at the time of the basic registration. For information concerning these issues, see Chapter 1800, Section 1802.7.

The U.S. Copyright Office may issue a supplementary registration that corrects or amplifies the information in any basic registration, group registration, renewal registration, or GATT registration, unless the registration has expired or unless it has been cancelled or abandoned.

As a general rule, the applicant must use the online application to correct or amplify a basic registration for the following types of works:

- A literary work, such as fiction, nonfiction, poetry, memoirs, textbooks, computer programs, or other nondramatic textual works.

- A single issue of a serial publication, such as a periodical, magazine, newsletter, or journal.

- A work of the visual arts, such as two-dimensional or three-dimensional works of fine, graphic, or applied art, prints, art reproductions, maps, technical drawings, and architectural works.

- A work of the performing arts, such as a musical work, dramatic work, choreographic work, pantomime, motion picture, or other audiovisual work.

- A sound recording, such as an audiobook, a podcast, or a recording of a song.

See 37 C.F.R. § 202.6(e)(1).

Likewise, applicants must use the online application to correct or amplify the information appearing in the following types of registrations:

- A registration for a compilation, a collective work, or a derivative work.
- A registration for an unpublished collection. *See* 37 C.F.R. § 202.6(e)(1).
- A registration for a unit of publication. *See* 37 C.F.R. § 202.3(b)(4); 37 C.F.R. § 202.6(e)(1).
- A registration for a group of serials, newspapers, or newsletters. *See* 37 C.F.R. § 202.4(d)-(f); 37 C.F.R. § 202.6(e)(1).
- A registration for a group of contributions to periodicals. *See* 37 C.F.R. § 202.4(g); 37 C.F.R. § 202.6(e)(1).
- A registration for a group of photographs. *See* 37 C.F.R. § 202.4(h), (i); 37 C.F.R. § 202.6(e)(1).

Applicants must use the online application to correct or amplify the information in a group registration for a photographic database. *See* 37 C.F.R. § 202.3(b)(5). But before doing so, they must contact the Visual Arts Division at (202) 707-8202 to obtain prior authorization and instructions concerning the information that should be included in the application. *See* 37 C.F.R. § 202.6(e)(3).

Similarly, applicants must use the online application to correct or amplify the information in a registration for a group of unpublished works or a group of short online literary works. *See id.* § 202.6(e)(2). But before submitting the claim, the applicant must contact the Office of Registration Policy & Practice at copyinfo@copyright.gov to obtain prior authorization and instructions concerning the information that should be included in the application. For additional information, see *Supplementary Registration (Circular 8)*.

By contrast, applicants must use a paper application submitted on Form CA to correct or amplify the information appearing in the following types of registrations:

- A group registration for a database that does not predominantly consist of photographs. *See* 37 C.F.R. § 202.3(b)(5); 37 C.F.R. § 202.6(e)(4).
- A GATT registration for a foreign work restored to copyright protection under the Uruguay Round Agreements Act. *See* 37 C.F.R. § 202.12; 37 C.F.R. § 202.6(e)(4).
- A renewal registration for a work registered or first published before January 1, 1978. *See* 37 C.F.R. § 202.17; 37 C.F.R. § 202.6(e)(4).

For more information on supplementary registrations, see Chapter 1800, Section 1802. For guidance in completing the online application, see Chapter 1800, Section 1802.8(A). For guidance in completing Form CA, see Chapter 1800, Section 1802.8(B).

1408 Renewal Registration Applications: Form RE and RE/Addendum

The U.S. Copyright Office offers renewal registrations for works that were first published or registered prior to 1978. The 1909 Act made works copyrighted in the United States before January 1, 1978 subject to a renewal system whereby the term of copyright was divided into two consecutive terms with separate registration requirements. The current Copyright Act that came into effect on January 1, 1978 retained the renewal system for works that were copyrighted before 1978 and were still in their first term on January 1, 1978. Renewal registration may still be obtained for pre-1978 works in their renewal term.

Applicants must use a paper application to seek a renewal registration. Form RE is the general renewal form, and Form RE / Addendum is required for works that were not registered with the Office during their initial term. At present, applicants cannot file for renewal registration using the electronic registration system.

For an extensive discussion of registration of renewal claims and for guidance in completing these forms, see Chapter 2100.

1409 GATT Registration Applications: Form GATT

Applicants must use Form GATT to register a foreign work that was restored to copyright protection in the United States under the 1994 Uruguay Round Agreements Act ("URAA"), codified as Section 104A of the Copyright Act. 17 U.S.C. § 104A. At present, applicants cannot seek a GATT registration using the electronic registration system.

For more information on GATT applications, see Chapter 2000, Section 2007.2.

1410 Preregistration

To seek a preregistration, applicants must use the online application designated for this service. For detailed information concerning preregistration, see Chapter 1600. For guidance in completing an application for preregistration, see Chapter 1600, Section 1606.

1411 Waivers

As discussed above, applicants must use an online application to register an architectural work, a group of unpublished works, a group of photographs, a group of serials or newsletters, a group of contributions to periodicals, or a group of short online literary works. In most cases, applicants must use the online application to correct or amplify the information appearing in an existing registration. *See* Sections 1404, 1406.1, 1406.2, 1406.4, 1406.5, and 1407.

In exceptional cases, the U.S. Copyright Office may waive this online filing requirement, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. An applicant may submit a request to waive this requirement in writing. It should explain why the applicant is unable to use the online application, and it should be sent to the following address:

Associate Register of Copyrights and
Director of Registration Policy & Practice
Registration Program
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559

See 37 C.F.R. § 202.4(c)(10), (d)(4), (f)(4), (g)(8), (h)(11), (i)(11).

1412 Filing Fees

1412.1 Statutory Basis for Setting Filing Fees

Since 1997, the U.S. Copyright Office has undertaken a series of studies to determine what fees to charge for specific services relating to registration. The Office revisits its schedule of fees approximately every three years, a process during which it seeks public comment, adopts some fees, and makes recommendations for other fees to Congress.

The majority of the Office's fee adjustments are guided by Section 708(b) of the Copyright Act, which states that, before adjusting certain fees, the Register must conduct a study of the Office's costs for registering claims and must consider the timing of any fee adjustments and the Office's authority to use the fees consistent with the Office's budget. Section 708(b) also states that the Register may, based on the results of the fee study, adjust some fees "not more than necessary to cover the reasonable costs incurred by the Copyright Office for … services … plus a reasonable inflation adjustment to account for any estimated increase in costs." Finally, Section 708(b) mandates that certain fees "shall be fair and equitable and give due consideration to the objectives of the copyright system."

1412.2 Where to Find Specific Filing Fee Information

The U.S. Copyright Office publishes its fee schedule in Section 201.3 of Title 37 of the Code of Federal Regulations, and on the Office's website.

1412.3 Submitting Filing Fees

When filing claims via the U.S. Copyright Office's electronic registration system, the applicant will be prompted to provide payment on the Online Payment screen. Applicants who submit paper applications should provide a deposit account number in the appropriate space of the application or should submit the filing fees in the same envelope or package with the application and deposit copy(ies). For more specific information regarding deposit accounts, see Section 1412.5 below.

1412.4 Acceptable Forms of Payment

The U.S. Copyright Office has issued regulations regarding acceptable forms of payment for filing fees. *See* 37 C.F.R. § 201.6(a).

Applicants using the Office's online registration system to file applications may pay fees by making a secure payment by credit or debit card, electronic check, or U.S. Copyright Office deposit account.

Applicants submitting paper applications may pay fees from a deposit account or by using checks, money orders, or bank drafts payable to the U.S. Copyright Office. Payment in cash may be made only in person at the Public Information Office.

Fees paid from a foreign country should be in the form of an international money order or bank check payable and immediately negotiable in the United States for the full amount of the fee required. All foreign checks or money orders must be redeemable without a service or exchange fee through a U.S. institution, payable in U.S. dollars, and imprinted with American Banking Association routing numbers. *See id.*

Postal money orders and international money orders that are negotiable only at a post office are not acceptable. Uncertified checks are accepted subject to collection. Where the statutory fee is submitted in the form of a check, the registration of the copyright claim or other record made by the Office is provisional until payment is received.

Receipt of valid fees is very important because it affects the effective date and validity of a registration. The effective date of registration will be the date the valid payment is received, provided that the applicant satisfied the minimum requirements for an acceptable application and deposit copy(ies) as of that date. In the event the filing fee is not paid, the registration or other record shall be expunged.

1412.5 Deposit Accounts

The U.S. Copyright Office maintains a system of deposit accounts for the convenience of those who frequently use the Office's services. The system allows an individual or firm to establish a deposit account with the Office and to make advance deposits into the account. Charges for registration, recordation, or other fee services will be deducted from the outstanding balance in such accounts. *See* 37 C.F.R § 201.6(b).

Only certain applicants may take advantage of deposit accounts. Specifically, a person or entity must have twelve or more transactions a year with the Office before they may prepay copyright expenses by establishing a deposit account. The Office and the deposit account holder will cooperatively determine an appropriate minimum balance for the deposit account (in no case less than $450), and the Office will automatically notify the deposit account holder if the account falls below that balance.

Deposit account holders may take measures to protect against falling below the account minimum. The holder may authorize the Office to automatically replenish the account from the holder's bank account or credit card in an amount determined by the deposit account holder. Automatic replenishment will be triggered when the deposit account falls below the minimum level of funding. The Office will notify the account holder when its account will be replenished.

The Office will close a deposit account the second time an account holder overdraws the account within any twelve-month period. An account closed for this reason can be

reopened only if the account holder agrees to fund the account through automatic replenishment.

1412.6 Refunds

The U.S. Copyright Office will not refund fees submitted for applications for basic, supplementary, or renewal registration, including mask works and vessel designs, if the Office refuses to register the claim because the material deposited does not constitute copyrightable subject matter or because the claim is invalid for any other reason. The Office will refund payments made by mistake or in excess of the fee, depending upon the timing of the request or other factors, but amounts of $50 or less will not be refunded unless specifically requested. *See* 37 C.F.R. § 201.6(c)(1). For example, the Office may refund the filing fee for a duplicate submission if the applicant filed an online application, and then immediately submitted another application to register the same work because her computer crashed before she received an email acknowledging her first submission. By contrast, if the applicant submitted an application for a preregistration, a supplementary registration, or a renewal registration, the Office will not refund the filing fee, even if she actually intended to file an application for a basic registration.

1412.7 Cancellation of Registration in Cases of Dishonored Checks

When a check received in payment of the filing fee is returned to the U.S. Copyright Office marked "insufficient funds" or is otherwise marked uncollectible, the Office may cancel any registration for which the dishonored check was submitted. 37 C.F.R. § 201.7(c)(2).

The Office will notify an applicant in writing if the check could not be collected. If the filing fee is received within forty-five days from the date set forth in the notice, the Office will issue a new certificate of registration. The effective date of registration for the new certificate will be the date that the filing fee was received.

If the Office does not receive a filing fee within forty-five days, the Office will cancel the registration. If the applicant would like to resubmit the work for registration, the applicant should file a new application, together with new deposit copy(ies) and the correct filing fee. In appropriate cases, the Office reserves the right to require a certified check or money order, and in all cases, the effective date of registration will be based on the date that the new submission is received by the Office.

For additional information concerning this procedure, see Chapter 1800, Section 1807.4(B).

1412.8 Special Handling Fees

The U.S. Copyright Office offers expedited handling of applications and documents, as well as requests for searches, certifications, or other services. The Office charges an additional fee for expedited services, called a special handling fee. The current fees for these services are set forth in the Office's regulations at 37 C.F.R. § 201.3(d), and on its website under the heading "Special services." For detailed information on these fees, see Chapter 600, Section 623.6 and Chapter 2400, Section 2411.3.

The special handling fee must be paid for each application, each document, or other service for which expedited service is requested and granted. Once a request for special handling has been granted, the special handling fee is not refundable, regardless of whether the Office issues a certificate of registration or a certificate of recordation or refuses to register or refuses to record the document.

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Deposits

1501 What This Chapter Covers

This Chapter discusses the deposit requirements for a variety of creative works. The term "deposit" is frequently misunderstood. It refers to the copy or copies of a work that are submitted to the U.S. Copyright Office. It does not refer to the filing fee that must be paid in order to register a work with the Office.

This Chapter is divided into two parts: Sections 1503 through 1510 discuss the deposit requirements for copyright registration, while Section 1511 discusses the mandatory deposit requirement (*i.e.,* the deposit to the Library of Congress that is required of all works that are published in the United States). The information in this Chapter applies only to works subject to copyright protection under the 1976 Copyright Act.

- For a discussion of the deposit requirements for works first copyrighted under federal law prior to January 1, 1978, see Chapter 2100.
- For a discussion of the deposit requirements for mask works, see Chapter 1200, Section 1210.2(C).
- For a discussion of the deposit requirements for vessel designs, see Chapter 1300, Section 1313.

1502 Deposit for Registration Distinguished from Mandatory Deposit

The U.S. Copyright Act provides for two separate sets of deposit requirements: deposits submitted in connection with registration applications and deposits submitted in accordance with the mandatory deposit provisions (or "legal deposit" provisions) of the law. The U.S. Copyright Office administers both sets of provisions.

Mandatory deposit is a statutory requirement for the benefit of the national collection of the Library of Congress. Section 407 of the Copyright Act provides that the owner of copyright or the owner of the exclusive right of publication in a work published in the United States must deposit two copies or phonorecords of the work within three months after publication. 17 U.S.C. § 407(a).

As discussed below in Section 1511.3, the Register of Copyrights has the authority to adjust or exempt certain works from the deposit requirements, as appropriate given the needs or concerns of applicants and the public. 17 U.S.C. §§ 407(c), 408(c)(1). Registration is not required as a condition for copyright protection. But when an applicant chooses to register an original work of authorship, the deposit requirements for that work are governed by Section 408 of the Copyright Act. The Register specifies by regulation the form of deposit that must accompany a copyright claim. These deposits are used to examine the work for copyrightable authorship, to verify the authorship claimed in the application, and to verify the facts stated in the application. Deposits may also be used for evidentiary purposes in litigation involving a copyrighted

work. Additionally, these deposits may be selected by the Library of Congress for use in its collections. 17 U.S.C. § 704.

In most cases, a deposit submitted for purposes of satisfying the mandatory deposit requirement may be used to satisfy the deposit requirement for registration, provided that the applicant submits the prescribed application and filing fee and any additional identifying material that the regulations may require. *See* 17 U.S.C. § 408(b).

For some classes of works, the deposit requirements for registration and mandatory deposit are not the same. In such cases, a separate submission of copies, phonorecords, or identifying material may be needed to register the work and to satisfy the mandatory deposit requirements. For example, mandatory deposit for a computer program requires two complete copies of the best edition, while registration may be accomplished with identifying material containing a selection of the source code for that work. (For a definition and discussion of the term "best edition," see Section 1504.)

1503 Deposit for Registration

1503.1 Overview of the Deposit Requirement

To register a copyright claim with the U.S. Copyright Office, an applicant must submit (i) a completed application, (ii) the appropriate filing fee, and (iii) a complete deposit of the work.

Section 408 of the Copyright Act provides general requirements for registration deposit copies. These requirements vary depending on whether the applicant intends to register a published work, an unpublished work, or a foreign work.

- For unpublished works, the applicant generally should submit one complete copy or phonorecord of the work. *See* 17 U.S.C. § 408(b)(1), 37 C.F.R. § 202.20(c)(1)(i). In the case of an unpublished pictorial, graphic, or sculptural work, the applicant generally may submit identifying material in lieu of an actual copy. *See* 37 C.F.R. § 202.20(c)(2)(iv), (xi)(A).

- For works first published in the United States on or after January 1, 1978, the applicant generally should submit two complete copies or phonorecords of the work, typically in the best edition format. *See id.* § 202.20(c)(1)(iii). Specifically, the applicant should submit two complete copies or phonorecords of the "best" edition that exists at the time the claim is filed. However, there are several exceptions to this rule, which are discussed in Sections 1509.1 through 1509.3. *See id.* § 202.20(c)(2).

- For works published solely in a foreign country, the applicant should submit one complete copy or phonorecord of the work as first published in that country. *See id.* § 202.20(c)(1)(iv). For works first published in a foreign country and subsequently published in the United States, the applicant may submit one complete copy or phonorecord of the work as first published in the foreign country. Alternatively, the applicant may submit one complete copy or phonorecord of the best edition published in the United States.

- A work that is first published simultaneously in the United States and a foreign country is considered published in the United States. *Id*. As such, two complete copies or phonorecords of the best edition are generally required for such works.

The terms "best edition," "complete copy," and "identifying material" are defined and discussed in Sections 1504, 1505, and 1506. Section 1507 discusses the appropriate format for the deposit, while Sections 1508.1 through 1508.7 discuss the procedure for submitting the deposit to the Office. Section 1508.8 discusses the procedure for requesting special relief from the deposit requirements.

1503.2 Refusal to Register

If the U.S. Copyright Office determines that the applicant failed to comply with the deposit requirements for a particular work, the registration specialist may communicate with the applicant or may refuse to register the claim. 17 U.S.C. § 410(b). The following are examples of situations where the Office may refuse to register a claim for failure to comply with the deposit requirement:

- The applicant failed to submit a copy or phonorecord of the work. 17 U.S.C. § 408(a).
- The applicant failed to submit a complete copy or phonorecord of the work. *Id.* § 408(b), 37 C.F.R. § 202.20(c)(1)(i)-(iv).
- The applicant failed to submit two copies or phonorecords of the best edition of a work published in the United States. 17 U.S.C. § 408(b)(2).
- The applicant failed to submit a *bona fide* copy of the work.
- The applicant failed to submit the required identifying material that is sufficient to show the authorship claimed in the application. 37 C.F.R. § 202.20(c)(2)(iv), (vii)-(xiv).
- The applicant failed to submit the work in an acceptable format.
- The applicant submitted the work in a form that cannot be examined by the Office.

The applicant must submit a *bona fide* copy of the work, regardless of whether the deposit consists of a complete copy, a complete phonorecord, or identifying material. For purposes of registration, a *bona fide* copy is a copy or phonorecord (i) that is virtually identical to the original copy or phonorecord of the work, and (ii) that is made from or by directly referring to the original copy or phonorecord. *Torres-Negron v. J&N Records, LLC*, 504 F.3d 151, 157 (1st Cir. 2007), *abrogated on other grounds by Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010); *Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1211-12 (9th Cir. 1998).

1504 What Is the Best Edition of the Work?

The Copyright Act states that the "material deposited for registration [of a published work] shall include . . . two complete copies or phonorecords of the *best edition*." 17 U.S.C. § 408(b)(2) (emphasis added).

The "best edition" of a work is defined as "the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes." 17 U.S.C. § 101; 37 C.F.R. §§ 202.19(b)(1), 202.20(b)(1).

The criteria used to identify the best edition for 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).

NOTE: If a work was published in both a hard copy format (*i.e.,* in a physically tangible format) and an electronic format, the requirements set forth in the Best Edition Statement for the hard copy format apply. 37 C.F.R. § 202.20(b)(1). It is the applicant's responsibility to submit the correct deposit.

1504.1 Works Exempt from the Best Edition Requirement

For purposes of registration, the following types of works are exempt from the best edition requirement:

- Unpublished works (including works that were published after the claim was submitted to the U.S. Copyright Office).
- Works published solely in a foreign country.

See 37 C.F.R. § 202.20(c)(1)(i), (c)(1)(iv).

If the work is unpublished, the applicant may upload an electronic copy of the work in an acceptable file format. The list of acceptable file formats is discussed in Section 1507 below.

Likewise, the applicant may upload an electronic copy if the work was unpublished when the claim was submitted. There is no need to submit additional copy(ies) or phonorecord(s) if the work is subsequently published while the work is being examined or after the claim has been registered or refused.

If the work was published solely in a foreign country, the applicant may submit one copy of the first published edition of that work.

1504.2 Works Subject to the Best Edition Requirement

As discussed in Section 1503.1, the applicant generally should submit two complete copies or phonorecords of the best edition of the work if the work was first published in the United States on or after January 1, 1978. *See* 37 C.F.R. § 202.20(c)(1)(iii). If the work was first published in a foreign country and then subsequently published in the United States, the applicant may submit one complete copy of the foreign edition, or alternatively, the applicant may submit one complete copy of the best edition published in this country. *See id.* § 202.20(c)(1)(iv). If a work was published in the United States in both a physical format and an electronic format, the applicant should submit the best edition of the work in the physical format. *See id.* § 202.20(b)(1).

To identify the "best" edition of the work, applicants should focus solely on the edition(s) or format(s) that actually exist as of the date that the claim is filed. For example, if a novel was published in paperback form on the date the claim was filed, the applicant should submit the work in that format, even if the work is subsequently published in another format that the Library may prefer.

To be clear, applicants do not need to create a new edition of a work in order to satisfy the best edition requirement. For example, if a motion picture was published solely on DVD as of the date that the claim was filed, the applicant may submit the work in that format; there is no need to produce another edition solely for the purpose of seeking a registration.

If the applicant is unable to submit a complete copy or phonorecord of the best edition, the applicant may ask for special relief from the deposit requirements. For information concerning this procedure, see Section 1508.8.

1504.3 Applicant Makes the Determination

As a general rule, the applicant – not the U.S. Copyright Office – should determine whether the work is subject to the best edition requirement for purposes of registration. This determination should be based on the facts that exist at the time when the claim is filed with the Office.

The registration specialist will not ordinarily conduct independent research to determine whether a particular work is subject to the best edition requirement, whether the applicant submitted the best edition of that work, or whether a different edition may be required. In most cases, the specialist will accept the applicant's determination, unless it is contradicted by information provided in the deposit itself or elsewhere in the registration materials. The Office leaves it to a court to determine whether a failure to comply with the best edition requirement was a knowing misrepresentation.

If the work was published solely in a format that is not listed in the Best Edition Statement, the applicant may seek further guidance concerning the deposit requirements for registration by submitting a written request to the Office of Registration Policy & Practice. The Office will provide the applicant with general information about the provisions of the Copyright Act, including the statutory definition of "best edition," and will explain the regulatory requirements for registering that type of work.

1505 What Is a Complete Copy or Phonorecord?

The meaning of the term "complete" copy or phonorecord varies depending on the following factors:

- The type of work.
- Whether the work is unpublished or published.
- If published, whether the work was published in electronic or hard copy format.

- If the work was published as a contribution to a collective work.

See 37 C.F.R. § 202.20(b)(2). These factors are discussed in Sections 1505.1 through 1505.5 below.

1505.1 Copies or Phonorecords of Unpublished Works

A copy or phonorecord of an unpublished work is complete if it contains all of the copyrightable authorship claimed on the application. *See* 37.C.F.R. § 202.20(b)(2)(i).

1505.2 Copies or Phonorecords of Published Works

A copy or phonorecord of a published work is complete if it "includes all elements comprising the applicable unit of publication of the work, including elements that, if considered separately, would not be copyrightable subject matter." 37 C.F.R. § 202.20(b)(2)(ii).

There are several exceptions to this rule. Where certain physically separable elements usually attached to a unit of publication are missing, the copy or phonorecord is complete if:

- The deposit contains all parts of the work claimed on the application;
- The removal of the missing elements did not physically damage the copy or phonorecord or garble its contents; and
- The work is exempt from the mandatory deposit requirements under 17 U.S.C. § 407; or
- The deposit consists entirely of a "container, wrapper, or holder, such as an envelope, sleeve, jacket, slipcase, box, bag, folder, binder, or other receptacle acceptable for deposit…."

37 C.F.R. § 202.20(b)(2)(ii).

1505.3 Electronic Copies or Phonorecords of Unpublished Works

An electronic copy or phonorecord of an unpublished work is complete if it is submitted in a digital file that contains all of the copyrightable authorship claimed on the application. 37 C.F.R. § 202.20(b)(2)(iii)(A).

1505.4 Electronic Copies or Phonorecords of Published Works

If the work is published solely in an electronic format, a copy or phonorecord of that work is complete if it is submitted in a digital file that contains all elements constituting the work in its published form (*i.e.,* the complete work as published), including metadata and authorship for which registration is not sought. 37 C.F.R. § 202.20(b)(2)(iii)(B) ("Publication in an electronic only format requires submission of the digital file[s] in exact first-publication form and content.").

1505.5 Copies or Phonorecords of a Contribution to a Collective Work

As a general rule, a copy or phonorecord of a contribution to a published collective work is complete if the applicant submits one of the following:

- One complete copy of the best edition of the entire published collective work; or
- A photocopy or facsimile copy (*i.e.,* an exact copy equivalent) of the contribution as it was published in the collective work.

If the contribution was published in a newspaper, the copy is complete if the applicant submits one of the following:

- The complete section containing the contribution; or
- The contribution cut out from the newspaper in which it appeared.

See 37 C.F.R. § 202.20(b)(2)(iv).

1506 Identifying Material

Identifying material ("ID material") is material that adequately represents the authorship claimed in an unpublished or published work. The U.S. Copyright Office has the authority to accept identifying material in lieu of a complete copy or phonorecord in cases where the copies or phonorecords would be too "bulky, unwieldy, easily broken, or otherwise impractical [to serve] as records identifying the work registered." H.R. REP. NO. 94–1476, at 154 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5770.

Examples:

- To register a sculpture, the applicant may submit identifying material consisting of photographs taken at every angle of the sculpture, rather than submitting the actual sculpture. *See* 37 C.F.R. §§ 202.20(c)(2)(xi)(A)(1), 202.21(b).
- To register a copyrightable design that has been applied to the back of a chair or other useful article, the applicant should submit drawings or photographs of the design as it appears on the chair rather than the actual piece of furniture. *See* 37 C.F.R. §§ 202.20(c)(2)(xi)(B)(2), 202.21(a).
- To register a computer program, the applicant generally may submit identifying material containing a selection of the source code from the program. *See* 37 C.F.R. § 202.20(c)(2)(vii).

Submitting identifying material may be mandatory or permissive. In some cases, the applicant must submit identifying material in lieu of copies or phonorecords of the actual work, while in other cases the applicant has the option of submitting identifying material or actual copies or phonorecords of the work. Identifying material must be

visually perceptible to the naked eye, meaning that the Office's staff should not have to use a machine or device to examine the work. *See* 37 C.F.R. § 202.21(a).

The Register also may require submission of identifying material by regulation, in addition to the best edition. 17 U.S.C. § 408(b).

The specific type of identifying material that should be submitted varies depending on the type of work. The cases where identifying material is an acceptable substitute for copies or phonorecords of the actual work are described in the following sections:

Literary Works

- Computer programs: Section 1509.1(F). *See* 37 C.F.R. § 202.20(c)(2)(vii).
- Databases: Sections 1509.1(G)(2) and 1509.1(G)(3). *See id*. § 202.20(c)(2)(vii)(D).
- Compilations or other types of literary works fixed or published solely in machine-readable copies (other than a CD-ROM) from which the work cannot ordinarily be perceived except with the aid of a machine or device. *See id.* § 202.20(c)(2)(vii), (viii)(E).
- GATT Literary Works: Section 1509.1(M). *See id.* § 202.12(c)(3).

Works of the Performing Arts

- Musical works published in motion pictures: Section 1509.2(A)(2)(d). *See id*. § 202.20(c)(2)(xii).
- Audiovisual works that have not been fixed on CD-ROM: Section 1509.2(E)(2). *See id*. § 202.20(c)(2)(viii)(B).
- Unpublished motion pictures: Section 1509.2(F)(2). *See id*. § 202.20(c)(2)(ii).
- Audiovisual works, musical compositions, or sound recordings fixed or published solely in machine-readable copies (other than a CD-ROM) from which the work cannot ordinarily be perceived except with the aid of a machine or device. *See id.* § 202.20(c)(2)(viii)(B)-(D).
- GATT Works of the Performing Arts: Section 1509.2(I). *See id.* § 202.12(c)(3).

Visual Art Works

- Unpublished pictorial or graphic works: Section 1509.3(A)(1). *See id*. § 202.20(c)(2)(iv).
- Pictorial or graphic works published in a limited edition: Section 1509.3(A)(3). *See id*.

- Pictorial or graphic works reproduced in sheet-like material: Section 1509.3(A)(4). *See id*. § 202.20(c)(2)(x).

- Prints, labels, and other advertising matter that is inseparable from a three-dimensional object: Section 1509.3(A)(9). *See id*. § 202.20(c)(2)(xi)(A)*(2)*, (c)(2)(xi)(B)*(2)*.

- Pictorial or graphic works reproduced on three-dimensional containers or holders: Section 1509.3(A)(10). *See id*. § 202.20(c)(2)(xi)(B)*(4)*.

- Three-dimensional visual arts works: Section 1509.3(B). *See id*. § 202.20(c)(2)(xi)(A)*(1)*.

- Two- or three-dimensional holograms. *See id.* § 202.20(c)(2)(iii).

- Architectural works: Section 1509.3(D). *See id.* § 202.20(c)(2)(xviii).

- Pictorial or graphic works fixed or published solely in machine-readable copies (other than a CD-ROM) from which the work cannot ordinarily be perceived except with the aid of a machine or device. *See id.* § 202.20(c)(2)(viii)(A).

- GATT Visual Arts Works: Section 1509.3(E)(3). *See id.* § 202.12(c)(3).

Oversized Deposits

- Any work that is more than ninety-six inches in any dimension. *See id.* § 202.20(c)(2)(xiii).

1507 Acceptable Formats for Registration Deposits

Depending on the type of work, the applicant may submit deposit copy(ies) in one of two formats:

- Hard copy (by mail).

- Electronic (by upload).

These formats are discussed in Sections 1507.1 and 1507.2. Instructions for submitting deposits in hard copy format are provided in Section 1508.2. Instructions for submitting deposits in electronic format are provided in Section 1508.1.

1507.1 Hard Copy Format

Hard copy deposits are copies and phonorecords embodied in a physically tangible format. Examples of hard copy deposits include, but are not limited to, the following:

- Printed materials
- CDs
- DVDs

- Fabric
- Film

The deposit requirements for works fixed in hard copy format vary depending on whether the work is unpublished or published.

- *Unpublished works:* For unpublished works fixed in hard copy format, the applicant should submit one complete hard copy of the work. If the unpublished work is fixed in both electronic and hard copy format, the applicant may submit one complete copy in an electronic format (provided that the requirements set forth in Section 1507.2 have been met).

- *Published works fixed solely in hard copy format:* For published works fixed solely in hard copy format the applicant should submit complete copy(ies) or phonorecord(s) of the work in hard copy format.

- *Published works fixed in both electronic and hard copy format:* If the work was first published in both electronic and hard copy formats, the applicant generally must submit complete copy(ies) or phonorecord(s) in hard copy format. *See* 37 C.F.R. § 202.20(b)(1).

For a definition of the term "complete," see Section 1505. For information on the deposit requirements for specific types of works that are typically fixed in hard copy format, see Sections 1509.1 through 1509.3.

1507.2 Electronic Format

Electronic deposit copy(ies) are copies or phonorecords embodied in electronic format, rather than or in addition to a hard copy format. Applicants may submit registration deposit copy(ies) in electronic format, provided that (i) the copy(ies) are "complete" as defined in Sections 1505.3 and 1505.4, (ii) the copy(ies) are submitted in one of the acceptable file formats discussed in Section 1508.1, and (iii) one or more of the following conditions has been met:

- The work is unpublished.

- The work is not subject to the best edition requirements.

- The work has been published only in electronic format.

- The work has been published and identifying material is permitted or required in lieu of a hard copy of the best edition.

- The applicant is registering the works using the group registration options for unpublished works, serials, newspapers, newsletters, photographs, contributions to periodicals, short online literary works, or secure test items.

- The applicant is submitting a group of photographs under the pilot program for a group of database updates that consist predominantly of photographs.

- The Office agrees to accept electronic copies or phonorecords under a grant of special relief.

For all other classes of works, applicants must submit the deposit in hard copy format (even if the application and filing fee are submitted through the electronic registration system). The U.S. Copyright Office will offer hard copy deposits to the Library of Congress for use in its collections. In addition to submitting a hard copy, the applicant may upload an electronic copy to the electronic registration system to ensure that the Office retains a copy of the work. When completing the online application, the applicant should state that the electronic copy is for archival purposes and that the hard copy will be sent separately. This statement should be provided in the Note to Copyright Office field.

1508 How to Submit a Registration Deposit

The applicant should submit registration deposit copy(ies) at the same time that the application and filing fee are submitted. Depending on the type of application and the deposit requirements for the work, the deposit copy(ies) may be submitted electronically or in hard copy format. These options are discussed in Sections 1508.1and 1508.2. For information concerning the difference between an electronic copy and a hard copy, see Sections 1507.1 and 1507.2.

NOTE: To examine a work for copyrightable authorship, the U.S. Copyright Office's Registration Program must be able to view or listen to the deposit material without the need to enter a password. Therefore, a deposit copy or phonorecord should not contain digital rights management controls or otherwise require a password to unlock the copyrighted material, regardless of whether it is uploaded in electronic format or submitted in a hard copy (*i.e.,* physically tangible) format. Additionally, deposit copies and phonorecords must not contain any built-in limitations on the period of use.

1508.1 Electronic Deposit Copy(ies)

When completing an online application, the applicant may submit deposit copy(ies), phonorecords, or identifying material in an electronic format, provided that the work satisfies the requirements set forth in Section 1507.2. If the work does not satisfy these requirements, the applicant must submit the deposit copy(ies) in a hard copy format.

If the applicant submits a work that is not eligible for submission in electronic format, a member of the Registration Program may communicate with the applicant to request a proper deposit. This process will delay the examination of the application and may change the effective date of registration.

The preferred methods for submitting the deposit in electronic format, in order of preference, are as follows:

- *Uploading electronic files to the electronic registration system:* When submitting an online application, the applicant may upload a digital file to the Office's server that contains a complete copy of the work that is claimed in the application. Guidance on how to upload the files is available on the Office's website.

- *Submitting electronic files by mail, by commercial carrier, such as Federal Express or United Parcel Service, by courier, or by hand delivery:* When submitting an online application or a paper application, the applicant may submit a digital file that contains a complete copy of the work that is claimed in the application. The files should be saved onto a physical storage device, such as a flash drive, CD-ROM, DVD, or the like. The storage device may be delivered to the Office by mail, commercial carrier, courier, or hand delivery. For guidance on this procedure, see Sections 1508.3 through 1508.5.

- *Identifying material:* If identifying material is permitted or required for the deposit, applicants are encouraged to submit that material in an electronic format. Specifically, applicants may upload the identifying material to the Office's server in the format that is most appropriate for the type of authorship that is claimed in the application. Alternatively, applicants may download the identifying material onto a physical storage device, such as a flash drive, CD-ROM, or DVD, and may deliver that device to the Office by mail, commercial carrier, courier, or hand delivery. For guidance on this procedure, see Sections 1508.3 through 1508.5.

NOTE: When submitting an online application and delivering the deposit by mail, commercial carrier, courier, or hand delivery, the applicant must attach a shipping slip to each deposit. If the applicant fails to attach a shipping slip to each deposit, the Office will be unable to connect the deposit with the application. For information concerning this procedure, see Section 1508.2.

The applicant must submit the electronic deposit copy(ies), phonorecords or identifying material in an acceptable file format, regardless of whether they are uploaded through the electronic registration system or submitted on a physical storage device. If the applicant fails to submit the deposit copy(ies) in an acceptable file format the registration specialist will refuse registration.

A current list of acceptable file formats is posted on the Office's website. The list includes, but is not limited to, the following file formats:

- pdf
- txt
- wpd
- doc
- tif
- svg
- jpg
- html
- wav
- mpeg, including mp3

37 C.F.R. § 202.20(b)(2)(iii)(C).

The work should be submitted in a form that allows it to be perceived as a complete work of authorship. The registration specialist must be able to perceive the entire content of the work, including the context where each element appears within the work

as a whole. The specialist may communicate with the applicant or may refuse registration if the applicant submits separate files or folders containing unassembled content or elements that have been disassociated from the context where they originally appeared within the work as a whole.

There is a maximum size restriction for each file that is uploaded to the electronic registration system. Specifically, the system will not accept any file that is more than 500 MB in size. Before uploading a file to the system, the applicant should confirm that the file does not exceed this size limit.

The system also has a 120 minute "time out" feature that automatically terminates the upload process if it takes more than two hours to complete. Depending on the connection speed of the applicant's computer, it may be necessary to split the deposit into separate files to ensure that the upload can be completed in two hours or less.

If the applicant intends to upload a large number of files, the Office encourages the applicant to submit the deposit in one or more compressed ZIP files. But in all cases, the files within the ZIP file must be submitted in an acceptable file format. If the ZIP file contains any files that do not appear on the list of acceptable file formats, the registration specialist may communicate with the applicant or refuse to register the claim.

Before uploading a ZIP file, the applicant should confirm that the file does not exceed the 500 MB size limit mentioned above. If the applicant intends to upload a very large file, the Office encourages the applicant to compress the deposit or to separate the deposit into two or more smaller files. Alternatively, the applicant may upload the deposit during two or more upload sessions; information concerning this procedure is available on the Office's website.

If the applicant is unable to upload the deposit with these options, then as discussed above, the applicant may save the deposit copy(ies) onto a physical storage device and deliver it to the Office by mail, commercial carrier, courier, or hand delivery, together with a shipping slip that connects the deposit with the online application.

1508.2 Hard Copy Deposits

The applicant must submit the deposit copy(ies), phonorecords, or identifying material in a hard copy format in the following situations:

- The work is not eligible for submission in electronic format because it does not satisfy the requirements set forth in Section 1507.2.
- The applicant is submitting a paper application rather than an online application.

Applicants may submit the deposit copy(ies) in a hard copy format by mail, by commercial carrier, such as Federal Express or United Parcel Service, by courier, or by hand delivery. These delivery options are discussed in Sections 1508.3 through 1508.5.

When the applicant submits an online application and filing fee and subsequently submits the deposit copy(ies) using one of these methods, the applicant must attach a shipping slip to the deposit copy(ies) to ensure that the deposit will be paired with the online application. *See* 37 CFR 202.3(b)(2)(i)(D). To create a shipping slip the applicant must click the Create Shipping Slip button at the bottom of the Case Summary screen then click the shipping slip link that appears in the field marked Send By Mail. The applicant must print one or more copies of the shipping slip, attach a copy to each deposit copy, and send all of these items to the Office in a single package.

The effective date of registration will be determined based on the date that the Office receives an acceptable application, the correct filing fee, and the deposit copy(ies) together with the corresponding shipping slip. If the shipping slip is not attached to each physical deposit, the deposit copy(ies) cannot be connected with the application. In such cases, the application and the deposit copy(ies) will not be examined by a member of the Registration Program unless the applicant agrees to pay an additional fee to locate the deposit copy(ies) and match it with the corresponding application. The amount of this fee is set forth in the Office's fee schedule under the heading "Matching unidentified deposit to deposit ticket claim," and it will be assessed for every half hour required to perform this service. If the Office is unable to locate the deposit copy(ies), the applicant will be required to resubmit the deposit copy(ies) to the Office with the required shipping slip. This process will change the effective date of registration for the claim. *See* Copyright Office Fees, 85 Fed. Reg. 9374, 9382 (Feb. 19, 2020).

1508.3 Submitting the Deposit by Mail or by Commercial Carrier

When completing an online application and submitting a hard copy deposit by mail or by commercial carrier, such as Federal Express or United Parcel Service, the applicant should send the deposit copy(ies) and the shipping slip(s) in a single package to the address specified on the shipping slip.

When submitting a paper application, the applicant should send the completed application, proper filing fee, and the deposit copy(ies) in a single package to the address specified in space 9 of the application under the heading marked "Mail To."

1508.4 Submitting the Deposit by Courier

To submit hard copy deposits by courier, the applicant should place all the required materials in a single package (including the appropriate shipping slip(s) when submitting an online application). The package should be sent to the Congressional Courier Acceptance Site ("CCAS"), which is located at 2nd and D Streets NE, Washington, DC. This location is open Monday through Friday from 8:30 a.m. to 4:30 p.m. Eastern Time, except for federal holidays. Short term parking for cars and bicycles is available.

Registration materials submitted through a courier service will not receive a dated receipt from the Office but will instead receive one dated by CCAS. The CCAS date of receipt is considered the date of receipt in the Office.

NOTE: A courier may deliver up to ten items at a time. Packages that are more than four inches by fourteen inches by eighteen inches will not be accepted. In such cases, the courier will be directed to deliver the package to an offsite mail processing center.

1508.5 Submitting the Deposit by Hand

To submit hard copy deposits in person, the applicant should place all the required materials in a single package (including the appropriate shipping slip(s) when submitting an online application). The package should be delivered by hand to the U.S. Copyright Office's Public Information Office ("PIO"). PIO is open to the public Monday through Friday, 8:30 a.m. to 5:00 p.m. Eastern Time, except for federal holidays. PIO is located at the following address:

Public Information Office
U.S. Copyright Office
James Madison Memorial Building, Room LM-401
101 Independence Avenue SE
Washington D.C.

An applicant who delivers registration materials to PIO during regular office hours will receive a date-stamped receipt that lists the title of no more than one of the works listed on the application.

NOTE: Visitors to the U.S. Copyright Office must pass through security before entering the building. Sealed packages or packages that are more than twenty-four inches wide by fifteen inches high are not permitted.

1508.6 Screening Deposits for Anthrax and Other Contaminants

In October 2001, envelopes contaminated with anthrax arrived in some Congressional offices. This caused a one-week closure of Capitol Hill buildings, including the James Madison Memorial Building of the Library of Congress where the U.S. Copyright Office is located. Since that time, all deliveries that are sent to the Office are screened offsite for anthrax or other contaminants prior to delivery. This process will delay the delivery of any deposit that is sent to the Office by mail, commercial carrier, or courier.

1508.6(A) Deposits Damaged During Contaminants Screening

In some cases the screening for anthrax and other contaminants may damage the deposit. When a deposit is damaged due to this process, a member of the Registration Program will notify the applicant and request a replacement deposit.

The replacement deposit should be submitted to the address specified in the notification from the Office, together with a written declaration confirming that the replacement is identical to the deposit that was previously submitted, including the copyright notice (if appropriate). If the work is approved for registration, the delay in the examination of the work will not affect the effective date of registration.

If the applicant fails to submit a replacement deposit within the time specified in Chapter 600, Section 605.6, the file will be closed.

1508.6(B) How to Avoid Damage to Deposit Copy(ies)

To avoid damage to the deposit, applicants should package the following items in cardboard boxes rather than envelopes for delivery to the Office:

- Audiocassettes, videocassettes, CDs, and DVDs.
- Microform.
- Photographs.
- Glossy advertisements, color photocopies, and other print items.

NOTE: CDs packaged in standard full-sized jewel boxes are more likely to survive the screening process than those packaged in slim-line cases.

In all cases, applicants are encouraged to remove any internal and external plastic packaging from the deposit. This type of material may melt during the irradiation process, which may damage the deposit.

1508.7 Special Handling

1508.7(A) How to Request Special Handling When Submitting an Application

Special handling is a procedure for expediting the examination and processing of an application. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate of registration (*e.g.,* as a prerequisite for bringing a copyright infringement suit in federal district court). For information concerning this procedure, see Chapter 600, Section 623.

1508.7(B) How to Request Special Handling for a Pending Application

A request for special handling may be made at any time before the U.S. Copyright Office issues a certificate of registration. If an application is currently pending, the applicant may ask the Office to process the claim on an expedited basis, provided that the applicant pays the special handling fee and provided that there is a compelling reason for the request. For information concerning this procedure, see Chapter 600, Section 623.5(D).

1508.8 Special Relief from Registration Deposit Requirements

This Section discusses the procedure for requesting special relief from the registration deposit requirements. For information concerning the procedure for requesting special relief from the mandatory deposit requirements, see Section 1511.9.

1508.8(A) What Is Special Relief?

The U.S. Copyright Office is authorized to grant special relief from the registration deposit requirements in certain circumstances. Specifically, the Office may allow the applicant to submit:

- One copy or phonorecord, or alternative identifying material (in lieu of submitting one or two copy(ies) or phonorecord(s) of the work).
- Incomplete copy(ies) or phonorecord(s) or copy(ies) or phonorecord(s) other than those normally comprising the best edition.
- Actual copy(ies) of the work (in lieu of submitting an electronic copy or identifying material).
- Identifying material that does not comply with sections 202.4 or 202.21 of the Office's regulations.

37 C.F.R. § 202.20(d)(1)(i)-(iv).

1508.8(B) How to Request Special Relief

A request for special relief must be made in writing and must include the specific reason(s) why the request should be granted. The request should be addressed to the Associate Register of Copyrights and Director of Registration Policy & Practice and should be signed by or on behalf of the person who signed the application. 37 C.F.R § 202.20(d)(3). The Associate Register will consider a request for special relief once the Office has received a completed application, the correct filing fee, and the deposit copy(ies).

When completing an online application, the applicant may submit a request for special relief in the Note to Copyright Office field. Alternatively, the applicant may submit the request along with the deposit copy by using the following procedures:

- When submitting the deposit through the electronic registration system, the applicant may upload the request and the deposit through the Electronic Deposit Upload screen, provided that the work is eligible for submission in an electronic format. *See* Section 1507.2. When using this option, the request should be prepared as a separate file and it should be uploaded before the deposit copy.
- When submitting the deposit by mail, commercial carrier, courier, or hand delivery, the request for special relief may be attached to the shipping slip.

When completing a paper application, the applicant may submit a request for special relief together with the application, the deposit, and the filing fee.

Once an application has been filed, the applicant may request special relief in response to an email or other written communication from a member of the Registration Program. Alternatively, the applicant may submit the request by mail to the following address:

Associate Register of Copyrights and
Director of Registration Policy & Practice
U.S. Copyright Office
P.O. Box 70400
Washington, DC 20024-0400

If the request is granted and if the work is approved for registration, a member of the Registration Program will add an annotation to the certificate of registration indicating that the work was registered under a grant of special relief.

If the request is denied, a member of the Registration Program will notify the applicant in writing. If the relevant deposit requirements have not been met, the staff member may ask the applicant to submit a replacement deposit. The replacement deposit should be sent to the address specified in the communication from the Office, together with a written declaration confirming that the work contained in the replacement is identical to the work contained in the initial deposit, including the copyright notice (if any).

If the work is approved for registration and if the copyrightable content of the replacement deposit and the initial deposit is the same, the effective date of registration will be determined based on the date that the Office received the initial deposit, the completed application, and the correct filing fee. If the copyrightable content is not the same, the effective date of registration will be determined based on the date that the Office received the replacement deposit, the completed application, and the correct filing fee.

If the applicant is unable to submit an acceptable deposit, the Office may refuse to register the claim.

1508.8(C) Ongoing or Continuous Grant of Special Relief

In certain situations, the Register of Copyrights may grant special relief on an ongoing or continuous basis for particular categories of works or for particular circumstances encountered by specific applicants. *See* Part 202—Registration of Claims to Copyright, Deposit Requirements 43 Fed. Reg. 41,975, 41,976 (Sept. 19, 1978).

1508.8(D) Termination of Special Relief

The Register of Copyrights may terminate any ongoing or continuous grant of special relief after consulting with other appropriate officials of the Library of Congress. In such cases, the Office will issue a written notice of termination that will be sent to the individual or organization that received the grant of special relief at the last address shown in the Office's records. A notice may be issued at any time, but the termination will not go into effect until thirty days after the date that the notice is mailed. The notice will apply to works deposited after the effective date of the termination, but the termination does not affect the validity of any deposit or registration previously made under the grant of special relief. *See* 37 C.F.R. § 202.20(d)(4).

1509 Deposit Requirements for Specific Types of Works

The Register of Copyrights has established specific deposit requirements for certain classes of works. *See* 17 U.S.C. § 408(c)(1) (stating that the Register of Copyrights has the authority to "specify by regulation the administrative classes into which works are to be placed for the purposes of deposit and registration, and the nature of the copies or phonorecords to be deposited in the various classes specified."). These requirements are discussed in Sections 1509.1 through 1509.3 below. For questions concerning works that are not addressed in these sections, applicants may contact the Public Information Office at (202) 707-5959, Monday through Friday, between the hours of 8:30 a.m. – 5:00 p.m. Eastern Time.

1509.1 Deposit Requirements for Literary Works

A literary work is a nondramatic work that explains, describes, or narrates a particular subject, theme, or idea through the use of narrative, descriptive, or explanatory text, rather than dialog or dramatic action. Generally, nondramatic literary works are intended to be read; they are not intended to be performed before an audience.

Examples of nondramatic literary works include the following types of works:

- Fiction
- Nonfiction
- Poetry
- Directories
- Catalogs
- Textbooks
- Reference works
- Advertising copy
- Book jackets
- Instructional works
- Compilations of information
- Computer programs
- Videogames
- Databases
- Serials

See 37 C.F.R. § 202.3(b)(1)(i).

To register an unpublished literary work, the applicant generally should submit one complete copy or phonorecord of the work. *See* 37 C.F.R. § 202.20(c)(1)(i).

To register a literary work that was first published in the United States on or after January 1, 1978, the applicant generally should submit two complete copies or phonorecords of the best edition of the work. *See id.* § 202.20(c)(1)(iii).

As discussed in Section 1504.2, the criteria used to identify the best edition for a literary 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).

To register a literary work published in both electronic and hard copy formats, the applicant should submit complete copies of the work in the hard copy format. If the work was published solely in electronic format, the applicant may submit digital file(s) containing a complete copy of the work, provided that the requirements set forth in Section 1507.2 have been met.

There are exceptions to these rules for certain types of literary works. The deposit requirements for these types of works are discussed in Sections 1509.1(A) through 1509.1(K). The deposit requirements for foreign literary works are discussed in Sections 1509.1(L) and 1509.1(M).

Section 1509.1(N) contains a series of charts that summarize the deposit requirements for these types of works. For detailed information on the copyrightability and registration of literary works, see Chapter 700.

1509.1(A) Literary Monographs

A literary monograph is a literary work that is "published in one volume or a finite number of volumes." 37 C.F.R. § 202.19(b)(5). Examples of works that may qualify as a monograph include fiction, nonfiction, poetry, short stories, memoirs, textbooks, and other types of nondramatic literary works.

Most monographs are published in a single volume, rather than a series of successive issues or parts. Some monographs are published in separate volumes with each bearing the same title and successive numerical designations (as in the case of a multi-volume encyclopedia). But typically the entire work is published in a limited number of volumes that, taken together, constitute the work as a whole.

To register an unpublished monograph, applicants should submit one complete copy of the work. To register a published monograph, applicants generally should submit one complete copy of the best edition of the work. *See* 37 C.F.R. § 202.20(c)(1)(i), (c)(2)(i)(L).

NOTE: Serials and legal publications are not considered monographs for purposes of registration. For information concerning the deposit requirements for these types of works, see Sections 1509.1(B) and 1509.1(C).

See Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions, 82 Fed. Reg. 38,859, 38,860 (Aug. 16, 2017).

1509.1(B) Serials

A serial is a "work issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely." 37 C.F.R. § 202.3(b)(1)(v). An "electronic serial" is a serial "published in the United States" that is "available only online." 37 C.F.R. § 202.19(b)(4).

Examples of works that may qualify as a serial include newspapers, magazines, newsletters, journals, and annuals. These types of works are typically published in successive issues and they are usually distributed on an established schedule. Each issue

is published under the same continuing title, and they generally bear numerical or chronological designations that distinguish one issue from the next.

To register an issue that has not been published, the applicant should submit one complete copy of the work. *See* 37 C.F.R. § 202.20(c)(1)(i).

If the issue was published in a physical format or published in both a physical and electronic format, the applicant should submit two complete copies of the work in the physical format. *See* 37 C.F.R. § 202.20(b)(1).

If the issue was published solely in electronic format, the applicant should upload one complete copy of the work to the electronic registration system. Specifically, the applicant should upload one file containing all of the content appearing within that issue, and the content should be presented exactly as it appeared "in its published form." 37 C.F.R. § 202.20(b)(2)(iii)(B). If the applicant uploads separate files containing the cover, table of contents, or other disaggregated content, the registration specialist may communicate with the applicant or may refuse registration.

In some cases it may be possible to register a group of serial issues with one application and one filing fee. For information concerning the deposit requirements for this group registration option, see Chapter 1100, Section 1107.5.

See Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions, 82 Fed. Reg. 38,859, 38,860 (Aug. 16, 2017).

1509.1(C) Legal Publications

A legal publication is a work that contains, analyzes, annotates, summarizes, or comments upon legislative enactments, judicial decisions, executive orders, administrative regulations, or other edicts of government. *See* Chapter 700, Section 717.1. These types of works may be literary monographs or serials.

To register an unpublished legal publication, applicants should submit one complete copy of the work. To register a published legal publication, applicants should submit two complete copies of the best edition of the work. *See* 37 C.F.R. § 202.20(c)(1)(i), (c)(1)(iii).

See Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions, 82 Fed. Reg. 38,859, 38,860 (Aug. 16, 2017).

1509.1(D) Book Jackets

To register a claim in the text, artwork, or other copyrightable material that appears only on a book jacket, the applicant should submit one complete copy of the jacket. The applicant need not submit a copy of the book itself, unless the copyrightable material is physically attached to the book (as in the case of an illustration on the cover of a paperback). *See* 37 C.F.R. § 202.20(c)(2)(i)(K) (requiring only one complete copy of works reproduced on three-dimensional containers); Part 202—Registration of Claims to Copyright, Deposit Requirements, 43 Fed. Reg. 41,975, 41,978 (Sept. 19, 1978) (explaining that the exception for containers applies to book jackets).

1509.1(E) Games

A game may be registered as a literary work if the predominant form of authorship in the work consists of text. Examples of works that may satisfy this requirement include word games, card games, party games, riddles, brain teasers, and similar diversions, including the instructions or directions for playing a particular game.

The deposit requirement for a game varies, depending on whether the literary work is reproduced in a two-dimensional or three-dimensional object.

- To register a two-dimensional game, the applicant should submit one complete copy if the game is unpublished. If the game has been published, the applicant should submit one complete copy of the best edition.

- If the game is reproduced in or on a three-dimensional object, the applicant generally should submit identifying material containing all the copyrightable authorship claimed in the application, regardless of whether the game is published or unpublished. However, if the game consists of multiple parts that are packaged and published in a box or similar container that is larger than 12 by 24 by 6 inches, the applicant may submit one complete copy of the best edition in lieu of identifying material.

See 37 C.F.R. § 202.20(c)(1)(i) (requiring one complete copy for an unpublished work), (c)(2)(i)(J) (requiring one complete copy of works published in the form of two-dimensional games), (c)(2)(xi)(A)(1) (permitting identifying material for three-dimensional sculptural works), (c)(2)(xi)(B)(3) (exception to rule requiring identifying material for three-dimensional games published in a container of a designated size), (c)(2)(i)(G) (one complete copy required for works subject to the exception set forth in § 202.20(c)(2)(xi)(B)); *see also* Part 202—Registration of Claims to Copyright, Deposit Requirements, 43 Fed. Reg. 41,975, 41,976 (Sept. 19, 1978) (explaining that only one copy is required for works consisting of multiple parts that include three or more three dimensional, physically separable parts, such as board games, models kits, and certain kinds of craft kits).

1509.1(F) Computer Programs

To register a computer program, the applicant should submit "one copy of identifying portions" for the specific version of the program that the applicant intends to register. *See* 37 C.F.R. § 202.20(c)(2)(vii).

Specifically, the applicant should submit an identifying portion of the source code for the particular version of the program that the applicant intends to register, regardless of whether the program is published or unpublished, and regardless of whether the program is fixed in a CD-ROM, semiconductor chip, a magnetic tape or disk, or any other storage media. These issues are discussed in Sections 1509.1(F)(1) through 1509.1(F)(5) below.

As discussed below, the U.S. Copyright Office considers source code to be the best representation of the copyrightable authorship in a computer program. The Office generally discourages applicants from submitting object code, because it cannot be

examined for copyrightable authorship. That said, the Office will accept a deposit containing object code if certain requirements have been met. For information concerning this option, see Section 1509.1(F)(4)(b).

In some cases the applicant may be required to submit additional material depending on the following factors:

- Whether the program is fixed in a CD-ROM.
- Whether the applicant expressly asserted a claim in the screen displays generated by the program.
- Whether the applicant intends to register the user manual or other documentation for the program.

These topics are discussed in Sections 1509.1(F)(6) through 1509.1(F)(7) below.

1509.1(F)(1) Source Code

The applicant may be required to submit the entire source code for the computer program, or the applicant may submit representative portions of the source code. *See* 37 C.F.R. § 202.20(c)(2)(vii). The amount of source code that is required varies depending on the length of the code, whether the work is a derivative computer program, and whether the code contains trade secret material. These issues are discussed in Sections 1509.1(F)(2) through 1509.1(F)(4) below.

The source code should be submitted either on paper or in an electronic file in a form that is perceptible to the human eye without the aid of a machine or device. *See* 37 C.F.R. § 202.20(c)(2)(vii). In all cases, applicants should add the title and version number of the program to the first page of the code. This helps the Registration Program determine whether the version described in the application matches the version shown in the identifying material. To help staff determine whether a sufficient amount of code has been submitted, applicants may insert page numbers on each page of source code where applicable.

The applicant does not need to provide the total number of lines of source code that appear in the program. However, if there are inconsistencies in the identifying material, such as missing page numbers or gaps between the line numbers for the source code, a member of the Registration Program may communicate with the applicant to determine whether the deposit is complete.

See H.R. REP. NO. 94-1476, at 153 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5769 (authorizing the Register of Copyrights to "allow or require deposit of print-outs of computer programs under certain circumstances"); *see also* Registration of Claims to Copyright Deposit Requirements for Computer Programs Containing Trade Secrets and for Computer Screen Displays, 54 Fed. Reg. 13,173, 13,174-75 (Mar. 31, 1989).

1509.1(F)(2) Derivative Computer Programs

If the computer program contains an appreciable amount of unclaimable material, the program should be registered as a derivative work. For purposes of registration, unclaimable material includes:

- Previously published material,
- Previously registered material,
- Material that is in the public domain, or
- Copyrightable material that is owned by a third party.

A registration for a derivative computer program covers the new material or revised material that the author contributed to that work, but it does not cover any of the unclaimable material that may appear in the program. *See* Chapter 700, Section 721.8.

To register a claim in a derivative computer program, the applicant should submit a portion of the source code for the specific version of the program that the applicant intends to register.

- If the new material or revised material appears throughout the entire program, the applicant should submit a copy of the first and last twenty-five pages of the source code for that version.
- If the new material or revised material does not appear in the first and last twenty-five pages of the source code, the applicant should submit any fifty pages of source code that contain new or revised material.

In all cases, the applicant should submit the page of the source code that contains the copyright notice (if any) for the specific version that the applicant intends to register. 37 C.F.R. § 202.20(c)(2)(vii)(A)(1).

1509.1(F)(3) Source Code That Does Not Contain Trade Secret Material

This Section discusses the deposit requirements for submitting source code that does not contain trade secret material.

The applicant should submit a portion of the source code for the specific version that the applicant intends to register. Specifically, the applicant should submit one copy of the first twenty-five pages and the last twenty-five pages of the source code for that version. In addition, the applicant should submit the page of the source code that contains the copyright notice (if any) for that version. 37 C.F.R. § 202.20(c)(2)(vii)(A)(1).

If the source code does not have a precise beginning, middle, or end, the applicant should submit fifty pages that represent the specific version that the applicant intends to register.

If the entire program is fifty pages or less, the applicant should submit the entire source code. In addition, the applicant should inform the U.S. Copyright Office that the entire code has been submitted. When submitting an online application this information should be provided in the Note to Copyright Office file; when submitting a paper application on Form TX this information should be provided in a cover letter.

1509.1(F)(4) Source Code That Contains Trade Secret Material

1509.1(F)(4)(a) Background

Section 705(a) of the Copyright Act requires the Register of Copyrights to prepare and maintain "records of deposits, registrations, recordations, and other actions" taken by the U.S. Copyright Office. 17 U.S.C. § 705(a). Section 705(b) states that all deposits maintained by the Office in connection with a completed copyright registration, "shall be open to public inspection." *Id.* § 705(b).

In the 1980s a concern was expressed that making computer programs available for public inspection could jeopardize a copyright owner's trade secret protection under state law. In response to these concerns, the Office established a specific procedure for source code that contains trade secret material.

For purposes of registration, a trade secret includes "any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 474-75 (1974) (quoting the Restatement of Torts § 757, comment b (1939)).

See generally Registration of Claims to Copyright Deposit Requirements for Computer Programs Containing Trade Secrets and for Computer Screen Displays, 54 Fed. Reg. 13,173, 13,173 (Mar. 31, 1989); Registration of Claims to Copyright; Deposit Requirements for Computer Programs Containing Trade Secrets, 51 Fed. Reg. 34,667, 34,667-68 (Sept. 30, 1986); Notice of Inquiry Deposit of Computer Programs and Other Works Containing Trade Secrets, 48 Fed. Reg. 22,951, 22,952 (May 23, 1983).

1509.1(F)(4)(b) Computer Programs That Contain Trade Secret Material

If the source code for the computer program contains trade secret material, the applicant should submit a portion of the code using one of the following options:

- The applicant may submit the first ten pages and last ten pages of source code, provided that none of the code is blocked out;
- The applicant may submit the first twenty-five pages and last twenty-five pages of source code with the portions of the code that contain trade secret material blocked out, provided that the blocked out portions are proportionately less than the remaining material and provided that the unblocked portions contain an appreciable amount of original authorship;

- The applicant may submit the first twenty-five pages and last twenty-five pages of object code for the program together with ten or more consecutive pages of source code, provided that none of the source code is blocked out; or

- If the source code for the entire program is less than fifty pages, the applicant may submit the entire code with the portions of the code that contain trade secret material blocked out, provided that the blocked out portions are proportionately less than the remaining material and provided that the unblocked portions contain an appreciable amount of original authorship.

See 37 C.F.R. § 202.20(c)(2)(vii)(A)(2).

In all cases, the applicant should use the following guidelines in preparing the selection of source code:

- If the source code does not have a precise beginning, middle, or end, the applicant may submit an appropriate number of pages (using one of the options described above).

- The applicant should submit the portion of the source code that contains the copyright notice (if any) for that version.

- The applicant should notify the Office that the source code contains trade secret material. When completing an online application, this information should be provided in the Note to Copyright Office field. When completing a paper application on Form TX, this information should be provided in a cover letter.

Section 410(a) directs the Register of Copyrights to examine claims to copyright and to determine whether the material deposited "constitutes copyrightable subject matter." 17 U.S.C. § 410(a). The U.S. Copyright Office considers source code to be the best representation of the copyrightable literary authorship in a computer program for examining purposes. By contrast, object code cannot be examined for copyrightable authorship, because it is written in a machine language that is unintelligible to human beings.

As mentioned above, an applicant may submit the first twenty-five pages and last twenty-five pages of object code, together with ten or more consecutive pages of source code. In such cases, the applicant must state in writing that the object code contains copyrightable authorship, and the applicant must request registration under the Rule of Doubt. When completing the online application, this statement should be provided in the Note to Copyright Office field. When completing a paper application, this statement should be provided in a cover letter. If the object code contains the copyright notice for the program, the applicant should submit the portion of the code where the notice appears. The notice should be underlined or highlighted, and the content of that notice should be decoded and presented in words and numbers that are comprehensible to the Registration Program.

If the applicant submits a deposit containing object code, the registration specialist will examine the object code and will determine whether the other formal and legal

requirements for registration have been satisfied. However, the specialist will not make any determination concerning the copyrightability of the object code. Instead, the specialist will accept the applicant's assertion that the object code contains copyrightable authorship and will register the program under the Rule of Doubt. This limitation will be reflected on the certificate of registration and in the online public record with an annotation, such as: "Regarding deposit: Registration made under Rule of Doubt." *See* 37 C.F.R. § 202.20(c)(2)(vii)(B).

The annotation indicates that the Office did not conduct a complete examination for copyrightable authorship. Therefore, the certificate may not be entitled to a legal presumption concerning the validity of the copyright. If there is a legal dispute involving the program, the courts can evaluate the copyrightability of the object code.

If a court determines that an applicant submitted redacted source code or object code that does not contain trade secret material, the Office may communicate with the applicant "to secure the required . . . deposit material or to clarify the information previously given on the application." 37 C.F.R. § 201.7(c)(4). If the Office does not receive a response within thirty days, or if the response does not resolve the substantive defect, it may cancel the registration for failure to comply with the relevant deposit requirements. *See id.*

1509.1(F)(4)(c) Derivative Computer Programs That Contain Trade Secret Material

If the applicant intends to register a derivative computer program that contains trade secret material and if the new material or revised material appears throughout the entire program, the applicant should submit a portion of the source code for that version using one of the following options:

- The applicant may submit the first ten pages and last ten pages of source code, provided that none of the code is blocked out; or

- The applicant may submit the first twenty-five pages and last twenty-five pages of source code with the portions of the code that contain trade secret material blocked out, provided that the blocked out portions are proportionately less than the remaining material and provided that the unblocked portions contain an appreciable amount of original computer code.

If the new material or revised material does not appear throughout the entire program or within the first twenty-five pages and last twenty-five pages of the source code, the applicant should use one of the following options:

- The applicant may submit twenty pages of code that are representative of the new or revised material, provided that none of the code is blocked out; or

- The applicant may submit any fifty pages of source code that are representative of the new or revised material. The portions of the code that contain trade secret material may be blocked out, provided that the blocked out portions are proportionately less than the remaining material and provided that the unblocked portions contain an appreciable amount of original computer code.

In all cases, the applicant should submit the portion of the source code that contains the copyright notice (if any) for the specific version that the applicant intends to register. *See* 37 C.F.R. § 202.20(c)(2)(vii)(A)(2).

In addition, the applicant should notify the Office that the source code contains trade secret material. When completing an online application, this information should be provided in the Note to Copyright Office field. When completing a paper application on Form TX, this information should be provided in a cover letter.

1509.1(F)(4)(d) Appropriate Method for Blocking Out Source Code That Contains Trade Secret Material

As discussed in Sections 1509.1(F)(4)(b) and 1509.1(F)(4)(c), an applicant may block out the portions of the source code that contain trade secret material. The applicant should not block out any portions of the source code that do not contain trade secret material.

The applicant may block out entire words or phrases in the source code that are trade secrets. In the alternative, the applicant may block out entire pages of the code containing trade secrets, provided that the applicant leaves a vertical or diagonal strip of visible text on each page that is sufficient to show that the page contains copyrightable authorship. In all cases, the blocked out portions should be "proportionately less than the material remaining, and the deposit [should reveal] an appreciable amount of original computer code." 37 C.F.R. § 202.20(c)(2)(vii)(A)(2).

The U.S. Copyright Office will not accept blocked out pages that conceal virtually all of the copyrightable expression in the work. The unblocked portions of the deposit must contain enough computer code to enable the Registration Program to determine whether the deposit contains a sufficient amount of copyrightable expression to warrant registration under Sections 102(a) and 410 of the Copyright Act. The Office has not attempted to quantify the amount of source code that must remain visible, because the determination of copyrightable expression can never be based on an arbitrary formula. Instead, the regulation requires "[a]n appreciable amount of original computer code," meaning sufficient original computer code to constitute recognizable copyrightable expression. *Id.* Whether a particular deposit meets this standard will be determined on a case-by-case basis. In most cases, the presence of copyrightable authorship is readily apparent. However, if all of the copyrightable expression has been blocked out and only uncopyrightable material remains visible, a member of the Registration Program will ask the applicant to submit an acceptable printout of source code and will change the effective date of registration to the date that an acceptable deposit is received. If the applicant is unable or unwilling to submit a deposit with copyrightable authorship that is visible to the Registration Program, registration may be refused, even if the unblocked portions represent more than fifty percent of the source code shown in the identifying material. *See* Registration of Claims to Copyright Deposit Requirements for Computer Programs Containing Trade Secrets and for Computer Screen Displays, 54 Fed. Reg. 13,173, 13,174 & n.3, 13,175 (Mar. 31, 1989).

1509.1(F)(4)(e) Special Relief for Computer Programs Containing Trade Secrets

If the applicant is unable or unwilling to deposit source code using any of the options discussed in Sections 1509.1(F)(4)(b) and 1509.1(F)(4)(c), the applicant may ask for special relief from the deposit requirements. For information concerning this procedure, see Section 1508.8.

See 37 C.F.R. § 202.20(d)(1)(iv); Registration of Claims to Copyright Deposit Requirements for Computer Programs Containing Trade Secrets and for Computer Screen Displays, 54 Fed. Reg. 13,173, 13,175 (Mar. 31, 1989).

1509.1(F)(5) Computer Programs Fixed in a CD-ROM

"[A] CD-ROM package, whenever available, is the preferred form of deposit for the works embodied therein, both for registration and mandatory deposit." Registration of Claims to Copyright: Deposit of CD-ROM Format, 56 Fed. Reg. 47,402 (Sept. 19, 1991).

If a computer program has been fixed in a CD-ROM, the applicant must submit "one complete copy of the entire CD-ROM package, including a complete copy of any accompanying operating software and instructional manual" for the program. 37 C.F.R. § 202.20(c)(2)(xix)(A). In addition, the applicant should submit a portion of the source code for the specific version of the program that the applicant intends to register, using the options discussed in Section 1509.1(F)(1) through 1509.1(F)(4).

CD-ROMs typically contain a copy of the source code for the computer program that has been converted or compiled into object code. If the applicant fails to submit identifying material a member of the Registration Program will ask the applicant to submit a file or printout containing an appropriate portion of the code. *Id.* § 202.20(c)(2)(xix)(B). The requirements for the submission of source code are discussed in Sections 1509.1(F)(1) through 1509.1(F)(4) above.

See generally Registration of Claims to Copyright; Mandatory Deposit of Machine-Readable Copies, 54 Fed. Reg. 42,295, 42,298 (Oct. 16, 1989) ("The Examining Division is required to examine for copyrightable authorship. Machine-readable copies are generally unsuitable for this task.").

1509.1(F)(6) Computer Screen Displays

As a general rule, a computer program and the screen displays generated by that program are considered the same work, because in most cases the screen displays are created by the program code, together with any internal image library. If the copyright in the program and the screen displays are owned by the same claimant, the program and any related screen displays may be registered with the same application. *See* Chapter 700, Section 721.10.

When an applicant expressly asserts a claim in a computer program, the registration covers the copyrightable expression in the program code and any copyrightable screen displays that may be generated by that code, even if the applicant does not mention "screen displays" in the application and does not submit a copy of the screen displays with the program code. By contrast, if an applicant states "screen displays" in the

application, the registration will not cover the computer program unless the applicant also asserts a claim in the "computer program" and submits an appropriate deposit for the work. *See* Registration Decision; Registration and Deposit of Computer Screen Displays, 53 Fed. Reg. 21,817, 21,819-20 (June 10, 1988).

When screen displays are specifically claimed in the application for registration, the applicant must submit a representative sampling of those screen displays. When registering derivative screen displays, the sampling must contain a sufficient amount of new material. For instance, the applicant may submit a visual reproduction of the screen displays, such as printouts, photographs, or drawings, provided that the reproductions are no smaller than three by three inches and no larger than nine by twelve inches. 37 C.F.R. § 202.20(c)(2)(vii)(C)(1). Alternatively, the applicant may submit a CD-ROM, DVD-ROM, and/or a user manual for the computer program, provided that it contains legible reproductions of the screen displays. (In this respect, the *Compendium of U.S. Copyright Office Practices, Third Edition* supersedes the Office's policy statement concerning the registration and deposit of screen displays. *See* 54 Fed. Reg. 13,173, 13,177 (Mar. 31, 1989).)

If the screen displays primarily contain audiovisual material, the applicant should submit that material on a ½ inch VHS format videotape or request special relief. However, if the screen displays simply demonstrate the functions of the computer program, the applicant should submit printouts, photographs, or drawings that meet the size requirements discussed above. 37 C.F.R. § 202.20(c)(2)(vii)(C)(2).

NOTE: If the applicant is unable to submit identifying material using any of these options, the applicant may ask for special relief from the deposit requirements. For information concerning this procedure, see Section 1508.8. In the alternative, the applicant may submit two complete copies of the work as published.

1509.1(F)(7) User Manuals and Other Documentation for a Computer Program

User manuals, instructional booklets, flowcharts, and other documentation that explain the development or operation of a computer program may be registered with the U.S. Copyright Office, provided that they contain a sufficient amount of original copyrightable authorship. *See* Chapter 700, Section 721.11.

If the claimant owns the copyright in the program and the user manual or other documentation for that program, and if the claimant physically packaged these items together and distributed them to the public as a single, integrated unit (such as a shrink-wrapped box containing a disk and booklet), it may be possible to register them together with one application and one filing fee. Specifically, the applicant may be able to register the works with the unit of publication option. *See* 37 C.F.R. § 202.3(b)(4). By contrast, if the program and the documentation are distributed online, if they are distributed separately from each other, or if they are owned by different claimants, each element is considered a separate work and a separate application for each element is required.

To register a computer program and the documentation for that program as a unit of publication, the applicant should submit one complete copy of the unit, together with

identifying portions of the program code. (The deposit requirements for computer programs are discussed in Sections 1509.1(F)(1) through 1509.1(F)(5) above.)

To register a user manual or other documentation without asserting a claim in the computer program, the applicant should submit two complete copies of the user manual or other documentation (if the work has been published) or one complete copy of the user manual or other documentation (if the work is unpublished).

For more information concerning the unit of publication option, see Chapter 1100, § 1107.

1509.1(G) Databases

This Section discusses the deposit requirements for registering a specific version of a single-file or multi-file database.

NOTE: When a specific version of a database has been infringed, the copyright owner may be eligible to claim statutory damages if that version was registered with the U.S. Copyright Office before the infringement began or within three months after that version was first published. *See* 17 U.S.C. § 412. A registration for a specific version of a database does not cover previously published versions of that database. Likewise, it does not cover any subsequent updates or revisions that may be made to the database, regardless of whether the database is published or unpublished. However, the Office has established a special procedure that allows applicants to register a database together with the subsequent updates or revisions that were made to that database within a period of three months or less. The deposit requirements for this group registration option are discussed in Chapter 1100, Section 1112.7.

1509.1(G)(1) Databases Fixed in CD-ROMs

If the database has been fixed in a CD-ROM, the applicant must submit "one complete copy of the entire CD-ROM package." *See* 37 C.F.R. § 202.20(c)(2)(xix)(A). If a member of the Registration Program is unable to view the CD-ROM using the equipment available in the U.S. Copyright Office, he or she will communicate with the applicant. *See id.* § 202.20(c)(2)(xix)(B).

In all other cases, the applicant should submit identifying portions of the database, as discussed in Sections 1509.1(G)(2) and 1509.1(G)(3) below.

1509.1(G)(2) Databases That Do Not Consist Predominantly of Photographs

This Section discusses the deposit requirements for a database that does not consist predominantly of photographs.

The applicant should submit identifying portions for the specific version of the database that the applicant intends to register, regardless of whether the database is published or unpublished. The identifying portions should be submitted on paper or in microfilm and should be visually perceptible without the aid of a machine or device. *See* 37 C.F.R. § 202.20(c)(2)(vii)(D).

The amount of material that is required varies depending on whether the applicant intends to register a revised database, and whether the database contains a single data file or multiple separate and distinct data files. For purposes of registration, a data file is a group of records pertaining to a common subject matter, regardless of the size or the amount of data within the records. *Id.* § 202.20(c)(2)(vii)(D)(2).

- If the database contains a single data file, the applicant should submit the first twenty-five pages and last twenty-five pages or equivalent units of the database. In addition, the applicant should submit a statement confirming that the work is a single-file database that does not require a descriptive statement.

- If the applicant intends to register a database that contains multiple separate or distinct data files, the applicant should submit fifty complete data records from each data file or the entire data file, whichever is less. In addition, the applicant should submit a descriptive statement that contains the information set forth in Chapter 1100, Section 1112.7(C), and that clearly identifies the creative authorship involved in selecting, coordinating, and/or arranging the content of the database.

- If the applicant intends to register a revised version of a database that contains a single data file, the applicant should submit fifty representative pages or data records that were added to or modified in that version. In addition, the applicant should submit a statement confirming that the work is a single-file database that does not require a descriptive statement.

- If the applicant intends to register a revised version of a database that contains multiple separate or distinct data files, the applicant should submit fifty representative pages or data records that were added to or modified in that version. In addition, the applicant should submit a descriptive statement that contains the information set forth in Chapter 1100, Section 1112.7(C), and that clearly identifies the new authorship involved in selecting, coordinating, and/or arranging the content of the revised database.

See id. § 202.20(c)(2)(vii)(D)(1), (3), (4), (5).

If the database contains a copyright notice, the applicant should provide the following information:

- If the notice is in a machine-readable format, the applicant should provide the exact content of the notice and indicate the manner and frequency with which it is displayed (*e.g.*, at a terminal when a user signs on, continuously on the terminal display, on printouts from the database, etc.).

- If the notice appears on copies of the database or on magnetic tape reels or the containers for those reels, the applicant should submit a photocopy or other sample of the notice.

Id. § 202.20(c)(2)(vii)(D)(6)-(7).

1509.1(G)(3) Databases That Predominantly Consist of Photographs

This Section discusses the deposit requirements for a database that consists predominantly of photographs.

In all cases, the applicant must submit a copy of each photograph that is included in the claim. 37 C.F.R. § 202.20(c)(2)(vii)(D)(8). The applicant may submit the photographs in a hard copy format using one of the formats described in Chapter 1100, Section 1114.4. In the alternative, the applicant may upload the photographs in an electronic format, provided that the applicant obtains permission to use the electronic registration system from the Visual Arts Division, and submits the online application and the deposit copies after consulting with, and under the supervision of, that Division.

In addition, the applicant must submit identifying portions of the database using one of the methods described in Section 1509.1(G)(2). The identifying material must be sufficient to show the authorship involved in selecting, coordinating, and/or arranging the photographs that appear within the database. If the compilation authorship is not perceptible in the deposit, or if the compilation authorship shown in the deposit is not sufficiently creative, the registration specialist will refuse to register the claim, irrespective of the creativity in the individual photographs.

NOTE: In some cases, the Visual Arts Division may ask the applicant to submit additional deposit material, particularly when the claim is submitted using the electronic registration system. For specific guidance, applicants should contact the Visual Arts Division at (202) 707-8202.

See generally Deposit Requirements for Registration of Automated Databases That Predominantly Consist of Photographs, 76 Fed. Reg. 5106 (Jan. 28, 2011); Registration of Claims to Copyright, 76 Fed. Reg. 4072 (Jan. 24, 2011).

1509.1(H) Literary Works Fixed in a CD-ROM

To register a literary work that is fixed in a CD-ROM, the applicant generally should submit one complete copy of the entire CD-ROM package, "including a complete copy of any accompanying operating software and instructional manual . . . ." 37 C.F.R. § 202.20(c)(2)(xix)(A). If the work is fixed in print as well as in the CD-ROM, the applicant also should submit a printed version of the work that is embodied in the CD-ROM. *Id*.

A complete copy of a published CD-ROM package includes all the elements comprising the applicable unit of publication, "including elements that if considered separately would not be copyrightable subject matter or could be the subject of a separate registration." *Id.*

Examples:

- A user manual.
- Installation instructions.
- Packaging that contains descriptive or instructional material.

If the CD-ROM is not the primary component of the published literary work, the applicant should submit two copies of the work as published.

Example:

- The applicant intends to register a workbook that contains text and illustrations together with a CD-ROM that is attached to the back cover. The CD-ROM is published with the workbook and it contains tests and other ancillary material. Because the workbook is the primary component of the published literary work, the applicant should submit two complete copies of the entire workbook package (including the CD-ROM).

If a member of the Registration Program is unable to view the CD-ROM using standard Office equipment, the Office may accept identifying material or alternative deposit materials under a grant of special relief (in addition to the complete CD-ROM package). *See id.* § 202.20(c)(2)(xix)(B). For information concerning this procedure, see Section 1508.8.

1509.1(I) Instructional Works

Instructional works include cookbooks, user guides or instructional manuals for a computer program, instructions for using a machine, appliance, or other device, and similar types of works. To register a published instructional work, the applicant generally should submit two copies or phonorecords of the best edition of the work.

By contrast, only one copy or phonorecord is required to register instructions for needlework or a craft kit, regardless of whether the work is published or unpublished. 37 C.F.R. § 202.20(c)(2)(i)(J).

1509.1(J) Tests and Answer Material for Tests

To register a test or answer material for a test that was published in another literary work, the applicant should submit two complete copies of that literary work.

If the test or answer material for a test is unpublished or if it was not published with another literary work, the applicant should submit one complete copy of the test and/or answer sheets that the applicant intends to register. 37 C.F.R. § 202.20(c)(2)(vi).

For a discussion of the deposit requirements for secure tests and secure test items, see *Copyright Registration for Secure Tests and Test Items (Circular 64).*

1509.1(K) Deposit Requirements for Group Registration Options

The Office offers group registration options for unpublished works, serials, newspapers, newsletters, contributions to periodicals, short online literary works, updates and revisions to a database, and test items prepared for use in a secure test. The deposit requirements for these options are discussed in the following sections:

- Unpublished works: Chapter 1100, Section 1106.

- Serials: Chapter 1100, Section 1107.
- Newspapers: Chapter 1100, Section 1108.
- Newsletters: Chapter 1100, Section 1109.
- Contributions to Periodicals: Chapter 1100, Section 1110.
- Short online literary works: Chapter 1100, Section 1111.
- Database Updates and Revisions: Chapter 1100, Section 1112.

1509.1(L) Foreign Literary Works

To register an unpublished literary work that was created by a citizen or national of a foreign country, the applicant should submit one complete copy or phonorecord that contains all the authorship claimed on the application.

To register a literary work that was published solely in a foreign country, the applicant should submit one complete copy or phonorecord of the work as first published in that country. *See* 37 C.F.R. § 202.20(c)(1)(iv).

If the work was first published in a foreign country and then subsequently published in the United States, the applicant may submit one complete copy or phonorecord of the work as first published in the foreign country. Alternatively, the applicant may submit one complete copy or phonorecord of the best edition that was published in the United States, provided that the content of the U.S. edition is identical to the content of the foreign edition. *See id.*

1509.1(M) GATT Literary Works

The General Agreement on Tariffs and Trade ("GATT") is an international trade agreement. To register a published literary work that was restored to copyright protection in the United States under GATT, the applicant may submit deposit copy(ies) in the following formats listed in descending order of preference:

1. The work as first published.
2. A reprint or rerelease of the work as first published.
3. A photocopy or identical reproduction of the work as first published.
4. A revised version which includes a substantial amount of the copyrightable content of the restored work with an indication in writing of the percentage of the restored work appearing in the revision.

See 37 C.F.R. § 202.12(c)(3)(i). For general information concerning GATT registrations, see Chapter 2000, Section 2007.

1509.1(N) Deposit Requirements for Literary Works: At a Glance

The following charts provide a brief summary of the deposit requirements for registering various types of literary works. For a detailed discussion of these requirements, see Sections 1509.1(A) through 1509.1(M) above.

If the applicant is unable to submit a deposit that satisfies these requirements, the applicant may ask for special relief. For information concerning this procedure, see Section 1508.8.

General Requirements

Nature of the Work	Published	Unpublished
Unpublished works	n/a	One complete copy representing the entire copyrightable content
Works first published in the United States before 1/1/78	Two complete copies of the work as first published	n/a
Works first published in the United States between 1/1/78 and 3/1/89 that are not listed below	Two complete copies of the best edition of the work (including the copyright notice for the first published edition)	n/a
Works first published in the United States after 3/1/89 that are not listed below	Two complete copies of the best edition of the work	n/a
Works that are not listed below that are published solely in a foreign country	One complete copy of the work as first published in the foreign country	n/a
Works that are not listed below that are first published in a foreign country and subsequently published in the United States	One complete copy of the work as first published in the foreign country, or one complete copy of the best edition published in the United States if the content of the U.S. and foreign editions is identical	n/a
Literary works published solely in hard copy format that are not listed below	Two complete copies of the best edition of the work in hard copy format	n/a

Nature of the Work	Published	Unpublished
Literary works published in hard copy and electronic format that are not listed below	Two complete copies of the best edition of the work in hard copy format	n/a
Literary works published solely in electronic format that are not listed below	*See* Section 1507.2	n/a

Monographs, Serials, Contributions to Collective Works, and Legal Publications

Nature of the Work	Published	Unpublished
Literary Monographs	One complete copy of the best edition of the work	One complete copy representing the entire copyrightable content
Serials	Two complete copies of the best edition of the serial	One complete copy representing the entire copyrightable content
Contributions to collective works other than newspapers	One complete copy of the best edition of the collective work, or a photocopy or other reproduction of the contribution as it was published in the collective work	One complete copy representing the entire copyrightable content
Contributions to newspapers	One complete section containing the contribution or a cut out of the contribution from the newspaper	One complete copy representing the entire copyrightable content
Legal Publications	Two complete copies of the best edition of the work	One complete copy representing the entire copyrightable content

Computer Programs

Nature of the Work	Published	Unpublished
Computer programs	Submit the first and last twenty-five pages (or equivalent units) of the source code. Additionally, a page or the equivalent unit that contains the notice (if any)	Submit the first and last twenty-five pages (or equivalent units) of the source code. Additionally, a page or the equivalent unit that contains the notice (if any)
Derivative computer programs	If revisions occur throughout the program, submit the first and last twenty-five pages of the source code. If revisions do not appear in the first or last twenty-five pages, submit fifty pages of source code containing revised material. In both cases, submit the page of the source code that contains the notice (if any).	If revisions occur throughout the program, submit the first and last twenty-five pages of the source code. If revisions do not appear in the first or last twenty-five pages, submit fifty pages of source code containing revised material. In both cases, submit the page of the source code that contains the notice (if any).
Computer programs that contain trade secrets	*See* Section 1509.1(F)(4)	*See* Section 1509.1(F)(4)
Computer programs fixed in CD-ROM format	One complete copy of the CD-ROM package and identifying portions of the source code for the program	One complete copy of the CD-ROM package and identifying portions of the source code for the program
Computer screen displays	*See* Section 1509.1(F)(6)	*See* Section 1509.1(F)(6)
User manuals and other documentation for a computer program	*See* Section 1509.1(F)(7)	*See* Section 1509.1(F)(7)

Databases

Nature of the Work	Published	Unpublished
Databases fixed in CD-ROM	One complete copy of the CD-ROM package	One complete copy of the CD-ROM package
Single-file databases	One copy of the first and last twenty-five pages or equivalent units of the database, together with a copy of the notice (if any) and a statement confirming that the work is a single-file database that does not require a descriptive statement	One copy of the first and last twenty-five pages or equivalent units of the database, together with a copy of the notice (if any) and a statement confirming that the work is a single-file database that does not require a descriptive statement
Multi-file databases	Fifty complete data records from each data file or the entire data file (whichever is less), together with a copy of the notice (if any), and a descriptive statement that contains the information set forth in Chapter 1100, Section 1112.7(C), and that clearly identifies the creative authorship in the selection, coordination, and/or arrangement of the database	Fifty complete data records from each data file or the entire data file (whichever is less), together with a copy of the notice (if any), and a descriptive statement that contains the information set forth in Chapter 1100, Section 1112.7(C), and that clearly identifies the creative authorship in the selection, coordination, and/or arrangement of the database
Revised single file databases	Fifty representative pages or data records that were added to or modified in the specific version of the database that the applicant intends to register, together with a copy of the notice (if any) and a statement confirming that the work is a single-file database that does not require a descriptive statement	Fifty representative pages or data records that were added to or modified in the specific version of the database that the applicant intends to register, together with a copy of the notice (if any) and a statement confirming that the work is a single-file database that does not require a descriptive statement

Nature of the Work	Published	Unpublished
Revised multi-file databases	Fifty representative pages or data records that were added to or modified in the specific version of the database that the applicant intends to register, together with a copy of the notice (if any), and a descriptive statement that contains the information set forth in Chapter 1100, Section 1112.7(C), and that clearly identifies the new authorship in the selection, coordination, and/or arrangement of the revised database	Fifty representative pages or data records that were added to or modified in the specific version of the database that the applicant intends to register, together with a copy of the notice (if any), and a descriptive statement that contains the information set forth in Chapter 1100, Section 1112.7(C), and that clearly identifies the new authorship in the selection, coordination, and/or arrangement of the revised database
Databases consisting predominantly of photographs	*See* Section 1509.1(G)(3)	*See* Section 1509.1(G)(3)

Instructional Works and Tests

Nature of the Work	Published	Unpublished
Instructional works, such as cookbooks and user manuals that are not listed below	Two complete copies of the best edition of the work	One complete copy representing the entire copyrightable content
Instructions for needlework or craft kits	One complete copy of the best edition of the work	One complete copy representing the entire copyrightable content
Tests and answer material for tests	*See* Section 1509.1(J)	One complete copy representing the entire copyrightable content
Secure tests	*See Copyright Registration for Secure Tests and Test Items* (Circular 64)	*See Copyright Registration for Secure Tests and Test Items* (Circular 64)

Other Types of Literary Works

Nature of the Work	Published	Unpublished
Book jackets	One complete copy of the best edition of the jacket	One complete copy representing the entire copyrightable content
Lectures, sermons, speeches, and addresses	When published individually, one complete copy of the best edition of the work	One complete copy representing the entire copyrightable content
Literary works fixed on phonorecords	One complete phonorecord containing the best edition of the work	One complete phonorecord representing the entire copyrightable content
Two-dimensional games	One complete copy of the best edition of the game	One complete copy representing the entire copyrightable content
Games reproduced in three-dimensional objects	Identifying material representing the entire copyrightable content (unless the game consists of multiple parts that are packaged and published in container larger than twelve by twenty-four by six inches, in which case the applicant may submit one complete copy of the best edition in lieu of identifying material)	Identifying material representing the entire copyrightable content
Literary works fixed in a CD-ROM	*See* Section 1509.1(H)	*See* Section 1509.1(H)
Multimedia kits	One complete copy of the best edition of the kit	One complete copy representing the entire copyrightable content

Group Registration Options

Nature of the Works	Published	Unpublished
Group registration of unpublished works	n/a	*See* Chapter 1100, Section 1106.4
Group registration of serials	*See* Chapter 1100, Section 1107.5	n/a
Group registration of newspapers	*See* Chapter 1100, Section 1108.5	n/a
Group registration of newsletters	*See* Chapter 1100, Section 1109.5	n/a
Group registration of contributions to periodicals	*See* Chapter 1100, Section 1110.5	n/a
Group registration of short online literary works	*See* Chapter 1100, Section 1111.6	n/a
Group registration of database updates or revisions	*See* Chapter 1100, Section 1112.7	*See* Chapter 1100, Section 1112.7

1509.2 Deposit Requirements for Works of the Performing Arts

The U.S. Copyright Office uses the term "work of the performing arts" to refer collectively to the following works of authorship:

- Musical Works, including any accompanying words.
- Sound Recordings.
- Dramatic Works, including any accompanying music.
- Choreographic works.
- Pantomimes.
- Audiovisual Works.
- Motion Pictures.

The Copyright Act does not define the term "work of the performing arts," nor does it provide definitions for the majority of the works listed above. As a general matter, a

work that was created to be performed "directly before an audience or indirectly by means of a device or process" is a work of the performing arts. 37 C.F.R. § 202.3(b)(1)(ii).

To register a work that was first published in the United States on or after January 1, 1978, the applicant generally should submit two complete copy(ies) or phonorecord(s) of the best edition of that work. *See id.* § 202.20(c)(1)(iii).

As discussed in Section 1504.2, the criteria used to identify the best edition of a 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).

To register a work published in both electronic and hard copy formats, the applicant should submit one or two complete copy(ies) or phonorecord(s) of the work in the hard copy format. If the work was published solely in electronic format, the applicant may submit digital file(s) containing one or two complete copy(ies) or phonorecord(s) of the work, provided that the requirements set forth in Section 1507.2 have been met.

There are exceptions to these rules for certain types of performing art works. The deposit requirements for these types of works are discussed in Sections 1509.2(A) through 1509.2(F). The deposit requirements for performing arts works published in a foreign country are discussed in Sections 1509.2(H) and 1509.2(I).

Section 1509.2(J) contains a series of charts that summarize the deposit requirements for these types of works. For detailed information on the copyrightability and registration of works of the performing arts, see Chapter 800.

1509.2(A) Musical Works

This Section discusses the deposit requirement for musical works. This requirement varies depending on whether the work is published or unpublished, and whether it was published in copies or phonorecords.

Phonorecords are "material objects" in which sounds have been fixed "and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." 17 U.S.C. § 101. Examples of physical phonorecords include compact discs, LPs, and cassette tapes. Examples of electronic phonorecords include digital audio files (such as .mp3 or .wav) stored on a computer, a flash drive, or other electronic device.

Copies are "material objects" (other than phonorecords) in which the work has been fixed "and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." *Id*. Examples of physical copies include printed formats (such as sheet music, a score, or a manuscript), as well as audiovisual formats (such as the soundtrack for a motion picture). Examples of electronic copies include digital files (such as .PDF, .DOC, .avi, or .mpeg) stored on a computer, a flash drive, or other electronic device.

NOTE: In some cases it may be possible to register a group of musical works with one application and one filing fee if the works are unpublished. For information concerning the deposit requirements for this group registration option, see Chapter 1100, Section 1106.4.

1509.2(A)(1) Unpublished Musical Works

To register an unpublished musical work, the applicant should submit one complete copy or phonorecord of the work that contains all the authorship claimed on the application. This requirement may be satisfied by uploading an electronic file to the electronic registration system, provided that it is submitted in one of the acceptable file formats listed in Section 1508.1.

1509.2(A)(2) Published Musical Works

The deposit requirement for published musical works varies depending on whether the work was first published in the United States or in a foreign country. It also varies depending on whether the work was published in copies, phonorecords, both copies and phonorecords, or solely in a motion picture. These requirements are discussed below in Sections 1509.2(A)(2)(a) through 1509.2(A)(2)(d).

1509.2(A)(2)(a) Musical Works Published in the United States in Phonorecords

If the musical work was published in the United States solely on phonorecords, the applicant should submit one complete phonorecord containing the published work. 37 C.F.R. § 202.20(c)(2)(i)(H).

Ordinarily, copyright owners are required to submit the "best edition" of a published works. 17 U.S.C. § 408(b). The "best edition" is the edition published in the United States (at any time before the deposit is received in the U.S. Copyright Office) that the Library of Congress determines to be most suitable for its purposes. 17 U.S.C. § 101.

In the case of musical works, the Office has set forth best edition requirements only for works published in print formats, such as sheet music. Musical works published solely on phonorecords or as part of a motion picture are not subject to the best edition requirement. *See* 37 C.F.R. Part 202, Appendix B, ¶ VI; *see also* 37 C.F.R. §§ 202.20(b)(1) (stating that "[t]he *best edition* of a work has the meaning set forth in § 202.19(b)(1)" and 202.19(b)(1)(i) (stating that "The 'best edition' requirement is described in detail at Appendix B" to part 37 of the regulations).

For information concerning the deposit requirement for musical works that have been published solely in print formats or published both in print format and on phonorecords, see Section 1509.2(A)(2)(b). For information concerning musical works that have been published solely in a motion picture, see Section 1509.2(A)(2)(d).

1509.2(A)(2)(b) Musical Works Published in the United States in Printed Copies

If the musical work was published in the United States solely in printed copies, the applicant should submit one complete copy of the best edition of that work.

Likewise, if the work was published both in printed copies and phonorecords that were distributed in the United States, the applicant should submit one complete copy of the best edition of that work. In other words, if the work was published on physical and electronic phonorecords (such as a compact disc and/or a digital audio file), and in physical or electronic copies (such as sheet music and/or PDF files), the applicant should submit one complete copy of the best edition of the printed work, rather than submitting a phonorecord.

When a musical work has been published in both copies and phonorecords, the Office considers the copies to be the best representation of the work. Visually perceptible formats typically contain a clear and precise representation of the music and lyrics that constitute the work. When a preexisting musical composition is published in a phonorecord, the sound recording is a separate work that recasts, transforms, or adapts the music and lyrics embodied in that recording. *See* 17 U.S.C. § 101 (definition of "derivative work"). And in cases where the music and sound recording are created simultaneously, it may be difficult to identify the author or co-authors of the music and sound recording or the respective owners or co-owners of each work.

To be clear, when a musical work is published *solely* in a phonorecord, the phonorecord constitutes the only representation of the work. In such cases, the applicant should submit the phonorecord, as discussed in Section 1509.2(A)(2)(a). There is no need to transcribe or notate the work in a visually perceptible form. *See* Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions, 82 Fed. Reg. 38,859, 38,862 (Aug. 16, 2017); Deposit Requirements: Proposed Rulemaking, 42 Fed. Reg. 59,302, 59,304 (Nov. 16, 1977).

The Copyright Act defines the "best edition" as "the edition, published in the United States *at any time before the date of deposit*, that the Library of Congress determines to be most suitable for its purposes." 17 U.S.C. § 101 (emphasis added). In other words, this definition only applies to editions of a work that exist at the time that the deposit is submitted to the U.S. Copyright Office. If the applicant submits a musical work on a phonorecord, and if the same work is published in a printed copy sometime thereafter, there is no need to resubmit the work in its visually perceptible form. *See* 42 Fed. Reg. at 59,304.

The criteria used to determine the best edition for a copy of a musical work are listed in section VI of the "Best Edition Statement," which is set forth in Appendix B to Part 202 of the Office's regulations. The Best Edition Statement 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).

Specifically, if the musical work was published in a printed edition, the applicant should submit one complete copy of the work as published in that edition. If the work was published in multiple printed editions, the applicant should review the Best Edition Statement and should submit the edition that is listed highest on the list.

NOTE: There are two additional considerations for works published in the following formats:

- If the work was published as a full score and parts, the full score is considered the complete copy. *Id.* § 202.20(b)(2)(vi)(A). If it was published as a conductor's score and parts, the conductor's score is considered the complete copy. *Id.* § 202.20(b)(2)(vi)(B).

- If the musical work was published as a contribution to a collective work (such as a hymn published in a hymnal), the applicant may submit one complete copy of the collective work, or a photocopy of the work as it was published in the collective work. 37 C.F.R. § 202.20(b)(2)(iv), (c)(2)(xv).

1509.2(A)(2)(c) Musical Works First Published in a Foreign Country

If the musical work was first published in a foreign country, and if the work was published in only one format, the applicant should submit one complete copy or phonorecord of the work as published in that format.

If the musical work was first published in a foreign country, and if the work was published in more than one format, the applicant should submit one complete copy or phonorecord of the first published edition. *See* 37 C.F.R. § 202.20(c)(1)(iv).

If the musical work was first published in a foreign country, and then subsequently published in the United States, the applicant may submit one complete copy or phonorecord of the edition that was first published in the foreign country. Alternatively, the applicant may submit one complete phonorecord or one complete copy of the "best edition" that was published in the United States, provided that the content of the U.S. edition is identical to the content of the foreign edition. *See id*. For information concerning the best edition requirement for printed copies of a musical work, see Section 1509.2(A)(2)(b).

1509.2(A)(2)(d) Musical Works Published Solely in Motion Pictures

If the musical work was published in the United States or a foreign country solely in a motion picture, the applicant may submit identifying material instead of submitting a copy of the actual motion picture. Specifically, the applicant may submit the following:

- A transcription of the entire musical work; or

- A reproduction of the entire musical work on a phonorecord, and photographs or other reproductions from the motion picture showing the title of the motion picture, the credits for the soundtrack, and the copyright notice for the soundtrack (if any).

See 37 C.F.R. §§ 202.20(c)(2)(i)(I), 202.20(c)(2)(xii), 202.21(f).

1509.2(B) Sound Recordings

This Section discusses the deposit requirement for sound recordings. As discussed below, this requirement varies depending on whether the work is published or unpublished.

NOTE: In some cases it may be possible to register a group of sound recordings with one application and one filing fee if the works are unpublished. For information concerning the deposit requirements for this group registration option, see Chapter 1100, Section 1106.4.

1509.2(B)(1) Unpublished Sound Recordings

To register an unpublished sound recording, the applicant should submit one complete phonorecord of the work that contains all of the authorship claimed on the application.

1509.2(B)(2) Published Sound Recordings

To register a sound recording published in the United States, the applicant should submit two complete phonorecords containing the best edition of the work. The criteria used to determine the best edition for a sound recording are listed in section V of the "Best Edition Statement," which is set forth in Appendix B to Part 202 of the Office's regulations. The Best Edition Statement 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).

The deposit for a claim in a sound recording is considered complete when it "includes the phonorecord, together with any printed or other visually perceptible material" that was published with the sound recording, such as cover art, liner notes, or the sound recording container. 37 C.F.R. §§ 202.19(b)(2); 202.20(b)(2)(v). For example, the Office will not accept a CD in a plain jewel case as the deposit copy for a claim in a published sound recording if the sound recording was marketed with cover art and liner notes.

1509.2(B)(3) Sound Recordings Published in Electronic Format

To register a sound recording published in the United States in both electronic and hard copy formats, the applicant should submit two complete phonorecords containing the best edition of the work in the hard copy format. If the sound recording was published solely in electronic format, the applicant may submit digital files containing a complete phonorecord of the work, provided that the requirements set forth in Section 1507.2 have been met.

1509.2(B)(4) Sound Recordings First Published in a Foreign Country

To register a sound recording that was published solely in a foreign country, the applicant should submit one complete phonorecord of the work as first published in that country. 37 C.F.R. § 202.20(c)(1)(iv).

If the work was first published in a foreign country and subsequently published in the United States, the applicant may submit one complete phonorecord of the work as first published in the foreign country. Alternatively, the applicant may submit one complete phonorecord of the best edition that was published in the United States, provided that the content of the U.S. edition is identical to the foreign edition. *See id*.

1509.2(C) Dramatic Works

Dramatic works may be fixed in visually perceptible copies (*e.g.,* a printed script), on phonorecords (*e.g.*, an audio recording), or in a motion picture or other audiovisual work.

1509.2(C)(1) Unpublished Dramatic Works

To register an unpublished dramatic work, the applicant should submit one complete copy or phonorecord that contains all the authorship claimed in the application.

1509.2(C)(2) Published Dramatic Works

To register a dramatic work published in the United States in visually perceptible copies, the applicant generally should submit two complete copies of the best edition of the work. If the dramatic work was published solely in electronic form, the applicant may submit a digital file containing one complete copy of the work. *See* Section 1507.2.

To register a dramatic work published on phonorecords in the United States, the applicant should submit one complete phonorecord containing the best edition of the work. As discussed in Section 1504, the criteria used to determine the best edition for 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. The Best Edition Statement 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).

If the dramatic work was published in a motion picture in the United States and if the dramatic work and the motion picture are authored and/or owned by the same party, the applicant may satisfy the deposit requirements for both works by submitting one complete copy of the motion picture together with the separate written description described in Section 1509.2(F)(1). A separate copy of the screenplay is not required.

If the dramatic work and the motion picture are not authored or owned by the same party, the applicant may submit one compete copy of the screenplay together with the identifying material described in Section 202.21(f) of the regulations in lieu of submitting an actual copy of the motion picture.

1509.2(D) Choreographic Works and Pantomimes

Choreographic works and pantomimes generally are fixed in visually perceptible copies, because these types of works are based on the physical movements of a person's body. The forms of fixation for choreography and pantomime typically include dance notation, motion pictures, textual descriptions, as well as drawings, illustrations, and/or photographs constituting the best edition of the work. *See* Chapter 800, Sections 805.3(D) and 806.3(D).

1509.2(D)(1) Unpublished Choreographic Works and Pantomimes

To register an unpublished choreographic work or pantomime, the applicant should submit one complete copy that contains all the authorship claimed on the application, regardless of the medium in which it is fixed.

1509.2(D)(2) Published Choreographic Works and Pantomimes

To register a choreographic work or pantomime published in a motion picture, the applicant should submit one complete copy of the best edition of the motion picture. 37 C.F.R. § 202.20(c)(2)(i)(I).

If the work was published in the United States in printed copies, the applicant generally should submit two complete copies of the best edition of the printed work. If the work was published solely in electronic form, the applicant may submit a digital file containing one complete copy of the work. *See* Section 1507.2.

The criteria used to determine the best edition for a work published in printed copies are listed in section I of the "Best Edition Statement," and the criteria for determining the best edition of a motion picture are listed in section III of the Statement. As discussed in Section 1504, the Best Edition Statement 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).

1509.2(E) Audiovisual Works

The term "audiovisual works" encompasses many categories of works that are "intrinsically intended to be shown by the use of machines or devices . . . ." 17 U.S.C. § 101. Motion pictures represent the largest category of audiovisual works; these types of works are discussed in Section 1509.2(F). The audiovisual components of computer screen displays are discussed in Section 1509.1(F)(6). For all other types of audiovisual works, the deposit requirements vary depending on whether the work has been fixed on a CD-ROM or another type of machine-readable copy.

1509.2(E)(1) Audiovisual Works Fixed in a CD-ROM

To register an audiovisual work that is fixed in a CD-ROM the applicant must submit one complete copy of the entire CD-ROM package, "including a complete copy of any accompanying operating software and instructional manual . . . ." 37 C.F.R. § 202.20(c)(2)(xix)(A).

A complete copy of a published CD-ROM package includes all the elements comprising the applicable unit of publication, "including elements that if considered separately would not be copyrightable subject matter or could be the subject of a separate registration." *Id.*

If a member of the Registration Program is unable to view the CD-ROM using standard Office equipment, the Office may accept alternative deposit materials under a grant of special relief (in addition to the complete CD-ROM package). *See id.* § 202.20(c)(2)(xix)(B).

If the work has been fixed in any other medium of expression, the applicant should refer to Section 1509.2(E)(2).

1509.2(E)(2) Audiovisual Works Fixed in Machine-Readable Copies Other Than a CD-ROM

To register an audiovisual work that has been fixed or published solely in machine-readable copies other than a CD-ROM, the applicant should submit identifying material, such as:

- A videotape or a series of photographs depicting representative portions of the copyrightable content of the work; and
- A separate synopsis of the work.

37 C.F.R. § 202.20(c)(2)(viii)(B). The applicant also may submit any packaging and/or instructional material that accompanies the pictorial images, if that material contains copyrightable authorship.

Examples of audiovisual works that fall within this category include arcade games and videogames that are not fixed on CD-ROMs.

In all cases, the applicant should include the title of the work on the identifying material. If the work has been published the applicant also should include the copyright notice for the work (if any). *Id.* § 202.20(c)(2)(viii).

NOTE: If the applicant is unable to submit identifying material using any of these options, the applicant may ask for special relief from the deposit requirements. For information concerning this procedure, see Section 1508.8.

1509.2(E)(3) Audiovisual Works Published in Electronic Format

To register an audiovisual work published in electronic and hard copy formats, the applicant should submit two complete copies of the best edition of the work in the hard copy format. If the audiovisual work was published solely in electronic format, the applicant may submit digital files containing a complete copy of the work, provided that the requirements set forth in Section 1507.2 have been met.

1509.2(F) Motion Pictures

This Section discusses the deposit requirements for motion pictures created or published on or after January 1, 1978. For information concerning motion pictures published before that date, see Chapter 2100. For information concerning a musical work that was published solely in a motion picture, see Section 1509.2(A)(2)(d).

To register an unpublished or published motion picture, the applicant should submit one complete copy of the work. 37 C.F.R. § 202.20(c)(2)(ii). In addition, the applicant should submit a separate written description of the nature and general content of the work, such as a continuity, pressbook, or synopsis. *Id.*

A copy of a motion picture is complete when "the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or

that would cause mechanical, visual, or audible defects or distortions." 37 C.F.R. § 202.20(b)(2)(vii).

1509.2(F)(1) Unpublished Motion Pictures

To register an unpublished motion picture, the applicant should submit one complete copy of the work, together with a separate written description of the work. 37 C.F.R. § 202.20(c)(2)(ii).

As a general rule, the applicant may submit an unpublished motion picture in any format, provided that the registration specialist can examine the work using the Office's standard equipment. For example, the applicant may upload a copy of the work through the electronic registration system, provided that it is submitted in one of the acceptable file formats discussed in Section 1508.1, and provided that the registration specialist can examine the work using the Office's standard equipment. Alternatively, the applicant may submit the work on a videodisc, such as a DVD, Blu-ray disc, CD-ROM, DVD-ROM, or on a flash drive.

1509.2(F)(2) Published Motion Pictures

To register a published motion picture, the applicant should submit one complete copy of the work as published, together with a separate written description of the work. *See* 37 C.F.R. § 202.20(c)(2)(ii).

The specific nature of the copy that should be submitted varies depending on whether the work was published in the United States or in a foreign country. These requirements are discussed below in Sections 1509.2(F)(2)(a) and 1509.2(F)(2)(b).

1509.2(F)(2)(a) Motion Pictures Published in the United States on or After January 1, 1978

If the motion picture was published in the United States on or after January 1, 1978, the applicant should submit one complete copy of the best edition of that work.

The criteria used to determine the best edition for a motion picture are listed in Section III of the "Best Edition Statement," which is set forth in Appendix B to Part 202 of the Office's regulations. The Best Edition Statement 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).

Specifically, if the motion picture was published in one of the formats listed immediately below the applicant should submit one complete copy of the work in the format that appears on this list. If the work was published in two or more of the formats listed immediately below, the applicant should submit the work in the format that is listed first. If the work was published in an electronic format and in one or more of the hard copy formats listed immediately below, the applicant should submit one complete copy of the hard copy format. *See* 37 C.F.R. § 202.20(b)(1).

- *Film Formats*:

    1. Preprint material (by special arrangement)

    2. 70 mm positive print (if original production negative is greater than 35 mm)

    3. 35 mm positive prints

    4. 16 mm positive prints

- *Video Formats:*

    1. Betacam SP

    2. Digital Beta (Digibeta)

    3. DVD

    4. VHS Cassette

See 37 C.F.R. Part 202, Appendix B, ¶ III.

The following examples illustrate the appropriate method for identifying the "best edition" in cases where a motion picture was published in one or more of the formats listed immediately above.

- An animated film was published solely on a commercial DVD. The applicant should submit one complete copy of the commercial DVD.

- A major motion picture was published in 35mm film, a commercial DVD, and a VHS cassette. The applicant should submit one complete copy of the 35mm film, because film formats are preferred over video formats, such as DVD and VHS.

- A documentary was published on DVD and VHS cassette. The applicant should submit one complete copy of the DVD, because DVD formats are preferred over VHS.

- A comedy routine was published on a commercial DVD and published online as a digital download. DVDs are included on the list of preferred formats, but digital downloads are not. Therefore, applicant should submit one complete copy of the DVD.

In all cases, applicants should focus solely on the editions or formats that actually exist as of the date that the claim is filed. For instance, if the motion picture was published solely as a digital cinema package (DCP), there is no need to create a new edition on 35 mm film, digibeta, or any of the other formats listed on the Best Edition Statement.

If the motion picture was published in a format that is not listed on the Best Edition Statement, the applicant may request further guidance concerning the deposit requirements for registration by submitting a written request to the Office of Registration Policy & Practice. If the motion picture was published solely in a DCP format, the applicant may upload the work in any of the acceptable file formats listed in Section 1508.1, provided that the file does not exceed 500 megabytes. Alternatively, the applicant may submit one complete copy of the work on a DVD-R.

1509.2(F)(2)(b) Motion Pictures Published in a Foreign Country on or after January 1, 1978

If the motion picture was published solely in a foreign country on or after January 1, 1978, and if the work was published in only one format, the applicant should submit one complete copy of the work as published in that format.

If the motion picture was published solely in a foreign country, and if the work was published in more than one edition, the applicant should submit one complete copy of the first published edition. *See* 37 C.F.R. § 202.20(c)(1)(iv).

If the motion picture was first published in a foreign country, and then subsequently published in the United States, the applicant may submit one complete copy of the edition that was first published in the foreign country. Alternatively, the applicant may submit one complete copy of the "best edition" that was published in the United States, provided that the content of the U.S. edition is identical to the content of the foreign edition. *See id*. For information concerning the best edition requirement, see Section 1509.2(F)(2)(a).

1509.2(F)(3) Motion Pictures Contained in Formats That Cannot Be Viewed by the U.S. Copyright Office

The U.S. Copyright Office may not have equipment needed to examine a motion picture for copyrightable authorship. If so, the registration specialist may ask the applicant to resubmit the work in a different format.

Alternatively, the specialist may proceed with his or her examination without requesting a viewable copy of the motion picture, provided that (i) the applicant submitted a separate written description of the work, such as a continuity, pressbook, synopsis, or the final shooting script, and (ii) the written description sufficiently identifies the copyrightable material in the work, and includes the following information:

- The continuing title of the work and the episode title (if any);
- The nature and general content of the program and its dialog or narration (if any);
- The running time; and
- All credits appearing on the work, including the copyright notice (if any).

37 C.F.R. § 202.21(h).

1509.2(F)(4) The Motion Picture Agreement

The Library of Congress may, at its sole discretion, enter into an agreement permitting the return of copies of published motion pictures to the applicant under certain conditions and establishing certain rights and obligations with respect to such copies on the part of both the applicant and the Library. *See* 37 C.F.R. § 202.20(c)(2)(ii).

The current Motion Picture Agreement states that after a motion picture has been registered, the deposit copy will be returned to the applicant upon written request. However, the applicant may be required to resubmit a copy of the work for the Library's permanent collection within a period of two years. By signing the Agreement, the applicant agrees to provide the Library with a copy that meets the archival quality standards set forth in the Agreement in the event that the film is recalled. *See* Deposit Requirements; Motion Pictures, 43 Fed. Reg. 12,320, 12,322-24 (Mar. 24, 1978).

Applicants may request a copy of the Motion Picture Agreement by calling the Office's Motion Picture Team at (202) 707-8182.

1509.2(F)(4)(a) Who May Enter Into the Motion Picture Agreement?

The Motion Picture Agreement may be used by the owner of copyright in a published work or the owner of the exclusive right of publication (including the exclusive right to distribute the work in the United States). The Agreement only refers to works first published in the United States.

The Agreement may also be used by the owner of copyright in a work initially published outside the United States, but later published in this country prior to the date of deposit. Works published only outside the United States may be made subject to the Agreement if (i) the owner of copyright executes the Motion Picture Agreement together with the Standard Modification of the Agreement, and (ii) if that party has an established business office in the United States or has designated an agent in the United States with express authority to receive service in the event the Agreement is breached.

Applicants may request a copy of the Standard Modification of the Motion Picture Agreement by calling the Office's Motion Picture Team at (202) 707-8182.

1509.2(F)(4)(b) Who May Sign the Motion Picture Agreement?

The Motion Picture Agreement may be signed by an individual applicant or his or her legal representative. A business entity may sign the Agreement through a legal representative empowered to bind the entity, such as an officer of a corporation, an attorney for the applicant, or another agent who is satisfactory to the Library of Congress. In certain cases, the signing party may be required to complete the Standard Modification to the Motion Picture Agreement. Legal representatives may also be required to sign a bond that subjects that party to certain liability under the Agreement.

1509.2(F)(4)(c) The Supplementary Property Agreement

If the applicant has entered into the Motion Picture Agreement the Office may accept a deposit copy in a format other than the best edition if the applicant signs the

Supplementary Property Agreement. By signing the Supplemental Property Agreement, the applicant agrees to resubmit a best edition copy of archival quality if the Library of Congress demands a copy of the motion picture under the Motion Picture Agreement.

Applicants may request a copy of the Supplementary Property Agreement by calling the Office's Motion Picture Team at (202) 707-8182.

1509.2(F)(4)(d) Return of the Deposit Copy Under the Motion Picture Agreement

The U.S. Copyright Office will return the deposit copy to the applicant pursuant to the Motion Picture Agreement if the applicant submits a specific written request. In particular, if the applicant signs the Supplementary Property Agreement discussed in Section 1509.2(F)(4)(c), that document will be interpreted as a written request for the return of the deposit copy.

If the work is to be returned by a private courier designated by the applicant, the applicant should include shipping instructions with the request. The instructions should indicate that the motion picture is to be returned at the applicant's expense and it should include the name of the courier, an account number (if any), a declaration of value, and the amount of insurance required.

If the applicant requests, the motion picture will be shipped collect by means of a private courier chosen by the Library of Congress, with insurance coverage at the applicant's expense, to the amount of the declared value. If no value has been declared, the amount of the insurance will be based on the estimated replacement cost for a copy of identical physical characteristics produced by a commercial laboratory.

Unless the Office is otherwise directed in writing at the time of deposit, motion pictures will be returned to the applicant by Special Fourth Class Mail. In such cases, the Library of Congress does not assume any responsibility for providing insurance. Because of the high risk of loss with respect to certain films, the Office ordinarily will attempt to contact applicants who submit 35mm feature films, oversize deposits, and copies of special value for instructions for return by private courier at the applicant's expense.

1509.2(F)(4)(e) Recall of the Deposit Copy Under the Motion Picture Agreement

At any time within two years from the date of the initial deposit, the Library of Congress may make a written request that a copy of archival quality be submitted for its permanent collections under the terms of the Motion Picture Agreement. The party receiving the request must submit one complete copy of the film, meeting the standards set forth in Appendix A of the Agreement, to the Library at the address specified in the request within six months from the date of the recall.

1509.2(F)(4)(f) Quality of the Copy Deposited Under the Motion Picture Agreement

If an applicant has signed the Motion Picture Agreement and submits a deposit copy without requesting the return of that copy, the motion picture is considered a "non-agreement" film and is treated as though there is no Agreement on file.

The standards governing the quality of a non-agreement film are set forth in Sections 1509.2(F)(1) and 1509.2(F)(2), and the special "archival quality" standards set forth in the Motion Picture Agreement and Appendix A thereto do not apply. That said, any copy recalled by the Library of Congress under the Agreement must meet all the technical guidelines set forth in Appendix A to the Agreement.

1509.2(F)(4)(g) Termination of the Motion Picture Agreement

The Library of Congress may terminate the Motion Picture Agreement for any good cause, including single or repeated instances involving a breach of the Agreement. If the Library terminates an Agreement, the termination applies only to motion pictures deposited after the termination, and does not affect the rights or obligations of either party with respect to any copies previously deposited or returned under the Agreement. If the Library terminates the Agreement, it will not reinstate the Agreement or enter into any similar or subsequent agreement with the applicant or its successors in interest, unless the Library determines in its sole discretion that doing so would be in the best interests of the Library. 37 C.F.R. § 202.20(c)(2)(ii).

1509.2(G) Deposit Requirements for Group Registration Options

The Office offers a group registration option for unpublished works. The deposit requirements for this option are discussed in Chapter 1100, Section 1106.4.

1509.2(H) Foreign Works of the Performing Arts

To register an unpublished work of the performing arts that was created by a citizen or national of a foreign country, the applicant should submit one complete copy or phonorecord of the work that contains all the authorship claimed on the application.

To register a work of the performing arts that was published solely in a foreign country, the applicant should submit one complete copy or phonorecord of the work as first published in that country. 37 C.F.R. § 202.20(c)(1)(iv).

If the work was published in a foreign country and then subsequently published in the United States, the applicant may submit one complete copy or phonorecord of the work as first published in the foreign country. Alternatively, the applicant may submit one complete copy or phonorecord of the best edition that was published in the United States, provided that the content of the U.S. edition is identical to the content of the foreign edition. *See id.*

1509.2(I) GATT Works of the Performing Arts

GATT is an international trade agreement that extended copyright protection to certain classes of works that were in the public domain in the United States, such as sound recordings that were first fixed outside the United States before February 15, 1972. For information concerning the deposit requirements for such works, see Section 1509.1(M).

1509.2(J) Registration Deposit Requirements for Works of the Performing Arts: At a Glance

The following charts provide a brief summary of the deposit requirements for various types of works of the performing arts. For a detailed discussion of these requirements, see Sections 1509.2(A) through 1509.2(I) above.

If the applicant is unable to submit a deposit that satisfies these requirements, the applicant may ask for special relief. For information concerning this procedure, see Section 1508.8.

General Requirements

Nature of the Work	Published	Unpublished
Unpublished works	n/a	One complete copy or phonorecord representing the entire copyrightable content
Works first published in the United States before 1/1/78	Two complete copies or phonorecords of the work as first published	n/a
Works first published in the United States between 1/1/78 and 3/1/89 that are not listed below	Two complete copies or phonorecords of the best edition of the work (including the copyright notice for the first published edition)	n/a
Works first published in the United States on or after 3/1/89 that are not listed below	Two complete copies or phonorecords containing the best edition of the work	n/a
Works that are not listed below that are published solely in a foreign country	One complete copy or phonorecord of the work as first published in the foreign country	n/a
Works that are not listed below that are first published in a foreign country and subsequently published in the United States that are not listed below	One complete copy or phonorecord of the work as first published in the foreign country or one complete copy of the best edition published in the United States if the content of the U.S. and foreign editions is identical	n/a

Musical Works

Nature of the Work	Published	Unpublished
Unpublished musical works	n/a	One complete copy or phonorecord representing the entire copyrightable content
Musical works published only in printed copies	One complete copy of the best edition of the work	n/a
Musical works published only in phonorecords	One complete phonorecord of the published work	n/a
Musical works published in printed copies and phonorecords before the work was submitted for registration	One complete copy of the best edition of the printed work	
Musical works published only in motion pictures	*See* Section 1509.2(A)(2)(d)	n/a

Sound Recordings

Nature of the Work	Published	Unpublished
Unpublished sound recordings	n/a	One complete phonorecord representing the entire copyrightable content
Sound recordings published solely in hard copy format	Two complete phonorecords containing the best edition of the work in hard copy format	n/a
Sound recordings published in hard copy and electronic format before the work was submitted for registration	Two complete phonorecords containing the best edition of the work in hard copy format	n/a
Sound recordings published solely in electronic format	One complete phonorecord of the published work	n/a

Dramatic Works

Nature of the Work	Published	Unpublished
Dramatic works fixed in visually perceptible copies	Two complete copies of the best edition of the work	One complete copy representing the entire copyrightable content
Dramatic works fixed in phonorecords	One complete phonorecord of the best edition of the work	One complete phonorecord representing the entire copyrightable content
Dramatic works fixed in motion pictures	*See* Section 1509.2(C)(2)	One complete copy representing the entire copyrightable content
Dramatic works published solely in electronic format	*See* Sections 1507.2 and 1509.2(C)(2)	n/a

Choreographic Works and Pantomimes

Nature of the Work	Published	Unpublished
Choreographic works fixed in printed copies	Two complete copies of the best edition of the printed work	One complete copy representing the entire copyrightable content
Choreographic works fixed in motion pictures	One complete copy of the best edition of the motion picture	One complete copy representing the entire copyrightable content
Pantomimes fixed in printed copies	Two complete copies of the best edition of the printed work	One complete copy representing the entire copyrightable content
Pantomimes fixed in motion pictures	One complete copy of the best edition of the motion picture	One complete copy representing the entire copyrightable content
Choreographic works or pantomimes published solely in electronic format	*See* Sections 1507.2 and 1509.2(D)(2)	n/a

Audiovisual Works

Nature of the Work	Published	Unpublished
Computer screen displays	*See* Section 1509.1(F)(6)	*See* Section 1509.1(F)(6)
Audiovisual works fixed in a CD-ROM	One complete copy of the entire CD-ROM package	One complete copy of the entire CD-ROM package
Audiovisual works fixed in machine-readable copies other than a CD-ROM (*e.g.,* arcade videogames)	Identifying material consisting of a videotape or a series of photographs depicting representative portions of the work together with a separate synopsis of the work	Identifying material consisting of a videotape or a series of photographs or drawings depicting representative portions of the work together with a separate synopsis of the work
Audiovisual works fixed in multimedia kits	One complete copy of the best edition of the kit	One complete copy representing the entire copyrightable content

Motion Pictures

Nature of the Work	Published	Unpublished
Motion pictures	*See* Section 1509.2(F)(1)	One complete copy of the work and a separate written description, or in the alternative, identifying material and a separate written description containing the information set forth in Section 1509.2(F)(2)
Motion pictures published solely in electronic format	*See* Section 1507.2	n/a

Group Registration Options

Nature of the Works	Published	Unpublished
Group registration of unpublished works	n/a	*See* Chapter 1100, Section 1106.4

1509.3 Visual Arts Works

The U.S. Copyright Office uses the term "visual arts works" to refer collectively to the following types of works:

- Fine art.
- Graphic art.
- Photographs.
- Prints.
- Art reproductions.
- Maps and globes.
- Charts and diagrams.
- Technical drawings, including architectural plans.
- Models.
- Works of artistic craftsmanship.
- Applied art.
- Architectural works.

To register a work that was first published in the United States on or after January 1, 1978, the applicant generally should submit two complete copies of the best edition of that work. *See* 37 C.F.R. § 202.20(c)(1)(iii).

As discussed in Section 1504.2, the criteria used to identify the best edition for a visual arts 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).

To register a work published in both electronic and hard copy formats, the applicant generally should submit complete two copies of the work in the hard copy format. If the work was published solely in electronic format, the applicant may submit digital file(s) containing complete copy(ies) of the work, provided that the requirements set forth in Section 1507.2 have been met.

There are exceptions to these rules for certain types of visual arts works. The deposit requirements for these types of works are discussed in Sections 1509.3(A) through

1509.3(D). The deposit requirements for foreign visual arts works are discussed in Section 1509.3(E). Section 1509.3(F) contains a series of charts that summarize the deposit requirements for these types of works. For detailed information on the copyrightability and registration of visual arts works, see Chapter 900.

1509.3(A) Two-Dimensional Visual Arts Works

1509.3(A)(1) Unpublished Works

To register an unpublished pictorial or graphic work, the applicant may submit identifying material instead of submitting an actual copy of the work. 37 C.F.R. § 202.20(c)(2)(iv). For information concerning the requirements for identifying material, see Section 1509.3(C).

NOTE: There is a limited exception to this rule for unpublished works fixed solely in a CD-ROM, which are discussed in Section 1509.3(A)(11).

1509.3(A)(2) Published Works

To register a pictorial or graphic work published in the United States, the applicant generally should submit two complete copies of the best edition of that work.

NOTE: There are several exceptions to this rule, which are discussed in Sections 1509.3(A)(3) through 1509.3(A)(12).

1509.3(A)(3) Certain Limited Editions

This Section discusses the deposit requirements for certain visual arts works that are published in a limited edition.

If an individual author owns the copyright in the work, the applicant may submit one complete copy of the best edition, or in alternative, the applicant may submit identifying material, provided that one of the following conditions has been met:

- Less than five copies of the work have been published; or
- The work has been published and sold or offered for sale in a limited edition consisting of no more than 300 numbered copies.

37 C.F.R. § 202.20(c)(2)(iv). For information concerning the requirements for identifying material, see Section 1509.3(C).

1509.3(A)(4) Works Reproduced in Sheet-like Materials

This Section discusses the deposit requirements for pictorial or graphic works that are reproduced solely in "sheet-like material." This category includes two-dimensional works that are fixed and/or published in the following types of material:

- Textiles and other fabrics.

- Wallpaper and similar commercial wall coverings.
- Carpeting.
- Floor tile and similar commercial floor coverings.
- Wrapping paper and similar packaging material.

If a visual arts work has been reproduced solely on sheet-like material, the applicant should submit the following:

- One copy of a swatch or piece of material that is sufficient to show all of the elements of the work that are claimed in the application.
- A copy of the copyright notice (if any) that appears on the work or on tags, labels, or packaging for the work.

37 C.F.R. § 202.20(c)(2)(x).

If the work contains a repeating pictorial or graphic design, the applicant should submit a copy of the complete design together with a partial repeat of that design.

The applicant should submit a copy that shows the actual color(s) of the design, including any alternate color variations of the design.

Applicants should not submit CAD drawings as the sole form of deposit, because these types of drawings generally do not show the actual fixed or published design. When including CAD drawings in the deposit, the applicant should submit the drawings together with other identifying material, such as photographs or scanned images showing the actual work fixed in fabric or other sheet-like material or showing the actual published edition of the work.

The applicant should not submit CAD drawings or photos of the work if the copyright claim is based all or in part on the elevations, embroidery, tufts, looms, or other textural design aspects in carpet, wallpaper, or other sheet-like material. Instead, the applicant should submit an actual swatch or piece of material that shows the textural design aspects that are claimed in the application.

1509.3(A)(5) Published Greeting Cards, Picture Postcards, and Stationery

To register published greeting cards, picture postcards, or stationery, the applicant should submit one complete copy of the best edition of the work. 37 C.F.R. § 202.20(c)(2)(i)(C).

1509.3(A)(6) Published Calendars, Decals, Fabric Patches, or Emblems

To register published calendars or two-dimensional decals, fabric patches, or emblems, the applicant should submit one complete copy of the best edition of the work. 37 C.F.R. § 202.20(c)(2)(i)(J).

1509.3(A)(7) Published Games

A two-dimensional game may be registered as a work of the visual arts if the predominant form of authorship consists of pictorial or graphic authorship, such as board games, playing cards, and the like.

To register a two-dimensional game that has been published, the applicant should submit one complete copy of the best edition of the work.

See 37 C.F.R. § 202.20(c)(2)(i)(J); Part 202—Registration of Claims to Copyright, Deposit Requirements, 43 Fed. Reg. 41,975, 41,976 (Sept. 19, 1978).

1509.3(A)(8) Published Needlework and Craft Kits

To register needlework or a craft kit, the applicant should submit one complete copy of the best edition of the work. 37 C.F.R. § 202.20(c)(2)(i)(J).

1509.3(A)(9) Published Commercial Prints, Labels, and Other Advertising Matter

To register prints, labels, and other advertising matter published in connection with the rental, lease, lending, licensing, or sale of services, articles of merchandise, or works of authorship, the applicant generally should submit one complete copy of the best edition of the work. 37 C.F.R. § 202.20(c)(2)(v).

If the print or label is published in a larger work, such as a newspaper or other periodical, the applicant may submit one copy of the entire page or pages where the work appears instead of submitting the entire larger work. *Id.*

If the print or label is physically inseparable from a three-dimensional object, the applicant generally must submit identifying material instead of submitting an actual copy of the work. *Id.* For information concerning the requirements for identifying material, see Section 1509.3(C).

NOTE: The rules discussed above do not apply to advertising material published in connection with motion pictures. The deposit requirements for such works are set forth in Section 1509.3(A)(2).

1509.3(A)(10) Pictorial or Graphic Works Reproduced on Three-Dimensional Containers or Holders

This Section discusses the deposit requirements for pictorial or graphic works reproduced on three-dimensional containers or holders, such as boxes, cases, and cartons, that can be readily opened out, unfolded, slit at the corners, or in some other way made adaptable for flat storage. The applicant should submit one copy of the work if the copy, when flattened, does not exceed ninety-six inches in any dimension. The applicant may submit identifying material if the copy, when flattened, exceeds ninety-six inches in any dimension. For information concerning the requirements for identifying material, see Section 1509.3(C).

37 C.F.R. § 202.20(c)(2)(i)(K), (c)(2)(xi)(B)(4).

1509.3(A)(11) Visual Arts Works Fixed in a CD-ROM

To register a pictorial or graphic work that is fixed in a CD-ROM the applicant must submit one complete copy of the entire CD-ROM package, regardless of whether the work is published or unpublished. If the work is fixed in print as well as the CD-ROM, the applicant also should submit a printed version of the work that is embodied in the CD-ROM. 37 C.F.R. § 202.20(c)(2)(xix)(A).

A complete copy of a published CD-ROM package includes all of the elements comprising the applicable unit of publication, "including elements that if considered separately would not be copyrightable subject matter or could be the subject of a separate registration" and "including a complete copy of any accompanying operating software and instructional manual." *Id*.

If a member of the Registration Program is unable to view the CD-ROM using standard Office equipment, the Office may accept alternative deposit materials under a grant of special relief (in addition to the complete CD-ROM package). *See id.* § 202.20(c)(2)(xix)(B).

1509.3(A)(12) Deposit Requirements for Group Registration Options

The Office has established a procedure that allows copyright owners to register groups of unpublished works, unpublished photographs, published photographs, or a database consisting predominantly of photographs with one application, one filing fee, and one set of deposit copies. The deposit requirements for these group registration options are discussed in Chapter 1100, Sections 1112.7 and 1114.4.

1509.3(B) Three-Dimensional Visual Arts Works

1509.3(B)(1) Identifying Material Required

When registering statues, carvings, ceramics, moldings, constructions, models, maquettes, dolls, toys, stuffed animals, puppets, or other three-dimensional sculptural works, the applicant generally must submit identifying material instead of submitting an actual copy of the work, regardless of whether the work is published or unpublished. 37 C.F.R. § 202.20(c)(2)(xi)(A)(1). Likewise, the applicant generally must submit identifying material instead of submitting an actual copy of the work when registering jewelry or when registering any three-dimensional work that is embodied in a useful article. *Id*. § 202.20(c)(2)(xi)(A)(2). For information concerning the requirements for identifying material, see Section 1509.3(C).

NOTE: There are several exceptions to this rule, which are discussed in Section 1509.3(B)(2).

1509.3(B)(2) Actual Copy(ies) Permitted in Some Exceptional Cases

When registering the following types of works the applicant may submit one complete copy in lieu of identifying material:

- Published three-dimensional cartographic representations, such as globes and relief models. 37 C.F.R. § 202.20(c)(2)(i)(A).

- Three-dimensional sculptural works fixed or published solely in the form of jewelry cast in base metal that does not exceed four inches in any dimension. 37 C.F.R. § 202.20(c)(2)(i)(G), (c)(2)(xi)(B)(5).

- Games that include multiple three-dimensional parts that are packaged and published in a box or similar container with flat sides and with dimensions of no more than twelve by twenty-four by six inches. 37 C.F.R. § 202.20(c)(2)(i)(G), (c)(2)(xi)(B)(3); *see also* Part 202—Registration of Claims to Copyright, Deposit Requirements, 43 Fed. Reg. 41,975, 41,976 (Sept. 19, 1978).

- Three-dimensional visual arts works fixed or published in or on a useful article that comprises one of the elements of the unit of publication for an educational or instructional kit that also includes a literary work, an audiovisual work, a sound recording, or any combination of such works. 37 C.F.R. § 202.20(c)(2)(i)(G), (c)(2)(xi)(B)(2).

NOTE: For all other three-dimensional works, the applicant must submit identifying material instead of submitting an actual copy of the work. For information concerning the requirements for identifying material, see Section 1509.3(C).

1509.3(C) Identifying Material

When registering a visual arts work with identifying material, the applicant should submit photographic prints, transparencies, photostats, drawings, or similar two-dimensional reproductions or renderings of the work in a form that is visually perceptible without the aid of a machine or device. *See* 37 C.F.R. § 202.21(a). The applicant should submit as many pieces of identifying material as necessary to show the entire copyrightable content of the work claimed in the application. *Id.* § 202.21(b). In addition, the applicant should include the title of the work on the front, back, or mount for at least one piece of identifying material. *Id.* § 202.21(d).

When registering a pictorial or graphic work, the identifying material should reproduce the actual colors employed in the work. In all other cases, the identifying material may be black and white or may consist of a reproduction of the actual colors. *Id.* § 202.21(a).

If the work has been published with a copyright notice, the location and content of the notice should be included on at least one piece of identifying material. *Id*. § 202.21(e). If the work was published without a notice, applicants may include any proprietary information concerning the owner, publisher, or distributor that was published on the work or on a tag, label, or packaging for the work.

NOTE: When registering a three-dimensional sculptural work fixed or published solely in the form of jewelry cast in base metal that exceeds four inches in any dimension, applicants are encouraged to submit photographs of the actual jewelry together with hand-drawn sketches or CAD drawings. If possible, applicants should eliminate reflected glare on the surface of the jewelry because it may inhibit the examination of the work.

Because a registration only covers the copyrightable authorship that is clearly shown in the identifying material, applicants are also encouraged to submit images of the jewelry from multiple perspectives, such as front, back, top-down, bottom, and side views.

1509.3(D) Architectural Works

This Section discusses the deposit requirements for published or unpublished architectural works.

An "architectural work" is "the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The 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." 17 U.S.C. § 101. For information on the copyrightability and registrability of architectural works, see Chapter 900, Section 926.

In all cases, the applicant should submit one complete copy of an architectural drawing or blueprint in visually perceptible form showing the overall form of the building (*i.e.*, drawings of the exterior elevations when viewed from the front, rear, sides, and top-down), and any interior arrangements of spaces and/or design elements in which copyright is claimed.

NOTE: The phrase "interior arrangements of spaces and/or design elements" refers to permanent, structural elements that define the arrangement of space within the interior of the building, rather than "interior design," such as the selection and placement of furniture, lighting, paint, and similar items.

The drawings should include the following information (if known):

- The name(s) of the architect(s) and draftsperson(s), and
- The building site.

See 37 C.F.R. § 202.11(c)(5)(i).

If the building has been constructed, the applicant also should submit photographs that clearly show the exterior and interior of the architectural work. *See id.*

The deposit may be submitted in any form that allows the U.S. Copyright Office to access, perceive, and examine the entire copyrightable content of the work being registered. The applicant may upload a digital copy of the work, provided that it is submitted in one of the file formats listed on the Office's website. *See id*. § 202.11(c)(5)(ii).

When uploading the deposit, the applicant should submit a separate file containing the name of the architect, draftsperson, or copyright owner if that information appears in a proprietary legend in the margins of the blueprints or drawings.

NOTE: Deposits that are uploaded to the electronic registration system will be considered solely for the purpose of registering the work with the Copyright Office, and

will not satisfy the mandatory deposit requirements for architectural works that have been published in the United States. *See id.* For information concerning these requirements, see Section 1511.8(J).

1509.3(E) Foreign Visual Arts Works

1509.3(E)(1) Two-Dimensional Works

To register an unpublished, two-dimensional visual arts work that was created by a citizen or national of a foreign country, the applicant may submit identifying material instead of submitting an actual copy of the work. *See* 37 C.F.R. § 202.20(c)(2)(iv). For information concerning the requirements for identifying material, see Section 1509.3(C).

To register a visual arts work that was published solely in a foreign country, the applicant should submit one complete copy of the work as first published in that country. 37 C.F.R. § 202.20(c)(1)(iv).

If the work was published in a foreign country and then subsequently published in the United States, the applicant may submit one complete copy or phonorecord of the work as first published in the foreign country. Alternatively, the applicant may submit one complete copy of the best edition that was published in the United States, provided that the content of the U.S. edition is identical to the content of the foreign edition. *See id.*

NOTE: There are several exceptions to these rules, which are discussed in Sections 1509.3(A)(3) through 1509.3(A)(11).

1509.3(E)(2) Three-Dimensional Works

To register a three-dimensional work the applicant generally should submit identifying material, regardless of whether the foreign work is published or unpublished.

NOTE: There are several exceptions to these rules, which are discussed in Section 1509.3(B)(2).

1509.3(E)(3) GATT Visual Arts Works

GATT is an international trade agreement that extended copyright protection to certain classes of works that were in the public domain in the United States, such as works first published outside the United States before March 1, 1989 without a proper copyright notice. For information concerning the deposit requirements for such works, see Section 1509.1(M).

1509.3(F) Registration Deposit Requirements for Visual Arts Works: At a Glance

The following charts provide a brief summary of the deposit requirements for various types of visual arts works. For a detailed discussion of these requirements, see Sections 1509.3(A) through 1509.3(E) above.

If the applicant is unable to submit a deposit that satisfies these requirements, the applicant may ask for special relief. For information concerning this procedure, see Section 1508.8.

Two-Dimensional Visual Arts Works

Nature of the Work	Published	Unpublished
Unpublished works	n/a	Identifying material representing the entire copyrightable content
Pictorial or graphic works (*e.g.,* artwork, drawings, illustrations, paintings, posters, photographs, prints, brochures, exhibition catalogs) first published in the United States before 1/1/1978	Two complete copies of the work as first published	n/a
Pictorial or graphic works first published in the United States between 1/1/1978 and 3/1/1989 that are not listed below	Two complete copies of the best edition of the work (including the copyright notice for the first published edition)	n/a
Pictorial or graphic works first published in the United States after 3/1/1989 that are not listed below	Two complete copies of the best edition of the work	n/a
Works that are not listed below that are published solely in a foreign country	One complete copy of the work as first published in the foreign country	n/a
Works that are not listed below that are first published in a foreign country and subsequently published in the United States	One complete copy of the work as first published in the foreign country or one complete copy of the best edition published in the United States if the content of the U.S. and foreign editions is identical	n/a

Nature of the Work	Published	Unpublished
"Limited edition" works published in quantities of five copies or fewer, or published in 300 numbered copies or fewer where the copyright is owned by an individual author	One complete copy of the best edition of the work or identifying material	n/a
Blueprints, architectural drawings, mechanical drawings, diagrams	One complete copy of the best edition of the work	Identifying material representing the entire copyrightable content
Two-dimensional maps or cartographic material	Two complete copies of the best edition of the work. If published in a CD-ROM, one complete copy of the CD-ROM package. If published in machine-readable format other than a CD-ROM, identifying material.	Identifying material representing the entire copyrightable content
Artwork reproduced only in fabric, wallpaper, carpeting, floor tile, wrapping paper, or other similar sheet-like materials	One complete copy in the form of an actual swatch or piece of such material sufficient to show all elements of the work in which copyright is claimed, and the copyright notice (if any)	Identifying material representing the entire copyrightable content
Greetings cards, picture postcards, stationery	One complete copy of the best edition of the work	Identifying material representing the entire copyrightable content
Calendars	One complete copy of the best edition of the work	Identifying material representing the entire copyrightable content
Two-dimensional fabric emblems or patches, decals or heat transfers (not applied to clothing), bumper stickers, campaign buttons	One complete copy of the best edition of the work	Identifying material representing the entire copyrightable content
Two-dimensional games	One complete copy of the best edition of the work	Identifying material representing the entire copyrightable content

Nature of the Work	Published	Unpublished
Patterns, cross-stitch graphs, stitchery brochures, needlework, and craft kits	One complete copy of the best edition of the work	Identifying material representing the entire copyrightable content
Commercial prints, labels, or other advertising matter (*e.g.,* flyer, label, brochure, or catalog used in connection with sale of goods or services)	One complete copy of the best edition of the work	Identifying material representing the entire copyrightable content
Commercial prints, labels, or other advertising matter published in a newspaper or other periodical	One copy of the entire page(s) of the periodical where the work appears	n/a
Commercial prints, labels, or other advertising matter inseparable from three-dimensional object (*e.g.,* silk screen label on a bottle)	Identifying material representing the entire copyrightable content	Identifying material representing the entire copyrightable content
Advertising material published in connection with motion pictures	Two complete copies of the best edition of the work	n/a
Two-dimensional artwork reproduced on three-dimensional containers or holders	Identifying material (or one complete copy of the best edition of the work if the box or container is less than ninety-six inches in any dimension when flattened)	One complete copy or identifying material
Contributions to collective works other than newspapers, such as photographs, drawings, cartoons, and the like	One complete copy of the best edition of the collective work, or a photocopy or other reproduction of the contribution as it was published in the collective work	One complete copy or identifying material
Contributions to newspapers	One complete section containing the contribution or a cut-out of the contribution from the newspaper	One complete copy or identifying material

Nature of the Work	Published	Unpublished
Works fixed only in a CD-ROM	One complete copy of the entire CD-ROM package	One complete copy of the entire CD-ROM package
Pictorial or graphic works fixed only in machine-readable format (other than a CD-ROM)	Identifying material representing the entire copyrightable content	Identifying material representing the entire copyrightable content
Group registration of unpublished works	n/a	*See* Chapter 1100, Section 1106.4
Group registration of contributions to periodicals	*See* Chapter 1100, Section 1110.5	n/a
Group registration of photographs	*See* Chapter 1100, Section 1114.4	*See* Chapter 1100, Section 1114.4
Group registration of databases that consist predominantly of photographs	*See* Chapter 1100, Section 1112.7	*See* Chapter 1100, Section 1112.7

Three-Dimensional Visual Arts Works

Nature of the Work	Published	Unpublished
Unpublished works	n/a	Identifying material representing the entire copyrightable content
Published sculptural works (*e.g.,* statues, carvings, ceramics, moldings, constructions, models, maquettes) that are not listed below	Identifying material representing the entire copyrightable content	Identifying material representing the entire copyrightable content
Jewelry	Identifying material representing the entire copyrightable content (or one complete copy if the work is cast in base metal that is no more than four inches in any dimension)	Identifying material representing the entire copyrightable content

Nature of the Work	Published	Unpublished
Dolls, toys, stuffed animals, or puppets	Identifying material representing the entire copyrightable content	Identifying material representing the entire copyrightable content
Games that include multiple three-dimensional parts	Identifying material representing the entire copyrightable content (or one complete copy of the best edition of the work if it is packaged in a box or similar container with flat sides and with dimensions of no more than twelve inches by twenty-four inches by six inches)	Identifying material representing the entire copyrightable content
Globes, relief models, or relief maps	One complete copy (including the stand, if any)	One complete copy (including the stand, if any)
Three-dimensional sculptural work (*e.g.,* a collector's doll, coin, or sculpture) in a box with copyrightable artwork and/or textual material with a claim in sculpture and artwork/text/photograph	Identifying material representing the entire copyrightable content of the sculptural work and the box (or one complete copy of the box if it is less than ninety-six inches in any dimension when flattened)	Identifying material representing the entire copyrightable content of the sculptural work and the box (or one complete copy of the box if it is less than ninety-six inches in any dimension when flattened)
Works attached to or embodied in a three-dimensional object	Identifying material representing the entire copyrightable content	Identifying material representing the entire copyrightable content
Works fixed or published in or on a useful article that comprises one of the elements of the unit of publication for an educational or instructional kit that also includes a literary work, an audiovisual work, a sound recording, or any combination of such works	One complete copy of the best edition of the work	One complete copy representing the entire copyrightable content

Architectural Works

Nature of Work	Published	Unpublished
Unconstructed buildings	*See* Section 1509.3(D)	*See* Section 1509.3(D)
Constructed buildings	*See* Section 1509.3(D)	*See* Section 1509.3(D)

1510 Storage of Deposits

This Section discusses the U.S. Copyright Office's practices and procedures for storing deposit copy(ies) and phonorecords.

1510.1 Deposit Storage

Section 704(a) of the Copyright Act states that "[u]pon their deposit in the Copyright Office under Sections 407 and 408, all copies, phonorecords, and identifying material, including those deposited in connection with claims that have been refused registration, are the property of the United States Government." 17 U.S.C. § 704(a).

Unpublished and published deposit materials that are submitted to the U.S. Copyright Office in a hard copy format are stored in offsite storage facilities, unless the deposit copy(ies) are selected by the Library of Congress for its collections or unless the deposit has been returned to the applicant under the Motion Picture Agreement. Unpublished deposit materials are stored for the entire term of copyright. Published deposit materials are currently stored for twenty years.

When the Office closes a file for a published or unpublished work without issuing a registration or refuses to register a work, the deposit materials are stored in accordance with the Office's retention schedule.

See generally Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions, 82 Fed. Reg. 38,859 (Aug. 16, 2017).

1510.2 Requests for Full-Term Deposit Storage for Published Works

Full-term retention of published deposit copy(ies) may be requested in certain circumstances. This option offers copyright owners the opportunity to ensure that copies or phonorecords of their works will remain in the custody of the U.S. Copyright Office for seventy-five years from the date of first publication. A request for full-term retention may be approved by the Office of Public Records and Repositories under the following conditions:

- The work is published;

- Copyright registration is approved;
- The appropriate fee is received; and
- The copy has been continuously in the custody of the U.S. Copyright Office.

See 37 C.F.R. § 202.23(a)-(c). The Office reserves the right to deny requests for full-term storage.

For information on how to request full-term storage of published deposits, see Chapter 2400, Section 2410.

1510.3 Requests for Inspection or Copies of Deposits

Upon request, any member of the public may inspect the deposit copy(ies) or identifying material for a work that has been registered or refused by the U.S. Copyright Office. Certain parties may request a certified or uncertified copy of the deposit copy(ies) or identifying material for a copyright claim, provided that the party satisfies the conditions set forth in the Office's regulations.

For information concerning these procedures, see Chapter 2400, Section 2407.

1511 Mandatory Deposit

As discussed above in Section 1502, the Copyright Act establishes two separate deposit requirements. Section 408 specifies the deposit requirements for registering a work with the U.S. Copyright Office, while Section 407 specifies the requirements for depositing a work with the Library of Congress.

Section 407 states that "the owner of copyright or of the exclusive right of publication in a work published in the United States shall deposit [with the U.S. Copyright Office], within three months after the date of such publication – two complete copies of the best edition" "for the use or disposition of the Library of Congress." 17 U.S.C. § 407(a)(1), (b). In the case of a sound recording published in the United States, Section 407 states that the copyright owner or the owner of the exclusive right of publication shall deposit "two complete phonorecords of the best edition, together with any printed or other visually perceptible material published with such phonorecords." 17 U.S.C. § 407(a)(2). This is known as the "mandatory deposit requirement."

Submitting a published work for the use or disposition of the Library is not a condition of copyright protection. However, the Register of Copyrights may facilitate, demand, negotiate, or exempt the provision of copies or phonorecords for the Library of Congress at any time after a work has been published in the United States. If the Office issues a written demand and if required copies or phonorecords are not received within three months of receipt of the demand, the copyright owner or owner of the exclusive right of publication in that work may be subject to fines or other monetary liability. 17 U.S.C. § 407(d).

In most cases, the owner of copyright or the exclusive right of publication may satisfy the mandatory deposit requirement by submitting an application to register the work,

provided that the applicant submits two complete copies or two complete phonorecords of the best edition. Alternatively, the owner of copyright or the exclusive right of publication may submit the required number of copies or phonorecords without an application.

If the applicant registered a published work with identifying material instead of submitting the best edition, the Library of Congress may demand an appropriate number of copies of the best edition under certain circumstances.

Some categories of works are exempt from the mandatory deposit requirement, even if a work has been published. *See* H.R. REP. NO. 94-1476, at 150 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5766 ("deposit of copies or phonorecords for the Library of Congress is mandatory, but exceptions can be made for material the Library neither needs nor wants"). For information concerning these exceptions, see Section 1511.3.

By contrast, some works — namely, transmission programs — are subject to mandatory deposit, regardless of whether the work is published or unpublished. For information concerning transmission programs, see Section 1511.5.

1511.1 What Is the Best Edition for Purposes of Mandatory Deposit?

The "best edition" for purposes of mandatory deposit is defined as "the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes." 17 U.S.C. § 101; 37 C.F.R. § 202.19(b)(1)(i).

The criteria used to identify the best edition for 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. 37 C.F.R. pt. 202, app. B. 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).

The Best Edition Statement contains a hierarchical list of formats that the Library prefers. Generally, if the work was published in two or more editions, the edition that is the highest quality is considered to be the "best" edition. "In judging quality, the Library of Congress will adhere to the criteria set forth [in the Best Edition Statement] in all but exceptional cases." 37 C.F.R. pt. 202, app. B.

If the Best Edition Statement does not provide specific criteria for selecting the best edition of the work, the edition that "in the judgment of the Library of Congress, represents the highest quality for its purposes shall be considered the 'best edition.'" 37 C.F.R. § 202.19(b)(1)(iii). If the copyright owner or owner of exclusive rights is uncertain as to whether a particular published edition constitutes the best edition, that party should contact the Office's Copyright Acquisitions Division at (202) 707-7125. 37 C.F.R. § 202.19(b)(1)(iii)(B).

1511.2 What Is a Complete Copy or Phonorecord for Purposes of Mandatory Deposit?

1511.2(A) Complete Copy of a Published Work

A copy is "complete" for purposes of mandatory deposit if it contains "all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from the mandatory deposit requirement." 37 C.F.R. § 202.19(b)(2).

1511.2(B) Sound Recordings

In the case of a sound recording published in the United States, a phonorecord is "complete" if it "includes the phonorecord, together with any printed or other visually perceptible material published with such phonorecord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container)." 37 C.F.R. § 202.19(b)(2)(i).

1511.2(C) Musical Compositions Published by Rental, Lease, or Lending

In the case of a musical composition published in the United States solely "by the rental, lease, or lending of a full score and parts," the full score is considered a "complete" copy. 37 C.F.R. § 202.19(b)(2)(ii)(A). If the work was published solely "by the rental, lease, or lending of a conductor's score and parts," the conductor's score is considered a "complete" copy. *Id.* § 202.19(b)(2)(ii)(B).

1511.2(D) Motion Pictures

In the case of a motion picture published in the United States, a copy is "complete" if "the reproduction of all the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions." 37 C.F.R. § 202.19(b)(2)(iii).

1511.2(E) Electronic Works

In the case of an electronic work published in the United States that is available only online, a copy is "complete" "if it includes all elements constituting the work in its published form, *i.e.*, the complete work as published, including metadata and formatting codes otherwise exempt from mandatory deposit." 37 C.F.R. § 202.19(b)(2)(iv).

Online-only works are exempt from the mandatory deposit requirement, except for electronic serials that have been demanded by the U.S. Copyright Office. 37 C.F.R. §§ 202.19(c)(5), 202.24; Mandatory Deposit of Published Electronic Works Available Only Online, 75 Fed. Reg. 3863, 3865 (Jan. 25, 2010).

1511.3 Works Exempt from Mandatory Deposit

The mandatory deposit requirement only applies to works published in the United States. Unpublished works and works that are published solely outside the United States are not subject to this requirement.

Mandatory deposit does apply to works that are published simultaneously in both a foreign country and in the United States. It applies to works that are first published in a foreign country and then subsequently published or distributed in this country. It also may apply to unpublished transmission programs transmitted in the United States. For information concerning foreign works, see Section 1511.4. For information concerning transmission programs, see Section 1511.5.

Section 407 also states that the Register of Copyrights "may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories." 17 U.S.C. § 407(c). The Office has issued exemptions for the following categories of works:

- Electronic works published in the United States that are available only online. 37 C.F.R. § 202.19(c)(5). For purposes of mandatory deposit, "electronic works" are defined as "works fixed and published solely in an electronic format." 37 C.F.R. § 202.24(c)(3).

  This exemption applies to electronic serials that are available only online, unless the Office issues a demand for a particular serial under Section 202.24 of the regulations. For information concerning electronic serials, see Sections 1511.6.

  NOTE: This exemption does not apply to works that are published in the United States in both electronic formats and physical formats.

- Tests and answer material for tests when published separately from other literary works. 37 C.F.R. § 202.19(c)(8).

- Lectures, sermons, speeches, and addresses when published individually and not as part of a collection of the works of one or more authors. 37 C.F.R. § 202.19(c)(3).

- Works first published as an individual contribution to a collective work. 37 C.F.R. § 202.19(c)(9).

  NOTE: This exemption does not apply to the copyright owner or owner of the exclusive right of publication in the collective work as a whole.

- Literary, dramatic, and musical works published only in phonorecords. 37 C.F.R. § 202.19(c)(4).

  NOTE: This exemption only applies to the literary, dramatic, or musical work that is embodied in a sound recording. The copyright owner or the owner of the exclusive right of publication in a sound recording, which results from the fixation of such works is subject to the mandatory deposit requirement if the sound recording is published in the United States.

- Works published only in a soundtrack that is an integral part of a motion picture. 37 C.F.R. § 202.19(c)(11).

  NOTE: This exemption does not apply to the copyright owner or the owner of the exclusive right of publication in a motion picture.

- Motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations. 37 C.F.R. § 202.19(c)(12).

- Diagrams and models illustrating scientific or technical works or formulating scientific or technical information in linear or three-dimensional form, such as architectural or engineering blueprints, plans, or designs, mechanical drawings, or anatomical models. 37 C.F.R. § 202.19(c)(1).

- Greeting cards, picture postcards, and stationery. 37 C.F.R. § 202.19(c)(2).

- Prints, labels, and other advertising materials, including catalogs, published in connection with the rental, lease, lending, licensing, or sale of services, articles of merchandise, or works of authorship. 37 C.F.R. § 202.19(c)(7).

- Three-dimensional sculptural works. 37 C.F.R. § 202.19(c)(6).

- Works reproduced and published only in or on jewelry, dolls, toys, games, plaques, floor coverings, wallpaper and similar commercial wall coverings, textiles and other fabrics, packaging material, or any useful article. *Id*.

If a published work is subject to the mandatory deposit requirement, the copyright owner or owner of exclusive rights may submit a request for special relief from this requirement. For information concerning special relief, see Section 1511.9.

1511.4 Mandatory Deposit for Works Published Outside the United States

Works published solely in a foreign country are not subject to the mandatory deposit requirement.

As a general rule, works that are published both in a foreign country and in the United States are subject to mandatory deposit. However, works that are published abroad and subsequently published in the United States without any change in the copyrightable content of the work are exempt from mandatory deposit if the following conditions have been met:

- The work was registered with the U.S. Copyright Office before it was published in the United States; or

- The work was registered after it was published in the United States but before the Office issued a demand for the work under Section 407(d) of the Copyright Act.

37 C.F.R. § 202.19(c)(10).

1511.5 Mandatory Deposit for Unpublished Transmission Programs

Most unpublished works are exempt from the mandatory deposit requirement, although there is a limited exception to this rule. Specifically, the Register of Copyrights may issue a written demand for a copy or phonorecord of an audio or audiovisual transmission program for the use or disposition of the Library of Congress, even if that program is unpublished. 17 U.S.C. § 407(e); 37 C.F.R. § 202.22(d).

A "transmission program" is defined as "a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit." 17 U.S.C. § 101. This category includes audio or audiovisual transmissions made "via the Internet, cable, broadcasting, and satellite systems and via any other existing or future devices or processes for the communication of a performance or display whereby images or sounds are received beyond the place from which they are sent." 37 C.F.R. § 202.22(b)(1).

For additional information concerning this procedure, see 37 C.F.R. § 202.22(d).

1511.6 Mandatory Deposit for Electronic Serials

As a general rule, the mandatory deposit requirement does not apply to electronic works published in the United States that are available only online. However, there is a limited exception to this rule.

The copyright owner or owner of the exclusive right of publication in an electronic serial published on or after February 24, 2010 is subject to mandatory deposit if the Office issues a written demand for a copy of that work for the use or disposition of the Library of Congress. *See* 37 C.F.R. §§ 202.19(c)(5), 202.24(a).

For purposes of mandatory deposit, an "electronic serial" is defined as "an electronic work published in the United States and available only online, issued or intended to be issued on an established schedule in successive parts bearing numerical or chronological designations, without subsequent alterations, and intended to be continued indefinitely." *Id.* § 202.19(b)(4). (For a definition of the term "electronic work," see Section 1511.3.)

The Register has promulgated an interim rule for this category of works. A serial is a work issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. The class includes periodicals (including newspapers), annuals, and the journals, proceedings, transactions, and other publications of societies. 37 C.F.R. § 202.3(b)(1)(v). It does not include works that are published both online and in physical form. Likewise, it does not include works that are constantly updated with no demarcation between particular, discrete issues of the publication. *See* Mandatory Deposit of Published Electronic Works Available Only Online, 75 Fed. Reg. 3863, 3865 (Jan. 25, 2010).

For additional information concerning this procedure, see 37 C.F.R. § 202.24. For information concerning serials that are published in a physical form or both online and in a physical form, see Section 1511.8(B).

1511.7 How to Submit Mandatory Deposits

This Section discusses the procedure for submitting copies or phonorecords to the U.S. Copyright Office for the purpose of mandatory deposit.

1511.7(A) Copies or Phonorecords Submitted with an Application for Registration

As a general rule, the copyright owner or owner of the exclusive right of publication in a published work may satisfy the mandatory deposit requirement by registering that work with the U.S. Copyright Office. *See* 17 U.S.C. § 408(b)(2). To do so, the applicant should submit a completed application, the appropriate filing fee, and the appropriate number of complete copy(ies) or phonorecord(s) of the best edition of the work.

For guidance in completing an application and for information concerning the filing fee, see Chapters 600 and 1400. For guidance in submitting the deposit copies or phonorecords for an application, see Section 1508.

1511.7(B) Copies or Phonorecords Submitted without an Application for Registration

For some categories of works the deposit requirements for registration and mandatory deposit are not the same, such as works that may be registered with identifying material or with a grant of special relief. In such cases, a separate submission of copies, phonorecords, or identifying material may be needed to register the work and to satisfy the mandatory deposit requirements. If so, the copyright owner or owner of the exclusive right of publication may satisfy the mandatory deposit requirement by submitting the required number of copies or phonorecords of the best edition to the following address:

Library of Congress
U.S. Copyright Office
Attn: 407 Deposits
101 Independence Avenue SE
Washington, D.C. 20559

As discussed in Section 1508.6, all mail that is sent to the Office is screened offsite for anthrax or other contaminants prior to delivery. In some cases this screening process may damage the deposit. If so, the Office will request a replacement deposit. To avoid damage to the deposit, the party submitting the deposit should follow the guidelines discussed in Section 1508.6(B).

1511.7(C) Copies or Phonorecords Submitted in Response to a Demand Notice

As discussed in Section 1511, the Register of Copyrights may issue a written demand for copies or phonorecords of any work published in the United States that is subject to the mandatory deposit requirement. A demand may be made at any time after the work has been published. 17 U.S.C. § 407(d).

If a copyright owner or owner of the exclusive right of publication receives a demand for mandatory deposit, that party should submit the required number of copies or phonorecords to the address specified in the demand notice within three months after the demand is received.

Alternatively, a copyright owner or owner of exclusive rights may respond by submitting the required copies or phonorecords together with an application to register the work and the appropriate filing fee.

- When completing an online application, the applicant should print one or more copies of the deposit copy shipping slip using the procedure discussed in Section 1508.2. The applicant should attach the demand notice and the shipping slips directly to the deposits, and should send all of these items in a single package to the address specified on the shipping slip.

- When completing a paper application, the applicant should attach the demand notice, the completed application, and the nonrefundable filing fee directly to the deposit, and should send all of these items to the following address:

  Library of Congress
  U.S. Copyright Office – CAD/AD
  101 Independence Avenue SE
  Washington, DC 20559-6601

NOTE: In all cases, the demand notice should be placed on top of the items in the package so that it is visible when the package is opened.

If the copyright owner or owner of exclusive rights submits the copies or phonorecords to the address specified in the demand notice without submitting an application, the appropriate filing fee, and/or the shipping slips, the Office will assume that the deposit was submitted solely for the purpose of satisfying the mandatory deposit requirement. The Office will not connect the copies or phonorecords with a separately submitted application nor will the Office hold the copies or phonorecords pending the receipt of an application. *See* 37 C.F.R. § 202.19(f)(1).

If the required deposit copies or phonorecords are not received in a timely manner, the party that received the demand notice may be subject to the following penalties:

- To pay a fine of not more than $250 for each work; and

- To pay the total retail price of the copies or phonorecords demanded into a specially designated fund in the Library of Congress, or if no retail price has been fixed, the reasonable cost to the Library of Congress of acquiring such copies or phonorecords; and

- To pay a fine of $2,500, in addition to any fine or liability imposed above, if the party willfully or repeatedly fails or refuses to comply with the demand.

17 U.S.C. § 407(d).

1511.7(D) Certificate of Receipt

Upon request, the Office will issue a certificate of receipt for copies or phonorecords that are submitted for the purpose of mandatory deposit, provided that the request is made at the time of the deposit. Thereafter, the Office will issue a certificate of receipt only if the request is made by the party that is identified in the Office's records as the party that submitted the copies or phonorecords. The certificate will provide the following information:

- The depositor.
- The work deposited.
- The nature and format of the copy or phonorecord deposited.
- The date of receipt.

17 U.S.C. § 407(b); 37 C.F.R. § 202.19(f)(3).

In all cases, the request for a certificate of receipt must be made in writing and must be accompanied by the appropriate fee, which is set forth in the Office's fee schedule under the heading "Issuance of a receipt for a section 407 deposit."

1511.8 Mandatory Deposit Requirements for Specific Categories of Works

To satisfy the mandatory deposit requirement, copyright owners and owners of the exclusive right of publication generally should submit two complete copies of the best edition of the work, or in the case of a sound recording, two complete phonorecords of the best edition. *See* 37 C.F.R. § 202.19(d)(1)(i), (ii). For a definition and discussion of the terms "best edition," "complete copy," and "complete phonorecord," see Sections 1504 and 1505.

There are several exceptions to this rule. For certain types of works, a party may submit (i) one copy or phonorecord instead of two, (ii) the work as first published instead of the best edition of the work, (iii) identifying material instead of copies or phonorecords, or (iv) in the case of a serial publication, two complimentary subscriptions to the work. The specific exceptions for literary works, works of the performing arts, and visual arts works are set forth in Sections 1511.8(A) through 1511.8(J).

1511.8(A) Literary Monographs

As a general rule, a party may satisfy the mandatory deposit requirement for a literary monograph by submitting one complete copy of the best edition of the work. 37 C.F.R. § 202.19(d)(2)(ix).

NOTE: This rule does not apply to serials, which are defined as works "issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely." 37 C.F.R. § 202.3(b)(1)(v). Likewise, it does not apply to legal publications, which are defined as works that contain legislative enactments, judicial decisions, or other edicts of government. 37 C.F.R. §

202.19(b)(5). To satisfy the mandatory deposit requirement for a legal publication, a party must submit two complete copies of the best edition. For information concerning the mandatory deposit requirements for serials, see Section 1511.8(B).

In some cases, the Library of Congress may need two copies of a literary monograph, particularly if there is high demand for the work from Congress, the Congressional Research Service, the Supreme Court, or the general public. If so, the Library may demand an additional copy under Section 407(d) of the Copyright Act. *See id*.

For example, the Library generally needs two copies of any reference work published in the United States, such as a dictionary, encyclopedia, gazetteer, bibliography, or almanac. Likewise, it generally needs two copies of any literary monograph published in the United States that focuses on the following subjects:

- U.S. history (including works bearing Library of Congress Cataloging in Publication ("CIP") subject headings for "U.S. history," "U.S. local history," "genealogy," "heraldry," or a Library of Congress classification containing the letters CR, CS, E, or F below 1000).

- Commerce or finance (including works bearing Library of Congress CIP subject headings for "commerce," "finance," "public finance," or a Library of Congress classification containing the letters HF, HG, or HJ).

- Political institutions and public administration (including works bearing Library of Congress CIP subject headings for "political institutions and public administration (North America or United States)," or a Library of Congress classification containing the letters JJ or JK).

- Libraries or information science (including works bearing Library of Congress CIP subject headings for "libraries," "books," "information resources," "bibliographies," or a Library of Congress classification containing the letter Z).

See Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions, 82 Fed. Reg. 38,859, 38,861 & nn. 10-13 (Aug. 16, 2017).

1511.8(B) Serials Published in a Physical Format

For purposes of mandatory deposit, a "serial" is defined as a work "issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely." 37 C.F.R. § 202.3(b)(1)(v). As a general rule, a party may satisfy the mandatory deposit requirement for a serial that has been published in a physical format by providing the Library of Congress with two complimentary subscriptions to that publication.

NOTE: This rule only applies to serials that have been published in a physical format, or in both a physical and electronic format. It does not apply to electronic serials that are published solely online. Nor does it apply to newspapers (regardless of whether they are published in physical or electronic form). For information concerning the mandatory deposit requirements for these types of serials, see Section 1511.6 and 1511.8(C).

Before the subscriptions begin, the copyright owner or the owner of the exclusive right of publication should send a letter to the Copyright Acquisitions Division confirming that subscription copies will be provided. The letter should include the name of the publisher, the title of the serial, the ISSN number that has been assigned to the serial (if any), and the issue date and numerical or chronological designations that will appear on the first issue that will be provided under the subscriptions.

Subscription copies should be physically mailed to the address specified in § 201.1(c) of the regulations. The copies should be sent promptly after the publication of each issue, and the subscriptions should be maintained on an ongoing basis. A party may cancel its subscription only if (i) the serial is no longer published by the owner, (ii) the serial is no longer published in the United States in a physical format, or (iii) the Copyright Acquisitions Division informs the owner that the serial is no longer needed for the Library's collections.

See 37 C.F.R. § 202.19(d)(2)(xi).

1511.8(C) Published Newspapers

A party may satisfy the mandatory deposit requirement for a published newspaper by submitting a deposit pursuant to and in compliance with the group registration option for newspaper issues. 37 C.F.R. § 202.19(d)(2)(ix). For information concerning this option, see Chapter 1100, Section 1110.

1511.8(D) Computer Programs and Computerized Information Works

As a general rule, a party may submit one complete copy of the best edition of the work in order to satisfy the mandatory deposit requirement for computer programs and computerized information works, such as statistical compendia, serials, and reference works. However, if the work is copy-protected, two copies of the best edition are required. 37 C.F.R. § 202.19(d)(2)(vii).

1511.8(E) Musical Works

If a musical work was published in the United States solely on phonorecords, then as discussed in Section 1511.3, the work is exempt from the mandatory deposit requirement. 37 C.F.R. § 202.19(c)(4). Sound recordings of a musical work published on phonorecords, however, are not exempt from mandatory deposit, as the sound recording is a separate work of authorship.

If a musical work was published in the United States in copies or both in copies and phonorecords, a party should submit one complete copy of the best edition of that work. 37 C.F.R. § 202.19(d)(2)(v). In other words, if the work was published in phonorecords – such as a compact disc – and in physical copies – such as sheet music – the applicant should submit one complete copy of the sheet music, rather than submitting the compact disc.

1511.8(F) Motion Pictures

To satisfy the mandatory deposit requirement for a motion picture, a party may submit one complete copy of the work together with a separate description of its contents, such as a continuity, pressbook, or synopsis. 37 C.F.R. § 202.19(d)(2)(ii).

If the copyright owner or the owner of the exclusive right of publication has signed the Motion Picture Agreement, the Office may return the deposit copy to that party upon request. For information concerning this procedure, see Section 1509.2(F)(4).

1511.8(G) Published Multimedia Kits

To satisfy the mandatory deposit requirement for a published multimedia kit that includes literary works, audiovisual works, sound recordings, or any combination of such works, a party may submit one complete copy of the best edition instead of two copies. 37 C.F.R. § 202.19(d)(2)(vi).

1511.8(H) Limited Edition Visual Arts Works

This Section discusses the mandatory deposit requirements for pictorial or graphic works that are published in a limited edition.

If an individual author owns the copyright in the work, the copyright owner or owner of the exclusive right of publication may submit one complete copy of the best edition, or in the alternative, the owner may submit photographs or other identifying material for the work, provided that one of the following conditions has been met:

- Less than five copies of the work have been published; or
- The work has been published and sold or offered for sale in a limited edition consisting of no more than 300 numbered copies.

37 C.F.R. § 202.19(d)(2)(iv)(A)-(B). For information concerning the requirements for identifying material, see Section 1509.3(C).

1511.8(I) Globes and Other Three-Dimensional Cartographic Works

A party may submit one complete copy of the best edition in order to satisfy the mandatory deposit requirement for a published three-dimensional cartographic representation of area, such as a globe or relief model. 37 C.F.R. § 202.19(d)(2)(i).

1511.8(J) Architectural Works

To satisfy the mandatory deposit requirement for an architectural work, the copyright owner or owner of the exclusive right of publication should submit presentation drawings in their most finished form. 37 C.F.R. § 202.19(d)(2)(viii).

The Library of Congress prefers drawings comprised of the following material listed in descending order of preference:

- Original format, or best quality form of reproduction, including offset or silk screen printing.
- Xerographic or photographic copies on good quality paper.
- Positive photostat or photodirect positive.
- Blue line copies (diazo or ozalid process).

The owner may also submit 8 x 10 inch photographs that clearly show several exterior and interior views of the architectural work.

In all cases, the deposit should disclose the name(s) of the architect(s) and draftsperson(s), as well as the building site.

See 37 C.F.R. § 202.19(d)(2)(viii).

1511.9 Special Relief from the Mandatory Deposit Requirement

This Section discusses the procedure for obtaining special relief from the mandatory deposit requirements. For information concerning the procedure for requesting special relief from the deposit requirements for registration, see Section 1508.8.

The Register of Copyrights is authorized to grant special relief from the mandatory deposit requirement for any published work.

- The Office may grant an exemption on an individual basis for a single work or for a series or groups of works.
- The Office may permit the deposit of one copy or phonorecord, or alternative identifying material (in lieu of submitting two copy(ies) or phonorecord(s) of the work).
- The Office may permit the deposit of incomplete copies or phonorecords or copy(ies) or phonorecords other than those normally comprising the best edition of a work.
- The Office may permit the deposit of identifying material that does not comply with Section 202.21 of the regulations.

37 C.F.R. § 202.19(e)(1).

A request for special relief must be made in writing and must include the specific reason(s) why the request should be granted. The request should be signed by or on behalf of the copyright owner or the owner of the exclusive right of publication, and it should be sent to the Associate Register of Copyrights and Director of Registration Policy & Practice at the address specified in Section 1508.8(B). *Id.* § 202.19(e)(3).

The Register of Copyrights may terminate any ongoing or continuous grant of special relief after consulting with other appropriate officials of the Library of Congress. *Id*. § 202.19(e)(4). The procedure for terminating a grant of special relief from the mandatory deposit requirements is the same as the procedure for terminating a grant of special relief of the deposit requirements for registration. *See* Section 1508.8(D).

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Preregistration

1601 What This Chapter Covers

This Chapter provides information on the U.S. Copyright Office's practices and procedures for preregistration.

A pregistration "allows the author of a work vulnerable to predistribution infringement to enforce her exclusive rights in court before obtaining [a] registration or refusal" from the Copyright Office. *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 889 (2019). This procedure is primarily intended to address situations where copyrighted works are "distributed illegally via the Internet BEFORE they are even made available for sale to the public [which] severely undercuts the ability of copyright holders to receive fair and adequate compensation for their works." 151 CONG. REC. S495 (daily ed. Jan. 25, 2005) (statement of Sen. Hatch).

For general information on the Office's practices and procedures for registration, see the following Chapters:

- Chapter 200: An Overview of the Registration Process
- Chapter 300: Copyrightable Authorship: What Can Be Registered
- Chapter 400: Who May File an Application
- Chapter 500: Identifying the Work(s) Covered by the Registration
- Chapter 600: Examination Practices
- Chapter 1400: Applications and Filing Fees
- Chapter 1500: Deposit

1602 What Is Preregistration?

In cases involving the infringement of a United States work, copyright registration is a prerequisite for filing an infringement action and for seeking an award of statutory damages and attorney's fees. *See* 17 U.S.C. §§ 101, 411(a), 412. Often, copyright owners do not seek registration until the work has been completed and distributed to the public, which may limit the remedies that may be available in cases involving "prerelease" infringement. *See* H.R. REP. NO. 109-33, pt. 1, at 4 (2005), *reprinted in*, 2005 U.S.C.C.A.N. 220, 223.

To address this concern, Congress created preregistration — a procedure that allows certain copyright owners to file an action for infringement and seek statutory damages and attorney's fees in cases where the work was infringed *before* the copyright owner completed the work and released it to the public. *See* 17 U.S.C. § 408(f)(1)-(2); *see also*

Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,286 (July 22, 2005); Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,905-06 (Oct. 27, 2005).

1603 Eligibility Requirements

"If a copyright owner is preparing to distribute a work of a type vulnerable to predistribution infringement . . . the owner may apply for preregistration." *Fourth Estate Public Benefit Corp.*, 139 S. Ct. at 885.

A work of authorship must satisfy the following criteria to qualify for this option:

- The work must be a motion picture; a sound recording; a musical composition; a literary work being prepared for publication in book form; a computer program; a videogame; or a photograph that is intended to advertise or market a particular product or service;
- The work must be copyrightable;
- The author must have begun to create the work;
- The work must be unpublished; and
- The work must be in the process of being prepared for commercial distribution.

37 C.F.R. § 202.16. A work that satisfies all of these requirements is eligible for preregistration, regardless of whether it is intended to be distributed in a physical or electronic format. *See* 37 C.F.R. § 202.16(b)(3); *see also* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,287 (July 22, 2005); Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,905-06 (Oct. 27, 2005). These requirements are discussed in Sections 1603.1 through 1603.5.

If the work described in the application does not meet these requirements, the Office will reject the application. The Office typically receives fewer than 2,000 applications for preregistration each year (compared with more than half a million applications for registration), and the Office rejects many of these applications because the work is not eligible for this procedure.

1603.1 Works That Are Eligible for Preregistration

Congress directed the Register of Copyrights to issue preregistrations for any work of authorship that falls within a class of works that has had a history of infringement prior to the authorized commercial distribution by the copyright owner. 17 U.S.C. § 408(f)(1)-(2). The Office determined that there has been a substantial history of prerelease infringement involving the following classes of works:

- Motion pictures.
- Sound recordings.

- Musical compositions.
- Literary works being prepared for publication in book form.
- Computer programs (including videogames).
- Advertising or marketing photographs.

37 C.F.R. § 202.16(b)(1). A work of authorship must fall within one or more of these classes to be eligible for preregistration. The Office will refuse an application for preregistration if the work does not appear to fall within any of these classes.

Examples:

- The U.S. Copyright Office will accept an application to preregister a motion picture. However, the Office will refuse to preregister a treatment, screenplay, storyboard, or shooting script for a motion picture because these types of works do not fit within the statutory definition of a "motion picture." *See* 17 U.S.C. § 101 (defining motion pictures as "audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any").
- As a general rule, a preregistration for a motion picture covers any sounds that may be embodied in that work (*i.e.*, the soundtrack). However, the U.S. Copyright Office may question an application that asserts a claim in both a motion picture and a sound recording, because the soundtrack for a motion picture does not fit within the statutory definition of a "sound recording." *See* 17 U.S.C. § 101 (defining sound recordings as "works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work …").
- A work of fiction or nonfiction that is intended to be published in book form (*i.e.*, hardback books, paperback books, ebooks, and the like) may be eligible for preregistration, even if the work contains material that would be ineligible for preregistration on its own, such as drawings, illustrations, or other two-dimensional artwork.
- A work of fiction or nonfiction that is intended to be published in book form may be eligible for preregistration, even if the work will be published exclusively online. However, the U.S. Copyright Office will not accept an application to preregister a website, because websites are not published in "book form."
- A personal journal or a daily diary would be considered a literary work, but these types of works are not eligible for preregistration, because in most cases, they are not intended to be published, nor

are they intended for commercial distribution. *See* Sections 1603.4 and 1603.5.

- The U.S. Copyright Office will accept an application to preregister a computer program that is intended for commercial distribution. However, the Office will refuse to preregister a claim in the HTML code for a website, because HTML code is a markup language rather than a computer programming language, and thus coding in HTML generally does not result in a computer program.

- A photograph that is intended to advertise or market a particular product or service may be eligible for preregistration, but a family portrait or a photograph taken on a personal vacation would not.

- A photograph of a famous celebrity caught in an embarrassing situation would not be eligible for preregistration, because this type of work does not advertise or market a particular product or service.

For a definition and general discussion of the types of works that are eligible for preregistration, see Chapters 700, 800, and 900.

See generally Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,288 (July 22, 2005); Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,906 (Oct. 27, 2005).

1603.2 The Work Must Be Copyrightable

The U.S. Copyright Office will not entertain an application for preregistration unless the work constitutes copyrightable subject matter under Section 102(a) of the Copyright Act. 37 C.F.R. § 202.16(c)(2).

1603.3 A Portion of the Work Must Be Fixed

Copyright law protects "original works of authorship fixed in a tangible medium of expression" but it does not extend to "any idea, procedure, process, system, method of operation, concept, principle, or discovery." 17 U.S.C. § 102(a), (b). A work of authorship is not eligible for preregistration unless the author began to create the work on or before the date that the application is submitted to the U.S. Copyright Office, and unless at least a portion of the work has been fixed in a tangible medium of expression as of that date. *See* 37 C.F.R. § 202.16(b)(2)(ii). The amount of material needed to satisfy this requirement varies depending upon the nature of the work:

- If the work is a motion picture, the filming of the work must have commenced.

- If the work is a sound recording, the recording of the sounds must have begun.

- In the case of a musical composition, at least some of the work must have been fixed either in the form of musical notation or in a copy or phonorecord embodying a performance of some or all of the work.

- In the case of a literary work being prepared for publication in book form, the actual writing of the text of the book must be underway.
- For a computer program, at least some portion of the source code or object code must have been fixed.
- For an advertising or marketing photograph, the photograph must have been taken. In the case of a group of photographs intended for simultaneous publication, at least one of the photographs in the group must have been taken.

37 C.F.R. § 202.16(b)(2)(ii)(A)-(F). Although a portion of the work must be fixed in a tangible medium of expression in order to seek preregistration, the applicant should not submit a copy or phonorecord of the work or any portion of the work with the application for preregistration. For a discussion of this issue, see Section 1606.7.

1603.4 The Work Must Be Unpublished

Preregistration protects unpublished works that are being prepared for commercial distribution. *See* 17 U.S.C. § 408(f)(1). Therefore, the U.S. Copyright Office will not entertain an application for preregistration unless the work is unpublished as of the date that the application is submitted. The Copyright Act defines publication as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending." 17 U.S.C. § 101. In addition, "offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication." For example, a sound recording is considered published if it has been offered to a group of disc jockeys for purposes of public air play, and a motion picture is considered published if it has been delivered to a number of distributors for purposes of theatrical exhibition. *See* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,287 (July 22, 2005).

1603.5 The Work Must Be Intended for Commercial Distribution

To be eligible for preregistration, the work of authorship must be in the process of being prepared for commercial distribution. *See* 17 U.S.C. § 408(f)(1); 37 C.F.R. § 202.16(b)(2)(ii). To satisfy this requirement, the applicant must certify that the work is being prepared for commercial distribution and that there is a reasonable expectation that the work will be commercially distributed to the public. *See* 37 C.F.R. § 202.16(b)(2)(i).

1604 Preregistration Distinguished from Registration

1604.1 Preregistration Is a Temporary "Placeholder" for an Actual Registration

A preregistration is merely a placeholder for or a prelude to an actual registration. Specifically, a preregistration allows a copyright owner to institute an infringement action "before the Register has granted or refused registration" if: (i) the work has been preregistered prior to publication, and (ii) the work is registered within three months after its first publication. *Fourth Estate Public Benefit Corp.*, 139 S. Ct. at 892. However, if

an infringement occurred within two months after the first publication of the work, the application, deposit, and filing fee must be received in proper form within one month after the copyright owner learned of the infringement or within three months after the first publication of the work (whichever is earlier). *See* 17 U.S.C. §§ 408(f)(3), 411(a), 412.

If a preregistered work is not registered within the prescribed time period, a district court must dismiss any action involving an infringement that occurred before or within two months after the first publication of that work. *See* 17 U.S.C. § 408(f)(4). If the infringement began more than two months after the first publication of a preregistered work, this rule does not apply. In other words, the failure to register a preregistered work before the deadline specified in Sections 408(f)(4)(A) and (B) of the Copyright Act will not prevent a copyright owner from registering that work and pursuing an infringement action, provided that the infringement occurred more than two months after the first publication of that work. *See generally* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,286-87, 42,290 (July 22, 2005); Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,905 (Oct. 27, 2005).

1604.2 Uses of Preregistration

A preregistration is not a registration. Nor is it a substitute for a registration. It "serves only as a preliminary step prior to a full registration." *Fourth Estate Public Benefit Corp*. 139 S. Ct. at 888 (internal quotation omitted).

As discussed in Section 1604.1, preregistration allows certain copyright owners to satisfy the requirements of Sections 411(a) and 412 of the Copyright Act by notifying the U.S. Copyright Office that the work is being prepared for commercial distribution. Copyright owners may benefit from this procedure if they have started to create a work of authorship that has not yet been completed, and if it is likely that a third party may infringe that work before it has been released to the public. But to preserve the benefits of this procedure, the copyright owner must seek an actual registration for the work promptly after it has been published or infringed. *See id.* at 888.

There are certain features that preregistration does not possess. Unlike a registration, a preregistration does not constitute *prima facie* evidence of the validity of the copyright or the facts stated in the application for preregistration or in the notification of preregistration. Moreover, the fact that a work has been preregistered does not create any presumption that the Office will register the work if the applicant subsequently submits an application for registration. 37 C.F.R. § 202.16(c)(13); *see also* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,286, 42,289-90 (July 22, 2005).

Preregistration is neither a prerequisite nor a precondition for copyright owners who wish to register their works with the Office. In other words, an original work of authorship may be registered regardless of whether that work has been preregistered or not.

If an applicant submits an application to register a work that has been preregistered, the application may or may not be assigned to the same registration specialist who examined the application for preregistration. However, the specialist will not compare the information provided in the application for registration with the preregistration record to determine whether it is consistent with the information provided in the application for preregistration.

1605 Preregistration for a Sound Recording Distinguished from a Preregistration for a Musical Composition

As a general rule, a preregistration for a motion picture extends to any sounds that may accompany that work, because a soundtrack falls within the statutory definition of a "motion picture." *See* 17 U.S.C. § 101 (stating that: "'Motion pictures' are audiovisual works" and that "'Audiovisual works' are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any"). A preregistration for a sound recording does not, in and of itself, constitute a preregistration of the musical works that may be embodied in that recording. *See* H.R. REP. NO. 109-33, pt. 1, at 5 (2005), *reprinted in* 2005 U.S.C.C.A.N. 220, 224. However, a claimant that owns the copyright in both a sound recording and a musical work embodied within that recording may preregister both the sound recording and the musical work with the same application. *See* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,288, 42,290 (July 22, 2005).

1606 Completing the Application

To preregister a work, the applicant must submit an application through the U.S. Copyright Office's electronic preregistration system. (The Office will not accept a paper application for preregistration.) To access this system, the applicant should go to the following link on the Office's website (www.copyright.gov/prereg/), then click the "Continue" button which appears next to the phrase "Start the preregistration process (Electronic Form PRE)."

In the application, the applicant must provide certain information about the work of authorship, such as the date the author started to create the work and the date the work is expected to be completed. These requirements are discussed in Sections 1606.2 through 1606.10. The information provided in the application should be based on the information available at the time the application is submitted to the Office.

See 37 C.F.R. § 202.16(c)(3); *see also* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,289, 42,290 (July 22, 2005); Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,906 (Oct. 27, 2005).

1606.1 Confidentiality and Privacy Concerns

Section 705 of the Copyright Act requires the Register of Copyrights to prepare and maintain "records of deposits, registrations, recordations, and other actions" taken by the U.S. Copyright Office, and states that these records "shall be open to public inspection." 17 U.S.C. § 705(a), (b).

Any information that the applicant provides in an application for preregistration will appear in the preregistration record for that work. The preregistration record will be available to the public upon request, and the U.S. Copyright Office will post the information that appears in the notification of preregistration in the online record for the work, which will be available to the public through the Office's website. Because these records are open to the public, an applicant should not provide information on the application if the author, claimant, and/or applicant do not wish to make that information public, including confidential information or personally identifiable information. *See* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,906 (Oct. 27, 2005).

1606.2 Type of Work

As discussed in Section 1603.1, there are six classes of works that are eligible for preregistration. The applicant should select the type of work that is most appropriate for the work that the applicant intends to preregister. Specifically, the applicant should check one or more of the boxes that appear on the Types of Work screen, depending on whether the work is a musical composition, a sound recording, a literary work intended to be published in book form, a computer program, a videogame, a motion picture, or an advertising or marketing photograph.

The applicant may preregister two or more works with one application if the works are owned by the same claimant and if the works will be published on the same date in the same unit of publication. In this situation, the applicant should check the boxes that describe each work that the applicant intends to preregister. However, if the applicant intends to preregister two or more works that will be distributed on different dates, the applicant must submit a separate application for each work. *See* 37 C.F.R. § 202.16(c)(4); *see also* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,290 (July 22, 2005).

Examples:

- River Rock Records commissioned twelve musical compositions that have been embodied in a number of sound recordings. River Rock owns the copyright in both the musical compositions and the sound recordings. All of these works will be published for the first time on the same compact disc. The applicant may preregister these works together by checking the boxes marked "Sound Recording" and "Musical Composition."

- Disco Fever Publishing owns a music video and a sound recording that has been remixed from a previously published recording. The music video and the remixed sound recording will be published for the first time as a set consisting of a DVD and a super audio compact disc. The applicant may preregister both of these works by checking the boxes marked "Sound Recording" and "Motion Picture."

- Lean Machine LLC is developing a new videogame. The packaging for this videogame will feature several photographs that are

intended to market the product. The applicant may preregister both the videogame and the photographs by checking the boxes marked "Computer Program (may include videogame)" and "Advertising or Marketing Photograph."

- Tween Publishing is preparing three novels that will feature the same recurring characters. All three novels may be preregistered with the same application and filing fee if the entire series is expected to be published in the same unit of publication on the same day. If each novel is expected to be published on a different date, a separate application and filing fee would be required for each work.

- Scintillating Studio is developing a pilot for a new television program and the network has ordered twelve additional episodes. The applicant should submit a separate application for the pilot and each additional episode in the series, because each episode will be released on a different date.

1606.3 Title

The applicant should provide the current title of the work in the box that appears on the Title screen. The U.S. Copyright Office will accept a "working title," even if it is not expected to be the title of the work when it is distributed to the public. *See* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,906 (Oct. 27, 2005).

If the work is a musical composition or sound recording that will be published in an album, the applicant should provide the title of the album on the Title screen. The titles of the individual songs and/or tracks (if they are known) should be provided on the Additional Title(s) screen.

1606.4 Author

The applicant should provide the full name of the author or authors of the work on the Authors screen. For the purposes of preregistration, the author is the person or organization who is expected to be named as the author when (and if) the applicant submits an application to register the work.

As a general rule, the author is the person (or persons) who actually created the material covered by the copyright claim. *See Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989) ("[T]he author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection."). However, there is an exception to this rule. If the work described in the application for preregistration is a work made for hire, the person who created that work is not necessarily the author. Instead, the employer or other person for whom the work was prepared is considered the author if:

- The work was created by an employee acting within the scope of his or her employment, or

- The work was specially ordered or commissioned as a work made for hire and fits within one of the nine categories of works listed in the statutory definition.

17 U.S.C. § 101 (definition of "work made for hire"). For a general discussion of Works Made for Hire, see Chapter 500, Section 506.

If the work is expected to be published as a pseudonymous work, the applicant may provide the author's real name or the author's pseudonym (or both). A work is considered to be a pseudonymous work if the author will be identified on copies or phonorecords of the work under a fictitious name and the author's real name will not appear anywhere on the copies or phonorecords. If the author's real name is expected to appear anywhere on the copies or phonorecords, the work is not considered a pseudonymous work, even if the author does not wish to reveal his or her identity in the preregistration record and even if the author is generally known by his or her pseudonym. In this situation the author's real name should be provided in the application. For a detailed discussion of pseudonymous works, see Chapter 600, Section 615.2.

1606.5 Copyright Claimant

The applicant should provide the full legal name and address of the copyright claimant on the Claimants screen. For the purposes of preregistration, the claimant is the person or organization who is expected to be named as a claimant when (and if) the applicant submits an application to register the work.

For purposes of registration, the claimant is either the author of the work or a person or organization that has obtained ownership of all rights under the copyright that initially belonged to the author. 37 C.F.R. § 202.3(a)(3). No other person or organization is entitled to be named as a claimant in an application for copyright registration.

If the author is not the same person or organization as the claimant, the applicant need not provide a transfer statement explaining how the claimant obtained ownership of all rights under the copyright that initially belonged to the author (although this information is required in an application for registration).

For a detailed discussion of claimants and transfers, see Chapter 600, Sections 619 and 620.

1606.6 Key Dates

The applicant should identify the date that the author started to create the work, the date that the work is expected to be completed, and the date that the commercial distribution of the work is expected to begin. This information should be provided in the boxes that appear on the Key Dates screen.

1606.6(A) Date of Creation

The applicant should identify the date that the author started to create the work. Specifically, the applicant should provide the month and year that the work was first fixed in a tangible medium of expression. Identifying the specific day that the first fixation occurred is encouraged, but not required. If the applicant cannot identify the

exact date of creation, the applicant should provide a good faith estimate and check the box marked "Approximate."

The criteria for establishing the date of creation vary depending upon the nature of the work:

- If the work is a motion picture, the date of creation is the date that filming began.
- If the work is a sound recording, the date of creation is the date that recording sessions began.
- If the work is a musical composition, the date of creation is the date that the author began to write down or record the music and/or lyrics.
- If the work is a literary work that is expected to be published in book form, the date of creation is the date that the actual writing of the text of the book began.
- If the work is a computer program, the date of creation is the date that the author began to write the code for the program.
- If the work is a videogame, the date of creation is the date that the author began to fix the visual aspects of the work.
- If the work is an advertising or marketing photograph, the date of creation is the date that the photograph was taken. If the applicant intends to preregister a group of photographs that are intended to be published together, the date of creation is the date that the author took the first photograph that will be included within the group.

1606.6(B) Expected Date of Completion

The applicant should identify the date that the work is expected to be completed. Specifically, the applicant should provide the month and year that the work is expected to be fixed in the final form that is intended for commercial distribution. Identifying the specific day that the work is expected to be finished is encouraged, but not required. If the applicant cannot identify the expected date of completion, the applicant should provide a good faith estimate and check the box marked "Approximate."

If the work is substantially finished except for the final editing, the applicant should provide the month and year that the final editing is expected to be complete. In the case of a motion picture, the applicant may provide the date when principal photography is expected to be completed.

1606.6(C) Expected Date of Commercial Distribution

The applicant should identify the date that the commercial distribution of the work is expected to begin. Specifically, the applicant should provide the year that copies or phonorecords of the work in its complete and finished form are expected to be distributed to the public. Identifying the month and day that copies or phonorecords of the work are expected to be distributed is encouraged, but not required. When an application for preregistration is submitted at an early stage of the creative process, the

anticipated release date is at best a prediction, rather than a binding commitment. *See* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,906 (Oct. 27, 2005). Therefore, if the applicant cannot identify the expected date of commercial distribution, the applicant should provide a good faith estimate and check the box marked "Approximate."

As discussed in Section 1603.4, the work must be unpublished as of the date that the application is submitted. An application will be questioned if the date of expected commercial distribution is the same as the date that the application is received in the U.S. Copyright Office, but an application received the day before the expected date of commercial distribution will be accepted.

1606.7 Description of the Work

The applicant should not submit a copy or phonorecord of the work or any portion of the work with the application for preregistration. Instead, the applicant should provide a detailed description that reasonably identifies the work.

The description should be based on the information available at the time the application is submitted, and it should contain no more than 2,000 characters (including spaces and punctuation marks). At a minimum, the description should be sufficiently detailed and specific to satisfy a court in a copyright infringement action that the allegedly infringed work is, in fact, the work described in the application for preregistration. Merely reciting the title of the work or the type of work (*e.g.*, "motion picture" or "sound recording") is not sufficient.

Because the description will be made available to the public through the U.S. Copyright Office's website, the applicant should not include any portion of the work in that description, such as the lyrics for a song or the lines of code for a computer program.

The specific requirements for describing a motion picture, sound recording, musical composition, book, computer program, videogame, or advertising or marketing photograph, are discussed in Sections 1606.7(A) through 1606.7(F).

See 37 C.F.R. § 202.16(c)(6); *see also* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,289, 42,290 (July 22, 2005).

1606.7(A) Motion Pictures

In the case of a motion picture, the description should include: the subject matter of the work; a summary or outline of the plot; the names of the director and the primary actors; the principal location of filming; and any other information that would assist in identifying the work being preregistered. 37 C.F.R. § 202.16(c)(6)(i).

1606.7(B) Sound Recordings

In the case of a sound recording, the description should include: the subject matter of the work(s) recorded; the genre of the work(s) recorded (*e.g.*, classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz); the title(s) and composer(s) of any musical compositions embodied in the sound recording; the

name(s) of the performer or performing group(s) featured in the recording; the principal location of the recording; and any other information that would assist in identifying the work being preregistered, such as the name of the record label that is expected to distribute the work. 37 C.F.R. § 202.16(c)(6)(ii).

1606.7(C) Musical Compositions

In the case of a musical composition, the description should include: the subject matter of the lyrics (if any); the genre of the work (*e.g.*, classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz); and any other information that would assist in identifying the work being preregistered. In particular, if the musical composition will be included in a sound recording or a motion picture that is being prepared for commercial distribution, the description should include the name of the performer(s) featured in the recording, the name of the record label or motion picture that is expected to distribute the work, and the principal location of the recording. 37 C.F.R. § 202.16(c)(6)(iii).

1606.7(D) Books

In the case of a literary work being prepared for publication in book form, the description should include: the genre of the book (*e.g.*, biography, novel, history) and a brief summary of the work, including the subject matter (*e.g.*, a biography of President George W. Bush, a history of the war in Iraq, a fantasy novel); a description of the plot, primary characters, events, or other key elements of the content of the work (if known); and any other information that would assist in identifying the work being preregistered, such as whether it is a later edition or revision of a previous work. 37 C.F.R. § 202.16(c)(6)(iv).

1606.7(E) Computer Programs and Videogames

In the case of a computer program, the description should include: the nature, purpose, and function of the program; the programming language that the author used to write the program; whether the program has been created with any particular organization or structure; the form in which the program is expected to be published (*e.g.*, as an online-only product); and the identities of the person(s) involved in the creation of the program. In addition, the description should indicate whether there are previous versions of the program, and if so, the description should identify those versions.

If the work is a videogame, the description should include the foregoing information, along with the subject matter of the game; the overall object, goal, or purpose of the game; the name(s) of the character(s) in the game (if any); and the general setting and surrounding depicted in the game.

37 C.F.R. § 202.16(c)(6)(v).

1606.7(F) Photographs

In the case of advertising or marketing photographs, the description should include the subject matter depicted in the photographs, including the particular product, event, public figure, or other item or occurrence which the photograph is intended to advertise

or market. To the extent possible and applicable, the description should provide additional information that will assist in identifying the work, such as: the party for whom the photographs were taken; the approximate time period when the photographs were taken; the approximate number of photographs that may be included in the group; any events associated with the photograph (*e.g.*, New York Fashion Week Fall 2011; North American International Auto Show 2012; Baselworld 2013); and the location and physical setting or surroundings depicted in the photographs. In addition, the applicant may provide a general description of the photograph (*e.g.*, lighting, background scenery, positioning of the subject matter depicted in the photograph) and any locations and events (if applicable) associated with the photographs (*e.g.*, Super Bowl XXXIX). 37 C.F.R. § 202.16(c)(6)(vi).

1606.8 Notification

On the Notification & Certification screen the applicant should provide the email address to which the notification of preregistration should be sent.

1606.9 Certification

On the Notification & Certification screen the applicant will be asked to certify the application. Specifically, the applicant should provide the first and last name of the individual who is certifying the application and should check the box labeled "I agree." By checking this box, the applicant certifies that he or she is the author, the copyright claimant, the owner of one or more exclusive rights of the work described in the application, or the authorized agent of the author, copyright claimant, or owner of exclusive rights. In addition, the applicant certifies that the work is being prepared for commercial distribution, that he or she has a reasonable expectation that the work will be commercially distributed to the public, and that the information given in the application is correct to the best of his or her knowledge. 37 C.F.R. § 202.16(c)(8); *see also* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,906 (Oct. 27, 2005).

Certifications are an important part of the preregistration procedure. The following acts constitute a crime that is punishable pursuant to Title 18, Section 1001 of the U.S. Code: knowingly and willfully falsifying, concealing, or covering-up a material fact; making any materially false, fictitious, or fraudulent statement or representation; or making or using any false writing or document knowing that it contains any materially false, fictitious, or fraudulent statement or entry in an application for preregistration.

1606.10 Filing Fee

The current filing fee for an application for preregistration is set forth in the U.S. Copyright Office's fee schedule under the heading "Preregistration of certain unpublished works." For information concerning the methods for paying this filing fee, see Chapter 1400, Sections 1403.4 and 1403.5.

The Office will not refund the filing fee under any circumstances. Nor will the Office credit the fee toward the filing fee for an application for a basic registration, even if the applicant intended to submit an application for registration but submitted an application for preregistration by mistake. *See* 37 C.F.R. § 202.16(c)(5).

1607 Examination Guidelines

Because a preregistration does not constitute *prima facie* evidence of the validity of the copyright or the facts stated in the notification of preregistration, the registration specialist conducts only a limited review of an application for preregistration. Specifically, the specialist will ascertain whether the work described in the application falls within one of the classes of works that have had a history of infringement prior to authorized commercial release (as determined by the Register of Copyrights) and whether the applicant provided all of the necessary information specified in the application.

As a general rule, the registration specialist will not pass judgment on the adequacy of the written description of the work. However, the description is an important part of the preregistration record, and it is important to recognize that this record cannot be corrected, amended, or supplemented once the U.S. Copyright Office has issued a notification of preregistration. *See* Section 1612. In an action for infringement of a preregistered work, the court may evaluate the written description to determine whether it actually describes the work that allegedly has been infringed, taking into account the information available when the application was submitted and taking into account the applicant's legitimate interest in protecting confidential information concerning the work.

See 37 C.F.R. § 202.16(c)(6)-(7); *see also* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,289-90 (July 22, 2005).

1608 Notification of Preregistration

If the application for preregistration has been approved, the U.S. Copyright Office will issue a notification of preregistration to the person or organization named in the application as the correspondent. The Office will send the notification to the email address that the applicant provided on the Notification & Certification section of the application.

The notification will include the preregistration number that has been assigned to the claim and the effective date of the preregistration. Preregistration numbers are not based on the nature of the work (*i.e.*, a number beginning with the letters VA for a work of the visual arts or a number beginning with the letters PA for a work of the performing arts). Instead, they are numbered consecutively beginning with the prefix PRE, regardless of whether the work in question is a motion picture, a sound recording, a musical composition, a book, a computer program, a videogame, or an advertising or marketing photograph.

The notification of preregistration will remind the correspondent that the work should be registered in a timely manner to secure the full benefit of the preregistration, and that the preregistration number should be included in the application for a basic registration to ensure that the records for the preregistration and the basic registration will be cross-referenced with each other.

The notification of preregistration is the only notice that the Office will provide to the applicant or the claimant indicating that a preregistration has been made. The Office does not issue paper certificates for preregistrations.

The Office will make the preregistration record available to the public through its Public Catalog. This database is available through the Office's website. Additionally, the Records, Research, and Certification Section will issue a certified copy of the notification of preregistration upon written request. For more information, see Chapter 2400, Section 2407.

See 37 C.F.R. § 202.16(c)(10)-(12); *see also* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,290 (July 22, 2005); Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,906 (Oct. 27, 2005).

1609 Effective Date of Preregistration

The effective date of a preregistration is the day on which the U.S. Copyright Office receives the filing fee and application for preregistration, which are later determined by the U.S. Copyright Office or a court of competent jurisdiction to be acceptable for preregistration. 37 C.F.R. § 202.16(c)(9).

"Once 'preregistration . . . has been made,' the copyright claimant may institute a suit for infringement." *Fourth Estate Public Benefit Corp*., 139 S. Ct. at 888 (quoting 17 U.S.C. § 411(a)). But as discussed in Section 1604.1, "[a]n infringement suit brought in reliance on preregistration risks dismissal unless the copyright owner applies for registration promptly after the preregistered work's publication or infringement." *Id*.

1610 Refusals

If the registration specialist determines that the work described in the application does not constitute copyrightable subject matter, that the work is not eligible for preregistration, or that the claim is invalid for any other reason, he or she will refuse to preregister the claim. The specialist will notify the applicant in writing of the refusal and will specify the reasons for his or her decision.

1611 No Requests for Reconsideration

A refusal to preregister is not subject to administrative review. If an application for preregistration is refused, the U.S. Copyright Office will not entertain a request for reconsideration. *See* 37 C.F.R. § 202.5(a) (stating that administrative review is only available in cases involving a refusal to register a claim to copyright, a mask work, or a vessel design). If the applicant disagrees with the registration specialist's decision, the applicant must submit a new application that addresses the issues identified in the refusal to preregister. If the new application is determined to be acceptable for preregistration, the effective date of preregistration will be the day on which the new application and the new filing fee were received in the U.S. Copyright Office. *See* Section 1609.

1612 No Corrections or Cancellations

The U.S. Copyright Office conducts only a limited review of an application for preregistration, because a preregistration does not constitute *prima facie* evidence of the validity of the copyright or the facts stated in the notification of preregistration. Consequently, a preregistration will not be cancelled, corrected, supplemented, or amended once it has been entered in the public record. For example, the Office will not expunge a preregistration from its records if the applicant incorrectly described the work or made other errors in the application. Nor will the Office accept an application for a supplementary registration to correct or amplify the information in the preregistration record. *See* Chapter 1800, Section 1802.4.

To correct a preregistration record, the applicant may submit another application containing the corrected or omitted information. The new effective date of preregistration is the day on which the Office receives the new filing fee and the new application, which are later determined by the U.S. Copyright Office or a court of competent jurisdiction to be acceptable for preregistration. *See* Section 1609.

If the work has been completed, the applicant may submit an application for a basic registration that contains the correct or missing information, instead of submitting a new application for a new preregistration.

See generally Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,290 (July 22, 2005).

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Administrative Appeals

1701 What This Chapter Covers

This Chapter discusses the process for appealing a refusal to register a copyright claim within the U.S. Copyright Office.

1702 Registration Refused After Examination

The U.S. Copyright Office does not register all claims to copyright. The Office may refuse to register claims that do not meet the statutory requirements for copyright registration, including on the following grounds:

- The applicant failed to submit a complete application, complete filing fee, and/or complete deposit copy(ies).
- The work is not fixed in a tangible medium of expression.
- The work lacks human authorship.
- The applicant asserts a claim to copyright in a work that is not covered by U.S. copyright law. *See* 17 U.S.C. §§ 102, 103.
- The work was not independently created.
- The work lacks the minimum level of creative authorship to support a copyright claim.
- The work is in the public domain.
- The work is a sound recording that was fixed before February 15, 1972 (*i.e.*, the date on which sound recordings became eligible for federal copyright protection).
    - **NOTE:** The Orrin G. Hatch – Bob Goodlatte Music Modernization Act ("MMA") provides owners of pre-1972 sound recordings with certain protections and remedies for copyright infringement if their recordings are used without authorization. To exercise these remedies, owners typically must file schedules with the U.S. Copyright Office listing their sound recordings and specifying the name of the rights owner, title, and featured artist for each recording. 17 U.S.C. § 1401(f)(5)(A). Additional information concerning the MMA and instructions on how to file a schedule is available on the Office's website.
- The work is an architectural work created before December 1, 1990 (*i.e.*, the date on which architectural works became eligible for federal copyright protection), or the application to register the architectural work does not otherwise meet the requirements set forth in Copyright Office regulations. *See* 37 C.F.R. § 202.11.

- The work is ineligible for copyright protection in the United States based on the author's citizenship or domicile, based on the nation of first publication, or any other factor set forth in Section 104 of the Copyright Act.
- The work does not meet the eligibility requirements for a particular registration option.
- The applicant is not authorized to register a claim in the work.
- The claimant named in the application is not a proper copyright claimant.
- The work unlawfully employs preexisting material that is under copyright protection. *See* 17 U.S.C. § 103(a); *see also* Chapter 300, Section 313.6(B).
- The applicant failed to submit a *bona fide* copy of the work. *See* Chapter 1500, Section 1503.2.

If the Office determines that the work does not constitute copyrightable subject matter or that the other formal and legal requirements have not been met, the Office will refuse to register the claim. The registration specialist assigned to the application will notify the applicant in writing and will explain the reasons for the Office's decision. *See* 17 U.S.C. § 410(b). The Office will send the notification to the correspondent listed in the Correspondent section of the application.

1703 First Request for Reconsideration

1703.1 Filing the Request

If the applicant disagrees with a refusal to register the entire work or a refusal to register a specific element of the work, the applicant may appeal that decision within the U.S. Copyright Office. This is an administrative procedure known as a first request for reconsideration.

A request for reconsideration must be in writing. The request should specify the reasons that the applicant believes that registration was improperly refused, including any legal arguments or supplementary information that support the applicant's position. 37 C.F.R. § 202.5(b)(1).

The applicant must provide the following information in the subject line on the first page of the request:

- A statement that the document is a "FIRST RECONSIDERATION."
- The ten digit case number/service request number that the Office assigned to the claim and the seven digit correspondence ID number that appears in the subject line of the letter refusing to register the work.
- The name of the copyright claimant(s) specified in the application and the title(s) of the work exactly as it appears in the application.

The pages of the first request should be numbered, including any attachments or exhibits thereto.

The applicant should send one copy of the request to the address specified in Section 1708.2, together with one copy of the reply sheet that was attached to the refusal to register, and the filing fee set forth in 37 C.F.R. § 201.3(d)(4)(i).

The request and the filing fee must be postmarked or dispatched by a commercial carrier, courier, or messenger within three months of the date set forth in the refusal. *See* Sections 1708.1 and 1708.3.

See generally 37 C.F.R. § 202.5(b)(1)-(3) (setting forth the procedure for submitting a first request for reconsideration).

1703.2 Review of the First Request for Reconsideration

The first request for reconsideration will be reviewed by a U.S. Copyright Office staff attorney in the Registration Program office who did not participate in the initial examination of the claim. The Office will base its decision on the applicant's submission and the administrative record. If the Office needs additional information in order to make its decision, the staff attorney will notify the applicant in writing. The Office will not hear oral argument in support of a first request for reconsideration.

The refusal to register is subject to *de novo* review, which means that the Office will take a fresh look at whether the work meets the statutory requirements for copyright registration.

If the Office decides to register the work, it will notify the applicant in writing. This notification will be sent to the individual who submitted the first request for reconsideration, rather than the correspondent listed in the application. A certificate of registration will be sent separately to the mailing address specified in the application. *See* Chapter 600, Section 622.4.

If the Office upholds the refusal to register, it will notify the applicant in writing and will explain the reasons for its decision. This notification will be sent to the individual who submitted the first request for reconsideration.

The Office will respond to the first request within four months after the date that the first request was received. If the deadline falls on a weekend or a federal holiday, the deadline will be extended to the next federal work day. In no case shall a failure to respond within four months after the date that the first request was received result in the registration of the applicant's work.

See generally 37 C.F.R. § 202.5(b)(4) (discussing the procedure for reviewing a first request for reconsideration).

1704 Second Request for Reconsideration

1704.1 Filing the Second Request for Reconsideration

If the U.S. Copyright Office refuses to register a work after reviewing a first request for reconsideration, the applicant may submit a second request for reconsideration.

A second request for reconsideration must be in writing. The request should specify the reasons that the applicant believes that registration was improperly refused, including any legal arguments or supplementary information that support the applicant's position. The applicant must specifically address the Office's reasons for upholding the refusal to register following the applicant's first request for reconsideration. *See* 37 C.F.R. § 202.5(c)(1).

The applicant must provide the following information in the subject line on the first page of the request:

- A statement that the document is a "SECOND RECONSIDERATION."
- The ten digit case number/service request number that the Office assigned to the claim and the seven digit correspondence ID number that appears in the subject line of the Office's response to the applicant's first request for reconsideration.
- The name of the copyright claimant(s) specified in the application and the title(s) of the work exactly as it appears in the application.

The pages of the second request should be numbered as well as any attachments or exhibits thereto.

The applicant should send one copy of the request to the address specified in Section 1708.2, together with a copy of the reply sheet that was attached to the Office's response to the applicant's first request for reconsideration, and the filing fee set forth in 37 C.F.R. § 201.3(d)(4)(ii).

The second request and the filing fee must be postmarked or dispatched by a commercial carrier, courier, or messenger within three months of the date set forth in the Office's response to the first request for reconsideration. *See* Sections 1708.1 and 1708.3.

See generally 37 C.F.R. § 202.5(c)(1)-(3) (setting forth the procedure for submitting a second request for reconsideration).

1704.2 Review of the Second Request for Reconsideration

The second appeal will be reviewed by the Review Board. The Review Board consists of the Register of Copyrights and the General Counsel of the U.S. Copyright Office (or their respective designees) and a third individual designated by the Register. 37 C.F.R. § 202.5(f).

The Review Board will base its decision on the applicant's written submission and the administrative record. Specifically, the Board will consider the arguments and evidence set forth in the applicant's second request for reconsideration, as well as the application and the deposit copy(ies). In addition, the Board may consider any prior correspondence between the applicant and the Office, or may take administrative notice of matters of general knowledge or matters known to the Office or the Review Board. If the Board needs additional information to review the second request, it will notify the applicant in writing. The Review Board will not hear oral argument on a second request for reconsideration.

Both the decision made by the registration specialist and the decision to uphold the refusal to register following the applicant's first request for reconsideration are subject to *de novo* review, which means that the Board will take a fresh look at whether the work meets the statutory requirements for copyright registration.

A majority of the Review Board's members must agree to uphold or reverse a refusal to register. A decision issued by the Review Board has no precedential value, nor is any decision binding upon the Board in any other appeal.

If the Review Board decides to register the applicant's work, it will notify the applicant in writing. This notification will be sent to the individual who submitted the second request for reconsideration, and the certificate of registration will be sent separately to the mailing address specified in the application. *See* Chapter 600, Section 622.4.

If the Review Board decides to uphold the refusal to register, it will notify the applicant in writing and will explain the reasons for its decision. This notification will be sent to the individual who submitted the second request for reconsideration. If the Review Board has been notified that the work is involved in litigation, the Review Board will send a copy of its decision to counsel of record for the parties in that dispute.

See generally 37 C.F.R. § 202.5(c)(4) (discussing the procedure for reviewing a second request for reconsideration).

1705 Registration Decision Date and Effective Date of Registration

If the U.S. Copyright Office registers a work following a first or second request for reconsideration, the Office will assign a registration decision date and an effective date of registration ("EDR") to the registration.

The "registration decision date" is the date that the Office completed its examination and approved the claim after reviewing the applicant's first or second request for reconsideration. The "effective date of registration" is the day on which the Office received an acceptable application, deposit copy(ies), and filing fee, which were later determined to be acceptable for registration. 17 U.S.C. § 410(d).

As a general rule, if the applicant made a reasonable, good faith effort to complete the relevant fields/spaces in the application, the effective date of registration is the date that the Office received the application, provided that the applicant submitted the

appropriate deposit copy(ies) and paid the applicable filing fee as of that date. *See* Chapter 600, Section 625.

1706 Final Agency Action

A decision issued by the Review Board in response to a second request for reconsideration constitutes the final agency action with respect to the issues addressed therein. 37 C.F.R. § 202.5(g).

If the U.S. Copyright Office upholds the refusal to register following a request for reconsideration, an applicant may appeal that decision under the Administrative Procedure Act ("APA") by instituting a judicial action against the Register of Copyrights in federal district court. *See* 5 U.S.C. § 500 *et seq*.

An applicant does not need to appeal a refusal to register under the APA in order to institute an infringement action in federal district court. *See* 17 U.S.C. § 411(a). However, the applicant must serve a copy of the infringement complaint on the Register, and "[t]he Register may, at his or her option, become a party to the action with respect to the issue of registrability of the copyright claim by entering an appearance within sixty days after such service …." *Id*.

1707 Retention of Records

The U.S. Copyright Office maintains records of all documents and correspondence relating to a first or second request for reconsideration.

1708 General Requirements for First and Second Requests for Reconsideration

1708.1 Filing Fee

The applicant must submit the appropriate filing fee together with both the first or the second request for reconsideration. *See* 37 C.F.R. § 202.5(b)(2), (c)(2). The current filing fees are set forth in the U.S. Copyright Office's fee schedule in the field marked "Appeals."

The applicant must pay a separate filing fee for each claim that has been refused registration, even if the Office refused to register two or more claims in the same letter. *See* Copyright Office Fees, 78 Fed. Reg. 18,742, 18,745 (Mar. 28, 2012).

1708.2 Address for Delivery

Each request for reconsideration (including requests that are delivered by mail, by courier, or by hand) should be addressed on the outside of the envelope as follows:

FIRST *or* SECOND REQUEST FOR RECONSIDERATION
U.S. Copyright Office
RAC Division
P.O. Box 71380
Washington, DC 20024–1380.

See 37 C.F.R. §§ 201.1(c)(4), 202.5(d).

1708.3 Deadline for Submitting a Request for Reconsideration

A first request for reconsideration must be postmarked or dispatched by a commercial carrier, courier, or messenger no later than three months from the date that appears in the written notice from the Office of its decision to refuse registration. 37 C.F.R. § 202.5(b)(3).

A second request for reconsideration must be postmarked or dispatched by a commercial carrier, courier, or messenger no later than three months from the date that appears in the written notice from the Office of its decision to uphold the refusal to register following the applicant's first request for reconsideration. 37 C.F.R. § 202.5(c)(3).

The Office will not consider a second request for reconsideration if the applicant failed to submit the first request in a timely manner.

If the deadline for submitting a first or second request falls on a weekend or a federal holiday, the deadline will be extended until the next federal work day. *See* 37 C.F.R. § 202.5(b)(3), (c)(3).

The deadline for submitting a first or second request may be suspended or waived, in whole or in part, by the Register of Copyrights upon a showing of good cause. The request for a suspension or waiver should be made in writing, it should indicate whether the request involves a "FIRST" or "SECOND" request for reconsideration, and it should be sent to the address specified in Section 1708.2. A suspension or waiver may be granted only with respect to a specific request for reconsideration, and shall not be considered in connection with any other request from that applicant or any other applicant. *See* 37 C.F.R. § 202.5(e).

1708.4 Withdrawing a Request for Reconsideration

An applicant may submit a request to withdraw a first or second request for reconsideration at any time before the U.S. Copyright Office has issued its decision. The request should be made in writing, it should indicate whether the requested withdrawal involves a "FIRST" or "SECOND" request, and it should be sent to the address specified in Section 1708.2. The decision whether to approve or deny the request will be made at the discretion of the Office. The filing fee will not be refunded and the Office will not reinstate a request for reconsideration once it has been withdrawn.

1708.5 Amending the Application During an Administrative Appeal

When evaluating a first or second request for reconsideration, the U.S. Copyright Office will focus on the type of authorship claimed in the application, such as "2-D artwork" or "text." As a general rule, the Office will not consider any type of authorship that was not expressly claimed in the application when the claim was refused. That said, the Office may allow an applicant to amend the application during a first or second appeal if the failure to include this information was the result of an honest omission or mistake.

Example:

> An application is submitted for a children's book titled *The Empty Piñata*. The work contains artwork and a *de minimis* amount of text, but the applicant only asserted a claim in "text." The registration specialist refuses registration. On appeal, the applicant admits that the words are uncopyrightable, and states that the applicant inadvertently failed to include a claim in "2-d artwork." The Office will uphold the refusal to register the claim in "text," and will consider whether the artwork contains a sufficient amount of creative expression to support a registration.

1708.6 No Expedited Review

Special handling is a procedure for expediting the examination of an application to register a claim to copyright or the recordation of a transfer or other document pertaining to copyright. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate. As discussed in Chapter 600, Section 623.2, the Office will not grant a request for special handling in connection with a first or second request for reconsideration.

1708.7 No Adverse Proceedings

The U.S. Copyright Office does not invite, and generally does not consider, arguments or evidence submitted by or on behalf of any party other than the applicant or the applicant's duly authorized agent.

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Post-Registration Procedures

1801 What This Chapter Covers

This Chapter sets forth the practices and procedures for modifying the registration record for a claim after the U.S. Copyright Office has issued a certificate of registration. The topics discussed in this Chapter include:

- Correcting or amplifying the information in a copyright registration.
- Requests to remove and replace certain types of personally identifiable information that may appear in the online public record.
- Cancelling a copyright registration.
- Asserting an adverse claim to copyright.

For a discussion of the procedure for abandoning a registration, see Chapter 2300, Section 2311. For a discussion of the procedure for recording transfers or other documents pertaining to copyright, see Chapter 2300, Section 2309.

1802 Supplementary Registration: Correcting or Amplifying the Information in a Registration

A supplementary registration is a special type of registration that may be used "to correct an error in a copyright registration or to amplify the information given in a registration." 17 U.S.C. § 408(d).

A supplementary registration identifies an error or omission in a basic registration and places the correct information or additional information in the public record. Supplementary registrations may be used only to correct or amplify limited issues involving certain types of registrations, which are listed in Section 1802.3 below. *Id.*; 37 C.F.R. § 202.6.

When the U.S. Copyright Office issues a supplementary registration, it does not cancel or replace the basic registration or the registration number for that registration. Likewise, the Office will not change the information set forth in the basic registration or the public record for that registration. Instead, the Office assigns a separate registration number and effective date of registration to the supplementary registration. The basic registration and the supplementary registration coexist with each other in the public record, and the supplementary registration augments — but does not supersede — the information set forth in the basic registration. 17 U.S.C. § 408(d); 37 C.F.R. § 202.6(f)(2).

1802.1 Who May File an Application for a Supplementary Registration?

The following parties may correct or amplify the information in a registration record:

- An author of the work.
- Any other party who is entitled to be named as a copyright claimant (*i.e.*, a copyright owner who owns all of the rights that initially belonged to the author).
- An owner of one or more — but less than all — of the exclusive rights in the work.
- A duly authorized agent of any of the foregoing parties.

37 C.F.R. § 202.6(c). No other party may file an application for supplementary registration.

If there is no clear relationship between the applicant and the parties named in the basic registration, the Office may ask the applicant to submit a sworn declaration or other evidence demonstrating that the applicant is an author of the work, a party who is entitled to be named as a copyright claimant, an owner of one or more of the exclusive rights in the work, or an authorized agent of one of the foregoing parties. If the applicant's claim appears to be implausible, the Office may decline to issue a supplementary registration, and if appropriate, may suggest that the applicant assert an adverse claim by submitting a new application for a new basic registration.

If the application for supplementary registration is approved, the Office will cross-reference the records for the supplementary registration and the basic registration. Specifically, the Office will place a note in the public record for the basic registration that identifies the registration number and the effective date of registration for the supplementary registration. In addition, the Office will place a note in the public record for the supplementary registration that identifies the registration number and the year of registration for the basic registration. 37 C.F.R. § 202.6(f)(1). The cross-references are intended to notify any person who searches the Office's records that the Office has issued a supplementary registration that may contain additional information pertaining to the basic registration, and that the records for both the basic registration and the supplementary registration should be consulted. *See* Supplementary Registration, 81 Fed. Reg. 86,656, 86,660 & n.26 (Dec. 1, 2016).

1802.2 When May an Application for a Supplementary Registration Be Filed?

An application to correct or amplify the information set forth in a basic registration may be filed at any time after the registration has been issued by the U.S. Copyright Office and at any time before the copyright has expired. *See* 37 C.F.R. § 202.6(d)(2), (3); Supplementary Registration, 81 Fed. Reg. 86,656, 86,660 & n.23 (Dec. 1, 2016).

1802.3 Records That May Be Corrected or Amplified with a Supplementary Registration

A supplementary registration may be used to correct or amplify the information set forth in the following types of registrations:

- A basic registration issued on or after January 1, 1978 (including group registrations).

- A copyright registration or renewal registration for a work that was registered or first published on or before December 31, 1977.

See 37 C.F.R. § 202.6(b)(1)(i)-(iii).

The U.S. Copyright Office may decline to issue a supplementary registration for a basic registration for a work that was registered or first published on or before December 31, 1977, because those registrations have expired by now. Allowing interested parties to correct or amplify the information in a basic registration after the initial term expired creates a potential for error, mistake, or even fraud. *See* Supplementary Registration, 81 Fed. Reg. 86,656, 86,660 (Dec. 1, 2016). A supplementary registration could have significant consequences in a legal dispute, given that a certificate of registration may create an evidentiary presumption concerning the facts stated in the certificate. 17 U.S.C. § 410(c). In exceptional circumstances, the Office may issue a supplementary registration for a basic registration that covered the first twenty-eight years of the copyright term, but only if the proposed correction or amplification is supported by clear, convincing, and objective documentation. *See* 37 C.F.R. § 202.6(d)(6). For information concerning this option, see Chapter 2100, Section 2131. For general information concerning the practices and procedures for correcting or amending a renewal registration, see Chapter 2100, Section 2138.

A supplementary registration may be used to correct or amplify the information in one basic registration or one renewal registration. The Office will not issue a supplementary registration that attempts to correct or amplify the information set forth in multiple registrations. However, there is no limit on the number of supplementary registrations that may be issued and cross-referenced with a basic registration or a renewal registration. *See* Supplementary Registration, 81 Fed. Reg. at 86,660.

1802.4 Records That Cannot Be Corrected or Amplified with a Supplementary Registration

A supplementary registration cannot be used to correct or amplify the following types of records:

Pending applications: The U.S. Copyright Office will not issue a supplementary registration to correct or amplify the information in a pending application. If the applicant discovers an error or omission in a pending application, the applicant should not file an application for supplementary registration. Instead, the applicant should contact the Office in writing using the form posted on the Office's website, or if the applicant receives a communication from a registration specialist concerning a pending application, the applicant should notify the specialist if the application is incorrect or incomplete.

Applications that have been withdrawn or rejected: The Office will not issue a supplementary registration for an application that has been withdrawn by the applicant or rejected by the Office.

The online public record: The Office will not issue a supplementary registration to correct an error that appears only in the online public record for a particular registration.

- If the online public record contains an error that does not appear in the certificate of registration, the author, the claimant, or one of the other parties listed in Section 1802.1 should contact the Office in writing using the form posted on the Office's website, instead of filing an application for supplementary registration.

  NOTE: Some entries in the online public record cannot be changed due to the current limitations of the electronic registration system. For example, the system cannot accept diacritical marks used in Spanish, French, German, or other foreign languages, such as ç, à, ñ, or ü.

- If the online public record contains a social security number, credit card number, driver's license number, or bank account number, this information may be removed through a procedure known as a "referral," which is discussed in Section 1804. If the online public record contains any other type of personally identifiable information, it may be possible to remove or replace that information using the procedure discussed in Section 1805.

Basic registrations in the wrong class or series: The Office will not issue a supplementary registration for a work that was registered in the wrong class or series. Instead, this issue must be addressed with a procedure known as a "cancellation and substitution," which is discussed in Section 1806.4(A).

Basic registrations for multiple works. When the Office registers multiple works under a registration accommodation, it will not accept an application that seeks to reclassify the works under a different accommodation. For example, a supplementary registration cannot be used to change a registration for a group of published photographs into a registration for a compilation, a collective work, or a photographic database (or *vice versa*). Nor can it be used to transform a registration for an unpublished collection or a group of unpublished works into a registration for a single published work. These types of changes would alter the fundamental nature of the claim, and would undermine the legal presumptions afforded to the initial examination of the works. And it would be inconsistent with the statutory and regulatory provisions stating that a supplementary registration augments – but does not supersede – the basic registration. *See* 17 U.S.C. § 408(d); 37 C.F.R. § 202.6(f)(2); Supplementary Registration, 82 Fed. Reg. 27,424, 27,426 (June 15, 2017).

Basic registrations that have been cancelled or abandoned: The Office will not issue a supplementary registration for a basic registration that has been cancelled or abandoned. *See* 37 C.F.R. § 202.6(d)(4)(iii); Supplementary Registration, 81 Fed. Reg. 86,656, 86,660 n.24 (Dec. 1, 2016).

Previous supplementary registrations: A supplementary registration cannot be used to correct or amplify the information in another supplementary registration. If the information in the basic registration is correct and if the Office previously issued a

supplementary registration to address a purported error in that registration, the author, the claimant, or any of the other parties listed in Section 1802.1 may prepare a declaration or affidavit stating that the information set forth in the basic registration is correct and stating that the information set forth in the supplementary registration is incorrect. The statement may be recorded with the Office using the procedures described in Chapter 2300, Section 2309.

Preregistrations: The Office will not issue a supplementary registration for a preregistration made under Section 408(f) of the Copyright Act. If there is an error or omission in a preregistration, the author, the claimant, or any of the other parties listed in Section 1802.1 may submit a new application for a new preregistration that contains the correct or missing information. If the work has been completed, the applicant may submit an application for a basic registration that contains the correct or missing information. For a detailed discussion of preregistration, see Chapter 1600.

Certificates of registration for mask works: A supplementary registration cannot be used to correct or amplify the information in a registration for a mask work. *See* 37 C.F.R. § 211.4(f); Supplementary Registration, 81 Fed. Reg. at 86,658 n.10. However, if the Office made an error or omission in preparing the certificate, the Office will correct the mistake and will issue a new certificate to the correspondent named in the certificate. For additional information concerning this procedure, see Chapter 1200, Section 1216.

Certificates of registration for vessel designs: A supplementary registration cannot be used to correct or amplify the information in a registration for a vessel design. If the Office made a clerical or typographical error in preparing the certificate of registration for a vessel design, the owner of the vessel design should contact the Office in writing using the form posted on the Office's website. If appropriate, the Office will correct the error and will issue a new certificate to the correspondent named in the certificate. If the applicant made a clerical or typographical error in the application for registration, the owner of the registered design or its duly authorized agent may submit an application for a certificate of correction using Form DC. *See* 37 C.F.R. § 212.8(a)(3), (c)(2). The procedure for correcting errors in a registration for a vessel design is similar to the procedure for supplementary registration, except that the Office will issue a certificate of correction only in cases involving clerical or typographical errors. *See* Correction of Errors in Certificates of Registration of Vessel Hull Designs, 71 Fed. Reg. 46,402, 46,402 (Aug. 14, 2006). For additional information concerning this procedure, see Chapter 1300, Section 1317.

Recorded documents: A supplementary registration cannot be used to correct the information set forth in a document that has been recorded with the Office. For a discussion of the proper procedure for correcting an error in a recorded document, see Chapter 2300, Section 2308.

1802.5 What Type of Information May Be Corrected or Amplified with a Supplementary Registration?

Supplementary registrations may be used for certain types of corrections and amplifications. A registration may be corrected if "information in the basic registration was incorrect at the time that basic registration was made." 37 C.F.R. § 202.6(d)(2). An amplification may be used "[t]o supplement or clarify the information that was required

by the application for the basic registration and should have been provided, such as the identity of a co-author or co-claimant, but was omitted at the time the basic registration was made." *Id.* § 202.6(d)(3)(i). An amplification may also be used "[t]o reflect changes in facts, other than those relating to transfer, license, or ownership of rights in the work, that occurred since the basic registration was made." *Id.* § 202.6(d)(3)(ii).

For representative examples of situations where a supplementary registration can and cannot be used to correct or amplify the information in a basic registration, see Sections 1802.6 and 1802.7.

1802.6 Supplementary Registration Appropriate

This Section provides representative examples of situations where a supplementary registration may be used to correct or amplify the information in a basic registration.

1802.6(A) Minor Errors in the Basic Registration

The U.S. Copyright Office will issue a supplementary registration even if the error in the basic registration is extremely minor, such as a typographical mistake or missing article such as "a," "an," or "the." But in most cases it is not necessary to correct minor errors in a basic registration, particularly if the correct or missing information appears elsewhere in the registration record.

1802.6(B) Change in Name or Address

A supplementary registration may be used to correct spelling errors or similar mistakes in the author's name, the claimant's name, or any other name that appears in the registration record. Likewise, a supplementary registration may be used to reflect a change in a name or address that appears in the basic registration (although it cannot be used to remove that information from the original record).

Examples:

- The U.S. Copyright Office issued a basic registration for a sound recording naming Dean Jonson as the author of the work. The author's name should have been spelled Dean Johnson. The error may be corrected with a supplementary registration.

- The Office issued a basic registration for a technical drawing. The certificate of registration names Richard Oxley as the author of this work, but the name given on the deposit copy is Richard Drummond Oxley. Richard may add his middle name to the registration record with a supplementary registration.

- In 2001 Kara King submitted an application to register a painting. Kara got married in 2011 and changed her name to Kara Mitchell. Kara's married name may be added to the registration record with a supplementary registration.

- In 2008 Bethany Rolling registered a sound recording, naming herself as the author and copyright claimant. At the time Bethany was living in Damascus, Maryland, and she provided her home address in the Name of Claimant field and the Rights and Permissions field. Three years later Bethany moved to Providence, Rhode Island. Bethany may add her new address to the registration record with a supplementary registration.

1802.6(C) Title of the Work

An error concerning the title of the work may be corrected with a supplementary registration. Specifically, a supplementary registration may be used to correct the title(s) of the work(s) listed in the basic registration, to add subtitle(s), previous or alternative title(s), or contents title(s) that were not provided in the application for the basic registration, or to reflect a change in the title(s) that has occurred since the basic registration was made.

Examples:

- Richard Maguire registered a sound recording. The title given in the certificate of registration is "I'll Love You," but the title given on the deposit copy is "I'll Love You (Forever)." Richard may add the longer title to the registration record with a supplementary registration.

- Carrie Murtagh registered the first draft of her short story. At the time, she had not decided on the title for the story, so she entered "A Warped Frustrated Old Man (Working Title)" in the Title field. Three months later Carrie published her story under the title "Potter's Field." Carrie may add the new title to the registration record with a supplementary registration, or preferably, by registering the published version of her story and listing the prior title in the Previous or Alternative Title field.

- Adams Baker & Co. submitted a compact disc that contains a dozen sound recordings. The company registered this CD as an unpublished collection, but failed to provide the titles of the recordings that appear on the CD. The title of each recording may be added to the registration record with a supplementary registration.

1802.6(D) Author(s) of the Work

A supplementary registration can be used to correct an error or omission in a basic registration involving the author(s) of the work. *See* 37 C.F.R. § 202.6(d)(3)(i).

If two or more authors created the work and some of the authors were not named in the basic registration, the names of the missing authors may be added to the registration record with a supplementary registration. The registration specialist may ask the applicant to provide documentation confirming that the other authors contributed copyrightable material to the work if the other authors are not listed in the deposit copy(ies), if there does not appear to be any connection between the other authors and

the authors named in the basic registration, or if there is any other reason to question the application. In addition, the specialist may ask the applicant to provide a transfer statement in the application for supplementary registration if a similar statement would have been required if the other authors had been named in the application for the basic registration.

The author's real name may be added to the registration record with a supplementary registration if the applicant provided a pseudonym in the application for the basic registration or if the basic registration states that the author is anonymous. For a discussion of anonymous and pseudonymous works, see Chapter 600, Sections 615.1 and 615.2.

If the wrong author is named in the basic registration, the correct name may be added to the registration record with a supplementary registration, provided that the application is filed by one of the parties listed in Section 1802.1. In addition, a statement may be added to the registration record to clarify that the person named in the basic registration is not, in fact, the author of the work (although that name cannot be removed from the original record). In some cases, the registration specialist may ask the applicant to provide a declaration or other supporting evidence confirming that the information set forth in the application for supplementary registration is correct.

Examples:

- Anne Duquesne and Phillip Craig are listed on the deposit copy as co-authors of a ballad titled "Together Forever." Anne registered the song, naming herself as the sole author and claimant of this work. Anne may add Phillip's name to the registration record with a supplementary registration.

- The U.S. Copyright Office issued a basic registration for a mash-up video. The certificate of registration states that the work was created by an author who uses the pseudonym, "Garrett London." The author may add his real name to the registration record by submitting an application for a supplementary registration.

- The Office registered a children's book, which was written by Sean Gladhill and illustrated by Dawn Bradley. Sean registered the work naming himself as the sole author and claimant of the "text." Sean attempts to add Dawn's name to the registration record with a supplementary registration. The registration specialist retrieves the deposit copy from the Library of Congress. The specialist will communicate with the applicant, because the copyright notice states "Text © Sean Gladhill and Artwork © Dawn Bradley" which suggests that Sean owns the text and Dawn owns the artwork. If it is determined that the text and the artwork are jointly owned, the specialist may issue a supplementary registration. However, if the text and the artwork are separately owned, the supplementary registration will be refused. Instead, Dawn should submit a new

application for a new basic registration naming herself as the sole author and copyright claimant for the artwork.

1802.6(E) Work Made for Hire

If the applicant failed to complete the work made for hire section of the application for basic registration, that information may be added to the registration record with a supplementary registration. Likewise, if the basic registration erroneously states that the work is (or is not) a work made for hire, the correct information may be added to the registration record with a supplementary registration.

In all cases, this determination should be based on the facts that existed at the time when the basic registration was made. In some cases, a new transfer statement may be required if the author named in the application for supplementary registration and the claimant named in the basic registration are not the same.

Examples:

- Jessica Fineman is a professional songwriter. She formed a closely held corporation to manage her financial portfolio and she routinely assigns her copyrights to this entity for tax purposes. In 1978 Jessica registered a song titled "Termination Nation." She named Jessica Fineman, Inc. as the author and copyright claimant and she checked the box indicating that the song was created as a work made for hire. In 2013 Jessica submits an application for supplementary registration stating that she should have named herself as the author of this song and the work made for hire box should have been checked "no," because she did not write this work as an employee of Jessica Fineman, Inc. Jessica also provides the transfer statement "by written agreement" to explain that she assigned the copyright in this song to her closely held corporation. The registration specialist will issue the supplementary registration.

- Julian Chariot is an amateur songwriter. In 2000 he registered a song titled "Trust Me." Julian named himself as the author and claimant, but mistakenly checked the work made for hire box "yes," because he assumed that this is the best way to tell the world that he wants to be hired as a songwriter. In 2013, Julian submits an application for a supplementary registration stating that the work made for hire box should have been checked "no." The registration specialist will issue the supplementary registration.

1802.6(F) Copyright Claimant(s)

A supplementary registration may be used to correct an error in the basic registration involving the copyright claimant. It may also be used to add the name of a co-claimant who should have been listed in the application for a basic registration (regardless of whether the co-claimant is — or is not — a co-author of the work). *See* 37 C.F.R. § 202.6(d)(3)(i).

This determination should be based on the facts that existed at the time when the basic registration was made. As discussed in Section 1802.7(B), information about a claimant or co-claimant who acquired the copyright after that date cannot be added to the registration record with a supplementary registration. *See* Corrections and Amplifications of Copyright Registrations; Applications for Supplementary Registration, 63 Fed. Reg. 59,235, 59,235 (Nov. 3, 1998). Recording a transfer or other document pertaining to copyright is the only means for adding subsequent information to the registration record.

If the copyright was co-owned by two or more parties when the application for the basic registration was submitted to the U.S. Copyright Office and if one or more of those co-owners was not listed in the basic registration, their name(s) may be added to the registration record with a supplementary registration. *See* 37 C.F.R. § 202.6(d)(3)(i).

In some cases, the applicant may be asked to provide a transfer statement in the application for supplementary registration or other documentation if a similar statement would have been required if the other co-owner(s) had been named in the application for the basic registration.

If an author of the work was listed in the basic registration as an author, but not as a copyright claimant, the author's name may be added as a claimant to the registration record with a supplementary registration. In the alternative, the author may file a new application for a new basic registration that names the author as the copyright claimant. *See* Section 1803.

If the wrong claimant was named in the basic registration, the correct name may be added to the registration record with a supplementary registration, provided that the application is filed by one of the parties listed in Section 1802.1. In addition, a statement may be added to the registration record to clarify that the name provided in the basic registration is incorrect (although that name cannot be removed from the basic registration). In some cases, the registration specialist may ask the applicant to provide a declaration or other supporting evidence confirming that the information set forth in the application for supplementary registration is correct.

Examples:

- Tracey Ebert and Karen Colby co-wrote a screenplay titled *Hair Force One*. On July 1, 2006 Karen assigned her share of the copyright to Graffiti Studios. On July 31, 2006 Tracey submitted an application to register the screenplay, naming herself as the sole copyright claimant. Tracey may file an application for supplementary registration naming Graffiti as a co-claimant. Tracey should provide a transfer statement that explains how the company obtained the copyright in this work. In addition, the registration specialist may ask Tracey to submit additional documentation concerning this transfer.

- Kris Anderson and Karina Ramsey registered the songs "Be the Best" and "Hornet's Nest," which were published on the album

Falling in Love in a Small Town. The basic registration named Kris and Karina as the co-authors and co-claimants for these works. In fact, Kris is the sole author and owner of "Be the Best," and Karina is the sole author and owner of "Hornet's Nest." If the U.S. Copyright Office had been aware of this when the application was filed, it would have asked the applicant to exclude one of these songs from the application. "Be the Best" or "Hornet's Nest" may be removed from the registration record with a supplementary registration that deletes the title of the work and removes Kris's or Karina's name from the Author/Claimant fields. The song that has been removed from the registration record may be registered separately by filing a new application for a new basic registration that names the correct individual as the author and owner of that song.

1802.6(G) Year of Completion

An error involving the year of completion may be corrected with a supplementary registration. But the year given in the application for supplementary registration must be the same as — or earlier than — the year given as the effective date of registration for the basic registration. Likewise, if the work has been published, the year of completion given in the application for supplementary registration must be the same as — or earlier than — the date of first publication given in the basic registration.

1802.6(H) Citizenship, Domicile, and Nation of First Publication

If there is an error in the basic registration concerning the author's citizenship/domicile or the nation of first publication, the correct information may be added to the registration record with a supplementary registration. This determination should be based on the facts that existed at the time when the basic registration was made.

If the work does not appear to be eligible for copyright protection in the United States based on the information provided in the application for supplementary registration, the registration specialist will communicate with the applicant. If the specialist determines that the work was not eligible for copyright protection at the time the basic registration was made, the application for supplementary registration may be refused and the basic registration may be cancelled. *See* Section 1802.9(I).

1802.6(I) Publication Issues

As a general rule, an error involving the date of publication for the work may be corrected with a supplementary registration. This determination should be based on the facts that existed at the time when the basic registration was made.

For instance, if the applicant mistakenly provided a date of publication for a work that has not been published, a statement may be added to the registration record to clarify that the work is actually unpublished. If the applicant provided the wrong date of publication in the application for basic registration, the correct date may be added to the registration record with a supplementary registration. However, the registration specialist may ask the applicant to confirm that the deposit copies submitted with the application for the basic registration are identical to the first published edition of that work.

Examples:

- Olivia Morland created a fabric design for her line of t-shirts. In the application for basic registration, Olivia stated that the design was first published on May 31, 2011, but in fact, she began selling her t-shirts on April 1, 2011. Olivia may add the correct date of publication to the registration record with a supplementary registration. The specialist may communicate with Olivia to confirm that the deposit copies submitted with the application for the basic registration are the copies that were first published on April 1, 2011.

- Brigitte Byrne is the author of a choreographic work that debuted at the Kennedy Center on September 15, 2010. The next day she filed an application to register her work with the U.S. Copyright Office. In her application, Brigitte stated that work was published on September 15, 2010, because she mistakenly assumed that a public performance constitutes publication. Brigitte may correct this mistake by filing an application for a supplementary registration stating that the work is, in fact, unpublished.

In some cases an error involving the publication of the work cannot be corrected with a supplementary registration. Instead, the applicant must submit a new application for a new basic registration. These types of publication issues are discussed in Section 1802.7(C).

1802.6(J) The Claim to Copyright

A supplementary registration may be used to correct or amplify the claim that has been asserted in the basic registration. Specifically, it may be used to correct or amend the information that appears on the certificate of registration in the fields/spaces marked Author Created, Limitation of Copyright Claim, Nature of Authorship, and/or Material Added to This Work. If the specialist determines that the authorship described in the application for supplementary registration is not registrable, he or she may communicate with the applicant and may refuse to issue a supplementary registration.

Examples:

- Deanna Mueller registered an unpublished journal, naming herself as the author of the "text." Deanna would like to add a claim in "illustrations" to the registration record. The registration specialist will retrieve the deposit copy from the Office's files to determine if Deanna contributed a sufficient amount of artwork to this work. If so, the specialist will issue a supplementary registration.

- Todoroff Designs registered a cookbook. The basic registration identifies the New Material Included in the claim as "text, two-dimensional artwork" and the Material Excluded from this claim as "text, two-dimensional artwork." Todoroff submits an application for supplementary registration to clarify that this is the eighth

edition of this cookbook and that the company intended to register the text and artwork that appears on pages 2, 12, and 60-82 of this edition. The registration specialist will retrieve the deposit copy to determine if these pages contain a sufficient amount of new copyrightable authorship. If so, the specialist will issue a supplementary registration.

- Bennett James registered an unpublished album titled *The Black Dossier*. The basic registration states that the author created "music, lyrics, and musical arrangement." Bennett submits an application for supplementary registration stating that he created the artwork that appears on the album cover. The registration specialist retrieves the deposit copy from the Office's files and determines that the artwork merely consists of the title of the album superimposed on a black background. The specialist will refuse to issue a supplementary registration, because the artwork that appears on the album is not copyrightable.

1802.7 Supplementary Registration Inappropriate

This Section provides representative examples of situations where a supplementary registration cannot be used to correct or amplify the information in a basic registration.

1802.7(A) Annotations

As a general rule, the U.S. Copyright Office will not amend or remove an annotation from the registration record. The Office will refuse an application for supplementary registration that purports to amend or remove an annotation.

1802.7(B) Ownership Issues

A supplementary registration cannot be used to reflect the division, licensing, or transfer of rights in the work. Likewise, a supplementary registration cannot be used to reflect a change in the ownership of the copyright that occurred on or after the effective date of registration for the basic registration. 37 C.F.R. § 202.6(d)(4)(i).

If the rights in the work have been divided, licensed, or transferred, or if there has been a change in ownership since the application for basic registration was made, the applicant should not submit an application for supplementary registration. Instead, the applicant should record the assignment, license, or other legal document that transferred the copyright from one party to another.

Recording certain documents "gives all persons constructive notice of the facts stated in the recorded document," and it may have other important consequences in the event that there is a conflicting transfer involving the same work. *See* 17 U.S.C. § 205(c)-(e). A supplementary registration does not provide these benefits. *See* Corrections and Amplifications of Copyright Registrations; Import Statements; and Recordation of Documents, 43 Fed. Reg. 771, 771 (Jan. 4, 1978).

Examples:

- Lorraine Pelowicz and Jody Keppler registered a song naming themselves as the co-claimants of the work. They subsequently submit an application for supplementary registration stating that Lorraine currently owns the publishing rights and that Jody currently owns the right to perform the work in public. The application will be refused. Instead, Lorraine and Jody should record the legal agreement that divided the ownership of the copyright between the parties.

- Tonya Greenleaf registered a blog naming herself as the author and claimant for this work. She subsequently submits an application for supplementary registration stating that she assigned the copyright in this work to the Pom Pom Publishing Company. The application will be refused. Instead, Tonya should record the assignment with the U.S. Copyright Office.

- Kimberly Browning registered a photograph naming herself as the author and claimant for this work. She subsequently submits an application for supplementary registration stating that she licensed this image to a photo library two days after she submitted her application for basic registration. The Office will not issue a supplementary registration. Instead, Kimberly should record the legal document that licensed her image to the photo library.

For guidance concerning the practices and procedures for recording a transfer or other document with the Office, see Chapter 2300.

1802.7(C) Publication Issues

If the work was unpublished when the application for the basic registration was submitted to the U.S. Copyright Office and then published sometime thereafter, the date of publication cannot be added to the registration record with a supplementary registration. Instead, the applicant should submit a new application for a new basic registration for the first published edition of that work (even if the published version "is substantially the same as the unpublished version"). *See* 17 U.S.C. § 408(e); 37 C.F.R. § 202.3(b)(11)(i).

Ordinarily, if the work was published on or before the date that the claim was filed with the Office, and if the applicant mistakenly claimed that the work was unpublished as of that date, the date of publication cannot be added to the registration record with a supplementary registration. Instead, the applicant should submit a new application for a new basic registration using the procedure described in Section 1803 (subject to the limited exception discussed below).

These types of publication issues cannot be corrected with a supplementary registration unless the deposit requirement for a published work and an unpublished work are the same. As a general rule, the applicant must submit two complete copies of the best

edition if the work was published on or after January 1, 1978, but only one complete copy is required for an unpublished work. *See* Chapter 1500, Sections 1505.1 and 1505.2. By contrast, if an unpublished work was erroneously registered as a published work, the date of publication may be corrected with a supplementary registration, because the deposit copies for a published work usually satisfy the deposit requirement for an unpublished work. *See* Section 1802.6(I).

There are limited exceptions to this rule. If a published work was erroneously registered as an unpublished work, the date of publication may be added to the registration record with a supplementary registration, provided that (i) the work was published on or after March 1, 1989, and (ii) the deposit requirement for that type of work would be the same regardless of whether the work was published or unpublished, such as architectural blueprints, mechanical drawings, globes, greetings cards, postcards, commercial prints and labels, as well as computer programs, databases, or other types of works that may be registered with identifying material.

A date of publication cannot be added to the registration record for an unpublished collection or a group of unpublished works. And as discussed in Section 1802.4, an unpublished collection or group registration cannot be transformed into a registration for a single published work. But it may be possible to exclude a published work from a prior registration, and then submit a new application, deposit, and filing fee for that work.

1802.7(D) Issues Involving the Deposit Copy(ies)

A supplementary registration may only be used to correct or amplify the information set forth in a certificate of registration. The U.S. Copyright Office will not issue a supplementary registration to correct an error in the deposit copy(ies) that were submitted with the application for basic registration. *See* 37 C.F.R. § 202.6(d)(4)(ii).

1802.7(E) Issues Involving Derivative Works

If a work has been changed or revised since it was registered, the changes or revisions cannot be added to the registration record with a supplementary registration. *See* 37 C.F.R. § 202.6(d)(4)(ii). Likewise, the Office will not issue a supplementary registration for an entirely new work that has not been registered before (even if it is based on a previously registered work). Instead, the applicant should submit a new application for a new basic registration, together with an appropriate copy(ies) of the new or revised version of the work.

For a definition and discussion of derivative works, see Chapter 500, Section 507.

1802.7(F) Issues Involving the Copyright Notice

The U.S. Copyright Office will not issue a supplementary registration to add or correct the copyright notice on the deposit copy(ies) that were submitted with the application for a basic registration. *See* 37 C.F.R. § 202.6(d)(4)(ii).

1802.7(G) Cancellation or Abandonment of a Basic Registration

A basic registration cannot be cancelled or abandoned with a supplementary registration. If the applicant asserts that the basic registration should be abandoned or cancelled for any reason, the U.S. Copyright Office will refuse to issue a supplementary registration. For a discussion of the procedure for cancelling a basic registration, see Section 1807. For a discussion of the procedure for abandoning a basic registration, see Chapter 2300, Section 2311.

1802.7(H) Adverse Claims

A supplementary registration cannot be used to question or challenge the validity of a basic registration. If an applicant asserts that the U.S. Copyright Office issued a basic registration to a party who is not eligible to be named as a copyright claimant or that the application for the basic registration was filed by a party who was not authorized to register the claim, the applicant should not submit an application for supplementary registration. Instead, the applicant should assert an adverse claim in the copyright by submitting a new application for a new basic registration on behalf of the party who should have been named as the copyright claimant. *See* 37 C.F.R. § 202.3(b)(11)(iii). For a discussion of the practices and procedures for asserting an adverse claim, see Section 1808.

1802.8 Completing the Application

As a general rule, an applicant must use the online application to correct or amplify the information set forth in a basic registration – even if the work was originally registered with a paper application. For guidance in completing the online application, see Section 1802.8(A).

Specifically, the applicant must use the online application to correct or amplify a basic registration for the following types of works:

- A literary work, such as fiction, nonfiction, poetry, memoirs, textbooks, computer programs, and other nondramatic textual works.
- A work of the visual arts, such as two-dimensional or three-dimensional works of fine, graphic, or applied art, prints, art reproductions, maps, technical drawings, and architectural works.
- A work of the performing arts, such as a musical work, dramatic work, choreographic work, pantomime, motion picture, or other audiovisual work.
- A sound recording, such as an audiobook, a podcast, or a recording of a song.
- A single issue of a serial publication, such as a periodical, magazine, newsletter, or journal.

37 C.F.R. § 202.6(e)(1).

Likewise, applicants must use the online application to correct or amplify the information appearing in the following types of registrations:

- A registration for a compilation, a collective work, or a derivative work.
- A registration for an unpublished collection. *See* 37 C.F.R. § 202.6(e)(1).
- A registration for a unit of publication. *See* 37 C.F.R. § 202.3(b)(4); 37 C.F.R. § 202.6(e)(1).
- A registration for a group of serials. *See* 37 C.F.R. § 202.4(d); 37 C.F.R. § 202.6(e)(1).
- A registration for a group of newspapers. *See* 37 C.F.R. § 202.4(e); 37 C.F.R. § 202.6(e)(1).
- A registration for a group of newsletters. *See* 37 C.F.R. § 202.4(f); 37 C.F.R. § 202.6(e)(1).
- A registration for a group of contributions to periodicals. *See* 37 C.F.R. § 202.4(g); 37 C.F.R. § 202.6(e)(1).
- A registration for a group of secure test items. *See* 37 C.F.R. § 202.13; 37 C.F.R. § 202.4(k).
- A registration for a group of unpublished photographs or a group of published photographs. *See* 37 C.F.R. § 202.4(h)-(i); 37 C.F.R. § 202.6(e)(1).

Applicants must use the online application to correct or amplify the information in a group registration for a database that predominantly consists of photographs. *See* 37 C.F.R. § 202.3(b)(5). But before submitting the claim, the applicant must contact the Visual Arts Division at (202) 707-8202 to obtain prior authorization and instructions concerning the information that should be included in the application. *See* 37 C.F.R. § 202.6(e)(4).

Similarly, applicants must use the online application to correct or amplify the information in a registration for a group of unpublished works, or a group of short online literary works. *See* 37 C.F.R. § 202.4(e)(2). But before submitting the claim, the applicant must contact the Office of Registration Policy & Practice at copyinfo@copyright.gov to obtain prior authorization and instructions concerning the information that should be included in the application. For additional information, see *Supplementary Registration (Circular 8)*.

By contrast, applicants must use a paper application submitted on Form CA to correct or amplify the information appearing in the following types of registrations:

- A group registration for a database that does not predominantly consist of photographs. *See* 37 C.F.R. § 202.3(b)(5); 37 C.F.R. § 202.6(e)(4).

- A GATT registration for a foreign work restored to copyright protection under the Uruguay Round Agreements Act. *See* 37 C.F.R. § 202.12; 37 C.F.R. § 202.6(e)(4).

- A renewal registration for a work registered or first published before January 1, 1978. *See* 37 C.F.R. § 202.17; 37 C.F.R. § 202.6(e)(4).

For guidance in completing Form CA, see Section 1802.8(B).

See generally Supplementary Registration, 82 Fed. Reg. 27,424 (June 15, 2017); Supplementary Registration, 81 Fed. Reg. 86,656, 86,660 & n.26 (Dec. 1, 2016).

1802.8(A) Completing the Online Application

This Section provides guidance for completing the online application for supplementary registration.

As discussed in Section 1802.8, applicants must use the online application in most cases. Applicants may submit a paper application only when correcting or amplifying the information in a renewal registration, a GATT registration, or a registration for a database that does not consist predominantly of photographs. If an applicant attempts to use a paper application to correct or amplify any other type of registration, the U.S. Copyright Office may return the application and filing fee and instruct the applicant to resubmit the claim using the online application, or the Office may simply refuse registration. 37 C.F.R. § 202.6(e)(4); Supplementary Registration, 81 Fed. Reg. 86,656, 86,658 (Dec. 1, 2016).

NOTE: In exceptional cases, the U.S. Copyright Office may waive the online filing requirement, subject to such conditions that the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant. An applicant may submit a request to waive this requirement in writing. It should explain why the applicant is unable to use the online application, and it should be sent to the following address:

Associate Register of Copyrights and
Director of Registration Policy & Practice
Registration Program
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559

See 37 C.F.R. § 202.6(e)(8); Supplementary Registration, 82 Fed. Reg. 27,424, 27,428 (June 15, 2017).

1802.8(A)(1) Eligibility Requirements

To seek a supplementary registration with the online application, the applicant should begin by clicking the phrase "Correct or Amplify an Existing Registration," which appears on the home page of the electronic registration system.

The system will generate a brief statement that describes the eligibility requirements for this application. If these requirements have been met, the applicant should check the box that appears next to the following statement: "I agree that I have read, understood, and meet all eligibility requirements described above for filing a Supplementary Registration."

1802.8(A)(2) Identifying the Basic Registration

The applicant must identify the basic registration that will be corrected or amplified by the supplementary registration. 17 U.S.C. § 408(d). Specifically, the applicant must provide the following information on the Original Registration screen:

- *Registration number for the basic registration*. This number appears on the certificate for the basic registration, and it typically begins with two or three letters, such as "VA" or "VAu." The applicant should provide this number in the field marked "Registration Number of Basic Registration (e.g. TXu003234533)."

- *Year of registration for the basic registration*. This information appears on the certificate for the basic registration under the heading marked effective date of registration. The applicant should provide this information in the field marked "Year of Basic Registration (YYYY)."

If the applicant fails to complete these fields, the application will not be accepted by the electronic registration system.

When providing the registration number for the basic registration, the U.S. Copyright Office strongly encourages applicants to use the format described below. This will facilitate the examination of the claim and prevent unnecessary delays.

Specifically, the registration number should consist of a twelve-character string without spaces or hyphens. For published registration numbers, enter two letters followed by ten digits. For unpublished registration numbers, enter three letters followed by nine digits. Every letter of the alphabetic prefix should be capitalized and zeroes should be inserted between the prefix and the numerical portion of the registration number so that it contains a total of twelve characters.

For instance, the proper format for a registration for a published sound recording consisting of the prefix "SR" and the numbers "123-4-567" would be "SR0001234567."

Examples:

- VAu 123-456 should be entered as VAU000123456.

- VA 1-357-911 should be entered as VA0001357911.

If the applicant includes spaces, hyphens, or other punctuation in the registration number (instead of using the format described above), the Office will remove these characters and convert the number to the preferred format, which may delay the registration decision.

1802.8(A)(3) Identifying the Work(s) Covered by the Basic Registration

The U.S. Copyright Office has established various categories for the purpose of registering works of authorship. These categories are merely administrative classifications that do not affect the subject matter of copyright or the exclusive rights in a work. *See* 17 U.S.C. § 408(c)(1).

When completing the online application, the applicant should identify the category that best describes the work(s) covered by the basic registration. These categories are listed on the Original Registration screen under a drop down menu marked Type of Work. Once a selection has been made, the system will provide a brief description and representative examples of the types of works that may be registered within each category. If the applicant fails to make a selection, the application will not be accepted by the electronic registration system.

The applicant should exercise care and judgment when completing this portion of the application. The selection will dictate the options for correcting or amplifying the information that appears in the basic registration. And if the claim is approved, it will determine the registration number that will be assigned to the supplementary registration.

Once a selection has been made, the Type of Work field cannot be changed unless the applicant discards the application and starts over again. If the applicant selects a category that does not match the works covered by the basic registration, the registration specialist may communicate with the applicant or refuse to issue a supplementary registration.

- Select *Literary Work* if the registration number assigned to the basic registration begins with the letters TX or TXu, and if the registration covers a work that explains, describes, or narrates a particular subject, theme, or idea through the use of narrative, descriptive, explanatory, or instructional text (rather than dialog or dramatic action). Examples of works that fit within this category include fiction, nonfiction, poetry, short stories, memoirs, textbooks, reference works, directories, catalogs, advertising copy, as well as computer programs. For additional information concerning this category, see Chapter 700, Section 703.

- Select *Work of the Visual Arts* if the registration number assigned to the basic registration begins with the letters VA or VAu, and if the registration covers a pictorial, graphic, or sculptural work. This category includes two-dimensional and three-dimensional works of fine, graphic, or applied art; prints and art reproduction; maps, and technical drawings. Examples of works that fit within this category include drawings, illustrations, posters, logos, sculptures, jewelry designs, fabric designs, wallpaper designs, and architectural works. For additional information concerning this category, see Chapter 900, Sections 903.1 and 903.2.

- Select *Work of the Performing Arts* if the registration number assigned to the basic registration begins with the letters PA or PAu, and if the registration covers a musical work, a dramatic work, a pantomime, or a choreographic work. Examples of works that fit within this category include songs, musical arrangements, stage plays,

screenplays, scripts, treatments, and ballets. For additional information concerning this category, see Chapter 800, Sections 802, 804, 805, and 806.

- Select *Sound Recording* if the registration number assigned to the basic registration begins with the letters SR or SRu, and if the registration covers a sound recording. Examples of works that fit within this category include a recording of a singer performing a song or an audiobook, podcast, or live concert recording. Likewise, the applicant should select this option if the registration covers both a sound recording and the underlying work embodied in that recording, such as a registration that covers a song and a recording of a musician performing that song. For additional information concerning this category, see Chapter 800, Section 803.

  NOTE: To add a claim in "sound recording" to a basic registration for a musical work, dramatic work, or literary work, the applicant should select the option for *Sound Recording* – even if the basic registration begins with the letters PA, PAu, TX, or TXu. For information concerning this type of correction or amplification, see Section 1802.6(J). If the Office determines that the work was registered in the wrong class or series, it may cancel the initial registration and issue a new registration in the correct class. For information concerning this procedure, see Section 1807.4(A).

- Select *Motion Picture/Audiovisual Work* if the registration number assigned to the basic registration begins with the letters PA or PAu, and if the registration covers a feature film, documentary film, animated film, television show, video, videogame, or other audiovisual work, such as a slide presentation. For additional information concerning this category, see Chapter 800, Sections 807 and 808.

- When correcting or amplifying a basic registration for a compilation, a collective work, or a derivative work, the applicant should select the category listed above that best describes that work and the original registration number. For additional information concerning these types of works, see Chapter 500, Sections 507 through 509.

- When correcting or amplifying a basic registration for an *unpublished collection* or a *unit of publication*, the applicant should select the category listed above that best describes the works included within that collection or unit and the original registration number. For additional information concerning these types of registrations, see Chapter 1100.

- Select *Single Serial Issue* if the registration number assigned to the basic registration begins with the letters TX, and if the registration covers a single issue of a serial publication. A serial is a work that is issued in successive parts bearing numerical or chronological designations and is intended to be continued indefinitely. Examples include a single issue of a newspaper, magazine, bulletin, newsletter, annual, journal, and other similar works. Examples of works that do not fall within this category include episodes of a television series, a series of online videos, a collection of musical works, a group of manuscripts, an assortment of poetry, or a set of advertising copies. For additional information concerning this category, see Chapter 700, Section 712.

- Select *Serial Issues* if the basic registration begins with the letters TX, and if it is a group registration that covers two or more issues of a serial publication. For information concerning this group registration option, see Chapter 1100, Section 1107.

- Select *Daily Newspapers* if the basic registration begins with the letters TX, and if it is a group registration that covers a month of issues from the same newspaper. For information concerning this group registration option, see Chapter 1100, Section 1108.

- Select *Daily Newsletters* if the basic registration begins with the letters TX, and if it is a group registration that covers multiple issues from the same newsletter. For information concerning this group registration option, see Chapter 1100, Section 1109.

- Select *Contributions to Periodicals TX* if the basic registration begins with the letters TX, if it is a group registration that covers a group of contributions that were first published in a periodical, and if the contributions primarily contain nondramatic text. Examples of contributions that fit within this category include articles, news stories, columns, features, reviews, editorials, essays, fiction, verse, quizzes, puzzles, and advertising copy. For information concerning this group registration option, see Chapter 1100, Section 1110.

- Select *Contributions to Periodicals VA* if the basic registration begins with the letters VA, if it is a group registration that covers a group of contributions that were first published in a periodical, and if the contributions primarily contain pictorial or graphic material. Examples of contributions that fit within this category include photographs, drawings, illustrations, cartoons, comic strips, prints, paintings, art reproductions, charts, diagrams, maps, and pictorial advertisements. For information concerning this group registration option, see Chapter 1100, Section 1110.

- Select *Published Photographs* if the basic registration begins with the letters VA, and if it is a registration for a group of published photographs. For information concerning this group registration option, see Chapter 1100, Section 1114.

- Select *Unpublished Photographs* if the basic registration begins with the letters VA, and if it is a registration for a group of unpublished photographs. For information concerning this group registration option, see Chapter 1100, Section 1114.

- Select *Literary Work* if the registration number assigned to the basic registration begins with the letters TX or TXu, and if it is a registration for a group of questions, answers, and other items prepared for use in a secure test.

- The online application may be used to correct or amplify the information in a registration for a group of *unpublished works,* or a group of *short online literary works.* But before submitting the claim, the applicant must contact the Office of Registration Policy & Practice at copyinfo@copyright.gov to obtain prior authorization and instructions concerning the information that should be included

in the application. For additional information, see *Supplementary Registration (Circular 8)*.

- Likewise, the online application may be used to correct or amplify the information in a group registration for a *photographic database.* But before submitting the claim, the applicant must contact the Visual Arts Division at (202) 707-8202 to obtain prior authorization and instructions concerning the information that should be included in the application. *See* 37 C.F.R. § 202.6(e)(3); Supplementary Registration, 81 Fed. Reg. 86,656, 86,658 n.9 (Dec. 1, 2016).

1802.8(A)(4) Correcting and/or Amplifying the Basic Registration

Once the applicant has selected the category that best describes the works covered by the basic registration, the applicant should (i) correct errors that appear in that registration, and/or (ii) provide information needed to amplify the facts stated in the basic registration. 37 C.F.R. § 202.6(d)(2)-(3).

To do so, the applicant should complete each screen that appears in the online application. When completing these screens, the applicant should provide all of the information that should have been included in the basic registration when it was made. If the registration contains information that is accurate and complete, the applicant should include that same information in the online application.

Guidance for completing the various screens that appear in the online application may be found in the following sections of the *Compendium*:

- For guidance on a supplementary registration involving a *Literary Work*, a *Work of the Visual Arts*, a *Work of the Performing Arts*, a *Sound Recording*, a *Motion Picture/AV Work*, a *Single Serial Issue,* or a *Collective Work,* the applicant should refer to the following sections:

  - Titles screen: *See* Chapter 600, Sections 610.1 through 610.5.
  - Publication/Completion screen: *See* Chapter 600, Sections 611.1 and 612.6.
  - Authors screen: *See* Chapter 600, Sections 613.9, 614.1, 615.1(B), 615.2(B), 616.3, 617.6, 618.4, 618.7(A), and 618.7(C).
  - Claimants screen: *See* Chapter 600, Sections 619.12 and 620.9.
  - Limitation of Claim screen: *See* Chapter 600, Section 621.8.
  - Rights & Permissions screen: *See* Chapter 600, Section 622.1.
  - Correspondent screen: *See* Chapter 600, Section 622.2.
  - Mail Certificate screen: *See* Chapter 600, Section 622.4.
  - Special Handling screen: *See* Chapter 600, Section 623.

- For guidance on a supplementary registration involving a *unit of publication*, the applicant should refer to Chapter 1100, Section 1103. For guidance on a supplementary registration involving an *unpublished collection*, the applicant should refer to *Compendium of U.S. Copyright Office Practices* § 1106.3 (3d ed. 2017).

- For guidance on a supplementary registration involving a group registration of *serial issues*, the applicant should refer to Chapter 1100, Section 1107.6.

- For guidance on a supplementary registration involving a group registration of *newspaper issues*, the applicant should refer to Chapter 1100, Section 1108.7.

- For guidance on a supplementary registration involving a group registration of *newsletter issues*, the applicant should refer to Chapter 1100, Section 1109.6.

- For guidance on a supplementary registration involving a group registration of *Contributions to Periodicals*, the applicant should refer to Chapter 1100, Section 1110.7.

- For guidance on a supplementary registration involving a group registration of *Unpublished Photographs* or *Published Photographs*, the applicant should refer to Chapter 1100, Section 1114.

- For guidance on a supplementary registration involving a group registration for a photographic database, the applicant should contact the Visual Arts Division at (202) 707-8202.

- For guidance on a supplementary registration involving a group registration of *Unpublished Works* or a group of *Short Online Literary Works*, the applicant should contact the Office of Registration Policy & Practice at copyinfo@coypright.gov for instructions concerning the information that should be included in the application. For additional information, see *Supplementary Registration (Circular 8)*.

1802.8(A)(5) Explanation for the Correction

If the information in the basic registration was incorrect when the registration was made, the applicant should provide the correct information in the relevant portions of the online application. In addition, the applicant should provide a brief statement that identifies and explains the reason for the correction. This statement should be provided on the Certification screen in the field marked Correction Explanation:

- The applicant should identify the section of the basic registration where the incorrect information appears. The applicant may provide the heading for that section, such as "Author Created" or "Material excluded from this claim." If the spaces on the certificate are numbered, the applicant may also provide the relevant line number, such as "2(a)" or "6(b)."

- The applicant should provide the incorrect information that appears in the basic registration.

- The applicant should provide the correct information that should have been included in the basic registration.

If the changes reflected in the supplementary registration are intended to amplify the information in the basic registration, the applicant should complete the Amplification Explanation field. For guidance in completing this portion of the application, see Section 1802.8(A)(6).

1802.8(A)(6) Explanation for the Amplification

As mentioned above, a supplementary registration may be used to clarify the information that appears in the basic registration, to provide missing information that should have been included in the registration, or to reflect changes that have occurred since the registration was made (other than a change in the ownership of the copyright).

The applicant should provide this information in the relevant portions of the online application. In addition, the applicant should provide a brief statement that identifies and explains the reason for the amplification. This statement should be provided on the Certification screen in the field marked Amplification Explanation:

- The applicant should identify the section of the basic registration that should be amplified. The applicant may provide the heading for that section, such as "Author" or "Copyright Claimant." If the spaces on the certificate are numbered, the applicant may also provide the relevant line number, such as "4" or "5."

- The applicant should provide a clear and succinct statement of the information that should be added to the registration record.

If the changes reflected in the supplementary registration are intended to correct the information in the basic registration, the applicant should complete the Correction Explanation field. For guidance in completing this portion of the application, see Section 1802.8(A)(5).

1802.8(A)(7) Certification

An application for supplementary registration may be submitted by an author, a copyright claimant, or an owner of one or more of the exclusive rights in the work, or a duly authorized agent of one of the foregoing persons. 37 C.F.R. § 202.6(c).

Before submitting an online application, the applicant must certify the application by providing the following information on the Certification screen:

- The applicant should provide his or her first and last name in the space marked Name of Certifying Individual.

- Using the drop down menu marked Submission Authority, the applicant should specify whether he or she is the author, a copyright claimant, or an owner of one or more of the exclusive right(s) in the work.

- If the applicant is an authorized agent of the author, a copyright claimant, or an owner of the exclusive right(s), the applicant should select that option from the drop down menu and write the name of the party he or she represents in the field marked "Authorized agent of (name)."

The applicant should check the box that reads, "I certify that I am the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights of this work, that I reviewed the certificate of registration for this work, and that the information given in this application is correct to

the best of my knowledge." There is no need to date the certification; the date will be added automatically when the application is received by the U.S. Copyright Office.

By checking this box, the applicant certifies that the information provided in the application is correct to the best of his or her knowledge. In addition, the applicant certifies that he or she reviewed the certificate of registration for the basic registration before the application was submitted. *See id.* § 202.6(e)(5).

Knowingly making a false representation of a material fact in an application for supplementary registration, or in any written statement filed in connection with the application, is a crime that is punishable under 17 U.S.C. § 506(e).

1802.8(A)(8) Applicant's Internal Tracking Number / Note to Copyright Office

The applicant may assign an internal tracking number to an online application by completing the field marked Applicant's Internal Tracking Number on the Certification screen.

Providing a tracking number is optional and this feature is intended solely for the applicant's convenience. The U.S. Copyright Office does not use these numbers to keep track of pending applications, although the number will appear on the certificate of supplementary registration.

The applicant may provide any additional information that is relevant to the claim in the field marked Note to Copyright Office. Currently, the total amount of text that may be provided in this field is limited to 25,000 characters.

Statements provided in the Note to Copyright Office field will not appear on the certificate of supplementary registration or the online public record. The Office will maintain a copy of the note in the registration record. If the note contains material information, the specialist may add that information to the registration record with an annotation, or may add a note to the certificate of registration and the online public record indicating that there is correspondence in the file.

1802.8(B) Completing Form CA

This Section provides guidance for seeking a supplementary registration with a paper application submitted on Form CA.

As discussed in Section 1802.8, Form CA may only be used to correct or amplify the information appearing in a renewal registration, a GATT registration, or a registration for a database that does not consist predominantly of photographs.

If an applicant attempts to use Form CA to correct or amplify any other type of registration, the U.S. Copyright Office may return the application and filing fee and instruct the applicant to resubmit the claim using the online application or the Office may simply refuse registration. *See* 37 C.F.R. § 202.6(e)(1)-(4); 37 C.F.R. § 202.6(f)(2); Supplementary Registration, 82 Fed. Reg. 27,424, 27,428 (June 15, 2017).

1802.8(B)(1) Space A: Identifying the Basic Registration

An application for supplementary registration "shall clearly identify the registration to be corrected or amplified." 17 U.S.C. § 408(d). The applicant should identify the basic registration by providing the following information in space A of Form CA:

- The title of the work that appears in the basic registration (including the previous or alternative title for the work, if any).
- The registration number that appears on the certificate of registration for the basic registration.
- The year that the U.S. Copyright Office issued the basic registration. (This information appears on the certificate of registration in the field marked effective date of registration.)
- The name(s) of the author(s) listed in the basic registration.
- The name(s) of the copyright claimant(s) listed in the basic registration.

The foregoing information should be copied exactly as it appears on the certificate of registration for the basic registration, even if that information is incorrect or incomplete, even if the applicant intends to correct or amplify that information with a supplementary registration, and even if that information has been corrected or amplified by an earlier supplementary registration.

1802.8(B)(2) Space B: Correcting Errors in the Basic Registration

If the information set forth in the basic registration was incorrect when the registration was made, the applicant should provide the following information in space B of Form CA:

- In the space marked Line Heading or Description, the applicant should provide the heading for the relevant section of the basic registration where the incorrect information appears. If the spaces on the certificate of registration are numbered one to nine, the applicant should also provide the relevant number in the space marked "Line Number." (If there are no numbers on the certificate of registration, the Line Number space may be left blank.)
- In the space marked "Incorrect Information as It Appears in Basic Registration," the applicant should provide the incorrect information exactly as it appears in the basic registration.
- In the space marked "Corrected Information," the applicant should provide the correct information that should have been provided in the application for the basic registration.

The applicant may provide a brief explanation for the error or the correction in the space marked "Explanation of Correction."

Examples:

- Lauren O'Neill published and registered her book of poems in 1971. In 2000, the U.S. Copyright Office issued a renewal registration for this work. Lauren later notices that her name is misspelled as "Lawren" on the certificate for the renewal registration. The error appears in the "Author" space and the "Renewal Term Ownership Information, Name of Statutory Claimant" space. Lauren may correct this error by providing the following information in space B of Form CA:

  – *Line Number:* n/a.

  – *Line Heading or Description:* Work or Material Claimed and Author Information, Renewal Term Ownership Information, Name of Statutory Claimant.

  – *Incorrect information:* Lawren O'Neill.

  – *Corrected information:* Lauren O'Neill.

  – *Explanation of correction:* Author's first name was misspelled.

- Steven Albrechtsen was born in Sweden. Steven published a book in Stockholm while he was attending university in another country. Steven failed to renew the copyright at the end of the first term. When the work was restored to copyright protection, he registered his book using Form GATT. Steven correctly stated that he is a Swedish citizen, but incorrectly stated that he was living in Sweden when the work was first published. Steven may correct this error by providing the following information in space B of Form CA:

  – *Line Number:* n/a.

  – *Line Heading or Description:* Author, Domicile.

  – *Incorrect information:* Domicile: Sweden.

  – *Corrected information:* Domicile: Germany.

  – *Explanation of correction:* The author was not living in Sweden when the work was first published; he was living in Germany.

- Marco Systems created a database for a client named Multiverse, LLC, and transferred the copyright in this work to that company through a written agreement. In 2014, Multiverse sought a group registration for the initial published version of the database, as well as two months of revisions. The certificate of registration correctly names Multiverse, LLC as the claimant, but incorrectly names that

company as the author of the work. Multiverse may correct this error by providing the following information in space B of Form CA:

– *Line number:* n/a.

– *Line Heading or Description:* Author, Work Made For Hire, Copyright Claimant.

– *Incorrect information:* Author: Multiverse, LLC; Work made for hire: Yes.

– *Corrected information:* Author: Marco Systems; Work made for hire: No; Transfer statement: By written agreement.

– *Explanation of correction:* The database and its revisions were not made for hire; Marco Systems should have been named as the author. Multiverse, LLC obtained the copyright in this database and its updates from the author by written agreement.

1802.8(B)(3) Space C: Clarifying Information in the Basic Registration, Providing Missing Information, or Reflecting Changes or Events That Have Occurred Since the Basic Registration Was Made

As mentioned above, a supplementary registration may be used to clarify the information that appears in the basic registration, to provide missing information that should have been included in the registration, or to reflect changes that have occurred since the registration was made (other than a change in the ownership of the copyright). In such cases, the applicant should provide the following information in space C of Form CA:

- In the space marked Line Heading or Description, the applicant should provide the heading for the relevant section of the basic registration that should be amplified. If the spaces on the certificate of registration are numbered one to nine, the applicant should also provide the relevant number in the space marked "Line Number." (If there are no numbers on the certificate of registration, the Line Number space may be left blank.)

- In the space marked "Amplified Information and Explanation of Information" the applicant should provide a clear and succinct statement of the information that should be added to the registration record.

In addition, the applicant may provide a brief explanation for the amplification.

Examples:

- Danny Nelson registered his song in 1972. After he passed away in 2012, his children, Denise and Donald, filed a renewal registration as statutory claimants. In 2014, Denise married and changed her name. Denise may add her new name to the registration record by providing the following information in space C of Form CA:

- *Line Number:* n/a.
- *Line Heading or Description:* Renewal Term Ownership Information, Name of Statutory Claimant.
- *Amplified Information and Explanation of Information:* Renewal Term Ownership Information, Name of Statutory Claimant: Due to marriage, the name of the statutory claimant entitled to claim the renewal term as daughter of the author has changed from Denise Nelson to Denise McArthur.

- In 1985, Kerry Blaire published a play in Israel without a copyright notice. When her play was restored to copyright protection, she registered the work using Form GATT. A year later, Kerry moved to a new address. She may add her new address to the registration record by providing the following information in space B of Form CA:
  - *Line Number:* 4.
  - *Line Heading or Description:* Owner of U.S. Copyright.
  - *Amplified Information and Explanation of Information:* Owner of U.S. Copyright: The Owner of U.S. Copyright's new address is 6401 Deerfield Lane, Miami, FL 32815.
- In December 2014, WWX Corporation registered a group of revisions to its published database, but failed to mention that some of the content was previously published in August of that year. WWX may add a disclaimer to the registration record by providing the following information in space C of Form CA:
  - *Line Number:* n/a.
  - *Line Heading or Description:* Limitation of Copyright Claim.
  - *Amplified Information and Explanation of Information:* Limitation of copyright claim: Some contributions previously published in August 2014.

1802.8(B)(4) Spaces D and E: More Space Needed

If the applicant needs more space to correct or amplify the information that appears in the basic registration, the applicant should provide the additional information in spaces D and/or E of Form CA. Use space D if you need more room to explain a correction. Use space E if you need more room to explain an amplification.

1802.8(B)(5) Space F: Contact Information

In space F, the applicant should provide the name, address, telephone number, email address, and fax number (if any) for the person or persons who should be contacted if the registration specialist has questions or concerns regarding the application for supplementary registration. This person is known as the correspondent. The U.S. Copyright Office will send all communications concerning an application for a supplementary registration to the correspondent at the address provided in Space F of Form CA.

1802.8(B)(6) Space G: Certification

Form CA must be submitted by an author, a copyright claimant (including a vested owner in the case of a supplementary registration for a renewal registration), an owner of one or more of the exclusive rights in the work, or a duly authorized agent of one of the foregoing persons. 37 C.F.R. § 202.6(c).

Before submitting Form CA, the applicant must certify the application on Space G. Specifically, the applicant should provide his or her signature under the heading "Signature," and his or her first and last name should be typed or printed in the space marked "Typed or Printed Name and Date."

The applicant should check one of the boxes on Form CA indicating whether he or she is an author of the work, a copyright claimant, or an owner of one or more of the exclusive right(s) in the work. If the applicant is an authorized agent of the author, copyright claimant, or owner of exclusive right(s), the applicant should provide the name of the party he or she represents. Ordinarily, an application will be accepted if two or more of the boxes in space G have been checked, unless there is reason to question the application.

By signing Form CA, the applicant certifies that the information provided in the application is correct to the best of his or her knowledge. In addition, the applicant certifies that he or she reviewed the certificate of registration for the basic registration before the application was submitted. *See id*. § 202.6(e)(5).

Knowingly making a false representation of a material fact in an application for supplementary registration, or in any written statement filed in connection with the application, is a crime that is punishable under 17 U.S.C. § 506(e).

1802.8(B)(7) Space H: Mailing Address for the Certificate of Supplementary Registration

The applicant should provide the first and last name of the individual and/or the name of the organization to which the certificate of supplementary registration should be sent, along with the street address, city, state, and zip code for that individual and/or organization. This information should be provided in space H under the heading "Certificate will be mailed in window envelope to this address." This portion of the application should be completed legibly; failure to provide a legible name and address may delay the delivery of the certificate of supplementary registration.

The applicant should provide only one mailing address in space H of Form CA. The U.S. Copyright Office will send a single copy of the certificate to that address by first class mail. Additional copies of the certificate may be obtained from the Office for an additional fee. For instructions on how to request additional copies of a certificate of supplementary registration, see Chapter 2400, Section 2408.

1802.8(C) Filing Fee

The filing fee for an application for supplementary registration is set forth in the U.S. Copyright Office's fee schedule under the heading "Supplementary registration." For information concerning the methods for paying this filing fee, see Chapter 1400, Sections 1412.4 and 1412.5.

As a general rule, the filing fee is not refundable, regardless of whether the Office issues a supplementary registration. 37 C.F.R. § 201.6(c). The Office will issue a refund if the Office determines that the error in the basic registration was caused by its own action or mistake. *See* Section 1802.9(A).

1802.8(D) Copy of the Certificate of Registration for the Basic Registration

As discussed in Sections 1802.8(A)(7) and 1802.8(B)(6), the applicant must certify that he or she reviewed the certificate of registration for the basic registration before seeking a supplementary registration. 37 C.F.R. § 202.6(e)(5).

If the applicant does not have a copy of the certificate, he or she may request a copy from the Records Research and Certification Section. For information concerning this procedure, see Chapter 2400, Section 2408.

As discussed in Section 1802.9(C), the applicant does not need to submit a copy of the certificate unless the registration specialist specifically asks the applicant to do so.

1802.8(E) Deposit Copy(ies) Not Required

As discussed in Section 1802.8(A), the applicant should not submit copy(ies) of the work unless the registration specialist specifically instructs the applicant to do so. *See* 37 C.F.R. § 202.6(e)(7); *see also* Section 1802.9(D).

1802.9 Examination Guidelines

1802.9(A) Errors Caused by the U.S. Copyright Office

If the Office discovers an error in a basic registration, and determines that the error was caused by its own action or mistake, the Office will take appropriate measures to correct the registration record. This procedure is known as a "referral." In this situation, the Office will refund the filing fee without issuing a supplementary registration. *See* 37 C.F.R. § 202.6(a); Supplementary Registration, 81 Fed. Reg. 86,656, 86,660 (Dec. 1, 2016).

For more information concerning referrals, see Section 1804.

1802.9(B) Identifying the Basic Registration

If the applicant fails to provide all of the information requested in the application for supplementary registration or fails to include relevant information that appears in the basic registration, the registration specialist may add or correct that information with an annotation, such as: "Information added from Copyright Office records" or "Information corrected from Copyright Office records." If the specialist is unable to identify the basic registration based on the information provided in the application, the specialist will communicate with the applicant.

1802.9(C) Examination of the Certificate of Registration for the Basic Registration

When the U.S. Copyright Office receives an application for a supplementary registration, the registration specialist will compare the information in the application with the information in the basic registration. If the Office has a digital copy of the certificate of registration, the specialist should be able to conduct his or her review without obtaining a physical copy of the certificate. If the supplementary registration corrects or amends a registration that is not available in digital form, the specialist will ask the applicant to submit a copy of the certificate via email. If the applicant is unable to do so, the Office will charge an additional fee to make a physical copy of the certificate. This fee is set forth in the Office's fee schedule under the heading "Provision of an additional certificate of registration." *See* 37 C.F.R. §§ 201.3(c)(12), 201.6(e)(5); Supplementary Registration, 81 Fed. Reg. 86,656, 86,659 (Dec. 1, 2016).

1802.9(D) Reexamination of the Deposit Copy

In some cases, it may be necessary to compare the information provided in the application for supplementary registration with the deposit copy(ies) which were submitted with the application for the basic registration, particularly if the supplementary registration changes the publication status of the work, adds additional authors to the registration record, or makes changes to the certificate of registration in the fields/spaces marked Author Created, Limitation of Copyright Claim, Nature of Authorship, or New Material Added to This Work.

If the U.S. Copyright Office does not have the deposit copy(ies) in its possession, or if the deposit copy(ies) cannot be found within the collections of the Library of Congress, the specialist will ask the applicant to submit a replacement deposit together with a written declaration confirming that the replacement is identical to the deposit copy(ies) that were submitted with the application for basic registration (including the copyright notice if the work was published in the United States before March 1, 1989).

1802.9(E) Multiple Corrections and Amplifications Submitted on the Same Application

If the applicant discovers errors in the basic registration and missing information that should have been included in the application for basic registration, the applicant may correct and amplify the information that appears in the basic registration with one application for supplementary registration.

If the applicant provides the corrected or amplified information in the wrong field/space of the application (such as using the amplification field to identify an error in

the basic registration), the registration specialist may issue a supplementary registration without communicating with the applicant. Likewise, the specialist may issue a supplementary registration, even if the specialist disagrees with the applicant as to whether the proposed change constitutes a "correction" or an "amplification." *See* Corrections and Amplifications of Copyright Registrations; Import Statements; and Recordation of Transfers and Other Documents, 43 Fed. Reg. 771, 771 (Jan. 4, 1978).

Example:

- Farida Hazra Khan wrote a travelogue titled *Get Your Groove On*. In 2013 Farida's agent registered the work, but she mistakenly identified the author as Hazra Khan. In the Rights and Permissions field the agent stated that requests to license the work should be sent to her address in Chicago. The agent subsequently moved to Philadelphia. The author's correct name and the agent's current address may be added to the registration record by providing the following information in the online application:
  - *Individual Author/First, Middle, Last Name:* Farida Khan.
  - *Rights & Permissions Information/Address, City, State, Postal Code:* 1800 JFK Boulevard, Philadelphia, PA 19101.
  - *Correction Explanation:* Author's first name given incorrectly.
  - *Amplification Explanation:* The address for rights and permissions has been changed to 1800 JFK Boulevard, Philadelphia, PA 19101.

1802.9(F) Certification Requirements

The registration specialist will review the application for supplementary registration to confirm that the applicant certified the application. The specialist will accept a certification that includes the name of the individual who certified the application, along with the name of that person's employer or the business or organization that the person represents, but a certification that merely recites the name of a business, company, partnership, or other legal entity is unacceptable.

When examining an application submitted on Form CA, the specialist will accept a handwritten, printed, or typed signature. The specialist will accept a photocopy of a handwritten signature, a stamped signature, or a signature provided on a preprinted label. Likewise, the specialist will accept a handwritten signature consisting solely of initials or a monogram if it is accompanied by the typed or printed name of the person who certified the application. If the application has not been signed, the specialist will ask the applicant to sign space G of Form CA and resubmit the application.

On occasion, applicants submit an application for supplementary registration without reviewing the information in the basic registration. In some cases, applicants review the records that are posted on the U.S. Copyright Office's online database, but those records

do not contain all the information that appears in the certificate of registration for a particular work. This may create a discrepancy between the registration record and the changes proposed in the application for supplementary registration.

As discussed in Sections 1802.8(A)(7) and 1802.8(B)(6), the individual who certifies the application must certify that he or she reviewed the certificate of registration for the basic registration. If it appears that this individual did not review the certificate before seeking a supplementary registration, the registration specialist may ask the applicant to resubmit the claim or may refuse registration.

See 37 C.F.R. § 202.6(e)(5); Supplementary Registration, 81 Fed. Reg. 86,656, 86,660 (Dec. 1, 2016).

1802.9(G) Adverse Claims / Actual or Prospective Litigation

If the U.S. Copyright Office is aware that there is actual or prospective litigation or an adverse claim involving a basic registration, the Office may decline to issue a supplementary registration until the applicant has confirmed in writing that the dispute has been resolved. For example, the Office may decline to issue a supplementary registration if it seems likely that the proposed change would be directly at issue in the litigation or the adverse claim. Similarly, the Office may decline to issue a supplementary registration if it seems likely that the proposed change, correction, or amplification may confuse or complicate the pending dispute.

Example:

- Michelle Peck registered an online video, naming herself as the author and copyright claimant. Mark Ferrell subsequently registered the same video, naming himself as the author and copyright claimant. Michelle submits an application for a supplementary registration stating that Mark's name should be added to her registration as a co-author and co-claimant. In a cover letter, Michelle explains that the parties are involved in a lawsuit concerning the ownership of the copyright. The authorship and ownership of the work appear to be directly at issue in the litigation, and if the Office added Mark's name to the registration record for Michelle's registration it could upset the balance between the competing registrations. As a result, the Office may decline to issue a supplementary registration until the dispute has been resolved.

If the Office is aware that there is litigation or an adverse claim involving a basic registration, the Office may issue a supplementary registration if the applicant intends to make a minor change to that registration. Similarly, the Office may issue a supplementary registration if the proposed change does not appear to be directly at issue in the dispute. Examples of minor changes or changes that are not likely to be at issue in a legal dispute include spelling mistakes, clerical errors, or changes to the title of the work.

Example:

- Olga Jensen registered a song titled "My Daddy Hated Those Crutches," naming herself as the author and copyright claimant. Olga submits an application for supplementary registration stating that the title of the work should be changed to "My Daddy Never Needed Those Crutches." In the cover letter Olga explains that she intends to sue a radio station for playing this song without permission. Although there is prospective litigation involving this song, the registration specialist may issue the supplementary registration because it appears that the title of the work has changed since the registration was made.

For a general discussion of adverse claims, see Section 1808.

1802.9(H) Refusal to Register

If the U.S. Copyright Office determines that the applicant is not authorized to file the application for supplementary registration or that the other requirements for a supplementary registration have not been met, the registration specialist will refuse registration. A refusal to register only some of the elements in an application for supplementary registration may be communicated in a telephone conversation, by email, or by letter. A decision to reject the entire application will be made by a written communication sent to the correspondent named in the application.

If the applicant disagrees with the Office's decision, the applicant may appeal that decision within the Office. This is an administrative procedure known as a request for reconsideration. To exercise this option, the applicant should follow the procedures set forth in 37 C.F.R. § 202.5 and Chapter 1700, Sections 1703 and 1708.

1802.9(I) Cancellation of a Basic Registration

If the changes proposed in the application for supplementary registration indicate that the work does not constitute copyrightable subject matter or that the other legal and formal requirements for obtaining a basic registration have not been met, the U.S. Copyright Office may refuse to issue a supplementary registration and may issue a proposal to cancel the basic registration.

Although the Office has the authority to cancel a basic registration if these requirements are not met, it may decline to cancel a basic registration if the application for supplementary registration was submitted by or on behalf of any party other than the claimant named in the basic registration.

For a discussion of the practices and procedures for cancelling a basic registration, see Section 1807.

1802.10 Certificate of Supplementary Registration

If the application to correct or amplify the registration record is approved, the U.S. Copyright Office will issue a supplementary registration to the author, claimant, or

exclusive licensee named in the application. But the Office will not notify any other party that a supplementary registration has been made, even if they are listed in the certificate of registration for the basic registration.

The Office will prepare a certificate of supplementary registration that contains pertinent information from the application. The certificate of supplementary registration will be mailed to the address that the applicant provided in the application. In addition, the Office will create a public record for the supplementary registration that identifies and describes the changes or revisions that have been made to the registration record.

The Office will assign a separate registration number to the supplementary registration. In most cases, this number will begin with the same prefix that appears in the basic registration.

1802.11 Cross-Referencing the Records for a Basic Registration and a Supplementary Registration

As discussed in Section 1802.1, the U.S. Copyright Office will place a note in the public record for the supplementary registration that cross-references the registration number and the year of registration for the basic registration. In addition, the Office will place a note in the public record for the basic registration that cross-references the registration number and the effective date of registration for the supplementary registration. 37 C.F.R. § 202.6(f)(1).

1802.12 Registration Decision Date and Effective Date of Supplementary Registration

The certificate of registration and the online public record for a supplementary registration contain the registration number and effective date for that registration. The certificate may also contain a registration decision date.

The "registration decision date" is the date that the U.S. Copyright Office completed its review of the application for supplementary registration and approved the claim. This date appears on certificates issued on or after August 19, 2019, but it does not appear in the online public record for such claims.

The effective date of registration ("EDR") is the day on which an acceptable application and filing fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for supplementary registration, have all been received in the Copyright Office." *See* 17 U.S.C. § 410(d).

As a general rule, if the applicant makes a reasonable, good faith effort to identify the basic registration that needs to be corrected or amplified and completes the relevant fields/spaces in the application, the effective date of registration will be the date that the Office received the application, provided that the applicant paid the applicable filing fee as of that date.

The Office cannot assign an effective date of registration if the changes proposed in the application are improper. *See* Sections 1802.5 through 1802.7(H). Likewise, the Office cannot assign an effective date of registration if the applicant submits an unacceptable

form of payment, such as uncollectible checks, unsigned checks, postdated checks, mutilated checks, illegible checks, fees made payable in a foreign currency, or the like. If the Office issues a certificate of supplementary registration and if the payment for the filing fee is returned for insufficient funds, or if the Office subsequently determines that the registration should not have been issued, the supplementary registration will be cancelled.

The effective date of registration for the basic registration and the effective date of registration for the supplementary registration will coexist with each other in the registration record. The Office maintains both records to allow courts to decide (i) whether the changes made by the supplementary registration are material, and (ii) whether those changes should or should not be deemed effective as of the date that the basic registration was made or the date that the supplementary registration was made.

1803 New Application for a New Basic Registration

This Section discusses the practices and procedures for correcting or amplifying the information in a basic registration by filing a new application for a new basic registration.

As a general rule, the U.S. Copyright Office will issue only one basic registration to the same claimant for the same work, and a supplementary registration is the preferred method for correcting or amplifying the information in a basic registration. *See* Applications for Registration of Claim to Copyright under Revised Copyright Act, 42 Fed. Reg. 48,944, 48,945 (Sept. 26, 1977).

As discussed in Section 1802.7, there are some cases where a supplementary registration cannot be used to correct or amplify the information in a basic registration. In those cases, a new application for a new basic registration may be used to correct an error or omission in a basic registration, instead of filing an application for a supplementary registration.

- *Claimant issues:* If the Office issued a basic registration that correctly identifies an individual as the author of the work, and names a different individual or legal entity as the copyright claimant, the author may file a separate application naming himself or herself as the copyright claimant for that work. *See* 37 C.F.R. § 202.3(b)(11)(ii).

- *Publication issues: Basic registration for an unpublished work that is subsequently published.* If the Office issued a basic registration for an unpublished work that was published sometime thereafter, the date of publication cannot be added with a supplementary registration. Instead, the applicant may provide the date of publication by submitting a new application for a new basic registration to register the first published edition of the work (even if the published version "is substantially the same as the unpublished version"). 17 U.S.C. § 408(e); 37 C.F.R. § 202.3(b)(11)(i).

- *Publication issues: Published work registered as an unpublished work.* If the applicant incorrectly stated that the work was unpublished, when in fact, the work was published, the date of publication may be added with a supplementary registration, but only if the deposit requirement for the published work and the unpublished work

are the same. If the deposit requirements are different, the applicant cannot correct this error with a supplementary registration. Instead, the applicant must submit a new application for a new basic registration, together with the proper filing fee and deposit copies for the published edition of the work.

- *Derivative work issues:* If a work has been changed or revised since it was registered, the changes or revisions cannot be added to the registration record with a supplementary registration. Likewise, the Office will not issue a supplementary registration for an entirely new work that has not been registered before (even if it is based on a previously registered work). In such cases, the applicant should submit a new application for a basic registration together with the proper filing fee and deposit copy(ies) for the derivative work.

- *Adverse claims:* If the applicant contends that the basic registration is invalid because it was filed by or on behalf of a party who was not authorized to register the copyright or names the wrong author(s) and/or claimant(s), the applicant should assert an adverse claim. Specifically, the applicant should file a competing application providing the name(s) of the party(ies) who should have been named as the correct author(s) and/or copyright claimant(s). *See* 37 C.F.R. § 202.3(b)(11)(iii). For information concerning this procedure, see Section 1808.

Ordinarily, the registration number and year of registration for the previous registration should be provided in an application for a new basic registration. Specifically, the applicant should provide this information in the Previous Registration field (in the case of an online application) or on space 5 (in the case of a paper application). But if an applicant intends to assert an adverse claim, the applicant should not provide the registration number for the other registration in the Previous Registration field/space. Instead, the applicant should provide a brief statement in the Note to Copyright Office field or in a cover letter indicating that the exact same work has been registered by another party. The registration specialist may add a note to the certificate of registration and the online public record indicating the presence of correspondence in the file or may add a note clarifying that the applicant has asserted an adverse claim.

Examples:

- Dennis Lockhart and Betty Patton co-wrote a ballad titled "Forever Apart." The Office issued a basic registration naming Dennis and Betty as the co-authors and Dennis as the sole copyright claimant. Dennis may add Betty's name to the Name of Claimant field with a supplementary registration. In the alternative, Betty may file a new application for a new basic registration naming herself as the copyright claimant for this work if the work is jointly owned.

- Eliza Kuralt registered a bird watching guide as an unpublished work. Two days later, Eliza began selling copies of her guide over the internet. The date of publication cannot be added to the basic registration with a supplementary registration. Eliza may add the date of publication to the registration record by submitting a new application for a new basic registration together with two copies of

the first published edition of her guide, even if the published version is substantially the same as the unpublished version.

- Matt Bernaski registered a computer program and mistakenly claimed that the work had not been published before. In fact, Matt distributed the program on a CD-ROM two days before he submitted his application to the Office. The date of publication cannot be added to the basic registration with a supplementary registration, because the deposit requirement for an unpublished program is not the same as the deposit requirement for a program published on a CD-ROM. However, Matt may file a new application for the published version of this work. To do so, Matt should submit a sample of the source code for his program together with one copy of the complete CD-ROM package. Matt should provide the registration number and year of registration for the previous registration in the Previous Registration field. In addition, he should provide the following statement in the New Material Included field (in the case of an online application) or on space 6(b) (in the case of a paper application): "This registration is made to correct a registration that was incorrectly made as unpublished." If appropriate, the Office may cancel the previous registration and issue a new basic registration for the work.

- Tracy Monaghan registered a genealogy that traces the history of the Monaghan family. Tracy subsequently updated and revised the genealogy after she discovered diaries, photographs, and other information about a distant member of the family. The updates and revisions cannot be added to the basic registration with a supplementary registration. However, Tracey may file a new application for a new basic registration if the updates and revisions contain a sufficient amount of copyrightable authorship to qualify as a derivative work.

A new application for a new basic registration may be filed at any time during the life of the copyright and the application may be submitted by any of the parties listed in Chapter 400, Section 402.

If the application for the new basic registration is approved, the Office will issue a certificate of registration and will create a public record for that registration. But the Office will not cancel the previous registration or the registration number that has been assigned to that registration, it will not change the information set forth in the previous registration or the public record for that registration, and it will not cross-reference those records with the records for the new basic registration. Instead, the previous registration and the new basic registration will coexist with each other in the public record.

1804 Referrals

If the U.S. Copyright Office discovers an error or omission in a registration record that was caused by its own action or mistake, the Office will correct the record on its own initiative. 37 C.F.R. § 202.6(a). This procedure is known as a "referral." If appropriate, the Office will issue a new certificate of registration containing the correct or missing information, update the online public record for the claim, and cancel any erroneous registrations that should not have been issued.

By contrast, if the applicant asks the Office to correct an error or omission that was caused by the applicant's action or mistake, the Office will not correct the record through the referral procedure – even if the registration specialist should have recognized that error or omission when he or she examined the claim. Instead, the author, the claimant, or one of the other parties listed in Section 1802.1 must submit an application for a supplementary registration, or a new basic registration (if appropriate), together with the requisite filing fee. *See* Supplementary Registration, 81 Fed. Reg. 86,656, 86,660-61 (Dec. 1, 2016).

There is a limited exception to this rule. If a social security number, driver's license number, credit card number, or bank account number appears in the certificate of registration or the online public record, the author, the claimant, or one of the other parties listed in Section 1802.1 should contact the Office using the form posted on the U.S. Copyright Office's website, instead of filing an application for supplementary registration. The Office will remove a social security number, driver's license number, credit card number, or bank account number from the certificate of registration and online public record upon written request. *See* 37 C.F.R. § 201.2(f). Likewise, if the Office discovers this type of information entirely on its own, it will remove that information from the registration record without communicating with the applicant. *See* Removal of Personally Identifiable Information From Registration Records, 82 Fed. Reg. 9004, 9005 (Feb. 2, 2017).

For information concerning the procedure for removing and replacing other types of personally identifiable information that may appear in the online public record, see Section 1805.

1805 Removal of Personally Identifiable Information

The U.S. Copyright Office may collect certain personally identifiable information (PII) as part of the copyright registration application, including home addresses, personal telephone and fax numbers, and personal email addresses. This information may be included in the online public record maintained by the Office.

In general, an author, claimant of record, or the authorized representative of the author or claimant of record may submit a request to remove or replace certain information in the online public record. This procedure only applies to PII that is requested by the Office as part of the registration process. For information about the Office's policy for handling extraneous PII, such as driver's license numbers, social security numbers, banking information, or credit card information, see Section 1804.

A properly submitted request will be reviewed by the Associate Register of Copyrights and Director of the Office of Public Information and Education to determine whether the request should be granted or denied. The Office's decision to grant or deny the request will be made in writing and will be sent to the address indicated in the request.

If the request is granted, the Office will remove the information from the online public record. Where substitute information is required and has been provided, the Office will add that information to the online public record. In addition, the Office will add a note indicating that the online record has been modified, and will issue a new certificate of registration that reflects the modified information. The Office will maintain a copy of the original registration record in its offline records.

If a request to remove PII is denied, the requesting party may request reconsideration using the procedure described in Section 1805.4.

1805.1 Form of Request

A request to remove PII must be made in writing. It should be clearly labeled as a "Request to Remove PII," and it must include the following information:

- The copyright registration number(s) associated with the record(s).
- The name of the author and/or claimant of record on whose behalf the request is made.
- A statement identifying the specific PII that is to be removed or replaced.

  NOTE: If the request involves the name of the author or claimant or the claimant's address, see Sections 1805.1(A) and 1805.1(B) for additional guidance.

- Verifiable substitute non-personally-identifiable information that should replace the PII to be removed, where applicable.
- A statement providing the reasons supporting the request.

  NOTE: If the request does not include verifiable substitute non-personally-identifiable information, see Section 1805.1(C) for additional guidance.

- The statement "I declare under penalty of perjury that the foregoing is true and correct."
- If the request is submitted by an authorized representative of the author or claimant of record, an additional statement that "I am authorized to make this request on behalf of [name of author or claimant of record]."
- A telephone number.
- An email address (if available).

- A physical mailing address to which the Office's response may be sent (if no email address is provided).

The request must be signed and dated by the author, claimant of record, or the duly authorized agent of the author or claimant of record. It must be accompanied by the filing fee described in Section 1805.2, and these items must be sent to the address specified in Section 1805.3.

See generally 37 C.F.R. § 201.2(e)(3).

1805.1(A) Name Change Requests

Requests to substitute the name of an author or claimant with that person's current legal name must be accompanied by a copy of the official documentation of the legal name change. 37 C.F.R. § 201.2(e)(2)(iii).

In no case will the U.S. Copyright Office remove the name of an author or claimant from the online public record. Similarly, the Office will not replace the name of an author or claimant with a pseudonym. *Id.*

Under the Copyright Act, works by anonymous and pseudonymous authors have different terms of copyright protection than works by authors whose real name is revealed in the Office's records. The term for works by anonymous and pseudonymous authors is 95 years following the year of first publication, or 120 years following the year of creation, whichever term expires first. The term for works by authors whose legal names are revealed in the Office's records is the life of the author plus 70 years. 17 U.S.C. §§ 302(a), 302(c). In addition, the Act specifically contemplates that if the real name of the author of an anonymous or pseudonymous work is identified in the Office's records during the term of protection, that work will receive a term of life plus 70 years. *Id.* § 302(c). If the Office removed the author or claimant's real name from the online public record, or replaced that name with a pseudonym, it would be contrary to the statutory scheme established by Congress and would likely create confusion regarding the term of copyright protection for the work. *See* Removal of Personally Identifiable Information From Registration Records, 81 Fed. Reg. 63,440, 63441-42 (Sept. 15, 2016).

1805.1(B) Claimant Address Change Requests

Requests to remove the address of a copyright claimant must be accompanied by a verifiable substitute address. 37 C.F.R. § 201.2(e)(2)(ii). Removing the claimant's address from the online public record would impede the public's ability to contact a copyright owner to obtain permission to use the work. Therefore, the U.S. Copyright Office will not remove this information unless a verifiable substitute address is provided. *Id.; see also* Removal of Personally Identifiable Information From Registration Records, 81 Fed. Reg. 63,440, 63441 (Sept. 15, 2016).

1805.1(C) Requests Submitted without Verifiable Substitute Information

In general, the U.S. Copyright Office will grant a request to remove PII when the requesting party provides verifiable, non-personally-identifiable substitute information, unless the Office determines that the need to maintain the original information in the

public record substantially outweighs the safety, privacy, or other concern stated in the request.

When a requesting party does not provide verifiable substitute information, the Office may grant the request only if the safety, privacy, or other stated concern substantially outweighs the need for the information to remain in the public record. In such cases, the requesting party must explain in detail why the presence of PII in the online public catalog presents a specific threat to the individual's personal safety or personal security, or presents other circumstances that support the request. 37 C.F.R. § 201.2(e)(3)(vi).

1805.2 Filing Fees

The requesting party must submit the appropriate filing fee together with the request to remove PII or a request for reconsideration. 37 C.F.R. § 201.2(e)(3). The current filing fees are set forth in the U.S. Copyright Office's fee schedule in the field marked "Removal of PII from Registration Records."

The requesting party must pay a separate fee for each registration record specified in the request. *See* 37 C.F.R. § 201.3(c)(19). In the case of a request for reconsideration the requesting party may pay a flat fee, regardless of the number of registration records involved.

Fees may be paid by check, money order, or bank draft payable to the U.S. Copyright Office, or they may be charged to a deposit account. For more information regarding acceptable forms of payment, see Chapter 1400, Section 1412.4.

1805.3 Address for Delivery

A requesting to remove PII may be delivered to the U.S. Copyright Office by mail. The request should be addressed on the outside of the envelope as follows:

> Associate Register of Copyrights and Director of the Office of Public Information and Education
> U.S. Copyright Office
> P.O. Box 70400
> Washington, DC 20024-0400

1805.4 Requests for Reconsideration

If the request for removal of PII is denied, the requesting party may submit a request reconsideration of that decision. However, the U.S. Copyright Office will consider only one request for reconsideration for each denial.

The request must be made in writing and it must specifically address the reasons for denying the request for removal. The request must be made within thirty days from the date set forth in the denial letter, and it should be clearly labeled as a "Request for Reconsideration of a Denial of a Request to Remove PII." The request must be accompanied by the non-refundable filing fee described in Section 1805.2, and these items must be sent to the address specified in Section 1805.3.

37 C.F.R. § 201.2(e)(7).

1805.5 No Expedited Review

Special handling is a procedure for expediting the examination of an application to register a claim to copyright or the recordation of a transfer or other document pertaining to copyright. The U.S. Copyright Office offers this service in certain circumstances where a copyright owner or other interested parties have a compelling reason for the expedited issuance of a certificate. However, the Office will not grant a request for special handling in connection with a request to remove PII or a reconsideration of such a request.

1806 Abandonment

A basic registration cannot be abandoned with a supplementary registration or an application for a new basic registration. However, the U.S. Copyright Office may record an affidavit, a declaration, a statement, or any other document purporting to abandon a copyright or any of the exclusive rights granted to copyright owners under Sections 106 or 106A of the Copyright Act. For a discussion of this procedure, see Chapter 2300, Section 2311.

1807 Cancellation

This Section discusses the practices and procedures for cancelling a registration issued by the U.S. Copyright Office.

1807.1 What Is Cancellation?

Cancellation is a procedure for invalidating a registration that has been issued by the U.S. Copyright Office.

The Register of Copyrights has the authority to cancel a registration if "the material deposited does not constitute copyrightable subject matter" or if "the claim is invalid for any other reason." 17 U.S.C. § 410(b); *see also* Sections 1807.4(B) through 1807.4(D). Likewise, the Register has the authority to cancel a registration if the registration was made in error or if the registration was issued in the wrong class or series. *See* Section 1807.4(A).

"The Office views cancellation of invalid claims as a necessary measure to ensure the integrity of the copyright registration system and to ensure consistent application of its regulations and practices." Cancellation of Completed Registrations, 50 Fed. Reg. 40,833, 40,834 (Oct. 7, 1985). "Without cancellation procedures, a copyright registration could be given *prima facie* effect in federal court where the Copyright Office knew the registration to be invalid under its regulations or practices. This would place an unfair burden on the public and on defendants in copyright litigation to overcome the strong presumption of validity that the courts have generally accorded copyright registrations." *Id.*

1807.2 What Types of Records May Be Cancelled by the U.S. Copyright Office?

The Office may cancel the following types of records:

- A basic registration issued under Sections 408(a) or 408(c)(1) of the Copyright Act.
- A supplementary registration issued under Section 408(d) of the Copyright Act.
- A renewal registration issued under Section 304 of the Copyright Act or under title 17 of the United States Code as it existed before January 1, 1978.
- A registration for a mask work or vessel design issued under Sections 908 or 1313 of the Copyright Act.

The Office will not cancel the following types of records:

- A basic registration or renewal registration that has expired, such as a registration issued on or before December 31, 1977 that covered the first twenty-eight years of the copyright term.
- A preregistration issued under Section 408(d) of the Copyright Act.
- Any other type of record maintained by the Office, such as deposit copies or recorded documents.

1807.3 Situations Where the U.S. Copyright Office Will Cancel a Registration

The Office will cancel a registration only in the following situations:

- The Office has determined that the work was registered in the wrong class. *See* Section 1807.4(A).
- A check received in payment for the filing fee was returned to the Office for insufficient funds. *See* Section 1807.4(B).
- The Office has determined that the registration should not have been issued because the work does not constitute copyrightable subject matter or fails to satisfy the other legal and formal requirements for obtaining a copyright registration. *See* Section 1807.4(C).
- The Office has determined that the application, filing fee, and/or the deposit copy(ies) do not satisfy the requirements of the Copyright Act and/or the Office's regulations and the Office is unable to correct the defect. *See* Section 1807.4(D).

See 37 C.F.R. § 201.7(b)-(c).

1807.4 Procedure for Cancelling a Registration

The decision to cancel a registration under 37 C.F.R. § 201.7(c)(1) or (c)(4) will be made by the Associate Register and Director of Registration Policy & Practice. The decision to cancel a registration under 37 C.F.R. § 201.7(c)(2) or (c)(3) will be made by an appropriate member of the Office's staff.

The Office will amend the public record to reflect the fact that the registration has been cancelled and will specify the reason for the cancellation. The Office will not return the deposit copy(ies) or refund the filing fee for the registration.

See generally Cancellation of Completed Registrations, 50 Fed. Reg. 33,065, 33,065-67 (Aug. 16, 1985).

1807.4(A) Registrations Issued in the Wrong Class or Series

If the U.S. Copyright Office determines that the work was registered in the wrong class or series, it may cancel the initial registration and issue a new registration in the correct class. *See* 37 C.F.R. § 201.7(c)(3). This procedure is known as a "cancellation and substitution" or "can-sub." In most cases the Office will conduct this procedure on its own initiative and without providing advance notice to the claimant or the correspondent named in the registration.

When selecting the appropriate class for the new registration, the Office will consider the predominant type of authorship that appears in the work. The applicant's preferences will not be considered.

When the Office issues a cancellation and substitution, it will cancel the initial registration and add a note to the public record to reflect this change. Then it will create a public record for the substitute registration and send a new certificate of registration to the mailing address that the applicant provided in the application for the initial registration.

Both the certificate of registration and the online public record for the substitute registration will contain the registration number and effective date for that registration. The certificate may also contain a registration decision date. The "registration decision date" is the date that the Office cancelled the initial registration and issued the substitute registration. This date appears on certificates issued on or after August 19, 2019, but it does not appear in the online public record for such claims.

The "effective date of registration" for the substitute registration will be the same as the effective date of registration for the initial registration.

Examples:

- On April 10, 2005 Pick Up Sticks LLC submitted an application to register an album and asserted a claim in "music, lyrics, and sound recording." The Office registered the claim in class SR. Pick Up Sticks subsequently filed an application for supplementary registration stating that the company owns the music and lyrics embodied in this album, but does not own the copyright in the sound recording. Pick Up Sticks should have registered this claim in class PA, rather than class SR. The Office will cancel the initial registration and will issue a new registration in class PA with an effective date of registration of April 10, 2005.

- Tally Ho, Inc. submitted an application to register its website as a literary work and stated that the site has been published in the United States. The Office issued a registration with an effective date of registration of August 20, 2009 and numbered the registration in series TX. On September 1, 2010 Tally Ho filed an application for supplementary registration stating that the website is, in fact, unpublished; therefore, the registration should have been numbered in series TXu. The Office will not cancel the basic registration, but instead, will issue a new registration in the correct series with an effective date of registration of September 1, 2010.

1807.4(B) Registrations Cancelled for Failure to Pay the Filing Fee

The U.S. Copyright Office will cancel a registration if a check received in payment of the filing fee is returned to the Office for insufficient funds or is otherwise uncollectible. 37 C.F.R. § 201.7(c)(2).

The applicant will be notified in writing that the fee could not be collected and that the registration has been cancelled.

If the applicant would like to resubmit the work for registration, the applicant should file a new application, together with new deposit copy(ies) and the correct filing fee. In appropriate cases, the Office reserves the right to require a certified check or money order, and in all cases, the effective date of registration will be based on the date that the new submission is received by the Office.

NOTE: This practice supersedes the Policy Decision Regarding Immediate Cancellation of Registration in Uncollectible Check Cases set forth in 46 Fed. Reg. 30,221, 30,221 (June 5, 1981).

See generally Cancellation of Completed Registrations, 50 Fed. Reg. 33,065, 33,066-67 (Aug. 16, 1985).

1807.4(C) Registrations Cancelled for Lack of Copyrightable Authorship

If the U.S. Copyright Office issues a registration and subsequently determines that the work appears to be uncopyrightable, the Office will issue a notice of intent to cancel the registration. The notice will be issued in writing and it will specify the reason(s) for cancelling the registration.

The Office will send the notice to the correspondent named in the registration record (including any supplementary registrations that have been cross-referenced with the basic registration). In addition, the Office will send a copy of the notice to the copyright claimant(s) at the address specified in the registration record. The Office will not search its records to determine if the claimant has transferred the copyright to another party. Likewise, the Office will not contact authors, claimants, or owners of exclusive rights who are not listed in the certificate of registration, even if the Office has reason to believe that they may be adversely affected by the Office's decision.

The correspondent will be given thirty days from the date set forth in the notice to show cause in writing why the registration should not be cancelled. *See* 37 C.F.R. § 201.7(c)(4). If the deadline falls on a weekend, a holiday, or any other nonbusiness day within Washington, DC or the federal government, the deadline will be extended until the next federal work day. 17 U.S.C. § 703. If a response was sent in a timely manner, but arrived in the Office after the relevant deadline, the Office may apply the regulation on postal disruptions to determine the timeliness of the response. *See* 37 C.F.R. § 201.8(b).

If the correspondent fails to respond within thirty days, or if, after considering the correspondent's written response, the Office determines that the work is not copyrightable, the Office will cancel the registration. *See* 37 C.F.R. § 201.7(c)(1).

1807.4(D) Registrations Cancelled for Substantive Defects in the Registration

If the U.S. Copyright Office registers a work that appears to be copyrightable but subsequently determines (i) that the statutory requirements for registration were not met, (ii) that essential information was not provided in the application, (iii) that the essential information provided in the application appears to be questionable, or (iv) that the correct deposit copy(ies) were not submitted, the Office may communicate with the correspondent and/or the copyright claimant.

In such cases, the Office will send the communication to the correspondent named in the registration record (including any supplementary registrations that have been cross-referenced with the basic registration). In addition, the Office will send a copy of the communication to the copyright claimant named in the basic registration at the address specified in the registration record. The Office will not search its records to determine if the claimant has transferred the copyright to another party and the Office will not contact authors, claimants, or owners of exclusive rights who are not listed in the certificate of registration, even if the Office has reason to believe that they may be adversely affected by the Office's decision.

The Office will describe the substantive defect in the registration and will ask the correspondent to submit the required information, to submit the correct deposit copy(ies), or to clarify the information provided in the application. *See* 37 C.F.R. § 201.7(c)(4). In addition, the Office will advise the correspondent that the registration may be cancelled if the defect is not resolved.

The correspondent will be given thirty days from the date set forth in the communication to resolve the defect in the registration. If the deadline falls on a weekend, a holiday, or any other nonbusiness day within Washington, DC or the federal government, the deadline will be extended until the next federal work day. 17 U.S.C. § 703. If a written response was sent in a timely manner, but arrived in the Office after the relevant deadline, the Office may apply the regulation on postal disruptions to determine the timeliness of the response. *See* 37 C.F.R. § 201.8(b).

If the correspondent's written response resolves the defect, the Office will correct the registration record and may issue a new certificate of registration with a new registration decision date and effective date of registration, if appropriate. If the correspondent fails to respond within thirty days, or if, after considering the written

response, the Office determines that the defect has not been resolved, the Office will cancel the registration. *See* 37 C.F.R. § 201.7(c)(4).

Examples of substantive defects that may prompt the Office to cancel a registration under § 201.7(c)(4) of the regulations include:

- The work is not eligible for copyright protection in the United States under Section 104 of the Copyright Act.
- The work was registered based on a claim in material added to a preexisting work, but the application as a whole indicates that the new material is not copyrightable.
- The author of the work is neither anonymous nor pseudonymous, but the author cannot be identified because there is a substantial variance between the information provided in the application and/or the deposit copy(ies).
- The application does not identify the copyright claimant, or it appears from the transfer statement that the claimant named in the application does not have the right to claim copyright.
- The copyright claimant cannot be adequately identified because there is a substantial variance between the information provided in the application or the information is unclear.
- The work was published in the United States before March 1, 1989, and none of the exceptions set forth in Section 405(a) of the Copyright Act apply.
- The work was published in the United States before January 1, 1978, but the deposit copies do not contain a copyright notice or the notice is defective.
- The Office issued a renewal registration for a work registered or first published in the United States before December 31, 1963, but the renewal application was submitted before or after the statutory time limit.
- The Office issued a registration for a group of related works, but subsequently determines that the applicable requirements for that option have not been met.
- The application and the deposit copy(ies) do not match each other, and the copy(ies) described in the application cannot be located elsewhere in the Office or the Library of Congress.
- The work was published in violation of the manufacturing provisions of the copyright law as it existed before July 1, 1986.

See 37 C.F.R. § 201.7(c)(4)(i)-(xi).

1807.4(E) Voluntary Cancellation

As a general rule, the decision to cancel a registration will be made solely by the U.S. Copyright Office acting on its own initiative. However, the Office may consider a request to cancel a registration, provided that the request is made by the copyright claimant named in the registration record or the claimant's duly authorized agent and provided that the following requirements have been met:

- *Content of the request:* The request should identify the registration that will be surrendered for cancellation, including the author(s), title(s), claimant(s), and registration number. The request should provide the full name of the individual who signed the request and should state that that party is the claimant named in the certificate of registration or the claimant's duly authorized agent. The request should be legible and capable of being imaged or otherwise reproduced by the technology employed by the Office at the time of its submission.

- *Justification for the request:* The request should demonstrate that the registration should be cancelled because the work was registered in the wrong class, because the filing fee has not been paid, because the work is uncopyrightable, or because there is a substantive defect in the registration.

- *Signature:* The request should be signed by the claimant named in the certificate of registration or the claimant's duly authorized agent. The Office will accept a printed or typed signature. Likewise, the Office will accept a handwritten signature or a photocopy of a handwritten signature if it is accompanied by the typed or printed name of the person who signed the request.

- *Payment:* The request should be accompanied by the correct filing fee. *See* 37 C.F.R. § 201.3(d)(11). The current fee is set forth in the Office's fee schedule under the heading "Voluntary cancellation of registration." The fee may be paid with a check or deposit account. For additional information concerning these payment methods, see Chapter 1400, Section 1412.4 and 1412.5.

The request should be sent to the following address:

U.S. Copyright Office
RAC Division
P.O. Box 71380
Washington, DC 20024-1380

If the Office determines that the registration is invalid under 37 C.F.R. § 201.7(c), it will cancel the registration and notify the claimant in writing.

The Office does not invite, and generally will not entertain, requests to cancel a registration by any party other than the claimant named in the certificate of registration. If the Office receives a request to cancel a registration from a third party, the Office will notify the claimant that the request was received and will provide the claimant with a copy of that request. However, the Office will not take any other action unless the claimant subsequently submits a request for voluntary cancellation.

Examples:

- John Falcone registered a song titled "Let Us Prey." The Office subsequently receives a letter from Robin Goodwin asserting that the registration should be cancelled, because John does not own the copyright in this work. The Office will not cancel the registration, although it will notify John that the request was received and will provide him with a copy of the letter. If Robin believes that she is the rightful owner of the copyright, she may submit a separate application to register the song in her own name.

- The Rational Group registered a work that contains a blank form combined with a substantial amount of text. The Office receives a letter from Entropy LLC stating that the registration should be cancelled, because blank forms are not copyrightable (citing § 202.1(c) of the regulations).The Office will not cancel the registration, although it will notify the Rational Group that the request was received and will provide the claimant with a copy of the letter.

The Office will not reinstate a registration after it has been voluntarily cancelled. If the claimant would like to resubmit the claim, the claimant must submit a new application, new deposit copy(ies), and the correct filing fee. The effective date of registration will be based on the date that the new submission is received by the Office.

1807.4(F) Court Ordered Cancellation

Occasionally, the plaintiff(s) and/or defendant(s) in a copyright infringement lawsuit ask the court to issue an order directing a party to cancel his or her registration. When requesting this type of relief, litigants should ask the court to issue the order to the copyright claimant named in the certificate of registration or the claimant's duly authorized agent. In addition, litigants should ask the court to direct that party to cancel the registration using the procedure described in Section 1807.4(E) above. *See Brownstein v. Lindsay*, 742 F.3d 55, 75 (3d Cir. 2014) ("Courts have no authority to cancel copyright registrations because that authority resides exclusively with the Copyright Office.").

1807.5 [Reserved]

1808 Adverse Claims

This Section discusses the practices and procedures for asserting an adverse claim to copyright. An adverse claim is a situation where:

- The U.S. Copyright Office receives two or more applications (either consecutively or simultaneously) to register the exact same work, where each application was certified and submitted by a different applicant, and each application contains conflicting statements regarding the authorship and/or ownership of the work;

or

- One party submits an application and asserts that another party's claim to copyright is unauthorized or invalid.

The Office does not conduct interference or adversarial proceedings. Likewise, the Office does not adjudicate factual or legal disputes involving claims to copyright. If there is a dispute between two or more parties, it is the responsibility of each party to pursue their claims in an appropriate court.

If a party asserts that another party registered the work without authorization or that a previous registration is invalid for any reason, the Office may suggest that the party register the work in his or her own name by submitting a separate application, deposit copy(ies), and filing fee. Likewise, an adverse claim may be appropriate if the party does not have the authority to correct or amend the information in the basic registration with a supplementary registration. *See* Section 1802.1.

When the Office examines an application, it does not search its records to determine whether the work has been registered before. If an applicant intends to assert an adverse claim, the applicant should provide a brief statement in the Note to Copyright Office field or in a cover letter indicating that the exact same work has been registered by another party. However, the applicant should not provide the registration number for the other registration in the Previous Registration field/space. The registration specialist may add a note to the certificate of registration and the public record indicating the presence of correspondence in the file or may add a note clarifying that the applicant has asserted an adverse claim.

If the application appears to be in order, the Office will register the adverse claim. The Office will notify the other party (or that party's duly authorized agent) that the Office received an adverse claim and that a separate registration has been issued to that party.

If the Office discovers that two or more parties are seeking to register the exact same work, the Office will examine each application to determine if the statutory and regulatory requirements have been met. The sequence that each application is received in the Office is irrelevant to this determination, and the Office will not conduct opposition or interference proceedings to determine whether one application should be given priority over the other. *See* Cancellation of Completed Registrations, 50 Fed. Reg. 40,833, 40,835 (Oct. 7, 1985) (noting the Office does not resolve factual disputes or conduct adversarial proceedings). The Office will inform each party of the other party's claim. In addition, the Office may ask each party to notify the registration specialist if that party does not wish to proceed with his or her application. If so, that party should submit a request to withdraw his or her application using the procedure described in Chapter 200, Section 208. If a party does not respond to the Office's inquiry, the Office will proceed with the examination of that party's application.

In most cases, the Office will issue a separate registration to each party and will create a separate public record for each registration. The Office will not cancel the other registration or the registration number that has been assigned to that registration, it will not change the information set forth in the other registration or the public record for

that registration, and it will not cross-reference those records with the records for the new registration. Instead, each registration will coexist with each other in the public record.

Examples:

- BrandImage LLC created a logo for the Shenanigans Amusement Park. Shenanigans registered the logo, naming itself as the sole author and copyright claimant and stating that the logo was created for the amusement park as a work made for hire. BrandImage claims that the registration is invalid, because a logo is not one of the types of works that can be created as a work made for hire and because BrandImage never assigned the copyright in this work to Shenanigans. The information in the basic registration cannot be corrected with a supplementary registration. However, BrandImage may file a new application for a new basic registration naming itself as the sole author and the sole copyright claimant. If BrandImage submits a new application, the Office may notify Shenanigans that the filing has been made, provided that the Office is aware that BrandImage is seeking to register the same work.

- Mark O'Meara registered a podcast, naming himself as the copyright claimant. Buzz Allston subsequently sends a letter to the Office stating that the registration is invalid, because Buzz (not Mark) owns the copyright in this work. The Office will refuse to cancel or amend Mark's registration and will explain that the Office does not resolve factual disputes or conduct adversarial proceedings. Instead, the Office will suggest that Buzz submit an application to register the podcast in his own name. If Buzz's application is approved, the Office will notify Mark that a separate registration has been made.

- The registration specialist receives two applications to register the same airbrush drawing. One application names ABC Graphics as the author and copyright claimant and states that the company's employees created the drawing as a work made for hire. The other application names an individual as the author and copyright claimant and states that the drawing is not a work made for hire. The specialist will communicate with each applicant. Both parties assert that they are the correct author/claimant and provide a plausible explanation for their respective positions. The registration specialist will register both claims.

- Robb Bay submits an application to register a song, naming himself as the author and copyright claimant. In the Note to Copyright Office field, the applicant states that Charles Stabillac registered the song without authorization and that the parties are engaged in a legal dispute concerning the ownership of this work. If Robb's application satisfies the registration requirements, the specialist will register

the claim. The specialist will notify Charles that a new basic registration has been issued to Robb, and the specialist will notify Robb that Charles has been made aware of this development.

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Publication

1901 What This Chapter Covers

This Chapter provides a definition and discussion of publication for works created or first published on or after January 1, 1978.

NOTE: This Chapter does not discuss works first published before January 1, 1978. For information concerning these types of works, see Chapter 2100. Additionally, this Chapter does not discuss publication issues that are unique to architectural works or online works. For publication issues relating to these types of works, see Chapter 900, Section 926.3 and Chapter 1000, Section 1008.3.

For a discussion of the specific practices and procedures for registering a claim to copyright in a published or unpublished work, see the following Chapters:

- For a general overview of the registration process, see Chapter 200.
- For guidance in determining who may file an application and who may be named as the copyright claimant, see Chapter 400.
- For a general overview of the applications that may be used to register a copyright claim, see Chapter 1400.
- For information on how to complete an application, see Chapter 600. For guidance in providing a date of first publication and identifying the nation of first publication in the application, see Chapter 600, Section 612.
- For information concerning the notice requirements for U.S. works published in copies or phonorecords between January 1, 1978 and February 28, 1989, see Chapter 2200.

1902 What Constitutes Publication?

Section 101 of the Copyright Act defines publication as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending." 17 U.S.C. § 101. It states that "offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication." *Id*. It also explains that "[a] public performance or display of a work does not of itself constitute publication." *Id.*

The legislative history explains that "a work is 'published' if one or more copies or phonorecords embodying [the work] are distributed to the public" with "no explicit or implicit restrictions with respect to [the] disclosure of [the] contents [of that work]." H.R. REP. NO. 94-1476, at 138 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5754. It also explains that publication occurs "when copies or phonorecords are offered to a group of

wholesalers, broadcasters, motion picture theatres, etc." for the purpose of "further distribution, public performance, or public display." *Id.*

Although it is not expressly stated in the statutory definition, the legislative history indicates that publication occurs only (i) when copies or phonorecords are distributed by or with the authority of the copyright owner, or (ii) when an offer to distribute copies or phonorecords to a group of persons for further distribution, public performance, or public display is made by or with the authority of the copyright owner. For a definition and discussion of the terms "copies" and "phonorecords," see Chapter 300, Section 305.

Offering to distribute copies or phonorecords to a group of persons for further distribution, public performance, or public display without authorization does not constitute publication. Likewise, an unauthorized distribution of copies or phonorecords does not constitute publication. Instead it generally constitutes copyright infringement. *See* H.R. REP. NO. 94-1476, at 62 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5675-76 (explaining that Section 106(3) of the Copyright Act gives copyright owners "the right to control the first public distribution of an authorized copy or phonorecord of [the] work, whether by sale, gift, loan, or some rental or lease arrangement").

1903 The Significance of Publication

Publication is an important concept for works created or first published after January 1, 1978 for a number of reasons:

- If the work has been published, the date and nation of first publication should be provided in the application to register that work with the U.S. Copyright Office. *See* 17 U.S.C. § 409(8). For guidance in completing this portion of the application, see Chapter 600, Sections 612 and 617.

- The deposit requirements for registering a published work differ from the requirements for registering an unpublished work. For information concerning these requirements, see Chapter 1500, Sections 1503 and 1505.

- Works first published in the United States may be subject to mandatory deposit with the Library of Congress. For information concerning the mandatory deposit requirements, see Chapter 1500, Section 1511.

- The year of publication may determine the length of the copyright term for a work made for hire. For a definition and discussion of works made for hire, see Chapter 500, Section 506.

- The year of publication may determine the length of the copyright term for an anonymous work or a pseudonymous work, unless the author's identity is revealed in records maintained by the U.S. Copyright Office. For a definition and discussion of anonymous works and pseudonymous works, see Chapter 600, Sections 615.1 and 615.2.

- The year of publication may determine the length of the copyright term if the work was created before January 1, 1978, and was first published between January 1, 1978 and January 1, 2003. *See* 17 U.S.C. § 303(a).

- A certificate of registration constitutes *prima facie* evidence of the validity of the copyright and the facts stated in the certificate of registration, provided that the work is registered before or within five years after the work is first published. 17 U.S.C. § 410(c).

- The copyright owner may be entitled to claim statutory damages and attorney's fees in an infringement lawsuit, provided that the work was registered before the infringement began or within three months after the first publication of the work. *See* 17 U.S.C. §§ 412, 504(c), 505.

- Many of the exceptions and limitations set forth in Sections 107 through 122 of the Copyright Act may be impacted depending on whether the work is published or unpublished. *See, e.g.,* 17 U.S.C. §§ 107, 108, 115, 118, and 121.

- As a general rule, U.S. works first published in the United States before March 1, 1989 must be published with a valid copyright notice. Failing to include a valid notice on a U.S. work published during this period may invalidate the copyright in that work. For a detailed discussion of these notice requirements, see Chapter 2200, Sections 2203 through 2207.

1904 General Policies Concerning Publication

This Section discusses the U.S. Copyright Office's general practices and procedures for examining published and unpublished works.

1904.1 Applicant Makes the Determination

The applicant—not the U.S. Copyright Office—must determine whether a work is published or unpublished.

The U.S. Copyright Act is the exclusive source of copyright protection in the United States, and all applicants — both foreign and domestic — must demonstrate that a work satisfies the requirements of U.S. copyright law to register a work with the Office. Determining whether a work is published or unpublished should be based on U.S. copyright law under Title 17, and it should be based on the facts that exist at the time the application is filed with the Office, even if the work was created in a foreign country, first published in a foreign country, or created by a citizen, domiciliary, or habitual resident of a foreign country.

Upon request, the Office will provide the applicant with general information about the provisions of the Copyright Act, including the statutory definition of publication, and will explain the relevant practices and procedures for registering a published or unpublished work with the Office. The Office will not give specific legal advice on whether a particular work has or has not been published. However, if an assertion is clearly contrary to facts known by the Office, a claim may be questioned, or in certain situations, refused.

1904.2 Facts Stated in the Application

As a general rule, the U.S. Copyright Office will not conduct its own factual investigation to determine whether a work is published or unpublished or to confirm the truth of the statements made in the application concerning publication.

Ordinarily, the Office will accept the facts stated in the application, unless they are implausible or conflict with information provided elsewhere in the registration materials, the Office's records, or other sources of information that are known by the Office.

1904.3 Claim in a Published or Unpublished Work Contradicted by Information Provided Elsewhere, such as in the Registration Materials

As a general rule, if the applicant affirmatively states that the work is unpublished or fails to provide a date of first publication in the application, the Office will register the work as an unpublished work, unless the information provided in the deposit copy or in other sources of information known by the Office clearly indicate that the work has been published.

Likewise, if the applicant affirmatively states that the work has been published and provides a date of first publication in the application, the Office generally will register the work as a published work, unless information provided in the deposit copies or in other sources of information known by the Office clearly suggest that the work is unpublished.

If the deposit copy(ies) or other information known by the Office clearly suggest that the work is published or unpublished and if it appears that the applicant provided or failed to provide a date of publication by mistake, the registration specialist may communicate with the applicant. For examples of situations that may prompt a communication concerning publication, see Chapter 600, Sections 612.7(A) and 612.7(B).

1905 Distribution of Copies or Phonorecords of a Work

As discussed in Section 1902, publication occurs when one or more copies or phonorecords of a work are distributed to the public by or with the authority of the copyright owner. These issues are discussed in Sections 1905.1 through 1905.3 below.

1905.1 Distribution to the Public

Section 101 of the Copyright Act states a work is published when copies or phonorecords of that work are distributed "to the public." 17 U.S.C. § 101. Specifically, publication occurs when one or more copies or phonorecords are distributed to a member of the public who is not subject to any express or implied restrictions concerning the disclosure of the content of that work. If a work exists only in one copy – such as a painting embodied solely in a canvas – the work may be considered published if that copy is distributed to the public with the authorization of the copyright owner. H.R. REP. NO. 94-1476, at 61, 138 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5754, 5675 (stating that "[t]he reference to 'copies and phonorecords,' although in the plural, are intended . . . to include the singular.").

Examples:

- Selling copies of a textbook to a local school board constitutes publication of that work.
- Selling a product with copyrightable artwork on the packaging and label constitutes publication of that artwork.
- Mailing copies of a catalog to potential customers constitutes publication of that catalog and any unpublished works revealed in that work.
- Distributing copies of a leaflet on a street corner constitutes publication of that work.
- Transmitting a copy of an illustration to a client constitutes publication of that work, if the copyright owner authorized the client to use that image and did not impose any restrictions on the client's ability to disclose that work to the public.
- Giving away copies of a photograph without further restriction constitutes publication of that work.
- Lending, renting, or leasing copies of a work constitutes publication of that work.
- Distributing copies of a motion picture through a retail service constitutes publication of that work.
- Selling the original copy of a painting at an auction.

If an actual distribution has not occurred, the work is considered unpublished. Likewise, a work is considered unpublished if the copies or phonorecords were not distributed to a member of the public, but instead were much more restricted, including an exchange between family members or social acquaintances.

The courts created the doctrine of "limited publication" to distinguish certain distributions from a "general publication" and to avoid the divestive consequences of publication without notice when it was clear the author (or copyright proprietor) restricted both the purpose and the recipients of the distribution. Generally, a limited publication is the distribution of copies of a work to a definitely selected group with a limited purpose and without the right of diffusion, reproduction, distribution, or sale. A limited publication is not considered a distribution to the public and, therefore, is not publication. *See White v. Kimmell*, 193 F.2d 744, 746-47 (9th Cir. 1952) (explaining that a publication is limited if it "communicates the contents of a [work] to a definitely selected group and for a limited purpose, and without the right of diffusion, reproduction, distribution or sale … [and is] restricted both as to persons and purpose.").

Examples:

- Sending copies of a manuscript to prospective publishers in an effort to secure a book contract does not constitute publication (regardless of whether the copies are returned).

- Distributing copies of a research paper that are intended solely for the use of the participants at a seminar generally does not constitute publication if there was no right of further diffusion, reproduction, distribution, or sale by the participants.

- Distributing copies of a speech that are intended solely to assist the press in covering that event has been deemed a limited publication under the Copyright Act of 1909 (*i.e.,* not a publication). However, under the current statutory definition, offering to distribute copies to different news outlets for the purpose of further distribution, public performance, or public display could constitute publication.

Moreover, a work may be considered unpublished if, in addition to communicating a work to a definitely selected group and for a limited purpose, the copyright owner imposed any express or implied restrictions concerning the disclosure of the content of that work, such as placing a statement on the copies or phonorecords indicating that distribution of the work is limited or restricted in some way, such as "Confidential—these specifications are for internal office use only."

1905.2 The Means of Distribution

As discussed in Section 1902, publication occurs when copies or phonorecords are distributed to the public by means of a sale or other transfer of ownership, such as giving copies away. Likewise, publication occurs when copies or phonorecords are distributed by means of rental, lease, or lending (*i.e.*, where the copies or phonorecords change hands, but there is no change in the ownership of those copies or phonorecords).

Distributing copies or phonorecords by any other means does not constitute publication. In particular, the legislative history states that "any form or dissemination in which a material object does not change hands... is not a publication no matter how many people are exposed to the work." H.R. REP. NO. 94-1476, at 138 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5754.

1905.3 Deposit for Registration in the U.S. Copyright Office

Depositing unpublished copies or phonorecords with the U.S. Copyright Office for the purpose of registering a claim to copyright does not constitute publication.

1906 Offering to Distribute Copies or Phonorecords of a Work

As discussed in Section 1902, offering to distribute copies or phonorecords to a group of persons for the purpose of further distribution, public performance, or public display constitutes publication, provided that the offer is made by or with the authority of the copyright owner. These issues are discussed in Sections 1906.1 through 1906.3 below.

1906.1 Offering to Distribute Copies or Phonorecords to a Group of Persons

Section 101 of the Copyright Act states that "offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication." 17 U.S.C. § 101. Specifically, publication occurs when one or more copies or phonorecords are offered to wholesalers, retailers, broadcasters, aggregators, or similar intermediaries for the purpose of distributing the work to the public or for the purpose of publicly performing or publicly displaying the work. If a work exists only in one copy, the work may be considered published if that copy is offered to a group of persons with the authorization of the copyright owner. H.R. REP. NO. 94-1476, at 61, 138 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5754, 5675.

Examples:

- Publication occurs when a motion picture is offered to a group of movie theaters or television networks for the purpose of exhibiting or broadcasting that work.
- Publication occurs when copies of a greeting card are offered to retailers for the purpose of selling those copies to the public.
- Publication occurs when copies of a photograph are offered to clients, including but not limited to newspapers, magazines, agencies, wire services, and websites with a license permitting further distribution or display of the photograph.
- Publication occurs when phonorecords are offered radio stations for the purpose of broadcasting the songs and sound recordings embodied therein.
- Publication occurs when copies of a song are offered to a group of band directors for the purpose of performing that work at athletic events.
- Publication occurs when fabric, carpet, or wallpaper samples are offered to sales representatives for the purpose of selling those works to wholesalers and retailers.
- Publication occurs when the original copy of a statue is offered to a group of museums for the purpose of publicly displaying the work.

Offering a work directly to the public constitutes publication where the offeror has completed all the steps necessary for distribution to the public, such that the only further action required is an offeree's action in obtaining a copy or phonorecord. By contrast, offering a work directly to the public does not constitute publication where distribution of copies or phonorecords requires additional action by the offeror.

Examples:

- If an author places copies of their new short story in a library book exchange box at the end of their driveway this constitutes publication of that short story.

- An online advertisement that offers to sell an ebook to the public, but does not make the ebook available for download, does not constitute publication of that ebook.

- An offer by the copyright owner on a public website to purchase and download an app that they developed and made accessible on that website constitutes publication of that app.

- An advertisement containing pictures of a jewelry design constitutes publication of that work, but an advertisement that merely contains a textual description of that design does not.

1906.2 Offering to Distribute Copies or Phonorecords for the Purpose of Further Distribution, Public Performance, or Public Display

Section 101 of the Copyright Act states that "offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication." 17 U.S.C. § 101. In other words, the copies or phonorecords must be offered to a group of persons for one or more of the purposes listed in the statute. Publication does not occur when copies or phonorecords are offered for any other purpose, such as offering them to a group of persons for private use, private performance, or private display.

1906.3 The Copies or Phonorecords Must Be in Existence

The statutory definition indicates that offering to distribute copies or phonorecords constitutes publication, provided that the copies or phonorecords exist when the offer is made. Offering to distribute copies or phonorecords before they exist or before they are ready for further distribution, public performance, or public display does not constitute publication.

Examples:

- Offering a new line of toys to a group of retailers constitutes publication, provided that the toys are available for distribution when the offer is made.

- Offering prints of a motion picture to a group of theater owners constitutes publication, provided that the prints are available for public performance when the offer is made.

- Offering a cartoon to a group of syndicators constitutes publication, provided that the work is available for distribution when the offer is made.

- Offering to distribute a motion picture that is currently in production does not constitute publication.

- Offering to distribute a sound recording that has not been fixed in its final form does not constitute publication.

1907 Distributing the Work vs. An Offer to Distribute the Work

The statute states that a work is published when copies or phonorecords are distributed to the public. It also states that offering to distribute copies or phonorecords to a group of persons for the purpose of further distribution, public performance, or public display constitutes publication. *See* 17 U.S.C. § 101 (definition of "publication"). In other words, publication occurs when either of these conditions has been met.

Examples:

- Distributing copies of a photograph to the public constitutes publication (even if the copies were offered solely for private display).

- Offering to distribute copies of a lithograph to a number of galleries for the purpose of public display constitutes publication, but offering the same copies to a group of individuals solely for private display does not.

1908 A Public Performance or Public Display Does Not Constitute Publication

As discussed in Section 1902, a public performance or a public display of a work "does not of itself constitute publication." 17 U.S.C. § 101 (definition of "publication"). Therefore, if the applicant provides a date of publication in the application and indicates that the work was performed, televised, broadcast, displayed, or exhibited on that date, the registration specialist may communicate with the applicant and explain that merely performing or displaying a work in public does not constitute publication under U.S. copyright law, "no matter how many people are exposed to the work." H.R. REP. NO. 94-1476, at 138 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5754.

Examples of performances and displays that do not in themselves constitute publication include the following:

- Performing a song at a concert or on television or radio, regardless of the size of the audience.

- Showing a motion picture in a theater or on television.

- Performing a play, a pantomime, or a choreographic work in a theater.

- Delivering a speech, lecture, or sermon at a public event.

- Displaying a painting in a museum, a gallery, or the lobby of a building (regardless of whether the copyright owner prohibited others from taking photographs or other reproductions of that work).

- Displaying a fabric design, wallpaper design, or textile design in a store front.

1908.1 Performing a Work of Authorship

Section 101 of the Copyright Act states that performing a work of authorship means "to recite, render, play, dance, or act [the work], either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible." 17 U.S.C. § 101. Reading a literary work aloud, singing or playing music, dancing a ballet or other choreographic work, or acting out a dramatic work or pantomime clearly falls within the scope of this definition. Likewise, showing portions of a motion picture, filmstrip, or slide presentation in sequential order or playing a motion picture sound track clearly qualifies as a performance of that work. *See* H.R. REP. NO. 94-1476, at 63-64 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5677.

1908.2 Displaying a Work of Authorship

Section 101 of the Copyright Act states that displaying a work of authorship means "to show a copy of [the work], either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially." 17 U.S.C. § 101. For example, displaying a painting in a gallery, posting a photograph on a billboard, placing an advertisement in a store front, or projecting a drawing onto a screen or other surface falls within the scope of this definition. *See* H.R. REP. NO. 94-1476, at 64 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5677.

1908.3 Public Performances and Public Displays

Section 101 of the Copyright Act states that performing or displaying a work "publicly" means:

- "[T]o perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or"

- "[T]o transmit or otherwise communicate a performance or display of the work to a place specified [in the preceding paragraph] or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times."

17 U.S.C. § 101.

Although the statute does not define the term "public," it "suggests that 'the public' consists of a large group of people outside of a family and friends," such as "a large number of people who are unrelated and unknown to each other." *American Broadcasting Companies, Inc. v. Aereo, Inc.*, 134 S. Ct. 2498, 2509-10 (U.S. 2014).

The legislative history explains that a performance or display constitutes a public performance or a public display if it occurs "in a public place." It also explains that a performance or display that occurs in a "semipublic" place, such as a club, lodge, factory, summer camp, or school, is considered a public performance or display. H.R. REP. NO. 94-1476, at 64 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5677-78.

By contrast, a performance or display that occurs at "a gathering confined to [an] individual's social acquaintances would normally be regarded as private." *Id.* A performance or display that occurs during "[r]outine meetings of businesses and governmental personnel" would be normally considered private "because they do not represent the gathering of a 'substantial number of persons.'" *Id., reprinted in* 1976 U.S.C.C.A.N. at 5678. Likewise, "an entity does not transmit [a work] to the public if it does not transmit to a substantial number of people outside of a family and its social circle." *American Broadcasting Companies,* 134 S. Ct. at 2511.

The legislative history further explains that a public performance or a display includes "the initial rendition or showing" of a work, as well as "any further act by which that rendition or showing is transmitted or communicated to the public." H.R. REP. NO. 94-1476, at 63, *reprinted in* 1976 U.S.C.C.A.N. at 5676. "[F]or example, a sing[er] is performing when he or she sings a song; a broadcasting network is performing when it transmits [that] performance (whether simultaneously or from records); a local broadcaster is performing when it transmits the network broadcast; a cable television system is performing when it retransmits the broadcast to its subscribers; and any individual is performing whenever he or she plays a phonorecord embodying the performance or communicates the performance by turning on a receiving set." *Id., reprinted in* 1976 U.S.C.C.A.N. at 5676-77.

A performance or display that is transmitted to the public is considered a public performance or a public display "even though the recipients are not gathered in a single place, and even if there is no proof that any of the potential recipients was operating his receiving apparatus at the time of the transmission." *Id.* at 64-65, *reprinted in* 1976 U.S.C.C.A.N. at 5678. "In other words, 'the public' need not be situated together, spatially or temporally" for a public performance or public display to occur. *American Broadcasting Companies,* 134 S. Ct. at 2510.

Moreover, "when an entity communicates the same contemporaneously perceptible images and sounds to multiple people, it transmits a performance to them regardless of the number of discrete communications it makes." *Id.* at 2509. For instance, when an entity "streams the same television program to multiple subscribers, it 'transmit[s]… a performance' to all of them," regardless of whether the entity makes the transmission "from the same or separate copies" or from "user-specific copies." *Id.* (quoting 17 U.S.C. § 101 (definition of "perform or display a work 'publicly'")).

1908.4 Private Performances and Private Displays

Section 101 of the Copyright Act expressly states that a public performance or a public display "does not of itself constitute publication." 17 U.S.C. § 101 (definition of "publication"). Therefore, a private performance or a private display in and of itself does not constitute publication.

1909 Specific Forms of Publication

1909.1 Unpublished Work Embodied in a Published Work

An unpublished work is considered published when it is embodied in another work of authorship that has been published, but only to the extent that the unpublished work is disclosed in the published work.

Examples:

- When an unpublished screenplay is used in the creation of a motion picture, the elements of that screenplay that appear in the motion picture are published when (i) copies of the motion picture are distributed to the public, or (ii) when copies of the motion picture are offered to a group of persons for further distribution, public performance, or public display.

- When an unpublished musical work is incorporated in a distributed sound recording, the elements of that work that are incorporated into the sound recording are published when (i) copies of the sound recording are distributed to the public, or (ii) when copies of the sound recording are offered to a group of persons for further distribution, public performance, or public display.

- When an unpublished painting is reproduced in a book, the elements of the painting that appear in the book are published when (i) copies of the book are distributed to the public, or (ii) when copies of the book are offered to a group of persons for further distribution, public performance, or public display.

- When an unpublished sculpture is featured in a motion picture, the publication of the motion picture may publish the sculpture if the motion picture discloses a sufficient amount of three-dimensional authorship to effectuate a publication of a sculptural work.

1909.2 Publishing a Portion of a Work

Publishing a portion of a work does not necessarily mean that the work as a whole has been published. As a general rule, publication applies only to the specific portions of the work that have been distributed to the public or offered for distribution to a group of persons for the purpose of further distribution, public performance, or public display.

Examples:

- Publishing a detailed summary of a novel does not publish the novel as a whole.
- Publishing a treatment or synopsis of a motion picture does not publish the motion picture as a whole.
- Publishing a motion picture that is based on an unpublished manuscript publishes the elements of the manuscript that are embodied in the motion picture, but it does not publish the manuscript as a whole.

1909.3 Publishing Separate Parts or Installments of a Work

When various parts or installments of a work are published separately, each part or installment is considered a separate work. As a general rule, an applicant should prepare a separate application, filing fee, and deposit for each part or installment of a work if those parts or installments were published separately. If the various parts or installments were published on different dates, the applicant should provide a separate date of publication for each part or installment.

NOTE: To avoid the need for filing multiple applications, applicants are encouraged to register an unpublished work as a whole before the various parts or installments of that work are published.

For a general discussion of the practices and procedures for registering multiple versions of the same work, see Chapter 500, Section 512.

1909.4 Works First Published Outside the United States

When a work is published in a foreign country and then subsequently published in the United States, the publication in the foreign country is considered the first publication of that work. When submitting an application to register the work the applicant should provide the date that the work was first published in the foreign country and should submit a copy or phonorecord of the foreign edition. Registering a claim in the U.S. edition may be permissible, provided that the work contains a sufficient amount of new material that did not appear in the work when it was published abroad.

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Foreign Works: Eligibility and GATT Registration

2001 What This Chapter Covers

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

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

- For a general overview of the registration process, see Chapter 200.
- For a discussion of copyrightable subject matter, see Chapter 300.
- For guidance in determining who may file the application and who may be named as the copyright claimant, see Chapter 400.
- For guidance in identifying the work that will be submitted for registration, see Chapter 500.
- For instructions on completing the online application or a paper application (other than an application submitted on Form GATT), see Chapter 600.
- For guidance on the filing fee, see Chapter 1400.
- For guidance on submitting the deposit copy(ies), see Chapter 1500.
- For guidance on publication, see Chapter 1900.

2002 Foreign Works

2002.1 What Is a Foreign Work?

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

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

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

2002.2 Treatment of Foreign Works

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

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

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

2003.1 Unpublished Works

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

2003.2 Published Works

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

2003.2(A) Eligibility Based on Nationality or Domicile

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

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

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

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

2003.2(B) Eligibility Based on Location of First Publication

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

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

2003.2(C) Eligibility for Sound Recordings

Section 104(b)(3) of the Copyright Act protects sound recordings that were first "fixed" in a foreign country that is a treaty party. Specifically, the law protects sound recordings that are embodied in phonorecords that are sufficiently permanent or stable to permit the work to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. 17 U.S.C. § 101 (definition of "fixed"). For more information on fixation, see Chapter 300, Section 305 and Chapter 800, Section 803.4.

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

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

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

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

2003.2(F) Eligibility Based on Presidential Proclamations

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

2004 Treaties and Presidential Proclamations

U.S. protection of foreign works often is based on the United States' treaty relationships with other countries. The United States has treaty relationships with all but a handful of countries, as set forth in *International Copyright Relations of the United States* (Circular 38a). Some of these treaties are multilateral, meaning that there are more than two parties to the treaty, while other treaties are bilateral, meaning that they are between just the United States and one foreign country. It is important to note the date on which a foreign country became a treaty party, because U.S. law will apply only to works either

created or first published (depending on which type of eligibility is used) on or after the date that the foreign country became a treaty party. Additionally, for a treaty to confer eligibility, it must apply to the work at issue. For example, an author of a literary work could not rely on the existence of a copyright treaty that protects only satellite broadcasts but not literary works.

2004.1 Multilateral Treaties

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

- Buenos Aires Convention of 1910: This was an early treaty that provided certain copyright protections for artistic and literary works and was deposited with the government of Argentina on May 1, 1911, and proclaimed by President Woodrow Wilson on July 13, 1914.

- Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention"): This treaty provides protection for certain literary and artistic works and has been signed by most countries. The effective date for U.S. adherence to the Berne Convention is March 1, 1989.

- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Geneva, 1971: The effective date for the United States is March 10, 1974. Note that only sound recordings are eligible for U.S. copyright protection based on this treaty. 17 U.S.C. § 104(d).

- Universal Copyright Convention, Geneva, 1952: This treaty protected certain literary, artistic, and scientific works. The effective date for the United States is September 16, 1955, the date the treaty entered into force. This treaty was revised, and the United States is a party to the version as revised at Paris in 1971 as of July 10, 1974.

- World Intellectual Property Organization ("WIPO") Copyright Treaty ("WCT"): The WCT is a special agreement under the Berne Convention that protects Berne Convention-covered works and includes specific language protecting computer programs and compilations of data or other material. The effective date for the United States is March 6, 2002, the date the treaty entered into force.

- WIPO Performances and Phonograms Treaty, Geneva, 1996 ("WPPT"): The WPPT covers certain rights for performers and producers of phonograms. The effective date for the United States is May 20, 2002, the date the treaty entered into force. Note that only sound recordings are eligible for U.S. copyright protection based on this treaty. 17 U.S.C. § 104(d).

- The Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") was entered into as part of the World Trade Organization ("WTO"), established pursuant to the Marrakesh Agreement of April 15, 1994, which implemented the Uruguay Round Agreements. TRIPS incorporated the Berne Convention in most part, covered copyright and other intellectual property rights, and included

provisions relating to enforcement of intellectual property rights. The effective date of United States membership in the WTO is January 1, 1995.

- The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled ("Marrakesh VIP Treaty") provides an obligation for member nations to provide copyright limitations and exceptions in order to permit reproduction, distribution and making available of published works in formats designed to be accessible to visually impaired people, and to permit exchange of these works across borders by eligible organizations that serve those beneficiaries. The provisions of this treaty were implemented into U.S. law with the Marrakesh Treaty Implementation Act on October 10, 2018. U.S. membership in the treaty came into force on May 8, 2019. For more information on the Marrakesh Treaty implementation in U.S. law, see the Copyright Office's *Understanding the Marrakesh Treaty Implementation Act*.

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

2004.2 Bilateral Copyright Treaties and Presidential Proclamations

The United States has entered into bilateral treaties with some foreign countries. These treaties often are in addition to multilateral treaties and try to provide a further layer of protection. For a list of specific U.S. bilateral treaties, see *International Copyright Relations of the United States* (Circular 38a).

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

2005 Registration Issues

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

2005.1 Multiple Authors of a Foreign Work

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

2005.2 Authors with Multiple Nationalities

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

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

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

2005.4 Stateless Persons

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

2005.5 Works Made for Hire

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

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

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

2005.5(B) Members

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

2005.5(C) Doing Business

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

2005.6 Anonymous and Pseudonymous Works

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

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

2005.7 Compilations and Derivative Works

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

2005.8 When Is Eligibility Determined?

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

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

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

2005.8(B) Change in Nationality or Domicile after Publication

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

2005.9 Eligibility Unclear

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

2006 Application Tips for Foreign Works

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

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

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

Examples of acceptable statements:

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

Examples of unacceptable statements:

- British Protected Person
- Commonwealth Citizen
- Worldwide
- Internet

2007 Restored Works

2007.1 What Is a Restored Work?

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

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

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

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

- *Not in the public domain in the source country:* The work must not be in the public domain in its source country through the expiration of the term of protection. 17 U.S.C. § 104A(h)(6)(B). As discussed in Chapter 100, Section 102.2(A), the term of protection is the length of time during which a work is protected by copyright law. As discussed in Chapter 300, Section 313.6(D), the term "public domain" means that the work is not protected by copyright law. Thus, a restored work must be copyright-protected and still within its term of protection in the foreign country.

- *Fell into the public domain in the United States:* The work must be in the public domain in the United States (i) because the work did not comply with certain formalities (such as failing to place a proper notice on the work, failing to renew the copyright in a timely manner, or failing to comply with manufacturing requirements under prior law); (ii) because the work is a sound recording that was fixed before February 15, 1972, and as such, was not protected by U.S. federal copyright law; or (iii) because of a lack of national eligibility (as discussed above generally). 17 U.S.C. § 104A(h)(6)(C).

- *Eligibility at time of creation or publication:* At least one author or rightholder of the work must have been (i) a national or domiciliary of an eligible country at the time of the work's creation, and (ii) if the work is published, it must have been first published in an eligible country and not published in the United States within thirty days after the date of first publication. 17 U.S.C. § 104A(h)(6)(D).

- *Sound recordings*: If the source country for the work is an eligible country solely by virtue of its adherence to the WPPT, the restored work must be a sound recording. 17 U.S.C. § 104A(h)(6)(E).

January 1, 1996 is the effective date of restoration of copyright for foreign works from countries that were members of the WTO or the Berne Convention on that date. Most restored works were restored on January 1, 1996, because many countries became members of the WTO or Berne Convention prior to that date. In all other cases, the

effective date of restoration is the date a newly eligible country accedes to the WTO or the Berne Convention or the date of a Presidential proclamation restoring U.S. copyright protection to works of that country.

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

2007.2 Registration Requirements for Restored Works

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

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

2007.2(A) Form GATT

To register a restored work, an applicant must file a paper application using Form GATT. Applicants cannot use the Office's electronic registration system to register restored works. Form GATT is designed to request information needed to determine whether a work qualifies as a restored work and complies with U.S. legal requirements.

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

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

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

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

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

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

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

- *Timing matters:* The applicant must determine whether, *at the time the work was created*, the author was a national or domiciliary of a country that is *now eligible for protection* in the United States. *See* 17 U.S.C. § 104A(h)(6)(D).

- *Anonymous works:* To register an anonymous work, the applicant may provide the author's legal name or the author's pseudonym, as long as the pseudonym consists of a name (rather than a number or symbol). *See* Chapter 600, Section 615.1(B).

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

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

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

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

2007.2(B) Filing Fees

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

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

2007.2(C) Deposit Requirements

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

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Renewal Registration

2101 What This Chapter Covers

This Chapter covers renewal registration of works that fall under the provisions of the Copyright Renewal Act of 1992, *i.e.*, works that secured copyright by registration or publication between 1964 and 1977, inclusive. The purposes are:

- To provide an overview of the renewal system and the effects of the Copyright Renewal Act of 1992 on renewal registration;
- To provide guidance to the public and U.S Copyright Office staff in registering renewal claims under Section 304(a) of Title 17, as amended by the Copyright Renewal Act of 1992; and
- To explain Office policy regarding certain copyright matters as they relate specifically to renewal registration.

This Chapter is divided into eight parts:

- Part I provides an overview of the renewal system as it evolved from 1909 to 1992. Start here to read about the terms of copyright and renewal provisions of the Copyright Act of 1909 and how they evolved.
- Part II explains the impact of the Copyright Renewal Act of 1992 on renewal registration in general. Start here to read about this amendment and how it affects renewal registration.
- Part III explains renewal registration requirements in general and how to complete Form RE or Form RE/Addendum. Start here for an overview of renewal registration requirements, or how to complete Form RE and Form RE/Addendum.
- Part IV explains renewal registration requirements for works that were not registered for the original term. Start here to read about the renewal registration requirements for a particular type of work.
- Part V discusses several broad copyright matters as they relate to renewal registration. Start here to read about how the manufacturing clause affects renewal registration, issues related to joint works or published collections, or what to do when an original registration record contains an error.
- Part VI discusses post renewal registration issues. Start here for information about amending a renewal registration record, or filing a renewal claim in a work for which a renewal registration is already on record.
- Part VII discusses restoration of copyright under the Uruguay Round Agreements Act ("URAA") in foreign works whose restored copyrights are governed by the

Copyright Act of 1909. Start here for information about foreign works that are not eligible for renewal registration but may be eligible for registration under the URAA.

- Part VIII contains a glossary of terms. Start here to find an explanation of terms related to renewal registration.

  NOTE: The definitions provided in the glossary only apply to this Chapter.

PART I GENERAL BACKGROUND

2102 Copyright Renewal

The Copyright Act of 1909 provided for two consecutive terms of copyright: an original term lasting for twenty-eight years from the date copyright was secured, followed by a renewal term of twenty-eight years. An Act to Amend and Consolidate the Acts Respecting Copyright, Pub. L. No. 60-349, §§ 23-24, 35 Stat. 1075, 1080 (1909) ("Copyright Act of 1909").

The original term began on the date of publication or registration (if registered as an unpublished work) and ended on the twenty-eighth anniversary date of publication or registration as an unpublished work. The renewal term began on the day following the twenty-eighth anniversary date and was to end on the fifty-sixth anniversary date of publication or registration as an unpublished work. However, as the earliest works that secured copyright under the Copyright Act of 1909 came to the end of their renewal terms, Congress enacted a series of extension acts to ensure the renewal terms would not expire before the current law took effect on January 1, 1978. These interim extension acts affected works still in their renewal terms whose copyright protection began between September 19, 1906 and December 31, 1918. Without these interim extensions, copyrights commencing during those years would have expired after fifty-six years. *See* *Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code* (Circular 92), ch.3, n.7. The final extension came with the Transitional and Supplementary Provisions of the Copyright Act of 1976. Pub. L. No. 94-553, app. A, tit. I, § 102, 90 Stat. 2541 (1976).

To extend copyright into the renewal term, two registrations had to be made before the original term expired, one for the original term and the other for the renewal term. Registration for the original term could be made at any time during the original term; renewal registration had to be made during the last year of the original term. This period for renewal registration is referred to as the renewal filing period.

The Copyright Act of 1976 retained the two-term system of the Copyright Act of 1909 for works in their original or renewal term of copyright on January 1, 1978, the effective date of the Copyright Act of 1976. It also retained the requirement that a renewal claim had to be registered with the U.S. Copyright Office during the last year of the original term to extend copyright into the renewal term. However, it extended the renewal term from twenty-eight years to forty-seven years for all works still in their original term as of the effective date of the Act, and provided that copyrights in their renewal term

before January 1, 1978 would subsist for seventy-five years.[1] 17 U.S.C. §§ 304(a), (b) (1976). It also provided that all copyright terms would extend to the end of the calendar year in which they would otherwise expire. *Id*. § 305. Two subsequent amendments to the Copyright Act of 1976 modified these renewal term provisions:

- The Copyright Renewal Act of 1992, Pub. L. No. 102-307, 106 Stat. 264, effective June 26, 1992, made renewal registration during the last year of the original term optional for works still in their original term as of that date, that is, works that secured copyright between January 1, 1964 and December 31, 1977, inclusive. Under this amendment, copyright extends into the renewal term automatically, regardless of whether an original or renewal registration was made before the original term expired. It also provides for renewal registration during the entire renewal term. 17 U.S.C. § 304(a). For more information about this amendment, see Part II.

- The Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, 112 Stat. 2827, effective October 27, 1998, further extended the renewal term by twenty years (from forty-seven years to sixty-seven years) for all works that secured copyright under the Copyright Act of 1909 and were still under copyright protection as of the effective date of the amendment. 17 U.S.C. § 304(b).

PART II THE COPYRIGHT RENEWAL ACT OF 1992

2103 Intent, Purpose, and Impact on Renewal Registration

The Copyright Renewal Act of 1992 ("Renewal Act") substantially amended the current law with regard to renewal registration. Pub. L. No. 102-307, 106 Stat. 264, effective June 26, 1992. Among other issues, it sought to bring registration requirements for works still in their original term in 1992 (*i.e.*, works published, or registered as unpublished works, from 1964 through 1977) more in line with registration requirements for works governed by the current copyright law. For such works, the act made original and renewal registration optional for statutory protection to extend into the renewal term. However, to encourage authors and proprietors to continue to register their works for the original term and make timely renewal registrations, it provided certain benefits for timely renewal registration. *See* Section 2107.

The act also provided for registration at any time while a work is under copyright, including the renewal term. This means a renewal claim can be registered at any time from the last year of the original term through the renewal term, regardless of whether a registration was made for the original term before that term expired.

Finally, to make the renewal registration record more useful to the public, the act provided within the renewal registration record itself a more efficient means of

1 17 U.S.C. § 304(b) took effect on October 19, 1976 under the Transitional and Supplementary Provisions of the Copyright Act of 1976. Pub. L. No. 94-553, app. A, tit. I, § 102, 90 Stat. 2541 (1976).

identifying the current owner of the renewal copyright at the time of registration where renewal title may have changed from its point of initial vesting.

2104 Affected Works

The Renewal Act affects works that were still in their original term of copyright at the time it took effect on June 26, 1992, *i.e.*, works published or registered as unpublished works from January 1, 1964 through December 31, 1977.

NOTE: The act does not apply to such works when they were first published with a year date in the copyright notice that is earlier than 1964. For information on how an antedated year date in the copyright notice affects the term of copyright, see Section 2115.2(b).

2105 Registration for the Original Term Is Not Required

Before the Renewal Act, a published work had to be registered for the original term before that term expired, and a renewal claim had to be filed during the last year of that term to extend copyright into the renewal term. A copyright claim for the original term could be filed simultaneously with a renewal claim, but the renewal claim was held until the original registration was completed so the renewal registration could cite the original registration record.

Exceptions: An original registration was not required for U.C.C. works, but a renewal claim had to be filed during the last year of the original term. Also, an original registration for a contribution first published in a collection was not required to register a renewal claim in the contribution.

The Renewal Act extended copyright protection into the renewal term regardless of whether the work was registered for the original or renewal term. When no registration was made for the original term, a renewal with addendum registration is required to demonstrate that the work as first published complied with all requirements of the Copyright Act of 1909 with respect to the existence, ownership, or duration of the copyright.

2106 Renewal Registration Before Expiration of Original Term Is Optional

Before the Renewal Act, renewal registration could only be made during the last year of the original term and was required to extend copyright into the renewal term. Under this act, renewal registration during the last year of the original term is optional. However, to encourage authors and proprietors to continue to do so, the act provides benefits for timely renewal registration.

NOTE: The last day when a timely renewal registration could be received was Tuesday, January 3, 2006, the first day of business following Saturday, December 31, 2005, when the original term ended for works that secured statutory copyright in 1977.

2107 Benefits Secured by Timely Renewal Registration

The Renewal Act provides the following benefits for timely renewal registration:

- The certificate of renewal registration constitutes *prima facie* evidence as to the validity of the copyright during its renewal term, and of the facts stated in the certificate.

- A derivative work made before the expiration of the original term of copyright under the authority of a grant of a transfer or license of copyright cannot continue to be used under the terms of the grant during the renewal term without the authority of the owner of the renewal copyright.

- The timely renewal registration determined in whom the renewal copyright would vest upon the beginning of the renewal term. For a discussion of this issue, see Section 2115.5(D).

2108 Renewal Registration Is Possible Through Renewal and Extended Terms

An application to register a renewal claim may be filed "within 1 year before the expiration of the original term of copyright" and "at any time during the renewed and extended term." 17 U.S.C. § 304(a)(3)(A).

2109 Benefits of Renewal Term Registration

Renewal term registration does not secure the benefits secured by timely renewal registration. However, such registration is required to proceed with an infringement case when a work was not registered for the original term. It also provides information about the party in whom the renewal copyright vested at the beginning of the renewal term, and may provide information about the current owner of the renewal copyright.

PART III RENEWAL TERM REGISTRATION

This Part focuses on how to register a renewal claim after the renewal copyright has vested. It explains basic requirements and the steps to take before submitting a renewal claim. Section 2115 discusses Form RE, explaining the information that should be provided and how to complete the application. Section 2116 discusses Form RE/Addendum, explaining the additional requirements for published works that were not registered for the original term and how to complete the application.

2110 Registration Requirements and Procedures

Registration requirements for renewal term registration depend on whether a work (or larger work) was registered for the original term. Therefore, this is the first fact that must be determined when filing for renewal registration. When a work was not registered for the original term, the applicant must provide information and material that show the work met all statutory requirements to secure (or maintain) copyright for the full original term.

2111 Work (or Larger Work) Registered for Original Term

This Section discusses the registration requirements that apply to both published and unpublished works that were registered for the original term.

2111.1 Form RE

When completing Form RE, the applicant should cite the registration number and other information from the original registration record. The application should be signed by a vested owner or the assignee or successor, or an authorized agent of any of these parties.

2111.2 Complete Filing Fee

The appropriate filing fee should accompany Form RE. A renewal claim cannot be processed without the complete filing fee. The current fee is set forth in the U.S. Copyright Office's fee schedule under the heading "Registration of a renewal claim (Form RE): Claim without addendum."

2111.3 Deposit Requirement

Generally, a deposit copy is not required for a renewal registration, because the required deposit materials were sent to the U.S. Copyright Office at the time of original registration.

Exception: In some cases, as when a renewal claim is filed in a contribution or separate work or element of authorship first published in a larger work, the Office may request examining material that shows the nature and contents of the work being registered or of the larger work.

2112 Work (or Larger Work) Not Registered for Original Term

This Section discusses the registration requirements that apply to published works that were not registered for the original term.

2112.1 Form RE and Form RE/Addendum

Form RE should be accompanied by Form RE/Addendum, and both forms should be signed by authorized parties.

Exception: Multiple submissions of Form RE may be accompanied by a single Form RE/Addendum when renewal claims are filed simultaneously for multiple contributions by the same individual author first published in a single issue of a periodical or collection, and the periodical or collection bore only a general copyright notice.

2112.2 Two Filing Fees—One for Each Form

There is a separate filing fee for Form RE and Form RE/Addendum, and both fees must be paid in full. The current fees are set forth in the U.S. Copyright Office's fee schedule under

the heading "Registration of a renewal claim (Form RE): Claim without addendum / Addendum (in addition to the fee for the claim)."

2112.3 Deposit Material Required

When a work (or larger work) was not registered for the original term, deposit material is required. In general, one complete copy or phonorecord of the work as first published is required. For more information about the deposit requirements, see Section 2116.5(A).

NOTE: Deposit material is also required when registration is based on the first publication of a work that was registered before 1978 as an unpublished work. For more information about deposit requirements for such works, see Section 2116.5(E).

2113 Not Known if Work (or Larger Work) Was Registered for Original Term

Generally, a Form RE/Addendum is appropriate only when a work (or the larger work) was not registered for the original term. If it is not known whether the work was registered for the original term, a search of the U.S. Copyright Office's registration records should be conducted before the renewal claim is filed. When a renewal claim is filed prior to a search being done, the Office may advise the applicant to conduct a search before proceeding with registration. For information about investigating the copyright status of a work, see *How to Investigate the Copyright Status of a Work* (Circular 22), and *The Copyright Card Catalog and the Online Files of the Copyright Office* (Circular 23). For more information about the administrative classifications for pre-1978 registration records, see U.S. COPYRIGHT OFFICE, ADMINISTRATIVE CLASSIFICATIONS: 1870-1978.

2114 Establishing Eligibility for Published Works Not Registered for the Original Term

When a work was not registered for the original term, certain information must be provided to establish eligibility for renewal term registration. Factors that may determine eligibility include:

- First publication between 1964 and 1977.

  NOTE: For information about renewal registration for the first published edition of a work registered as an unpublished work between 1964 and 1977, see Section 2115.3(E).

- First publication with the statutory[2] or U.C.C. notice, with all copies or phonorecords distributed in the United States until March 1, 1989 bearing an acceptable copyright notice.[3]

- The author's nationality and place of domicile at the time of first publication.

- The place of first publication.

  NOTE: Generally, eligibility under the Copyright Act of 1909 is based on the nationality and domicile of the author at the time, rather than the place, of first publication. In certain cases, however, the place of publication may be the deciding factor, for example, when the work (or the larger work) was:

  - First published in the United States and it was subject to the manufacturing clause; or

  - Created by an author, other than a U.S. author, and first published in a U.C.C. country; or

  - Published simultaneously in the United States.

- The manufacturing clause.

- Registrability of subject matter. While Section 4 of the Copyright Act of 1909 stated that copyright may be secured for "all the writings of an author," not all works were registrable. Copyright Act of 1909, Pub. L. No. 60-349, § 4, 35 Stat. 1075, 1076 (1909).[4] As enacted in 1909, Section 5 provided for eleven classes of registrable works. *Id.* § 5, 35 Stat. at 1076-77.[5] Within these classes, only certain classes could be registered prior to publication. *Id.* § 11, 35 Stat. at 1078.[6]

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2 For information concerning notice requirements for works published before 1978, see 37 C.F.R. § 202.2.

3 For information concerning notice requirements for works first published between January 1, 1978 and March 1, 1989, see *Circular 3, Copyright Notice*.

4 *See also* U.S. COPYRIGHT OFFICE, STUDY NO. 3: THE MEANING OF "WRITINGS" IN THE COPYRIGHT CLAUSE OF THE CONSTITUTION (1956).

5 This section was expanded in 1912 to include motion-picture photoplays and motion-pictures other than photoplays, and again in 1971 to include sound recordings. Pub. L. No. 62-303, 37 Stat. 488, 488-89 (1912); Pub. L. No. 92-140, § 1, 85 Stat. 391, 391 (1971). For information concerning architectural works, choreographic works, and computer programs, see Sections 2121.6, 2122.3, and 2120, respectively.

6 This section was expanded in 1912 to include motion pictures.

2115 Renewal Registration Requirements—Form RE

This Section explains the information that should be provided on Form RE. If the work was registered for the original term, Form RE should include facts from the original registration record. If the work was not registered for the original term, Form RE should state the facts as they existed at the time of first publication and should be accompanied by Form RE/Addendum. The most recent version of Form RE, as posted on the U.S. Copyright Office's website, should be completed for all renewal term registrations.

2115.1 Title Information

This space on Form RE should identify the work in which the renewal copyright is claimed. The complete title as first published, or as given in the original registration record is required.

2115.1(A) Additional Identifying Information for Periodicals

When seeking a renewal registration for a periodical, the volume, number and issue date, if any, is required.

2115.1(B) Contribution to a Periodical or Published Collection

When seeking a renewal registration for a contribution to a periodical or published collection, the title of the contribution and the title and identifying information (if any) of the periodical or published collection is required.

2115.1(C) New or Alternative Title for Published Work

If the work has been published or reissued under a different title than the title given in the original registration record the new title may be provided as an alternative title.

2115.2 Original Term Information

This space of Form RE should provide information about certain facts in the original registration record, or the facts as they pertain to the original term, if the work was not registered for the original term.

2115.2(A) Publication Date

If the work was published, the complete date of first publication (month/day/year) is required.

2115.2(B) Antedated Year Date(s) in Copyright Notice

When a work was first published with a year date in the copyright notice that was earlier than the year of first publication, the term of copyright is determined by the year date in the copyright notice, rather than the year of first publication. Likewise, when a work is published with multiple year dates in the copyright notice, the year dates may affect the term of copyright. Multiple year dates in a copyright notice also indicate that an earlier version or a portion of the work was previously published. Therefore, all

antedated year date(s) in the copyright notice(s) should generally be cited in the certificate of renewal registration and renewal registration record. For more information about the effect of publication with antedated and multiple year dates in the copyright notice, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf.

2115.2(B)(1) Original Registration Record Cites Antedated Year Date(s) in Copyright Notice

If the original registration record cites antedated year date(s) in the copyright notice, the applicant should include these year dates in Form RE.

2115.2(B)(2) Antedated Year Date(s) in Copyright Notice in Deposit Copy

When a work is registered for the first time during the renewal term and it contains a year date in the copyright notice that is earlier than the year of first publication, the U.S Copyright Office will inquire about the facts of first publication and whether the deposit material represents the work as first published. When a work contains multiple year dates in the copyright notice or multiple copyright notices with antedated year date(s), the Office also will inquire about whether the work or portions of it were previously published. The applicant should cite all antedated year dates in Form RE.

2115.2(C) Post-Dated Year Date in Copyright Notice

When a work was first published with a year date in the copyright notice that is later than the year of first publication, there may be serious consequences for renewal registration. The U.S. Copyright Office's action will depend on whether the year date is post-dated by one year or more. For more information about the effect of publication with a post-dated year date in the copyright notice, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf.

2115.2(C)(1) Year Date Is Post-Dated by One Year

When the renewal claim is based on an original registration record that cites a post-dated year date in the notice, the Office will notify the applicant about the citation in the original registration record. In addition, the Office will add an annotation to the certificate of renewal registration and a note in the renewal registration record regarding the post-dated year date.[7] When a work is being registered for the first time during the renewal term the Office will inquire about the facts of publication. If the

7 This policy took effect in 2012 and represents a change from the longstanding Office practice not to note a post-dated year date on the certificate of renewal registration or in the renewal registration record. Before 1978, post-dated year dates were annotated in the original registration record, but not on the certificate of registration. Since 1978, a post-dated year date was not generally noted on either the certificate or original registration record.

applicant confirms the publication facts, the certificate of renewal registration and renewal registration record should cite the post-dated year date.

2115.2(C)(2) Year Date Is Post-Dated by More Than One Year

When a work was first published with a year date in the copyright notice that is more than one year post-dated, the work is considered to have been first published without a copyright notice. In such cases, renewal registration is not possible.

2115.2(D) Registration Date for Unpublished Works

The complete date of registration is required for all works registered before 1978 as unpublished works. The registration date is the date when the last element (application, copy, filing fee) was received in acceptable form in the U.S. Copyright Office.[8]

2115.2(E) Original Copyright Claimant

Statutory copyright was secured either by publication with notice in the name of the proprietor identified in the copyright notice, or by registration as an unpublished work in the name of the party identified as the copyright claimant in the registration record. Therefore, Form RE should name the proprietor(s) identified in the copyright notice (if the work was not registered for the original term), or the copyright claimant(s) named in the original registration record.

Exception: For information concerning works first published abroad, see Section 2115.2(E)(2).

2115.2(E)(1) Work Registered for Original Term

If the work was registered for the original term, the complete name(s) of the original copyright claimant(s) as given in the original registration record is required.

2115.2(E)(2) Published Work Not Registered for Original Term

If a published work was not registered for the original term, the complete name(s) of the proprietor(s) as identified in the copyright notice is required. If the work is a contribution or a separate work or element of authorship first published with its own separate copyright notice, Form RE should name the proprietor identified in the separate notice.

Exception: When the work was first published abroad, the applicant generally should name the owner of the right to secure U.S. copyright on the date of first publication. However, in certain cases it may be necessary or acceptable to name the proprietor identified in the notice. For more information about who should be named as the original copyright claimant, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT

[8] Not all corrections or omissions on an application resulted in stamping the later receipt date. However, when the later receipt date is stamped, that date supersedes the original date of receipt in determining the effective date of registration.

OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf.

Exception to exception: For works subject to the manufacturing clause, the renewal claim must name the proprietor identified in the copyright notice, unless the work was published with the U.C.C. notice.

2115.2(F) *Ad Interim* Copyright Information

A renewal claim based on an *ad interim* registration record must provide information about the registration for the subsequent U.S. edition. Otherwise, renewal registration generally will be refused.

Exceptions:

- If *ad interim* copyright was subsisting when the country of the author's nationality joined the U.C.C., the work did not have to be manufactured and published in the United States to secure the full original term of copyright[9] Copyright Act of 1909, *amended by* Pub. L. No. 83-743, § 9(c), 68 Stat. 1030, 1031 (1954).

- Likewise, when *ad interim* copyright subsisted, or was capable of being secured on December 31, 1977 (*i.e.*, works first published between July 1 and December 31, 1977, inclusive) copyright was extended to the full original term of copyright under the transitional provisions of the Copyright Act of 1976.[10]

- Finally, even when the two exceptions listed above do not apply, renewal registration may still be possible if the work was manufactured and published in the United States while *ad interim* copyright subsisted, but no registration was made for the U.S. edition. In this last situation a renewal registration for the U.S. edition must be made before a renewal registration can be made for the foreign edition that secured *ad interim* copyright. This requirement ensures that the full original term of copyright was secured through compliance with the manufacturing clause.

When a renewal claim is based on the original registration record for the U.S. edition of a work that was subject to the manufacturing clause and secured *ad interim* copyright for the foreign edition, the certificate of renewal registration and renewal registration

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9 "For this purpose, *ad interim* copyright was subsisting…if a claim to *ad interim* copyright had actually been registered on or before the effective date. It was not subsisting if the work was published more than six months before the effective date or was published within six months before the effective date but without the U.C.C. notice. Where a work was published within six months before the effective date and bore a U.C.C. notice, the case will be treated as though an *ad interim* copyright was subsisting in the work on the effective date…." COMPENDIUM (FIRST) § 8.4.6.III.b.

10 Pub. L. No. 94-553, app. A, tit. I, § 107, 90 Stat. 2541 (1976) (Transitional and Supplementary Provisions of the Copyright Act of 1976).

record must refer to the *ad interim* registration because the term of copyright is determined by the date of first publication abroad, and the renewal registration in the U.S. edition must be limited to the revisions or additions in the U.S. edition, unless both editions were identical. In such cases, the U.S. Copyright Office will add an annotation to the certificate of renewal registration and a note in the renewal registration record regarding the *ad interim* registration record.

NOTE: A renewal claim in the U.S. edition of a work subject to the manufacturing clause for which *ad interim* copyright was not secured, or in a U.S. edition that was manufactured and published after *ad interim* copyright expired must be limited to revisions or additions in the U.S. edition. If the editions are identical, renewal registration for the U.S. edition is not possible. For more information about registration requirements for works subject to the manufacturing clause, see Section 2124.

2115.2(G) Supplementary Registration Information

When a renewal claim is based on an original registration record that was corrected or amplified by a supplementary registration, the renewal claim should provide the registration number(s) and effective date(s) of the supplementary registration(s). For a discussion about how information added to an original registration record by supplementary registration may affect renewal registration, see Section 2131.

2115.3 Work or Material Claimed Information

This space of Form RE describes the extent of a renewal claim, *i.e.*, it describes the material that is the subject matter of the renewal claim.

2115.3(A) Entire Work

This option is appropriate when the renewal copyright in the work as a whole vested in the same party(ies) on the same date. It generally applies to unitary works by an individual or proprietary author or to joint works. It also may apply to composite works. When a renewal claim extends to the entire work, except for some material previously published or registered, a statement excluding such material should be added to this option to clarify the extent of the claim in the work as a whole.

2115.3(B) Contribution to a Periodical or Published Collection

This option is appropriate when the claim to the renewal copyright is limited to a separate, distinct work of authorship first published in a periodical or collection, such as a textual article or a photograph.

2115.3(C) Revisions / New Material in a Derivative Work

This option is appropriate when the claim to the renewal copyright is limited to a new version, or to new material added to a previously published or registered work.

2115.3(D) Separate Work or Element of Authorship First Published in Larger Work

This option is appropriate when a separate, distinct work or element of authorship within a larger work is owned separately from the larger work for the renewal term. Such a work is often adjunct (*e.g.*, a foreword or annotated bibliography) or auxiliary (*e.g.,* photographs in a biography) to the larger work as a whole, or it may be a separate work or element within a work that does not constitute joint authorship (*e.g.,* illustrations in a children's book). It is not applicable to composite works that consist of inseparable contributions, or to component elements of a unitary work, such as a motion picture.

2115.3(E) Based on First Publication of a Work Registered as an Unpublished Work

This option is appropriate when the sole basis of renewal registration is to register a renewal claim in the published edition of a work that secured statutory copyright under the Copyright Act of 1909 by registration as an unpublished work. Generally, it applies only to certain works of the visual and performing arts that could be registered as unpublished works,[11] but it also may apply to nondramatic literary works prepared for oral delivery, presentation, or performance when such works were registered for the original term as unpublished works. When a renewal registration is based on this option, the registration number and effective date of the original registration record for the unpublished work are required because the registration established the copyright term and the vesting date of the renewal copyright, regardless of the date of first publication. *See* Section 2115.2(D).

Renewal registration on this basis is possible only when the copyright secured by the registration of the unpublished work was still in effect at the time of first publication, it was maintained by the published edition, and it is still subsisting at the time of renewal registration. To maintain the copyright secured by the original registration for the unpublished work, a work first published before January 1, 1978 had to meet the statutory requirements of the Copyright Act of 1909. Works first published between January 1, 1978 and March 1, 1989 had to meet the statutory requirements of the Copyright Act of 1976, as enacted at the time of first publication. Works of foreign origin also had to meet eligibility criteria as of the date of first publication.

NOTE: A renewal claim based on first publication cannot be combined with a renewal claim in new material added to the published edition because the vesting date of the renewal copyright in the work as first published was determined by the original registration for the unpublished work, whereas the vesting date of the renewal copyright (if any) in the new material was determined by the date of first publication.

NOTE: When a work was registered as an unpublished work before 1978, a new basic registration for the work as first published is not appropriate because the original term of copyright that was secured by registration has expired.

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11 For information concerning the classes of works that could be registered under the 1909 Act, see Section 2114 and footnote 6.

2115.4 Author Information

This space of Form RE identifies the party(ies) who created, or caused to be created, the work or material claimed. When the party is a person who created the work in his or her personal capacity, the party is referred to as an individual author. When the party is an organization or an employer, the party is referred to as a proprietary author, and the work is considered to be a proprietary work.

In addition to identifying the author, this space of Form RE provides information regarding an author's nationality and domicile, year of death, and contribution to certain classes of works when this information is required to make a complete and accurate renewal registration record.[12]

2115.4(A) Full Legal Name or as Given in the Original Registration Record

Generally, Form RE should provide the full legal name(s) of the author(s) at the time of creation or, if the work was registered for the original term, the names(s) as given in the original registration record.

For an exception to this rule, see Section 2119.2.

2115.4(A)(1) Pseudonymous and Anonymous Works

When a work is pseudonymous or anonymous, the legal name of the individual author is not required, unless it was provided in the original registration record.[13] If the pseudonym was provided in the original registration record, it should be given and identified as such in the renewal registration record. When a pseudonymous or anonymous work was not registered for the original term, the nationality and domicile of the author at the time of first publication is required to establish eligibility. In addition, the author of a pseudonymous work must be identified by providing the author's legal name, the author's pseudonym, or both.

NOTE: While the legal name of the author is not required for pseudonymous or anonymous works, by identifying the individual author the certificate of renewal registration and renewal registration record provides the critical fact that determines the party in whom the renewal copyright vested.

2115.4(A)(2) Works Made for Hire

The employer for hire should be identified by the employer's full legal name at the time of creation. If the work is being registered for the first time during the renewal term, the

12 Providing the nationality and domicile for the author of such works represents a policy change that took effect with the amendment of Form RE.

13 This provision represents a change of policy that occurred with the publication of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Previously, the U.S. Copyright Office required the legal name of at least one author to establish eligibility.

individual who was employed or hired to create the work may be named as the employee if this individual is identified on the deposit copy.

2115.4(A)(3) Posthumous Works

A deceased author should be identified by the author's full legal name.

2115.4(A)(4) Composite Works

The proprietary author should be identified by the full legal name at the time of creation, unless the renewal claim is based on an original registration record that did not identify the author. *See* Section 2115.4(A).

2115.4(A)(5) Joint Works

All authors who contributed to the joint work as a whole should be identified.

2115.4(B) Year of Death

When an individual author is deceased at the time of renewal registration, the year of death is required.

2115.4(C) Nationality and Domicile

Eligibility for renewal registration generally depends on the nationality and domicile of the author at the time of first publication.

NOTE: This information is required in Form RE for the author of a contribution to a periodical or published collection (or of a separate work or element of authorship in a larger work) when the renewal claim is based on an original registration record for, or on a general copyright notice for, the periodical, collection, or larger work.

2115.4(D) When Authorship Statement Is Required

An authorship statement is generally required when given in the original registration record or when the extent of the renewal claim, or the contribution of an author, is not clear from other information provided in Form RE.

2115.5 Vested Owner Information

This space of Form RE provides information about the party in whom the renewal copyright vested, and may provide information regarding ownership of the renewal copyright at the time of registration. At least one party must be identified as a vested owner and an acceptable statement must be provided as to the statutory basis for that vested owner's claim to the renewal copyright. Generally, the vested owner is a statutory renewal claimant, but for information concerning the effect of a timely renewal registration, see Section 2115.5(D). While the vesting date generally has not

been given in Form RE,[14] it is the first fact that has to be determined in order to identify the parties entitled to claim the renewal copyright.

2115.5(A) Determining When the Renewal Copyright Vested

For purpose of renewal term registration, the renewal copyright vested on the first day of the renewal term. For works that secured copyright from 1950 through 1977, the renewal term began on January 1st of the 29th year following the effective date of registration as an unpublished work or the date of first publication.

Exception: When a work was first published with an earlier year date in the copyright notice, the renewal copyright vested on January 1 of the 29th year from the year date in the copyright notice. *See* Section 2115.2(B).

Generally the vesting date is clear, but when the facts of first publication are not known, or a work was first published with multiple year date(s) in the copyright notice, or when an error or omission in an original registration record calls into question when the original term began or ended, it may be difficult to determine the vesting date. When it appears that the renewal ownership information may be premised on an inaccurate vesting date, the U.S. Copyright Office will notify the applicant, and will refuse registration unless the discrepancy is resolved. Likewise, when an applicant is unable to determine when the renewal copyright vested, the Office will refuse renewal registration. If the vesting date is disputed, *see* Section 2137.

2115.5(B) Determining the Party in Whom the Renewal Copyright Vested

Certain parties are entitled by law to claim the renewal copyright. Generally, the U.S. Copyright Office will not question the identity of the vested owner or the statutory basis of a renewal claim when this information is consistent with the author facts in the original registration record or in the deposit copy, or with other facts available at the time of renewal registration. When the vested owner is not identified, the statutory basis is not given, or this information is unclear, the Office will request written verification from the applicant to clarify the party in whom the renewal copyright vested and the statutory basis. When the statutory basis is inconsistent with the author facts in the original registration or the deposit copy, see Section 2134. If the identity of the vested owner or the statutory basis of the renewal claim is in dispute, see Section 2137.

NOTE: The renewal copyright cannot vest in a deceased person or defunct organization. To be named as a vested owner, a person must have been alive, or an organization must have been in existence, on the date the renewal copyright vested.

The Office does not generally search its records to verify whether the party named as the vested owner was alive or in existence when the renewal copyright vested. However, if the Office is aware that a renewal claim fails to identify a valid owner, or provide a valid statutory basis for claiming the renewal copyright, the renewal claim will

14 Before 2007 (when Form RE was revised), renewal claims filed on behalf of a current owner provided the name of the vested owner and the vesting date in the basis of claim statement.

be refused. For example, the Office will refuse to register a renewal claim that identifies an author as a vested owner, when the author's year of death precedes the vesting date.

2115.5(C) Parties Entitled to Claim the Renewal Copyright

Generally, the right to claim the renewal copyright flows from the individual author. However, for proprietary works, the right flows from the original copyright claimant.

2115.5(C)(1) Personal Works

An individual author is entitled to claim the renewal copyright if the author is still alive on the last day of the original term or, if a timely renewal registration was made, on the effective date of the renewal registration. Otherwise, the following parties are entitled in this order:

- If there is a widow or widower or surviving child or children of the deceased author, the widow or widower and any surviving child or children may claim.

- If there is no widow or widower or surviving child, but the author left a will, then the executor named in the author's will may claim on behalf of the legatees.

  NOTE: If an author died during the original term without a widow or widower or surviving child, and the author's will failed to name an executor, or the executor died, or the executor was no longer acting in that capacity on the last day of the original term, the administrator (administrator c.t.a. or administrator d.b.n.c.t.a.) may be named as the vested owner on behalf of the legatees. In no case is the administrator of an intestate author's estate entitled to claim the renewal copyright.

- If there is no widow or widower or surviving child and the author died intestate, the person recognized by state law as the next of kin of the deceased author may claim.

  Exception: Next of kin are not entitled to claim the renewal copyright when an author left a will without naming an executor and an administrator c.t.a. or administrator d.b.n.c.t.a. was acting in this capacity on the last day of the original term (or on the effective date of a timely renewal registration). *See Gibran v. National Committee of Gibran*, 255 F.2d 121, 122 (2d Cir. 1958).

2115.5(C)(2) Proprietary Works

The law provides four exceptions to the general rule that the individual author (or the author's heirs as described above) is entitled to claim the renewal copyright. For the following types of works, the proprietor of copyright on the last day of the original term (or on the effective date of a timely renewal registration) may claim the renewal copyright:

- Works made for hire. The exception that entitles "an employer for whom such work is made for hire" was created to make it possible for a proprietary author (the

employer) to claim the renewal copyright in a work created at its "instance and expense."[15]

NOTE: Generally for this exception to apply, the original copyright claimant must have secured copyright by virtue of employing the creator, rather than through any transfer of rights after the work was completed. When a renewal claim indicates that the work was not "copyrighted" by the employer (*i.e.*, the employer transferred the common law property to a third person prior to publication or registration as an unpublished work), the U.S. Copyright Office will advise the applicant about this situation and request confirmation that the facts of authorship are accurately stated.

- Composite works. The purpose of this exception was to provide the proprietor the means of renewing the copyright when, as a practical matter, there were too many authors to join in the renewal claim. To be an acceptable basis for a renewal claim, the work must meet the criteria for composite works.

- Posthumous works. This exception as set forth in the Copyright Act of 1909 allows the proprietor to claim the renewal copyright when a work was first published after the death of the author.

  NOTE: For a proprietary author to be entitled to claim the renewal rights in a work published after an author's death, other factors should be taken into consideration. *See Bartok v. Boosey & Hawkes, Inc.,* 523 F.2d 941, 946 (2d Cir. 1975) (concluding that a concerto was not a posthumous work considering the fact that the author completed the concerto, heard it performed, executed a contract for its copyright, corrected published proofs, distributed orchestra parts, and the general public heard the concerto in concert and on the radio). For renewal registration purposes, a work is not considered posthumous unless it was unpublished when the author died and the author did not assign the copyright or exploit any rights in the work during his or her lifetime. The Office will require these facts to be established before registering a renewal claim on the statutory basis of being a posthumous work.

  Exception: If the work was unpublished when the author died, and if the author did not assign the copyright – but did exploit some of the rights through contracts – it may be unclear whether the work is posthumous or not. A registration specialist may communicate with the applicant to determine whether the renewal claim is eligible for registration as a personal or posthumous work. As appropriate, the Office may register the claim as an adverse renewal claim or may refuse registration.

- Works copyrighted by a corporate body other than as an assignee or licensee. This exception has little meaning within the scope of renewal registration because nearly

15 This phrase comes from court decisions regarding works made for hire under the Copyright Act of 1909. *See, e.g., Yardley v. Houghton Mifflin Co.,* 108 F.2d 28, 31 (2d Cir. 1939) (discussing purposes and expense); *Brattleboro Publishing Co. v. Winmill Publishing Corp*., 369 F.2d 565, 567 (2d Cir. 1966); *Picture Music, Inc. v. Bourne, Inc*., 457 F.2d 1213, 1216 (2d Cir. 1972); *Murray v. Gelderman*, 566 F.2d 1307, 1310 (5th Cir. 1978); *Easter Seal Society for Crippled Children & Adults of Louisiana, Inc. v. Playboy Enterprises*, 815 F.2d 323, 325-28 (5th Cir. 1987).

all proprietary works to which it could apply more clearly qualify under one of the other exceptions. Examples of types of works to which this exception may apply:

- A work to which stockholders of a corporation contributed indistinguishable parts.
- A work written by officials or stockholders in a corporation when it was written directly for the corporation but not as a work made for hire.
- A work written or created by members of a religious order or similar organization, when the individual authors never had a personal property right in the work.
- A motion picture when it is asserted that it was produced under special circumstances and was not copyrighted by an employer for whom the work was made for hire.

Types of works to which this exception cannot apply:

- The original copyright proprietor was not a corporation.
- The individual author of an unpublished work transferred the common law literary property or the right to secure copyright to a corporation.
- A posthumous or composite work or a work made for hire.

NOTE: The Office will inquire about a renewal claim that cites this exception as the basis of the claim unless the applicant provides an explanation of special circumstances under which this basis of claim applies.

2115.5(D) Effect of Timely Renewal Registration

When a timely renewal registration was made, it determined the party(ies) in whom the renewal copyright would vest at the beginning of the renewal term. Any subsequent renewal claim filed during the renewal term must identify another party entitled to claim the renewal copyright on the effective date of the timely renewal registration, or, if any party entitled on that date either died or ceased to exist before the renewal copyright vested, a successor or assignee of that party. In such cases, the certificate of renewal registration should cite the number and effective date of the timely renewal registration and identify both the statutory renewal claimant and the vested owner.[16] It should also provide the statutory basis for the renewal claim and a statement explaining how the vested owner acquired the renewal copyright from the statutory renewal claimant(s). For examples of acceptable statements, see Section 2115.5(E)(3).

16 This policy took effect in 2011.

2115.5(E) Acceptable Basis of Claim Statements

A renewal claim must state the statutory basis of the renewal claim in acceptable terms.

2115.5(E)(1) Personal Works

Examples of acceptable statements for personal works include:

- For an author: "Author."
- For a widower or widow: "Widower (or widow) of the deceased author (name of author)."
- For a child: "Child of the deceased author (name of author)."
- For an executor named in the author's will: "Executor of the deceased author (name of author)."
- For an administrator c.t.a. (or d.b.n.c.t.a.) for the deceased author's estate: "Administrator c.t.a. (or administrator d.b.n.c.t.a.) for the estate of the deceased author (name of author)."
- For a next of kin: "Next of kin of the deceased author (author's name), there being no will."

NOTE: In exceptional cases, the U.S. Copyright Office may accept other basis of claim statements for personal works when the statement appears to be accurate and to comply with the intent of the law.

2115.5(E)(2) Proprietary Works

Examples of acceptable statements for proprietary works include:

- If the work is a work made for hire: "Proprietor of copyright in a work made for hire."
- If the work is a composite work: "Proprietor of copyright in a composite work."
- If the work is a posthumous work: "Proprietor of copyright in a posthumous work."
- If the work was created by a corporate body under certain exceptional circumstances: "Proprietor of copyright in a work copyrighted by a corporate body, otherwise than as an assignee or licensee." As discussed in Section 2115.5(C)(2), this basis of claim is appropriate only in very limited circumstances.

NOTE: In exceptional cases, the U.S. Copyright Office may accept other basis of claim statements for proprietary works when the statement appears to be accurate and to comply with the intent of the law. *Cadence Industries Corp. v. Ringer*, 450 F. Supp. 59, 64 (S.D.N.Y. 1978).

2115.5(E)(3) Statutory Renewal Claimant Is Not Vested Owner

When the renewal copyright vested in a party which acquired the renewal copyright from a statutory renewal claimant as determined by a timely renewal registration, the renewal claim must provide the statutory basis for the claim to the renewal copyright and a statement showing how the vested owner acquired the copyright from the statutory renewal claimant. Examples of acceptable statements are:

- By will (or by intestate succession) of (name of deceased statutory renewal claimant), who was entitled on (effective date of timely renewal registration) to claim the renewal copyright as the (basis of claim statement from Section 2115.5(E)(1)).
- By assignment or written agreement on (date) from (name of deceased or defunct statutory claimant), entitled on (effective date of timely renewal registration) to claim the renewal copyright as the (basis of claim statement from Section 2115.5(E)(1) or 2115.5(E)(2)).
- By merger agreement with (name of defunct statutory claimant), entitled on (effective date of timely renewal registration) to claim the renewal copyright as the (basis of claim statement from Section 2115.5(E)(2)).

2115.5(F) Proprietary Work, Vested Owner Is Not the Original Copyright Claimant

The right to claim the renewal copyright in a proprietary work flows from the original copyright claimant. Therefore, when the vested owner is not the original copyright claimant in a proprietary work, the U.S. Copyright Office may inquire about when and how the vested owner obtained the right to claim the renewal copyright from the original copyright claimant.

2115.5(G) Name of Vested Owner and Statutory Basis of Claim Statement Required

The full legal name of the vested owner is required, even when the work is anonymous. When a work is pseudonymous and the vested owner is the author, the renewal claim may identify the vested owner by the author's pseudonym.[17] An acceptable statement explaining the statutory basis for the vested owner's claim to the renewal copyright is also required. *See* Section 2115.5(E). When the vested owner acquired the renewal copyright from the statutory renewal claimant as determined by a timely renewal registration, the statement should also show how the vested owner acquired the renewal copyright from the statutory renewal claimant. *See* Section 2115.5(E)(3).

17 This policy took effect with the publication of the *Compendium of U.S. Copyright Office Practices, Third Edition.*

2115.5(H) Multiple Vested Owners

A renewal claim does not have to identify all vested owners of the work or material claimed. However, if there are multiple vested owners and they are represented by the party filing the renewal claim, they should all be identified as vested owners.

2115.5(I) Current Mailing Address or Year of Death Required

The vested owner's current address should be provided unless the vested owner is deceased or defunct (in the case of an organization) at the time of renewal registration. In that case the applicant should provide the year of death (if the vested owner was an individual) or dissolution (if the vested owner was an organizational entity).

2115.5(J) Vested Owner Is Deceased or Defunct at Time of Renewal Registration

If the vested owner is deceased or defunct at the time of renewal registration, the renewal registration record must identify the current owner of the renewal copyright. If it is unclear how or when the renewal copyright was derived from the vested owner, see Section 2115.6(C).

2115.6 Current Owner Information

A renewal claim filed during the renewal term may identify the current owner (assignee or successor) of the renewal copyright, provided that it also identifies the vested owner. 17 U.S.C. § 304(a)(3)(A)(ii) (allowing assignees or successors to register a claim to the renewed and extended term of copyright "if application is made in the name of" the vested owner). When the vested owner is deceased or defunct (as in the case of an organization) at the time of renewal registration, the renewal registration record must identify at least one current owner and provide information about how that party obtained the renewal copyright from the vested owner.

2115.6(A) Full Legal Name and Address for Current Owner

When the renewal registration identifies the current owner of the renewal copyright, it should provide the full legal name and the current address at the time of renewal registration. When the party is commonly known by an alternative designation, that designation should also be provided.

2115.6(B) Acceptable Transfer Statements

When the current owner of the renewal copyright is identified, the renewal registration must provide information about how the renewal copyright was acquired. Examples of acceptable transfer statements include:

- By assignment from the vested owner dated (date).
- Successor under the will of (by intestate succession from) the vested owner.
- By assignment from (name of party), successor by merger of the vested owner.

- By assignment dated (date) from (name of party), assignee of the vested owner by assignment.

2115.6(C) Means or Date of Transfer Is Unclear

When the relationship or the chain of title between the vested owner and the current owner is unclear, the U.S. Copyright Office may inquire about when, how, and from whom the party identified as the vested or current owner acquired the renewal copyright.

2115.6(D) Renewal Copyright Assigned During Original Term

When the renewal copyright is assigned before it vests, it is a contingency right until the renewal copyright actually vests. An assignor may reserve that right by filing a timely renewal registration (thereby determining in whom the renewal copyright will vest), or by allowing the right to vest automatically. The U.S. Copyright Office will inquire about the date of an assignment and/or the identity of the assignor when this information is useful in establishing or verifying the identity of the vested owner.

2115.6(E) Renewal Registration Already on Record in the Name of a Vested Owner

When a renewal registration is on the record in the name of a vested owner, the U.S. Copyright Office will refuse a renewal claim in the name of a current owner which derived the renewal copyright from that vested owner. In such cases, the appropriate action is to record the document of transfer. For information concerning this issue, see Section 2136.

2115.7 Certification Required

The name and signature of the person certifying the facts stated in the application are required. That person should be a vested owner or a current owner who derived the renewal copyright from the vested owner, or the authorized agent of a vested owner or current owner. The Office will accept a handwritten, typed, or printed signature. If the signature is handwritten, the first and last name of the person who certified the application should be typed or printed in the space marked "Typed or printed name." The date of certification should also be provided.

2116 Additional Requirements for Published Works Not Registered for the Original Term: Form RE/Addendum

When a published work (or the larger work in which it was first published) was not registered for the original term, additional information must be provided to show that the work met all statutory requirements to secure and maintain the full original term of copyright. A deposit copy is required, along with Forms RE and RE/Addendum and a separate filing fee for each application. The U.S. Copyright Office may request more information as needed to establish eligibility for renewal registration, or may require supporting documentation, or proof of certain facts regarding publication with the statutory or U.C.C. notice.

2116.1 Title Information

This space of Form RE/Addendum provides title information for the eligible work. Generally, the eligible work is the U.S. work, or an eligible work of foreign origin, that bore the statutory or U.C.C. notice at the time of first publication. When copyright was secured in a contribution to a periodical or published collection under a general copyright notice, Form RE/Addendum should give the title of the periodical or collection. When a contribution was first published with its own separate copyright notice, Form RE/Addendum should identify the contribution as the eligible work. The complete title of the work as first published is required.

2116.2 Author Information

This space of Form RE/Addendum must identify at least one eligible author and provide the nationality and domicile of the author at the time of first publication. The author may be an individual or proprietary author.

2116.2(A) Name of Eligible Author

The full legal name of the author at the time of first publication is required. If there are multiple joint authors, the name of only one joint author on whom eligibility is based is required.

Exceptions: When a work is pseudonymous, the author may be identified by the pseudonym. When a work is anonymous, the author's legal name is not required but the author's nationality and domicile must be provided.[18]

NOTE: When renewal registration is sought for a contribution first published in a periodical or collection (or a separate work or element of authorship first published in a larger work) that bore only a general copyright notice, the eligible work is the periodical, published collection, or larger work. Therefore, Form RE/Addendum should name the eligible author of the periodical, collection, or larger work, while Form RE should identify the author of the contribution or separate element of authorship and should provide that author's nationality and domicile at the time of first publication.[19]

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18 This provision represents a change of policy that occurred with the publication of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Previously, the U.S. Copyright Office required the legal name of at least one author to establish eligibility. For a discussion of this issue, see Section 2115.4(A)(1).

19 This requirement represents a change of policy that took effect when Form RE was amended to provide nationality and domicile information for an author. Prior to this amendment, Form RE/Addendum identified the eligible author of the work in which the renewal copyright was claimed. For example, if the renewal claim was in a contribution first published in a published collection, Form RE/Addendum identified the author of the contribution because Form RE did not provide this information.

2116.2(B) Nationality and Domicile of Eligible Author

Both the nationality and domicile of the eligible author at the time of first publication are required. For works made for hire, when the employer is an individual, both nationality and domicile at the time of first publication is required. When the employer is a corporation, the country of incorporation is required in lieu of nationality or domicile. For posthumous works, eligibility may be based on either the nationality of the deceased author at the time of death, or the nationality and domicile of the original copyright claimant at the time of first publication.

2116.3 Publication Information

The complete date (month, day, and year) and the nation (as then known) of first publication are required.

2116.3(A) Date of First Publication Unknown

When the actual date of publication is unknown, the applicant should still provide a complete date to the best of his or her knowledge, along with a separate written statement explaining the basis for determining the date given.

2116.3(B) Simultaneous Publication in the United States

For renewal registration purposes, a work was simultaneously published in the United States when it was published in this country on the same day as it was published abroad. Such works are considered to be first published in the United States.

Exception: For information regarding the effect of simultaneous publication in the United States on renewal registration of books and periodicals that would be otherwise eligible as U.C.C. works, or through *ad interim* copyright and compliance with manufacturing requirements, see Section 2118.3. For works of foreign origin that are published in the United States within thirty days of first publication abroad, see Part VII regarding restoration of copyright under the URAA.

2116.4 Manufacture Information

This space of Form RE/Addendum must be completed for all nondramatic literary works and two-dimensional prints and labels in the English language. Information as to where and how such works were manufactured is required. *See* Section 2124. This information is also required for foreign language books when the eligible author was a national or domiciliary of the United States at the time the work was first published.

2116.4(A) Acceptable Terms to Describe Manufacturing Process

The processes by which a work was manufactured may be described in general terms, such as “typeset,” “printed from plates,” “photoengraving process,” “lithographic process,” “offset,” “photo-offset,” or “binding.”

2116.4(B) Works Manufactured by Other Processes

When the applicant asserts that a work was manufactured by other processes and it appears the work may not have fully complied with the manufacturing requirements, the U.S. Copyright Office will require additional information about the manufacturing processes to determine whether the work secured the full original term of copyright in the United States. If such information cannot be provided, renewal registration may be refused.

2116.5 Deposit Information

This space of Form RE/Addendum describes the material deposited for registration of published works that were not registered for the original term. Renewal registration is generally dependent on the availability of a complete copy or phonorecord of the work as first published.

2116.5(A) Deposit Requirement

The deposit requirement for renewal registration of published works that were not registered for the original term is one complete copy or phonorecord of the work as first published. This requirement applies to U.S. works and works of foreign origin.[20]

Exception: For information regarding the deposit requirements for renewal claims in contributions first published in a periodical or collection and separate works or elements of authorship in a larger work, see Section 2116.5(C).

NOTE: The deposit requirement for renewal registration based on the first publication of a work that secured statutory copyright by registration as an unpublished work depends on when the work was first published. *See* Section 2116.5(E).

2116.5(B) Alternative Deposit Material

When only archival copies or phonorecords of the work as first published are available at the time of renewal registration, an applicant may provide an explanation of why it is difficult to meet the deposit requirement. The U.S. Copyright Office will consider on a case-by-case basis whether alternative deposit material is acceptable. If approved, the alternative deposit material should be described on Form RE/Addendum.

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20 The Office adopted this requirement when the Copyright Act of 1976 went into effect. *See* 37 C.F.R. § 202.20(c)(1)(ii). This represented a change in policy from the Copyright Act of 1909, which provided that copyright could be secured by the act of publication with notice, after which it required "prompt" deposit of "two complete copies of the best edition thereof then published" for U.S. works and "one complete copy of the best edition then published" for works of foreign origin. To register a work for the original term under the 1909 Act, the Office required two complete copies of the best edition then published for U.S. works, and one complete copy of the best edition so published for works of foreign origin if a registration fee was paid, or two such copies if a catalog card was submitted in lieu of the fee.

NOTE: When a work is selected by the Library of Congress for its collections the Office generally will require that the deposit requirement be met (*i.e.*, alternative deposit material and identifying material will not be accepted), or the Office may accept a reproduction of the work in an archival-quality format under a grant of special relief.

2116.5(B)(1) Identical to the Complete Work as First Published

When the alternative deposit material is a photocopy or exact reproduction, or a complete copy of the work as first published that is transferred to an archival-quality format, the applicant must verify in writing that the deposit material is identical to the work as first published, including the position and content of the copyright notice.

2116.5(B)(2) Reprint or Reissue of Work as First Published

When the alternative deposit material is a reprint edition (as in a book), or a reissue (as in a sound recording), or a domestic edition of a foreign work (as in a motion picture with English subtitles), or the foreign edition of a U.S. publication (as in a magazine issue), that contains the same identical copyrightable content but with a different copyright notice and perhaps some new, separate content, such as cover artwork, introductory text, liner notes, credits, or subtitles that is not the subject matter of the claim, the applicant should provide the following, in addition to a complete copy of the reprint or reissue:

- A written request for a grant of special relief from the deposit requirement with an explanation of why a copy as first published cannot be deposited;
- Material obtained directly from a copy or phonorecord of the work as first published that properly identifies the work and its contents, and shows the work was first published with the statutory or U.C.C. notice; and
- A written statement verifying that all of the authorship claimed is contained in the deposit copy and is identical to the work as first published, and specifying the new, separate authorship contained in the copy that is not part of the claim.

In such cases the renewal claim must be limited to the authorship in the deposit copy that is separate and identical to the work as first published. The U.S. Copyright Office will then determine on a case-by-case basis whether to accept the deposit material under a grant of special relief.[21]

2116.5(B)(3) Identifying Material

In exceptional circumstances, the U.S Copyright Office may accept identifying material when it is not possible to provide a complete copy of the work as first published. In such cases, the applicant should provide the following, in addition to the identifying material:

21 The option to grant special relief in such cases represents a change of policy that took effect with the publication of the *Compendium of U.S. Copyright Office Practices, Third Edition.*

- A written request for a grant of special relief from the deposit requirement with an explanation of why a complete copy as first published cannot be deposited;

- Material obtained directly from a copy of the work as first published that properly identifies the work and its contents, and shows the work was first published with the statutory or U.C.C. notice; and

- A detailed description of how the deposit material differs from the work as first published, and how much of the original content is contained in the deposited material.

In each case, the Office will consider the specific circumstances in determining whether renewal registration should be made, even though the deposit requirement is not met. If identifying material is accepted, the Office will register the renewal claim under a grant of special relief when the damage, change, or revision in the deposit material is minimal, separate from, and does not include any portion of the authorship in which renewal is claimed and the work met all other statutory requirements to secure the full original term of copyright. If the situation is otherwise, the Office will either refuse renewal registration, or register the renewal claim under the rule of doubt with an annotation on the certificate of renewal registration and a note in the renewal registration record explaining that the deposit material does not comply fully with renewal registration requirements.[22]

NOTE: When it is not known or cannot be determined that the identifying material contains a representative amount of the copyrightable content, or it is not possible to distinguish between the copyrightable content contained in the work as first published and the revisions or changes in the deposit material, the Office will not accept identifying material.

NOTE: When a renewal claim is filed under expedited handling due to pending or prospective litigation, or when the renewal claim is adverse to another renewal claim in process or already on the record, if alternative deposit material is deposited, it must be identical to the complete work as first published. In such cases, the Office will not accept identifying material. Generally, in adverse situations, the deposit material cannot be, or be taken from, an infringing copy. For information regarding adverse renewal claims, see Section 2137.

2116.5(C) Contribution First Published in a Periodical, Collection, or Larger Work

The deposit requirement for a contribution first published in a periodical, collection, or larger work is identifying material including the complete contribution and the title and table of contents pages from the collection or larger work or the mast head of the

22 This provision represents a change of policy that took effect with the publication of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Under the prior policy, the Office determined whether the deposit material was acceptable under the deposit requirement and either refused or registered with reference to the alternative deposit material in Form RE/Addendum. Registration was not made under the rule of doubt and special relief did not apply.

periodical. If the contribution did not bear its own separate copyright notice, the page showing the position and content of the general copyright notice is required. If the periodical, published collection, or larger work was subject to the manufacturing clause, the pages containing information about how and where the work was printed and bound are required.

2116.5(D) Music or Other Component Element Embodied in a Published Motion Picture

The deposit requirement for music or other component elements embodied in a published motion picture is identifying material consisting of a script, photograph, transcription, or reproduction on a phonorecord of the component element as contained in the motion picture, along with photographs or reproductions of the screens from the motion picture as first published showing the title and credits, and the content and position of the copyright notices for both the motion picture and the component element.

2116.5(E) Based on First Publication

If the work was first published before January 1, 1978, the deposit requirement is one complete copy or phonorecord of the work as first published. If the work was first published on or after January 1, 1978 the deposit requirement is one complete copy or phonorecord of the best edition available at the time of registration, along with other examining material from the work as first published to prove that the work as first published met all statutory requirements to maintain the copyright secured by registration of the unpublished work. If the best edition is not identical to the work as first published see Sections 2116.5(B)(2) and 2116.5(B)(3).

2116.6 Verification of Copyright Notice

Generally, renewal registration of a published work is premised on these facts:

- The full original term of copyright was secured upon first publication with the statutory or U.C.C. notice (or soon thereafter by securing *ad interim* copyright, during which the work was manufactured and published in the United States with the required copyright notice); and

- Statutory copyright has been maintained uninterrupted through the full original term and into the renewal term, and subsists at the time of renewal registration.

The U.S. Copyright Office requires written verification of these facts by a knowledgeable source. For information about notice requirements under the Copyright Act of 1909, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf. Regarding the notice requirements for specific classes of works, see Part IV.

2117 Effective Date of Renewal Registration

The effective date of renewal registration is established when all of the elements required for renewal registration are received (filing fees, Form RE, Form

RE/Addendum, if necessary, deposit materials, if any), and Form RE identifies the work by title or original registration number, and identifies at least one vested owner. If the initial deposit material is not in an acceptable format, but is accessible for examining purposes and contains all of the copyrightable authorship claimed, the effective date of the renewal registration will not be affected.

PART IV CLASSES OF WORKS AND RELATED REGISTRATION ISSUES

This Part focuses on issues related to renewal claims in specific classes of works. Some issues arise from the original registration record; others arise when published works were not registered for the original term.

2118 Nondramatic Literary Works (Books)

This class of works was registered for the original term under class A as published works and, since 1978 under class TX. Such works (fiction and nonfiction, poetry, etc.) were referred to as "books" in the Copyright Act of 1909.[23]

To be eligible for renewal registration, books had to secure the full original term of copyright in the United States by meeting certain requirements based on the language of the text, the nationality and domicile of the author, and the nation of first publication. U.C.C. works were exempt from some requirements, including the manufacturing requirements. Even so, the manufacturing clause remains a key factor in determining whether a book is eligible for renewal registration.

The following types of books are subject to the manufacturing clause:

- Books written in the English language (except U.C.C. works);
- Books written by a U.S. national or domiciliary;
- Books that were first published in the United States.

Another determining factor is the nationality and domicile of the author at the time of first publication; the place of publication is generally immaterial except when a book was:

- First published in the United States; or
- First published in a U.C.C. country (other than the United States) and the author was not a U.S. national or domiciliary at the time of first publication. *See* U.S. COPYRIGHT OFFICE, UNITED STATES COPYRIGHT RELATIONS OF CURRENT INTEREST (1960).

23 For a discussion of unpublished, nondramatic literary works prepared for oral delivery (lectures, sermons, addresses), see Section 2122.4.

In nearly all cases, books had to be published with a copyright notice as specified in Sections 19 and 20, or 9(c) of the Copyright Act of 1909 (as amended), whether published in the United States or abroad.

Exception: It was possible to secure *ad interim* copyright in an English-language book published abroad without the required notice. However, to secure the full original term of copyright in the United States, such books had to be manufactured and published in this country with the statutory or U.C.C. notice while *ad interim* copyright subsisted, and to maintain copyright, every copy published in the United States had to bear the required copyright notice.

2118.1 English Language Books

Generally, all English language books are subject to the manufacturing clause except those that qualify under the U.C.C. exemption ("U.C.C. works").

Exceptions: For information concerning works under *ad interim* copyright when a country joined the U.C.C. and works that secured, or were capable of securing, *ad interim* copyright as of December 31, 1977, see Section 2115.2(F). Also, when an author of a book was stateless on the date of first publication, renewal registration is possible regardless of the former or prospective citizenship or domicile of the author, or the place of manufacture or first publication.

2118.2 Foreign Language Books

Generally, foreign language books are subject to the manufacturing clause only if first published in the United States.

Exception: If the author is a U.S. national or domiciliary when a foreign language book was first published, the book had to be manufactured in the United States. If the book was manufactured abroad, copyright in the United States was lost upon publication; *ad interim* copyright could not be secured, and renewal registration is not possible.

2118.3 Effect of Simultaneous Publication in the United States

Generally, when a book is otherwise eligible for renewal registration as a U.C.C. work, simultaneous publication in the United States will not prevent renewal registration. For an explanation of what constitutes simultaneous publication, see Section 2116.3(B).

2118.4 Illustrations in a Book

Renewal registration for an illustration contained in a book that is subject to the manufacturing clause depends on the process of reproduction. If the illustration was produced by lithographic or photoengraving processes it must be manufactured in the United States. For more information, see Section 2121.5.

2118.5 Unpublished Nondramatic Literary Material

Unpublished nondramatic literary material (other than those prepared for oral delivery) could not be registered under the Copyright Act of 1909 and did not come under

statutory protection until January 1, 1978 under the Copyright Act of 1976. Therefore, renewal registration is not applicable to these works. For information about renewal registration of nondramatic literary works prepared for oral delivery, see Section 2122.4.

2118.6 Literary Material Contained in a Published Phonorecord

Under the Copyright Act of 1909, the release of a sound recording on a phonorecord did not publish the recorded literary work. Therefore, a renewal claim in a published sound recording cannot extend to the recorded literary work.

2118.7 Text and Illustrations Owned Separately for the Renewal Term

When the renewal copyrights in these elements vested in different parties, or on different dates, each element must be registered separately for the renewal term, even if both elements were registered together for the original term.[24]

2119 Periodicals / Serials

Under the Copyright Act of 1909, published periodical issues were registered for the original term under class B and, since 1978 in class TX or as serials in class SE. Periodicals are subject to the manufacturing clause with regard to the textual content, and the guidelines for "books" are applicable to renewal claims in periodicals that were not registered for the original term. For information concerning these guidelines, see Section 2124.

2119.1 Title Information Should Include Volume / Number / Issue Date / ISSN (if any)

To properly identify the specific issue of the periodical that is the subject matter of the renewal registration, all indicia particular to that issue should be provided in the title information.

2119.2 Identity of Author

When a renewal claim is based on an original class B registration record, the name of the author is not required, because the original registration record did not identify the author. If the periodical issue was not registered for the original term, the renewal registration must identify the proprietary or individual author. If the author is not the original copyright claimant, the U.S. Copyright Office will generally request information that supports the author facts.

24 This registration requirement represents a change from the practice applied to timely renewal registrations when the Office accepted both claims to the renewal copyrights on one Form RE.

2119.3 Each Issue / Edition Must Be Registered Separately

Each issue of a periodical must be registered separately. Likewise, when an issue of a periodical is published in two or more separate editions containing different copyrightable content, separate renewal registrations are required.

2119.4 Extent of Renewal Claim

Generally, renewal registration for a periodical issue as a whole is made in the name of the proprietor on the statutory basis that the work is a composite work. However, not all periodicals/serials are composite works. In such cases, if the periodical was created as a work made for hire, the renewal copyright may be claimed by the proprietor on that statutory basis. If the periodical was not made for hire, the renewal copyright may be claimed on behalf of the individual author. In either case, the renewal registration should be limited to the material created by the employer for hire or individual author. *See* Sections 2115.5(C)(2) and 2126.

2120 Computer Programs

The U.S. Copyright Office began to register claims in computer programs in 1964 as "books" in class A. Since 1978, claims in computer programs have been registered in class TX or PA.

To be registrable for the renewal term, a computer program must meet the following requirements:

- It was published in copies (*i.e.*, reproductions of the program in a form perceptible or capable of being made perceptible to the human eye were distributed or made available to the public). If the computer program was not registered for the original term and it seems unlikely that it was actually distributed to the public in the form deposited, or it seems unlikely that it was actually published, the Office may inquire about publication and may require a brief explanation of the way in which the program was first made available to the public and the form in which the copies were published.

- The literary expression consists of sufficient creative authorship to support a claim to copyright.

- The published copies contained the statutory or U.C.C. notice for books. When a program was first published in the form of punched cards or magnetic tape, the work did not have "pages" so the requirement that the notice must appear in books either on the title page or the page immediately following could not be met. In such cases, the Office will take into consideration the nature of any intervening material in determining whether the location of the notice is acceptable. For more information, see COMPENDIUM (FIRST) Supplementary Practice No.35.

2121 Works of the Visual Arts

This category of works includes classes F through K under the Copyright Act of 1909 and all categories of works registered since 1978 in class VA. These classes include:

pictorial, graphic and sculptural works including two- and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams and models embodied in a wide variety of forms. Certain classes of works could be registered in unpublished form for the original term; others had to be published to be registrable. Works within Class K (prints and pictorial illustrations) are subject to the manufacturing clause.

2121.1 Maps

This class of works was registered for the original term under class F and, since 1978, in class VA. For renewal registration purposes, this type of work includes all published cartographic representations of area, such as terrestrial maps and atlases, marine charts, celestial maps, and such three-dimensional works as globes and relief models.

To be registrable for the renewal term, a map should contain original cartographic material, such as drawings or pictorial representations of area based on original surveying or cartographic field work, or compilations resulting from the selection and ordering of essentially cartographic elements, such as roads, lakes or rivers, cities, political or geographic boundaries.

The copyright notice may consist of any acceptable form of the word "copyright" or the copyright symbol, along with the name of the copyright proprietor. The year date of publication may be included, but it is not required. An acceptable notice may also include the initials, monogram, mark, or symbol in place of the name of the copyright proprietor if the name of the proprietor appears on some permanently accessible portion of the work. All of the elements should appear together and be positioned in such manner and location as to give reasonable notice of the copyright claim. For more information about notice requirements, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf.

NOTE: If maps appear on multiple pages as in a "book," the notice should include the year date and appear on the title page or the page immediately following.

2121.2 Original Works of Art

This class of works was registered for the original term under class G, as both published and unpublished works, and, since 1978, in class VA. For renewal registration purposes, this type of work includes published and unpublished pictorial or graphic works, such as paintings, drawings, cartoons, etchings, engravings, and two-dimensional abstract or representational designs, and sculptural material, such as statuary, carving in relief, and three-dimensional abstract or representational designs. These works may be embodied in a variety of forms including ornamental or useful articles.

To be registrable for the renewal term, a work of art should contain original pictorial, graphic, or sculptural material. In certain cases, the unrestricted public exhibition of a work of art may constitute a publication of the work.

The copyright notice should be legible and permanently affixed to the work itself and the required elements should appear together. For information concerning the required elements and location of the notice, see Section 2121.1.

2121.3 Technical Drawings and Models

This class of works was registered for the original term under class I, as both published and unpublished works and, since 1978, in class VA. For renewal registration purposes, this type of work includes published and unpublished two-dimensional drawings and three-dimensional plastic works designed for a scientific or technical use, such as architectural blueprints, mechanical drawings, engineering diagrams, and anatomical models.

To be registrable for the renewal term, such works should contain original graphic, pictorial or sculptural material.

The copyright notice should be legible and permanently affixed to the work itself and the required elements should appear together. For information concerning the required elements and location of the notice, see Section 2121.1.

2121.4 Photographs

This class of works was registered for the original term under class J, as both published and unpublished works and, since 1978, in class VA. For renewal registration purposes, this type of work includes published and unpublished still photographic prints.

To be registrable for the renewal term, a photograph should contain original photographic authorship in the various elements involved in its composition, such as time and light exposure, camera angle, or arrangement and disposition of the subjects depicted.

Generally a photograph is not considered published until copies have actually been placed on sale, sold, or publicly distributed. However, an unrestricted public exhibition may constitute publication. While photographs are not subject to the manufacturing clause, a lithographic or photoengraving reproduction is subject to this provision.

NOTE: For renewal registration purposes, a published reproduction of a photograph produced by lithography, photoengraving, rotogravure, collotype, mezzotint, or other similar process of reproduction is not registrable as a "photograph," but it may be registrable as a "print" or "pictorial illustration" if it meets manufacturing requirements. When the photograph is reproduced and first published as a contribution to a collection, the U.S. Copyright Office will inquire about the reproduction process and will refuse renewal registration if the photographic reproduction or the published collection did not meet manufacturing requirements at the time of first publication.

2121.4(A) Notice Requirements

The copyright notice must be permanently affixed to the photograph itself and the required elements should appear together. For the required elements of the notice, see Section 2121.1. Also, the notice may consist of the symbol © accompanied by the initials,

monogram, mark, or symbol of the copyright proprietor. The notice may be located on any accessible part of a single-page work or on a margin or permanent mounting, provided that it is visible and not concealed. For more information about notice requirements, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf.

Exception: When eligibility for renewal registration is based solely on the U.C.C exemption, the copy must bear the U.C.C. notice as specified in Section 9(c) in the Copyright Act of 1909 (as amended). However, if the notice satisfies the notice requirement of Section 19, but not 9(c), renewal registration may still be possible. In this case, the U.S Copyright Office will add an annotation to the certificate of renewal registration and a note in the registration record citing this Section of the *Compendium of U.S. Copyright Office Practices, Third Edition*.

NOTE: Renewal registration may be possible when a photograph was first published in a book with a copyright notice that is acceptable for photographs but does not meet the statutory requirements for books. In such cases, renewal registration must be limited to the photograph.

2121.4(B) First Published in a Motion Picture

The U.S. Copyright Office has a longstanding practice of regarding a motion picture as a unitary work in which the component elements are integral to the work as a whole. Therefore, when a photograph was first published in a motion picture, renewal registration is not possible unless it was registered separately for the original term as an unpublished work, or the motion picture bore a separate copyright notice for the photograph. Renewal registration for such photograph cannot be based on the original registration record for the motion picture. *See* Section 2122.6(C).

2121.5 Prints and Pictorial Illustrations

Prints were registered for the original term under class K and reproductions of artistic works and photographs were registered in classes H and K, respectively. Since 1978 they have been registered in class VA. For renewal registration purposes, this type of work includes published prints (commercial or otherwise), posters, pictorial illustrations, greeting cards, picture postcards, gameboards, and labels, among other works produced by means of lithography, photoengraving, or other methods of reproduction.

To be registrable for the renewal term, a print or pictorial illustration should contain original graphic or pictorial material. A reproduction should contain original authorship such as drawing, sculpture, or molding, and the underlying work should be a pictorial, graphic, or sculptural work. Because a reproduction is a derivative work, a renewal claim must describe the authorship in the reproduction. Prints and labels, as well as reproductions first published in books, are generally subject to the manufacturing clause.

2121.5(A) Manufacturing Requirements

As a general rule, to be registrable for the renewal term a lithograph or photoengraving, whether first published as an illustration in a book or as a separate work, should be manufactured in the United States.

Exceptions: In the following cases a lithograph or photoengraving does not have be manufactured in the United States:

- It represents a subject located abroad and illustrates a scientific work or reproduces an artistic work.
- It qualifies for renewal registration as a U.C.C. work.
- It was first published as part of a larger work other than a book (for example a periodical, a drama, or a musical composition).
- It was first published in a book that is not subject to the manufacturing clause (for example, a foreign language book written by a foreign author and first published abroad).

NOTE: When the entire text of a book is in the public domain and the illustrations constitute the new material, or when multiple lithographs or photoengravings are published in a collection in which these elements predominate, they are treated as separate works, and each illustration, lithograph, or photoengraving must meet the statutory requirements.

2121.5(B) Notice Requirements

The copyright notice must be permanently affixed to the work itself and the required elements should appear together. For information concerning the required elements and location of the notice, see Section 2121.1.

2121.6 Architectural Works

For renewal registration purposes, an architectural work can be registered only as a technical drawing. *See* Section 2121.3. Form RE should describe only the authorship contained in the drawing and should not refer to any element associated with the building itself, because an architectural work as it exists in a building was not protected under the statute until December 1, 1990.

2122 Works of the Performing Arts

This category of works includes classes C through E and L through N under the Copyright Act of 1909 and, since 1978, all categories of works currently registered in classes PA and SR. For renewal registration purposes, this category of works includes published and unpublished songs and musical works, dramatic works (with or without music), motion pictures and other audiovisual works, and unpublished lectures, sermons, interviews, and speeches prepared for oral delivery, presentation, or performance. From February 15, 1972, it also includes published sound recordings.

2122.1 Musical Works and Songs

This class of works was registered for the original term under class E, as both published and unpublished works, and since 1978 in class PA. For renewal registration purposes, this class of works includes published and unpublished musical works and songs. It does not include published works containing only lyrics.[25]

2122.1(A) Published After Registration as Unpublished Work

When a musical work or song was published following registration as an unpublished work before 1978, a renewal with addendum claim may be filed based on first publication to show proof that the song as first published met the statutory requirements to maintain the copyright secured by the original registration. *See* Section 2115.3(E).

2122.1(B) First Published as a Component Element of a Motion Picture Soundtrack

Renewal registration in a song or incidental music first published in a motion picture soundtrack is possible only if the song or incidental music was registered separately from the motion picture for the original term, or if the motion picture was first published with a separate copyright notice for the musical work. *See* Section 2122.6(C).

2122.1(B)(1) Registered for Original Term as Unpublished Work

When a musical work or song from a motion picture was registered for the original term as an unpublished work, a renewal registration may be based on the original registration record, even when the motion picture was published before the effective date of the original term registration. When registration records show the motion picture was published prior to the effective date of the original registration record, the U.S. Copyright Office will add an annotation to the certificate of renewal registration and a note in the registration record for the musical work regarding the registration record for the published motion picture, because of the effect of publication on the copyright term.

2122.1(B)(2) Renewal Claim Based on Motion Picture Registration

Renewal registration for a musical work or song that was first published in a motion picture soundtrack cannot be based on the original registration record for the motion picture.

2122.1(C) Released Only in a Phonorecord

Under the Copyright Act of 1909, releasing a sound recording on a phonorecord did not constitute publication of the recorded musical work or song. However, such works were often registered as unpublished works to secure federal statutory protection. When the U.S. Copyright Office receives a claim in a musical work that was released in a recording before 1978 and it seems likely that the author or copyright owner would have registered the work to secure statutory protection when the recording was released, the Office may

25 Song lyrics that were first published separately from the music could be registered in class A as a book for the original term. *See* Section 2118.

advise the applicant to request a search of the records before proceeding with registration. For more information on searching Office records, see *How to Investigate the Copyright Status of a Work* (Circular 22) and *The Copyright Card Catalog and the Online Files of the Copyright Office* (Circular 23).

Exception: When the lyrics of a song were printed on an album cover or insert, the lyrics were considered to be published as of the release date of the album. In such cases, the lyrics must be registered separately from the music, based on the facts of first publication, and renewal registration depends on whether the album contained the statutory or U.C.C. notice for visually perceptible authorship.

2122.1(D) Made Available Only in Rental Score

Lease or rental of copies generally was regarded as publication under the Copyright Act of 1909 unless the distribution was to a limited group or for a restricted purpose. Therefore, when a musical work was made available in rental scores, renewal registration may be appropriate depending on the scope of distribution and restrictions placed on its use. The U.S. Copyright Office generally will register a renewal claim when the applicant asserts publication.

2122.1(E) Notice Requirements

The notice for a musical work or song should contain the word "copyright," the abbreviation "Copr.," or the symbol ©, the year in which copyright was secured and the name of the copyright proprietor and be placed either "upon its title page or the first page of music." Copyright Act of 1909, Pub. L. No. 60-349, §§ 19-20, 35 Stat. 1075, 1079-80 (1909). For lyrics published on an album cover or insert, the copyright notice should be placed on the cover or insert or near the title of the song. For musical works first published in a motion picture, the separate copyright notice should appear within the credits. For more information about copyright notice requirements, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf.

2122.2 Dramatic Works

This class of works was registered for the original term under class D, as both published and unpublished works and, since 1978, in class PA. For renewal registration purposes, these works are generally considered to be unitary works; therefore a renewal claim should generally name all of the authors who contributed to the work as a whole.

Exception: In certain cases (specifically with regard to cantatas that were registered for the original term as published musical works), when the applicant asserts that the renewal copyright in a song or musical work within a dramatic work vested separately in different parties, the U.S. Copyright Office may register separate renewal claims.

2122.2(A) First Published in a Motion Picture

When a play, script, or screenplay was registered for the original term before the motion picture was published, renewal registration may be based on the original registration

record. When the dramatic work was not registered before the motion picture was published, renewal registration is possible only if the published motion picture contained a separate copyright notice for the dramatic work.

NOTE: A renewal registration in a component element of a published motion picture, or in a work fixed and first published in a motion picture, cannot be based on the original registration for the motion picture.

2122.2(B) Made Available Only in Rental Copies

As with musical works, when a dramatic work was made available only in rental copies prior to 1978, publication may or may not have occurred. *See* Section 2122.1(D). If publication did occur, renewal registration depends on whether the dramatic work was first published with the statutory or U.C.C. notice.

2122.2(C) Released Only in a Phonorecord

Dramatic works released only in sound recordings on phonorecords were not considered published under the Copyright Act of 1909. *See* Section 2122.1(C).

2122.2(D) Notice Requirements

Dramatic works first published in copies should bear the statutory or U.C.C. notice for books. If the work was first published in a motion picture, the separate notice should appear in the credits. For more information about notice requirements, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf.

2122.3 Choreography and Works Containing Choreography

The 1909 Act did not recognize choreography as a distinct category of copyrightable authorship. A choreographic work was eligible for federal copyright protection only to the extent that it qualified as a "dramatic composition." To satisfy this requirement, a choreographic work had to tell a story, develop a character, or express a theme or emotion by means of specific movements and physical actions. *See* U.S. COPYRIGHT OFFICE, STUDY NO. 28: COPYRIGHT IN CHOREOGRAPHIC WORKS at 176 (1960).

The U.S. Copyright Office registered choreographic works for the original term as published or unpublished "dramatico-musical compositions." Copyright Office regulations promulgated under the 1909 Act stated that:

> Choreographic work of a dramatic character, whether the story or theme be expressed in music or action combined or by actions alone, are subject to registration in Class D. However, descriptions of dance steps and other physical gestures, including ballroom and social dances or choreographic works which do not tell a story, develop a character or emotion, or otherwise convey a dramatic concept or idea, are not subject to registration in Class D.

37 C.F.R. § 202.7 (1959). When Congress enacted the 1976 Copyright Act it extended federal copyright protection to choreography, and since then, the Office has registered choreographic works in class PA.

To be registered as a dramatic work for the renewal term, a choreographic work should tell a story or convey a dramatic concept or idea. The work had to be fixed in a perceptible form (*e.g.,* a textual description, Laban notation, or videography) in enough detail that the work can be performed. Descriptions of dance steps that do not tell a story, develop a character or emotion, or otherwise convey a dramatic concept or idea, are not subject to registration as dramatic works. Also, it is not possible to register a mere dance step or variation. Ballroom, social, and folk dance steps are not registrable.

2122.3(A) Registered for Original Term as Dramatic Work

When a renewal claim is based on an original registration record for a dramatic work, the renewal claim cannot extend beyond the dramatic elements of authorship described in the original registration record, even when the work is a choreographic work or a dramatic work that contains choreography.

2122.3(B) Published but not Registered for Original Term

A choreographic work may be registered for the renewal term as a dramatic work, but only when the work meets all of the following criteria for choreography:

- The work is an original creation of choreographed movements, such as a ballet, modern dance composition, or similar theatrical work;
- The choreographic authorship is fixed in a perceptible form in sufficient detail to be capable of performance; and
- The work has a dramatic element, such that the choreography tells a story, or develops a character, or expresses a theme, or conveys an emotion.

If the renewal claim describes the work or authorship as "choreography," rather than "dramatic work," the U.S. Copyright Office will add an annotation to the certificate of renewal registration and a note in the registration record that the work is registered as a dramatic work.

2122.3(C) Notice Requirements

As a dramatic work, choreographic works first published in printed copies should bear the statutory or U.C.C. notice for books. If the work was first published in a motion picture, the separate notice should appear in the credits. For more information about copyright notice requirements, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf.

2122.4 Works Prepared for Oral Delivery, Presentation, or Performance

In general, nondramatic literary works could only secure statutory protection under the Copyright Act of 1909 by the act of publication with the statutory or U.C.C. notice, followed by registration in class A, or since 1978, in class TX. However, certain literary works prepared specifically for performance or presentation to the public could secure statutory protection prior to publication by registration in class C. Because these works secured statutory protection by registration as unpublished works, a renewal claim based on an original class C registration cannot contain publication information.

2122.4(A) First Published in Copies

While a presentation or performance (or a limited distribution of copies for the purpose of presentation or performance) may not have caused a work to lose its common law protection under the Copyright Act of 1909 as an unpublished work, an unrestricted distribution of a work to the general public may have done so. *See, e.g., Estate of Martin Luther King, Jr., Inc. v. CBS, Inc.*, 194 F.3d 1211, 1214-15 (11th Cir. 1999); *King v. Mister Maestro, Inc.*, 224 F. Supp. 101, 106 (S.D.N.Y. 1963). When works registered in class C were published prior to 1978, they had to meet statutory requirements for books, including the manufacturing requirements, to maintain copyright through the full original term of copyright. When such works failed to do so upon publication, renewal registration is not possible.

2122.4(B) First Published as a Component Element of a Motion Picture Soundtrack

Renewal registration for a script, a speech, or an interview first published in a motion picture (such as a news broadcast or documentary) is not possible unless the underlying literary work was registered separately in class C prior to publication, or the motion picture as first published contained a separate copyright notice for the literary work. *See* Section 2122.6(C). Renewal registration may not be based on the original registration record for the motion picture.

2122.4(C) Released Only in a Phonorecord

Under the Copyright Act of 1909, releasing a sound recording on a phonorecord did not constitute publication of the literary work. However, reproducing any portion of the literary work on the album cover or insert material published that portion with the release of the phonorecord.

2122.4(D) Notice Requirements

The notice requirements for literary works prepared specifically for performance, delivery or presentation to the public are the same as the notice requirements for dramatic works. *See* Section 2122.2(D). For more information about copyright notice requirements, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf.

2122.5 Sound Recordings

This class of works was added in Section 5 of the Copyright Act of 1909 under a 1971 amendment that provided statutory protection to published sound recordings that were fixed on or after February 15, 1972. *See* Pub. L. No. 92-140, § 3, 85 Stat. 391, 392 (1971) (stating that the amendment "shall apply only to sound recordings fixed, published, and copyrighted on and after the effective date of this Act and before January 1, 1975");[26] *see also* 37 C.F.R. § 202.15a (1972) ("Only those sound recordings fixed and published on or after February 15, 1972, are eligible for registration."). Sound recordings published between 1972 and 1977 were registered for the original term under class N and, since 1978, in class SR.

For renewal registration purposes, this category of works includes only sound recordings fixed and published between February 15, 1972 and December 31, 1977. Sound recordings that were fixed prior to February 15, 1972, or fixed but not published between February 15, 1972 and December 1977 are not eligible for renewal registration. To be registrable, a sound recording had to be published with the required copyright notice for sound recordings. *See* Section 2122.5(G).

NOTE: Certain foreign sound recordings fixed prior to February 15, 1972 or first published prior to January 1, 1978 that are not eligible for renewal registration may be eligible for registration under the provisions of the URAA. *See* Part VII.

2122.5(A) Date of Fixation

For renewal registration purposes, the date of fixation for a sound recording is the date when the entire series of sounds constituting the sound recording was fixed on a final master recording that is later reproduced in published phonorecords. Sound recordings fixed prior to February 15, 1972 are not eligible for statutory protection.

2122.5(B) Derivative Sound Recordings

Renewal registration for a derivative sound recording that was first published before 1978 must be based on the changes or additional recorded sounds contained in the new version. If the renewal claim is based on an original registration record for the derivative sound recording, it cannot extend beyond the scope of the original registration record. If the derivative sound recording was not registered for the original term, the renewal claim cannot extend to any portion of the original sound recording that was fixed before February 15, 1972 or previously published or registered.

To be registrable for the renewal term, a derivative sound recording must contain additional recorded material, or be different enough in substance from the original sound recording to be a "new work." Changes that are purely mechanical, such as "rechanneling" or "declicking," do not result in a "new work." Generally, for a renewal claim to be based solely on the manipulation of sounds, the original sound recording should have been fixed in multiple tracks. In such cases, the U.S. Copyright Office will

26 Congress subsequently removed the January 1, 1975 deadline from the statute. *See* Pub. L. No. 93-573, § 101, 88 Stat. 1873, 1873 (1974).

require a written statement describing how the sounds were manipulated and will refuse renewal registration unless it deems this authorship to be sufficient.

2122.5(C) Eligibility of Foreign Sound Recordings

Renewal registration of foreign sound recordings is dependent on the nationality and domicile of the author at the time of first publication. Renewal registration may be possible when the author was a national or domiciliary of (or, if an organization, was registered in) a country with which the United States had bilateral relations, or when the producer was a national of (or if an organization, was registered in) a country that was a party to the Geneva Phonogram Convention at the time of first publication (on or after March 10, 1974). *See* U.S. COPYRIGHT OFFICE, UNITED STATES COPYRIGHT RELATIONS OF CURRENT INTEREST (1960); *International Copyright Conventions* (Circular 38) (1977).

NOTE: When eligibility for registration of a foreign sound recording is based solely on the provisions of the U.C.C., renewal registration is not possible, but registration under the URAA may be possible. *See* Part VII.

2122.5(D) Renewal Claims in Multi-Track Albums

When two or more sound recordings were first published in an LP album or in a 45-inch disk or on tape (reel-to-reel, cassette, 8-track cartridge, etc.), registration for the original term was generally made for the album as a whole, unless the album contained separate copyright notices for the individual tracks. Generally, a single renewal claim should be filed for a multi-track album as a whole when it was first published with a general copyright notice for the sound recording.

2122.5(E) Renewal Claim Includes Underlying Material

The release of a sound recording on a phonorecord prior to 1978 published the sound recording, but it did not constitute a publication of the recorded literary, musical, or dramatic work. 17 U.S.C. § 303(b).Therefore, a renewal claim in a sound recording cannot include a claim in the recorded literary, musical, or dramatic work, even when an original registration record mistakenly includes a claim in the recorded material. For information regarding uncorrected errors in original registration records, see Section 2130.

2122.5(F) Renewal Claim Includes Artwork or Text on Album Cover or Insert

To secure statutory copyright, visually perceptible authorship first published on an album cover or insert must have been first published with the statutory or U.C.C. notice. For renewal registration purposes, these elements must be registered separately from the sound recording, based on the separate copyright notices for the sound recording and visually perceptible authorship, unless:

- The renewal claim is based on an original registration record for the sound recording that included these elements; and
- The renewal copyrights vested in the same party and on the same date.

NOTE: A copyright notice for the sound recording cannot secure statutory copyright for the visually perceptible authorship.

2122.5(G) Notice Requirements

Section 19 of the Copyright Act of 1909 provided that the copyright notice for a sound recording should contain the symbol ℗ (*i.e.*, the letter P in a circle), the year of first publication, and the name of the copyright proprietor, or a recognized abbreviation or alternative designation of the proprietor. Copyright Act of 1909, *amended by* Pub. L. No. 92-140, 85 Stat. 391, 391 (1971). If no other name appears in conjunction with the notice, but the producer of the sound recording was named on the labels or containers, this name should be considered a part of the notice. The notice should appear on the album covers or on the disk covers in such a way as to give reasonable notice of the claim to copyright.

For renewal registration purposes, when a sound recording is first published with a copyright notice that does not include the name of the copyright proprietor, but the record producer is named on the album cover or labels on the tape or disk of the phonorecord, the record producer will be identified in the renewal registration record as the original copyright claimant.

NOTE: A copyright notice for the visually perceptible authorship on a record album cover, disk, or insert cannot secure statutory protection for the sound recording.

2122.6 Motion Pictures and Other Audiovisual Works

Motion pictures and other audiovisual works were registered for the original term under classes J, L, and M as published and unpublished works and, since 1978, in class PA. Motion pictures include "photoplays" (feature films, television shows and videos with a dramatic plot, animated cartoons, etc.) registered in class L, and other films (such as documentaries, educational or instructional filmstrips and videos, newsreels and other television shows that are not dramatic in nature) registered in class M. Motion pictures and audiovisual works may or may not contain an integrated soundtrack. When sounds were first published as part of a motion picture or audiovisual work, they are "sounds accompanying an audiovisual work (or motion picture)," not "sound recordings."

Audiovisual works, other than motion pictures, generally were registered for the original term in class J as photographs but they are included here with motion pictures based on the current law that defines motion pictures as a type of audiovisual work. For renewal registration purposes, audiovisual works include works such as filmstrips and slide films (*e.g.,* travelogs and educational slide shows).

2122.6(A) Publication of a Motion Picture

Determining whether renewal registration is appropriate may depend on whether a motion picture was first published before 1978. Under the Copyright Act of 1909, publication was generally deemed to have taken place when prints of a film were placed on sale, sold, or distributed to the public, or to film exchanges, film distributors,

exhibitors, or broadcasters under a lease or similar arrangement. The U.S. Copyright Office generally considers syndication to be publication.

NOTE: When a motion picture is published, all component elements are published to the extent they are contained within the published motion picture. *See* 37 C.F.R. § 202.15 (1975).

2122.6(B) Notice Requirements

The copyright notice for a motion picture or other audiovisual work may consist of any acceptable form of the word "copyright" or the copyright symbol, along with the name of the copyright proprietor and the year date of first publication. Generally, it should be embodied in the motion picture or filmstrip, preferably in the title frames or near them, or embodied in or after the closing credits, and should be clearly visible when projected or broadcast. For more information about copyright notice requirements, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf.

NOTE: Renewal registration may be possible when a motion picture was first published before 1978 with a copyright notice that lacks a year date, provided that the other required elements are included within the notice. By contrast, registration may be refused if the notice is illegible or otherwise fails to clearly meet the notice requirements.

2122.6(C) Component Element(s) of a Motion Picture

The U.S. Copyright Office considers a motion picture to be a unitary work in which the component parts are integral to the work as a whole. The Office generally will not register a separate renewal claim in a component element of a motion picture.

By regulation effective on May 12, 1975, renewal registration for a component element of a motion picture soundtrack (*e.g.,* music, songs, screenplay, script) is possible only when:

- A separate registration for the original term was made for that element, or
- The motion picture bore a separate copyright notice for the component element.

See 37 C.F.R. § 202.15 (1975); Motion Picture Soundtracks, 40 Fed. Reg. 12,500, 12,501 (Mar. 19, 1975).

NOTE: This regulation applies only to motion pictures first published, or registered as unpublished works, before 1978.

Likewise, renewal registration is possible for a visual work or element (such as a painting or photograph) contained in a motion picture only when the work or element was registered separately for the original term, or the motion picture bore a separate copyright notice for the work.

NOTE: A renewal claim in a component element of a motion picture cannot be based on the original registration record for the motion picture.

2122.6(D) Slides, Slide Films, and Filmstrips

For renewal registration purposes, a slide film or filmstrip must have been first published with the statutory or U.C.C. notice for photographs. *See* Section 2121.4(A). Slides or photographs on slides that were not fixed and published in a film or video format cannot be registered as a slide film. Instead, for renewal registration purposes, each slide as first published must bear a separate copyright notice as required for photographs.

2123 Multimedia Works

For renewal registration purposes, when a multimedia work consists of parts that are capable of being separated and used independently, the statutory or U.C.C. notice must appear on each component part that contains copyrightable material. If any component part bears its own separate copyright notice a separate renewal claim must be filed for the component part. When a multimedia work was first published with a general copyright notice for the work as a whole, a single renewal claim may be filed for all component parts first published together as a self-contained unit, provided the renewal copyrights in all of the material claimed vested in the same party on the same date. If the work contains an audiovisual element the sounds may be "sound recording" or "sounds accompanying an audiovisual work," depending on whether they are intended to be used in conjunction with the audiovisual component. If a multimedia work does not contain an audiovisual element, the sound component (if any) must bear the copyright notice for sound recordings. For more information about copyright notice requirements, see U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES Chs. 4, 8.2, & Supplementary Practice Nos. 18, 19, 27, 29, 35 & 37 (1st ed. 1973), *available at* http://copyright.gov/comp3/chap2100/doc/appendixA-noticerequirements.pdf.

NOTE: Sounds do not have to be physically integrated with the audiovisual work to be "sounds accompanying an audiovisual work."

PART V COPYRIGHT ISSUES RELATED TO RENEWAL REGISTRATION

This Part focuses on several broad issues that affect renewal registration.

2124 Manufacturing Clause

Section 15 of the Copyright Act of 1909 required that certain classes of works be typeset, printed, and bound in the United States to secure the full original term of copyright. Proof must be provided that such works were manufactured in the United States.

2124.1 Classes of Works Subject to the Manufacturing Clause

The following works are subject to the manufacturing clause:

- All published nondramatic literary works (books and periodicals) except the following:
  - Works exempt as U.C.C. works.
  - Works with raised characters intended for the use of the blind.
  - Works printed or produced in the United States by processes not covered by the manufacturing clause. Copyright Act of 1909, *amended by* Pub. L. No. 69-464, § 15, 44 Stat. 1075 (1926).[27]
  - Works in a foreign language by a foreign author first published abroad.
  - Works in English, first published abroad with the statutory copyright notice, and with *ad interim* copyright secured, during the term of which copies were manufactured in the United States.
- Lithographs and photoengravings, either as illustrations in books or as separate works such as two-dimensional prints and labels except the following:
  - Works exempt as U.C.C. works.
  - Works that represent a subject located abroad and illustrate a scientific work or reproduce a work of art.
  - Works published in works other than books (periodicals, dramas, musical compositions).

NOTE: A book or periodical in a foreign language by a U.S. author had to be manufactured in the United States. If manufactured abroad, it could not be registered for full-term or *ad interim* copyright during the original term, and is not eligible for renewal registration.

Exceptions: A work by a foreign author who was domiciled in the United States at the time of manufacture and first publication abroad is not considered to be a work of foreign origin. If the work is partly in English and partly in a foreign language and it qualifies as a U.C.C. work, renewal registration may be possible. For situations when renewal registration may be possible for foreign works even when they were subject to

27 "Whether a … book which is mimeographed, typewritten, or produced by a similar process of manual duplication is required to be so produced in the U.S. is regarded as doubtful." COMPENDIUM (FIRST) § 6.2.1.I.c (1st ed. 1973).

the manufacturing clause at the time of publication, but failed to comply, see Section 2115.2(F).

2124.2 Effect of the Manufacturing Clause on Copyright Term

If such works did not comply fully with the manufacturing clause at the time of first publication, copyright was lost upon publication unless, in the case of an English language nondramatic literary work (including periodicals), *ad interim* copyright was secured. For such works, if *ad interim* copyright was secured and a U.S. edition was published and registered before *ad interim* copyright expired, copyright was extended to the full original term of twenty-eight years. If a U.S. edition was not published before *ad interim* copyright expired, copyright was lost at the expiration of *ad interim* copyright. In such cases renewal registration is not possible.

Exception: If a work was manufactured and published in the United States with the statutory copyright notice prior to the expiration of *ad interim* copyright, but the U.S. edition was not registered for the original term before *ad interim* copyright expired, renewal registration may be possible for both editions.

2124.3 Manufacturing Requirements

To comply with the manufacturing clause, all text had to be typeset and printed from plates made within the United States, or produced by lithographic or photoengraving processes wholly performed within the United States. If a book was first printed from type set abroad and the pages printed abroad were then reproduced in the United States by offset or other lithographic process, such reproduction may be considered to comply fully with the requirement. All binding processes, if any, had to be performed in the United States.

All illustrations and photographs within such works, as well as separate lithographs or photoengravings (aside from when the subjects represented are located abroad and illustrate a scientific work or reproduce an artistic work) reproduced by lithographic or photoengraving processes had to be wholly manufactured in the United States.

If a published collection was partially manufactured in the United States (including the binding, if any) renewal registration may be possible for the contributions manufactured in the United States.

2125 Unpublished Collections

The provision for original term registration of a collection of unpublished material as a single work affects renewal registration for works of visual and performing arts, and certain literary works prepared for oral delivery, such as lectures, addresses, and interviews.[28]

28 Section 12 of the Copyright Act of 1909 provided for registration of certain classes of works in unpublished form. Pub. L. No. 60-349, § 12, 35 Stat. 1075, 1078 (1909). By Office practice, such

A renewal registration based on an original registration record for an unpublished collection may cover one, some, or all of the works contained in the collection.

An applicant may file a renewal claim for the entire collection, even if it includes works by different authors. Alternatively, an applicant may submit separate renewal claims for each work within the collection if the original registration record includes the titles of each work.

When some works are owned separately for the renewal term, separate renewal claims should be filed to clarify the author and owner information for the renewal term.

2126 Published Collections

When separate, distinct works are assembled and published together in a collection, renewal registration may be possible for both the collection and the contributions. The extent of a renewal claim in a published collection[29] as a whole depends on the statutory basis of the renewal claim.

Generally, when the published collection is a personal work the renewal claim cannot extend beyond the authorship contributed by the individual author, regardless of the extent of the original registration record. Likewise, when the renewal copyright is claimed on the basis that the work is a posthumous work, a work made for hire, or a work copyrighted by a corporate body other than as an assignee or licensee, the renewal

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works could be registered together for the original term as an unpublished collection when all of the following conditions were met:

- The collection was assembled in an orderly arrangement;
- The collection bore a single title identifying the collection as a whole;
- The collection as a whole is the subject of a single claim of copyright;
- All of the component works are by the same author, or (if the component works are by different authors) the collection as a whole represents the work of a single author in its compilation; and
- The component works are all of the same class, or the component works are principally of the class in which the collection is to be registered.

COMPENDIUM (FIRST) Supplementary Practice No. 3.

29 While the Copyright Act of 1909 and Office regulations did not refer to or define the term "collective work," many nondramatic literary works published before 1978 were registered for the original term as "collective works" between 1978 and 2005. In addition, this term has been generally used for renewal registration purposes to describe published works in which an individual author may claim the renewal copyright in a contribution separate from the collection as a whole, as in a "contribution to a collective work." Recently, however, the Office has determined that the term "collective work" is not applicable to renewal registration. Therefore, the *Compendium of U.S. Copyright Practices, Third Edition* uses the term "published collection" to refer to published works that are collective, rather than unitary, in nature.

claim cannot extend beyond the material that was published posthumously, or created as a work made for hire, or copyrighted by the corporate body.

Generally, when the published collection is a composite work, the renewal claim may extend to the entire work. In such cases, however, the U.S. Copyright Office may request examining material or additional information to determine whether the extent and the statutory basis of the renewal claim are appropriate.

Exception: When the contributions first published in a collection bear separate copyright notices, renewal registration for the published collection does not extend to the contributions, regardless of the statutory basis of the renewal claim, and even when the renewal copyrights in the contributions and the published collection as a whole vested in the same party on the same date. In such cases, renewal registration for the collection should be limited to the compilation or editorial authorship. For more information about registration of a contribution first published with a separate notice, see Section 2127.

To be registered for the renewal term on the statutory basis of being a composite work, a published collection must be a literary work having separate, distinct contributions by a number of authors on a variety of subjects. For example, a proprietor may claim the renewal copyright in a periodical or encyclopedia having separate, distinct contributions by various authors, or in an anthology of poetry by a number of authors on a variety of subjects on the basis that the work is a composite work. By contrast, a proprietor may not claim the renewal copyright in a work such as a collection of short stories or poems by only a few authors on the basis that the work is a composite work.

NOTE: While a renewal claim in the name of the proprietor of a composite work may be made in the work as a whole, it is unclear whether the proprietor's right to the renewal copyright extends to all parts that are not separately renewed. For works subject to the manufacturing clause, a renewal registration on this basis does not extend to any contribution or separate, distinct work or element of authorship that did not secure the full original term of copyright.

NOTE: Composite works and published collections do not include joint works or other unitary works which have overarching elements (such as a novel) or a common design consisting of component elements that are integral to the work as a whole (such as a motion picture).

2127 Contributions to Periodicals, Published Collections, and Other Larger Works

The Copyright Act of 1909 provided for original registration of contributions by individual authors to periodicals, and renewal registration of contributions to periodicals, encyclopedic, or other composite works. Copyright Act of 1909, Pub. L. No. 60-349, §§ 12, 23, 35 Stat. 1075, 1078, 1080 (1909). The U.S. Copyright Office has expanded the scope of this provision with regard to renewal registration to include:

- Contributions by individual authors to published collections;
- Separate works and elements of authorship first published in other types of larger works; and

- Contributions that were created as works made for hire.

When a contribution or separate work or element of authorship was first published with its own separate copyright notice, it must be registered separately for the renewal term, even when it was registered for the original term together with the collection or as part of the larger work. For information regarding uncorrected original registration records, see Section 2130.

NOTE: Separate registration for a contribution to a joint or other unitary work is not possible, even when the contribution is separable from the work as a whole, unless the contribution was registered separately for the original term, or the unitary work as first published bore a separate copyright notice for the contribution. If the contributor is an author of the unitary work, a renewal claim may be registered in the unitary work as a whole, but not in that author's contribution, separate from the work as a whole.

2128 Group Renewal Registration

The current law provides for a single renewal registration of a group of works by the same individual author that were first published as contributions to periodicals within the same calendar year. One of the criteria, however, makes that provision applicable only to timely renewal registration.[30] 17 U.S.C. § 408(c)(3). Once timely renewal registration ended for the last works that secured copyright under the Copyright Act of 1909, the U.S. Copyright Office determined that group renewal registration should no longer be made. Therefore, as of 2006, group renewal registration has not been available.

2129 Joint Works and Other Unitary Works

Generally, when a work is unitary in nature the renewal claim should include all of the authorship claimed in the original registration record or first published in the work, unless any portion of the work is preexisting or separately owned for the renewal term. This principle is in contrast with renewal registration of works that are collective in nature, where the renewal claim generally must be limited to the compilation or editorial authorship contributed by the individual or proprietary author. *See* Section 2126.

2130 Uncorrected Errors in Original Registration Records

Generally, when a renewal claim is based on an original registration record, it should reflect the facts given in the original registration record. However, when that record contains an error that was not corrected during the original term and the error is presented to the U.S. Copyright Office at the time of renewal registration, the Office may allow the renewal registration record to state the correct facts if those facts are supported

30 The Office interpreted this provision broadly to include a variety of works by the same individual author (such as textual articles, cartoons, photographs, musical works) that were first published as separate, distinct works of authorship in periodicals, and other larger works, including serials and published collections, published within the same calendar year, and until 2006, did not require that such renewal claims be filed during the renewal filing period.

and will result in a more useful and accurate renewal registration record. For information regarding renewal claims with new or different information, see Section 2134.

2131 Corrected Original Registration Records

The Copyright Act of 1909 did not provide for correction of registration records, but U.S. Copyright Office regulations allowed the Office to correct its own errors. Initially, most errors (other than Office errors) were addressed by recording a document against the registration record. Later the Office made other corrective actions available to applicants, including corrective registration and filing a new basic registration. The appropriate use of these corrective actions depended on whether the work was published or unpublished and the effect the error had on the validity of the original registration record.

The Copyright Act of 1976 provided for supplementary registration, which then became the primary means of correcting and amplifying registration records, including original registration records for works that secured copyright under the 1909 Act. 17 U.S.C. § 408(d).

Generally, it is no longer possible to correct or amplify information in an original registration record for works that secured copyright protection under the 1909 Act, because the original term has expired. *See* Supplementary Registration, 81 Fed. Reg. 86,656, 86,660 & n.23 (Dec. 1, 2016). In an exceptional case, the Office may accept an application to correct or amplify the information in this type of registration if it is supported by clear, convincing, and objective documentation. 37 C.F.R. § 202.6(d)(6). In such cases, the Office may require the applicant to record the supporting documents.

The Office will refuse to issue a supplementary registration if the applicant attempts to change the original copyright claimant, the identity of the work, or the publication information or status of the work, because this could affect the validity or duration of the copyright or the validity of the original registration record. Likewise, the Office typically will refuse to issue a supplementary registration if the applicant attempts to make similar changes in a renewal registration record. *Id.* § 202.6(d)(5).

When a renewal claim is based on an original registration record that refers to, or is cross-referenced with a corrective action, the effect on renewal registration generally depends on the corrective action. Typically, the Office will not register a renewal claim based on an original registration record that was corrected by a corrective registration; rather, the renewal claim will be based on the corrective registration, because it generally superseded the original registration. By contrast, when an original registration record was corrected by supplementary registration, a renewal claim cannot be based on the supplementary registration record, because a supplementary registration cannot supersede an original registration. Similarly, when a document was recorded to add or correct information in an original registration record, the Office will take that information into consideration and will inform the applicant of the recorded document when it appears the applicant is unaware of it.

NOTE: When a renewal claim is based on an original registration record that is cross-referenced with a supplementary registration, or refers to a corrective registration or a

recorded document, the Office will add an annotation to the certificate of renewal registration and a note in the renewal registration record regarding the registration or recordation.

For information regarding a renewal registration based on uncorrected original registration records, see Section 2130. For information about filing a renewal claim with new or different information from the original registration record, see Section 2134. For information about correcting or amplifying the information in a renewal registration record, see Section 2138.

2132 Cancelled or Abandoned Original Registration Records

While U.S. Copyright Office regulations did not provide for cancellation of records under the Copyright Act of 1909, Office practices required that certain registration records be cancelled when an Office error caused a record to be entered in error or in the wrong class, or when there was lack of payment. 37 C.F.R. § 201.5 (1977). Sometimes a party recorded a document to "abandon" a particular registration record they had made. When an original registration record was cancelled or was putatively abandoned by the applicant by recordation of a document, the Office generally will refuse a renewal claim based on the cancelled or "abandoned" registration record. If it appears, however, that the work may have secured the full original term of copyright and may be eligible for renewal registration, the Office will advise the applicant accordingly. When a renewal registration is based on an "abandoned" original registration record, the Office will add an annotation to the certificate of renewal registration certificate and a note in the registration record regarding the recorded document.

2133 Abandonment of Copyright

When a renewal claim is based on an original registration record that refers to a recorded document purporting to abandon the copyright in the work, the U.S. Copyright Office may register the renewal claim if, after advising the renewal applicant of the recorded document, the applicant verifies that no other action was taken to notify the public of the intent to abandon the copyright and reasserts the claim to the renewal copyright. If the author or proprietor took further action to notify the public of the intent to abandon the copyright (such as authorizing the publication of a statement in a number of well-known newspapers that the property rights in a particular work would no longer be enforced), the Office may refuse to register the renewal claim based on the original registration record.

2134 New or Different Information from the Original Registration Record

Generally, when a renewal claim is based on an original registration record, it should reflect the facts given in that record. However, the U.S. Copyright Office may register renewal claims that contain facts not stated in the original registration record when such facts make the renewal registration record more useful or accurate. When a renewal claim provides information that is different from information in the original registration record, the applicant must provide supporting documentation, and recordation may be required. For information regarding uncorrected original registration records, see Section 2130.

When the statutory basis of a renewal claim is inconsistent with the author facts in the original registration record, the Office will advise the renewal applicant of the inconsistency and inquire about the circumstances under which the work was created. If the basis of the renewal claim indicates that the work is a proprietary work, the Office will request information to verify that the requirements to claim the renewal copyright under one of these exceptions are met. If the renewal claim is adverse to a renewal claim in process or a renewal registration already on the record, see Section 2137.

NOTE: The Office will refuse to register a renewal claim that is based on, or contains, new information that calls into question the term of copyright or the validity of the original registration record. It may also refuse to register a renewal claim with information that cannot be supported or, in some cases verified by a knowledgeable source, or appears on its face to be implausible.

2135 Effect of Change of Policy

When an original registration was entered into the record under U.S. Copyright Office policies then in effect, a renewal claim based on that original registration record generally will be registered, even when, under current policies, the original registration would not be entered.

PART VI POST-RENEWAL REGISTRATION ISSUES

2136 Multiple Renewal Claims, Including Duplicate Claims

Once a renewal registration is made in a work, registration of a later claim will depend on whether that claim provides additional ownership information for the renewal term that appears on its face to be valid. Generally, the U.S. Copyright Office will register a renewal claim that identifies at least one vested owner who is not identified as such in the renewal registration records for that work. The Office will not knowingly register a duplicate renewal claim, *i.e.*, a renewal claim that identifies the same vested owner on the same statutory basis as an earlier renewal registration record for the same work.

When a renewal claim is filed to identify the current owner of the renewal copyright who derived that right directly or indirectly from a party already identified as a statutory renewal claimant or vested owner in a renewal registration record, the Office will refuse renewal registration and will suggest recordation to show the change of ownership, unless the renewal claim is adverse to another renewal claim that is pending or already entered into the registration record. For a discussion of adverse renewal claims, see Section 2137.

2137 Adverse Renewal Claims

An adverse renewal claim presents ownership facts for the renewal term that appear to be valid, but are in conflict with another pending renewal claim or completed renewal registration record. When such conflicts are brought to the U.S. Copyright Office's attention, the Office will attempt to notify all parties involved in the dispute based on information in its records. The Office's general practices for adverse claims apply to

adverse renewal claims. For information concerning these practices, see Chapter 1800, Section 1807.

Exceptions: When a timely renewal registration was made, the Office will add an annotation on the later certificate of renewal registration and a note in the registration record regarding the timely renewal registration, even when the renewal claims are adverse. Also, when the statutory basis of a renewal claim is inconsistent with the author facts established in an original registration record, or with information available at the time the renewal claim is filed, the Office may require documentation to support the renewal claim, even when the renewal claim is adverse to a pending renewal claim or completed renewal registration record.

When a renewal claim is based on asserted facts that appear to be invalid or implausible, the Office will refuse registration as an adverse claim unless the applicant provides documentation that, in the view of the Office, sufficiently supports the asserted facts. In such cases, the Office may require recordation of the document(s) to support the renewal claim, or in lieu of registration.

NOTE: A renewal claim is not adverse simply because its statutory basis is inconsistent with the author facts in the original registration record on which it is based. *See* Section 2134.

2138 Correcting and / or Amplifying Information in a Renewal Registration Record

A supplementary registration is a special type of registration that may be used "to correct an error in a copyright registration or to amplify the information given in a registration," including a renewal registration. 17 U.S.C. § 408(d); 37 C.F.R. § 202.6(b)(1)(ii). Specifically, it identifies an error or omission in an existing registration and places the corrected information or additional information in the public record.

Generally, the U.S. Copyright Office will not accept a supplementary registration that presents information that is adverse to the facts stated in the renewal registration record. When renewal registration is still possible, the Office may encourage the applicant to file an adverse renewal claim. For information regarding adverse situations, see Section 2137. When renewal registration is not an option, the Office may encourage the applicant to record any relevant documents rather than seeking a registration.

For general information concerning the procedure for seeking a supplementary registration, see Chapter 1800, Section 1802.

2138.1 Appropriate Use of Supplementary Registration

With regard to renewal registration records, supplementary registration is generally appropriate to correct or amplify extremely minor errors or omissions, or to provide updated contact information. *See* 37 C.F.R. § 202.6(d)(5). Such information may include:

- New or alternate titles or other identifying information for the work.
- Pseudonyms, fuller name forms, legal name changes or other identifying information by which an author or vested or current owner was or is now known.

- Current addresses and contact information for vested or current owners, and rights and permission holders.

- Incorrect spelling or punctuation.

In exceptional cases, supplementary registration may be appropriate to correct the identity of a statutory renewal claimant or vested owner if "clear, convincing, and objective documentation is submitted to the Copyright Office which proves that an inadvertent error was made in failing to designate the correct living statutory renewal claimant in the basic renewal registration." *Id.* Such documentation may consist of a death or marriage certificate, a published obituary or death notice, a will, a court order, or an assignment or other legal agreement or document of transfer.

Supplementary registration may also be appropriate to correct the basis of claim for a statutory renewal claimant or vested owner. *See id.* Again, the Office may require documents to prove that the basis is accurately stated and appears to be valid. In these exceptional cases, the Office may require that the supporting documentation be recorded. In such cases, a reference to the recorded document will be added to the certificate of supplementary registration and to the supplementary registration record.

NOTE: Supplementary registration is not appropriate to identify additional statutory renewal claimants or vested owners in a renewal registration record, except in exceptional cases when the renewal registration record fails to identify a party who was entitled to claim the renewal copyright. *See* Section 2138.3.

On a case-by-case basis, supplementary registration may also be appropriate to correct current owner information or other information, such as the means by which, or the party from whom, that owner obtained the renewal copyright. It may also be used to amplify the renewal registration record by providing current contact information for this party.

2138.2 Parties Authorized to File for Supplementary Registration

Parties authorized to file for supplementary registration pertaining to renewal registration records include the party who filed the renewal claim and those identified in the record as a statutory renewal claimant, vested owner, or current owner of the renewal copyright, or their representatives. The U.S. Copyright Office may also accept a supplementary registration certified by a successor or assignee of a statutory renewal claimant, a vested owner, or current owner.

2138.3 Inappropriate Use of Supplementary Registration

With regard to renewal registration records, supplementary registration cannot be used:

- To correct or amplify a fact that was established in an original registration record.

  Exception: When an original term registration record contains an error or omission of fact pertaining to a previous registration that affects the term of copyright, the U.S. Copyright Office may accept a supplementary registration to add this information to a renewal registration record.

- To identify additional statutory renewal claimants in a timely renewal registration record.

- To identify additional vested owners in a renewal term registration record.

  Exception: For an exception to this rule, see Section 2138.1.

- To identify the assignee or successor to a statutory renewal claimant or vested owner in a renewal registration record that was filed in the name of the vested owner.

  Exception: For an exception to this rule, see Section 2138.1.

- To identify an assignee or successor who acquired the renewal copyright since the effective date of the renewal registration.

- As a substitute for renewal term registration.

- When, as a result of the correction or amplification, a renewal registration record would be invalidated or provide information that is adverse to the facts established in the renewal registration record. In such cases the Office may cancel the renewal registration record (Section 2140), and/or advise that a separate renewal claim be filed (Section 2137) or a document be recorded (Section 2139).

NOTE: In lieu of supplementary registration, an assignment or other document of transfer may be recorded in the instances listed in the fourth and fifth bullet points above. The recorded document will not be cross-referenced with the renewal registration record.

2139 Recordation

With regard to renewal registration, documents may be recorded to support or provide proof of facts for a renewal claim or a supplementary registration, or to document life events, or to provide a public record of copyright assignments or other legal documents pertaining to the renewal copyright. Generally, a recorded document is not cross-referenced with a renewal registration record. However, a reference to a recorded document will be added to a certificate of renewal registration and to the renewal registration record when it provides support for the facts, or when the original registration record referred to the recorded document.

When supplementary registration is not possible or appropriate (such as, when the author facts stated in an original registration record are disputed, or the renewal copyright is transferred after the effective date of renewal registration), recordation may be the most appropriate means of providing information in the public record regarding a work or its renewal copyright.

2139.1 Types of Documents that May be Recorded

Any document pertaining to copyright(s) may be recorded, even if the work(s) to which it pertains have not yet been registered. For information about recordation, see Chapter 2300.

2139.2 When Recordation May Be Required

With regard to renewal registration, the U.S Copyright Office may require that a document be recorded in the following circumstances:

- A renewal claim is based on an author who is not identified in the original registration record or, if the work was not registered for the original term, in the deposit copy.
- A supplementary registration seeks to correct a statutory renewal claimant or a vested owner, and/or an assignee or successor identified in a renewal registration record.
- A supplementary registration seeks to correct the statutory basis for a claim to the renewal copyright.
- A renewal claim or a supplementary registration related to a renewal registration record is based on a court order.
- When, at the discretion of the Office, a public record is needed to support a renewal registration record or a supplementary registration related to a renewal registration record.

In such cases, a reference will be added to the certificate of renewal registration and to the renewal registration record, although the recorded document will not be cross-referenced with the renewal or supplementary registration record.

2140 Cancellation of Renewal Registration Records

The U.S. Copyright Office will not cancel a renewal registration record unless it qualifies for cancellation under 37 C.F.R. § 201.7. Generally, a request to cancel a renewal registration record should come from the party who filed the renewal claim, or a successor or assignee of that party. The fact that this party did not represent one or more of the statutory renewal claimants or vested owners at the time of renewal registration may not be sufficient cause to cancel a record. Instead, the Office may require that the party correct or amplify the record by supplementary registration. For additional information concerning cancellation, see Chapter 1800, Section 1806.

2141 Referral of Renewal Registration Records

The U.S. Copyright Office will not refer a renewal registration record for correction or cancellation unless the record contains an error the Office should have recognized at the time of registration, or the Office made an error, or in some way failed to properly process the renewal claim. Administrative action will depend on the error and its effect on the

renewal registration record. In certain cases the effective date of the renewal registration record may be affected and, if an applicant fails to respond to Office correspondence or remedy the deficiency, the renewal registration record may be cancelled. For additional information concerning referrals, see Chapter 1800, Section 1804.

NOTE: It is the applicant's responsibility to identify the proper statutory renewal claimant or vested owner. Once a renewal registration record has been entered, the Office will not refer the record or take administrative action to correct this error.

PART VII COPYRIGHT RESTORATION OF FOREIGN WORKS GOVERNED BY THE COPYRIGHT ACT OF 1909

2142 Restored Copyrights for Works Governed by the Copyright Act of 1909

The Uruguay Round Agreements Act ("URAA"), which took effect in the United States on January 1, 1996, provides for automatic restoration of statutory protection in the United States on that date (or the date of adherence or proclamation of the source country, if later) for certain works whose copyrights in the United States had been lost due to noncompliance with formalities (such as first publication without a copyright notice, noncompliance with the manufacturing clause, or failure to register a basic or renewal claim before the original term expired) or due to lack of eligibility or subject matter protection (in the case of sound recordings). For a copyright to be restored under this provision, the work had to have met certain criteria at the time of creation and first publication.

The URAA applies to pre-1978 works as well as post-1978 works. Generally, the provisions apply to published works of foreign origin, but they also may apply to certain unpublished works that were registered for the original term, or in the case of sound recordings, to those fixed prior to February 15, 1972.

For a general discussion of restored works and the registration requirements for such works, see Chapter 2000, Section 2007.

2143 Renewal Registration Not Appropriate for Restored Copyrights

To be eligible for renewal term registration, a work must have secured statutory protection by first publication with the statutory or U.C.C. notice (or soon thereafter by *ad interim* registration), or by registration as an unpublished work, and continued to meet all statutory requirements to maintain copyright through the full original term and into the renewal term. Therefore, a work that failed to secure copyright in the United States at the time of first publication, or lost it at any time during the original or renewal terms, is not eligible for renewal registration, even when copyright was restored in the United States under the provisions of the URAA.

2144 Copyright Terms for Restored Copyrights

Under Section 104A of the Copyright Act of 1976, restored works enjoy the remainder of the term that would have been granted in the United States had the copyrights not been

lost. 17 U.S.C. §104A(a)(1)(B). Therefore, a work that initially secured copyright under the Copyright Act of 1909 by first publication with notice, or by registration as an unpublished work, but lost copyright at some point and then regained it under the URAA, enjoys the same term it would have been granted in the United States if copyright had remained uninterrupted. Likewise, a work that failed to secure copyright in the United States at the time of first publication enjoys the same term of copyright it would have been granted in the United States if statutory copyright had been secured upon publication.

NOTE: Some works of foreign origin first published abroad may have secured statutory copyright in the United States even when publication occurred without the statutory or U.C.C. notice. *See* Section 2115.2(F). If statutory copyright was secured in the United States and remained uninterrupted into the renewal term, registration under the URAA is not appropriate.

2145 Registration Under the URAA After Copyright in Source Country Has Expired

Provided a work of foreign origin met the eligibility requirements for restoration of copyright as of January 1, 1996 (or as of the date of adherence or proclamation of the source country, if later), registration under the provisions of the URAA is possible for works governed by the Copyright Act of 1909 as long as the work remains under statutory protection in the United States.

PART VIII GLOSSARY OF TERMS

This Glossary provides brief explanations of certain terms that are relevant to renewal registration. Definitions that are taken directly from the Copyright Act of 1909, the Copyright Act of 1976, or the Office's regulations are enclosed in quotation marks. Definitions that are not enclosed in quotation marks are not legal definitions; they are intended to educate and inform legal practitioners and members of the public who file and U.S. Copyright Office Registration Program staff who examine renewal claims.

NOTE: This Glossary only applies to Chapter 2100; it does not apply to any other chapter in the *Compendium of Copyright Office Practices, Third Edition.*

Abandonment. When a copyright owner seeks to abandon a copyright, the copyright owner must take concrete steps to manifest the intent to abandon the copyright and let the public know. Recording a document of intent to abandon a copyright with the U.S. Copyright Office is one such means of manifesting such intent. Such action may not have any legal effect as against a third party owner, such as an heir or other successor in interest or joint owner. When a copyright owner sought to abandon a copyright registration, recording a document was an appropriate means under 37 C.F.R. § 201.5(a) (1977)[31] of informing the Office and the public that a registration was made in error.

31 "No correction or cancellation of a Copyright Office registration or other record will be made (other than a registration or record provisional upon receipt of fee as provided in 201.6) after it has been completed if the facts therein stated agree with those supplied the Office for the purpose

Absence of a will. For purposes of renewal registration, this occurs when an author dies intestate or leaves a will that names no executor, or no executor is alive or exists at the time of renewal registration.

Acceptable alternative designation. A generally known alternative name by which the copyright proprietor can be recognized. It may be either part of the full name or a completely different name or well-known initials. If the alternative designation in the notice reasonably identifies the copyright proprietor to those who come in contact with the copies, the notice is acceptable.

Ad interim copyright. *Ad interim* copyright was a short-term U.S. copyright available for English language books and periodicals that were manufactured and first published abroad prior to 1978. Its purpose was to secure temporary U.S. protection for a work pending the manufacture and publication of an edition in the United States. For works published abroad between 1949 and 1977, it was secured by registration within six months of first publication abroad and lasted for a maximum of five years from first publication. If the work was manufactured and published in the United States before *ad interim* copyright expired, copyright was then extended to the full term of twenty-eight years. *Ad interim* copyright was also automatically extended to the full original term if it was subsisting when the country where the author was a national joined the U.C.C.

Administrator (c.t.a. or d.b.n.c.t.a.). A person appointed by a court who performs the identical functions of an executor (*administrator cum testamento annexo* - administrator c.t.a.). When an estate has been settled and the executor discharged, or when the executor is removed before the estate is completely administered, the court may appoint an *administrator de bonis non cum testamento annexo* (administrator d.b.n.c.t.a.) to deal with the remaining or after-acquired property under the will.

Adverse renewal claim. A claim to the renewal copyright that is in conflict with another renewal claim in process or already on the record.

Anonymous work. "An 'anonymous work' is a work on the copies or phonorecords of which no natural person is identified as author." 17 U.S.C. § 101.

Assignee. A party that has acquired the renewal copyright in a work by assignment or other written document of transfer from the vested owner in whose name no renewal registration was previously made.

Author. See "individual author."

Berne Union. The International Union for the Protection of Literary and Artistic Works established under the Berne Convention of 1886 and its revisions (Paris, 1896; Berlin,

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of making such record. However, it shall be within the discretion of the Register of Copyrights to determine if any particular case justifies the placing of an annotation upon any record for the purpose of clarification, explanation, or indication that there exists elsewhere in the records, indexes or correspondence files of the Office, information which has reference to the facts as stated in such record." 37 C.F.R. § 201.5(a) (1977).

1908; Rome, 1926; Brussels, 1948; Paris, 1971). Countries that adhere to one or more of the conventions are members of the Berne Union. Protection under these conventions is extended without formalities to works on the sole condition that first publication take place in a country that belongs to the Berne Union. It is administered by the World Intellectual Property Organization (WIPO). The United States did not become a member of the Union until 1988 and its provisions did not take effect in the United States until March 1, 1989. Therefore, eligibility for renewal registration cannot be based on the Berne Convention. Protection of U.S. works in member countries prior to that date could be obtained by first or simultaneous publication in a Berne Union country.

Buenos Aires Convention of 1910. See "Pan-American Conventions."

Books. Published nondramatic literary works, with or without illustrations. Common examples are fiction, nonfiction, poetry, compilations, directories, catalogs, dissertations, theses, reports, and tables of information, when such works have been published. Books may take the form of bound or loose-leaf volumes, pamphlets, brochures, leaflets, cards, and single pages containing solely text. For renewal registration purposes, unpublished manuscripts are not considered "books." Also, unpublished works prepared for oral delivery, such as sermons, lectures, addresses are not "books" for renewal registration purposes.

Child or Children. The progeny of an author. A renewal claim may be registered in the name of an author's illegitimate child, whether acknowledged or not, or in the name of an adopted child, but not in the name of a step-child or grandchild of an author.

Composite work. For renewal registration purposes, an original literary publication in which a proprietor is entitled to claim the renewal copyright. The work must incorporate contributions from a number of different authors on a variety of subjects. Composite works may contain distinct and separate contributions, as in a periodical or published collection, or indistinguishable contributions, as in a dictionary. A unitary work such as a song or a motion picture is not a composite work.

Computer program. For renewal registration purposes, a set of operating instructions for a computer including perhaps a compilation of reference information to be drawn upon by the computer in solving problems. In most cases, the preparation of computer programs involves substantial elements of gathering, choosing, rejecting, editing, and arranging material. Some programs also embody verbal material which is written by the programmer and can be considered literary expression.

Contribution. For renewal registration purposes, a separate, distinct work of authorship first published in a periodical or collection that can be exploited independently for the renewal term.

Corrective registration. An entirely new registration that was made in certain instances to correct an error in an original registration record that could not have been known by the U.S. Copyright Office. A corrective registration required the same application, deposit copy(ies), and filing fees as required for the original registration it corrected. Under the Copyright Act of 1976, supplementary registration generally, but not exclusively, replaced this registration option.

Current owner (of the renewal copyright). An assignee or successor that acquired all U.S. rights in the renewal copyright either directly or indirectly from the vested owner.

Date of (first) publication. "[T]he earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority . . . ." Copyright Act of 1909, *amended by* Pub. L. No. 80-281, § 26, 61 Stat. 652, 659-60 (1947).

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

Domicile. The place where a person has a fixed and permanent residence for an unlimited time and to which such person, whenever absent, has the intention of returning. An author is generally regarded as "domiciled" in a country if he intends to make his permanent residence there. Residence is not the equivalent of domicile and cannot serve as a basis for determining eligibility. For renewal registration purposes, domicile in the United States includes all States, the District of Columbia, Puerto Rico, Panama Canal Zone, Virgin Islands, and Guam.

Dramatic work. A work that tells a story by means of dialog or acting and is intended to be performed. It gives directions for performance or represents all or a substantial portion of a story as actually occurring rather than merely being narrated or described. Such works may contain musical and choreographic elements.

Examining material. Material that may be requested by the U.S. Copyright Office, even when deposit material is not required, in order to determine the content or nature of the work or whether a work (or the larger work), as first published met all requirements for renewal registration. Such material may consist of a complete copy of the work as first published or identifying material taken directly from the work as first published. Such material is used only for examining purposes and will be retained by the Office and stored in the correspondence record.

Executor. A person named as such in a will and qualified in probate proceedings. For renewal registration purposes, the right to claim as "executor" is a personal right and the renewal claim should name the individual executor, although the executor claims on behalf of the author's legatees.

Foreign author. For renewal registration purposes, an author who was not a national or domiciliary of the United States or a U.C.C. country, or a stateless person at the time of first publication. An author who was a domiciliary of the United States at the time of first publication is considered to be a U.S. author, regardless of nationality.

Geneva Phonogram Convention. The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (concluded on

October 29, 1971). This Convention granted record producers the international right to block imports of counterfeit music recordings and to take action against distributors and retailers who sold them. It did not grant performing rights. It required the term of protection be at least twenty-five years from the date of either fixation or first publication. The Senate ratified U.S. adherence to the Convention on October 1, 1973, effective March 10, 1974. *See* U.S. COPYRIGHT OFFICE, UNITED STATES COPYRIGHT RELATIONS OF CURRENT INTEREST (1960).

Inconsistent renewal claim. A renewal claim that is based on author facts that are not supported by the facts in the original registration record.

Inconsistent and adverse renewal claim. A renewal claim based on author facts that are not supported by the facts in the original registration record, and which is also adverse to a renewal claim in process or already on the record.

Identifying material. For renewal registration purposes, deposit material that is not the complete work as first published, or an exact, complete photocopy of that edition, or a reprint edition or a reissue or rerelease of the work as first published. Identifying material includes a revised edition, or a damaged or incomplete copy that contains a preponderate amount of the material claimed, or it may consist of specific portions from the work as first published. Identifying material is generally accompanied by written verifications as required by the U. S. Copyright Office. When the deposit material consists solely of identifying material, renewal registration will be considered only in exceptional circumstances and may be made under a grant of special relief or the rule of doubt, unless the work is a contribution or a separate work or element of authorship first published in a larger work.

Individual author. For renewal registration purposes, the individual who personally wrote or created renewable matter in the work. Does not include employers for hire or any non-personal entity identified as an author in an original registration record; such entities are referred to as proprietary authors.

Joint work. "A 'joint work' is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." 17 U.S.C. § 101. The U.S. Copyright Office applies the definition of "joint work" in the Copyright Act of 1976 to renewal claims because the term was not defined in the Copyright Act of 1909 and case law prior to 1978 did not provide clear guidance. While the Fifth Circuit ruled in 1934 that the renewal claim in the name of the widow of the author of the preexisting text did not extend to the illustrations added fifteen years later because the illustrations were revisions to a preexisting work that were of a separate and distinct nature by another person,[32] the Second Circuit reached the opposite conclusion in 1946[33] and 1955,[34] finding that the mere fusion of effort could

32 *Harris v. Coca-Cola Co.,* 73 F.2d 370 (5th Cir. 1934).

33 *Shapiro, Bernstein & Co., Inc. v. Jerry Vogel Music Co., Inc.,* 161 F.2d 406 (2d Cir. 1946).

34 *Shapiro, Bernstein & Co., Inc. v. Jerry Vogel Music Co., Inc.,* 221 F.2d 569 (2d Cir. 1955).

result in a joint work and that a preconceived common design or active collaboration among the authors was no longer required. For renewal registration purposes, a work is considered to be a "joint work" only as this concept found its way into the Copyright Act of 1976. For a general discussion of joint works, see Chapter 500, Section 505.

Knowledgeable source. For renewal registration purposes, an author of record or original copyright claimant, or a representative of such parties, or a third party having personal knowledge or access to documents relating to the creation and publication of a work, such as an editorial officer of the original publishing house or the producer of a motion picture.

Manufacturing clause. Section 16 of the Copyright Act of 1909 (as revised in 1954) required that most English language books and periodicals be printed and bound in the United States to secure the full original term of copyright. Copyright Act of 1909, *amended by* Pub. L. No. 83-743, § 9(c), 68 Stat. 1030, 1031 (1954). These works had to be printed from type set by hand or typesetting equipment in the United States or from plates made in the United States, or the lithographic or photoengraving processes had to be performed in the United States and they had to be printed and bound in the United States. The requirement also applied (with exceptions) to separate prints and labels, and to pictorial illustrations first published in books. If such works, or portions of them, were not manufactured in the United States, renewal registration is not possible. As carried into the Copyright Act of 1976, the clause applied only to published English language nondramatic literary material, prohibiting, except under certain conditions, the importation and public distribution in the United States of copies that were not manufactured in the United States or Canada. It no longer had an effect on securing copyright in such works, or the term of copyright. The clause was allowed to expire on June 30, 1986 and was repealed in 2010. *See* Pub. L. No. 97-215, 96 Stat. 178, 178 (1982); Copyright Cleanup, Clarification, and Corrections Act of 2010, Pub. L. No. 111-295, § 4(a), 124 Stat. 3180, 3180 (2010). For a general discussion of the manufacturing clause, see Section 2124.

Motion picture. A series of pictures presenting to the eye the illusion of motion, which pictures are projected on a screen or transmitted by means of television or otherwise, and have as their origin a series of connected pictures on film or other recording media. Motion pictures were classified for registration purposes before 1978 as "photoplays" or "other than photoplays." This description grew out of the early silent films, and as late as 1973 the U.S. Copyright Office took no position on whether a copyright in a motion picture covered the integrated soundtrack portion of the work. In 1975, the Office took the position, for registration purposes, that any copyrightable component part of a motion picture soundtrack is considered an integral part of a motion picture. *See* 37 C.F.R. § 202.15 (1975); Motion Picture Soundtracks, 40 Fed. Reg. 12,500, 12,501 (Mar. 19, 1975).

Multimedia work. A work that combines two or more kinds of authorship in two or more media.

Next of kin. Blood relatives of the author. For renewal registration purposes, one of the statutory classes which may be entitled to claim the renewal copyright. A blood relative

may claim as "next of kin" of the deceased author, provided the deceased author was not survived by a widow or widower or child or children and did not leave a will.

National / Nationality. A "national" is a citizen of a nation or a person who, although not a citizen, owes permanent allegiance to the nation. Citizens of the United States are persons entitled as such by the U.S. Constitution or federal statutes, including persons born in Guam, the U.S. Virgin Islands, and Puerto Rico. By federal statutes, some persons are nationals, but not citizens, of the United States, including persons born in the outlying possessions of the United States. All U.S. citizens are also nationals of the United States.

Original copyright claimant. The party in which statutory copyright was initially secured either by being identified as the proprietor in the copyright notice at the time of first publication or as the copyright claimant in an original registration record for an unpublished work.

Nondramatic literary works. For renewal registration purposes, any literary work (other than a drama or other literary work intended for oral delivery or public performance such as a lecture or sermon) that was first published in printed copies. Such works include books and periodicals.

Pan-American Conventions. Copyright relations among countries of the Western Hemisphere were governed to some extent under the Copyright Act of 1909 by a series of conventions, chief of which was the Buenos Aires Convention of 1910. That convention specifies that authors of any member country who secured copyright in their own country will enjoy the rights each of the other countries accords its own works, if the work contains a statement indicating the reservation of the property right, such as "All Rights Reserved" or "Todos los derechos reservados" or "Copyright reserved." Such words are not required to reserve U.S. copyright and are not considered to be a substitute for the copyright notice required under the Copyright Act of 1909. For a list of the seventeen countries that ratified the Convention, see *Circular 38, International Copyright Conventions*.

Periodical / Serial. Includes published newspapers, magazines, reviews, bulletins, etc. issued at regular intervals of less than a year, the successive issues bearing the same title (with a distinguishing number or date for each issue) and being similar in the general character of their subject matter. Publications issued at intervals of a year or more, or irregularly, are not considered to be periodicals, but may sometimes be registered as serials. Likewise, a series of books issued regularly under a series title is not a periodical.

Personal work. A work created by an individual author in his or her own personal right as an author.

Phonorecord. "'Phonorecords' are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device," including "the material object in which the sounds are first fixed." 17 U.S.C. § 101. In the

Copyright Act of 1909 such objects were referred to as "reproductions of sound recordings." 17 U.S.C. § 26 (1973).

Posthumous work. A work that was unpublished on the date of the death of the author and with respect to which no copyright assignment or other contract for exploitation of the work occurred during the author's lifetime. *See* 37 C.F.R. § 202.17(b)(3); *see also* H.R. REP. NO. 94-1476, at 139 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5755 (stating that the term "posthumous work" "has the meaning given to it in *Bartok v. Boosey & Hawkes, Inc.*, 523 F.2d 941 (2d Cir. 1975) – one as to which no copyright assignment or other contract for exploitation of the work has occurred during an author's lifetime, rather than one which is simply first published after the author's death.").

Proprietary author. An employer or organizational or impersonal party that causes a work to be created. When a work was created by a proprietary author, the proprietor at the time of renewal registration (if made during the last year of the original term), or on the last day of the original term (if renewal registration is made during the renewal term), is entitled to claim the renewal copyright.

Proprietary work. The law describes four types of works in which the proprietor, rather than the person(s) who created the work, may claim the renewal copyright: works made for hire, composite works, posthumous works, and "any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author)." Pub. L. No. 61-281, § 24, 61 Stat. 652, 659 (1947).

Proprietor. The owner of copyright in a proprietary work on the date the renewal claim was filed during the renewal filing period or on the last day of the original term if no renewal registration was made before that date. To claim the renewal copyright as a proprietor, the claimant should derive title directly or indirectly from the original copyright claimant.

Pseudonymous work. A work on the copies or phonorecord of which the individual author is identified under a fictitious name.

Publication. The Copyright Act of 1909 did not define publication *per se* but defines "the date of publication" as having occurred when "copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority." Copyright Act of 1909, *amended by* Pub. L. No. 80-281, § 26, 61 Stat. 652, 659-60 (1947). Under court decisions, a work was generally considered to be published when a general publication occurred. A general publication is the distribution of one or more copies of a work to the general public, usually by means of a sale or a public distribution. The courts created the doctrine of limited publication to avoid the divestive consequences of publication without notice, when it was clear the author (or copyright proprietor) restricted both the persons and the purpose of the distribution. Generally, limited publication is the distribution of copies of a work to a definitely selected group and for a limited purpose, and without the right of diffusion, reproduction, distribution, or sale. A limited publication is not considered a distribution to the public and, therefore, is not publication. Leasing or renting of copies is ordinarily regarded as a general publication unless the distribution was to a limited group or for a restricted purpose. For example, leasing copies of a motion picture to film distributors or

exhibitors or broadcasters would be regarded as publication, whereas making a rental score available for a limited time for performance purposes only would not be regarded as publication. Likewise, placing an artistic work on public display with no restrictions against copying could be considered publication, whereas if the exhibition was not open to the public or restrictions on copying were imposed, a general publication is not deemed to have occurred. *Letter Edged in Black Press, Inc. v. Public Building Commission of Chicago*, 320 F. Supp. 1303, 1311 (N.D. Ill. 1970); *William. A. Meier Glass v. Anchor Hocking Glass Corp.*, 95 F. Supp. 264, 268 (W.D. Pa 1951). For renewal registration purposes, when there is virtually no doubt based on information provided to the U.S. Copyright Office or available at the time of registration that a general, rather than a limited, publication occurred without the statutory or U.C.C. notice, the Office may refuse registration.

Published collection. For renewal registration purposes, an original publication comprising multiple, distinguishable, and separate works that are assembled into an aggregate whole, for example, a published collection of short stories, poems, photographs, or songs, or a periodical such as a magazine with multiple, independent articles. A published collection may lack overall editing or compilation authorship. If it does contain such authorship, a proprietor which claims the renewal copyright on the basis that the work made for hire may claim in that authorship, but not in the separate contributions or in the entire collection as a whole. *See* U.S. COPYRIGHT OFFICE, STUDY NO. 31: RENEWAL OF COPYRIGHT at 176 (1960). Unitary works such as a novel with chapters, a long poem in sections, a dramatic work with songs, a motion picture, or other works with overarching elements or integral component parts are not published collections.

Recordation. For renewal registration purposes, a process of providing a public record of a document that seeks to amend, amplify, or abandon a registration record or abandon a copyright. The date of recordation was the date when the last necessary element (document and required filing fee) was received. When a document was returned for correction, the date it was received back in corrected form was the date of recordation. When a document was recorded against an original registration record an annotation referring to the recorded document was added to the numbered application and the catalog card(s) covering the entry.

Renewal filing period. The period during which a renewal claim could have been filed during the last year of the original term to extend copyright into the renewal term. For works copyrighted before 1950, it began on the twenty-seventh anniversary of the date when copyright was secured and ended on the twenty-eighth anniversary of that date (or the next succeeding business day). For works copyrighted between 1950 and 1977, it began on December 31st of the twenty-seventh year and ended on December 31st of the twenty-eighth year (or the next succeeding business day). However, when a work was published with an antedated year date in the copyright notice, the renewal filing period began on December 31st of the twenty-seventh year preceding the year date in the copyright notice and ended on December 31st of the twenty-eighth year in the copyright notice. Also, under Section 8 of the Copyright Act of 1909 (revised 1941), the President had the authority to extend time limits for renewal registration for the benefit of citizens of a certain nation by proclamation. Copyright Act of 1909, *amended by* Pub. L. No. 77-258, § 8, 55 Stat. 732 (1941). In such circumstances, after determining the nationality and domicile of the author or proprietor, the U.S. Copyright Office registered

renewal claims within the time specified in the proclamation with an annotation referring to the extension-of-time proclamation.

Renewal term registration. A type of registration created by the Copyright Renewal Act of 1992 in which claims to the renewal copyright may be registered after the renewal filing period, *i.e.*, after the renewal copyright has vested. Such registrations may include a Form RE/Addendum to demonstrate that the work complies with all requirements of the Copyright Act of 1909 with respect to the existence, ownership, or duration of the copyright for the original term of copyright, if no registration was made for the original term.

Separate work or element of authorship. A separate, distinct work first published in a larger work that is not a published collection. For example, a preface to a literary work, illustrations in a children's book, artwork or a photograph on a dust cover of a book, or a filmstrip in a multimedia kit.

Sound recordings. "'Sound recordings' are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture . . . ." 17 U.S.C. § 101. A sound recording is fixed when the complete series of sounds is first produced on a final master recording that is later reproduced in published copies. Sound recordings do not include motion picture soundtracks.

Special relief. A procedure established by regulation under 37 C.F.R. § 202.20(d) to authorize the U.S. Copyright Office to accept an optional deposit under Section 408(c) of the Copyright Act of 1976. It allows the Register of Copyrights to grant the applicant the option of depositing less than, or other than, that which is required under the general deposit regulations. In certain circumstances, this procedure may be applied to renewal with addendum registrations.

Source country. A nation other than the United States that is an eligible nation under the URAA. With regard to unpublished works, it is the eligible nation of which the author or rightholder, or the majority of the foreign authors or rightholders are nationals or domiciliaries or which has the "most significant contacts with the work." 17 U.S.C. § 104A(h)(8)(B). For published works, it is the eligible country in which the work was first published or if published on the same day in two or more eligible countries, the country which has the "most significant contacts with the work." *Id.* § 104A(h)(8)(C). Applies only to works eligible for registration under the URAA; is not applicable to renewal registration.

Stateless author. A person who has no nationality, either as the result of never having acquired nationality in any nation, or as the result of having effectively renounced or been deprived of his or her former nationality without having, as yet, become a national of any nation.

Statutory renewal claimant. A party entitled by law to claim the renewal copyright.

Successor. A party that has acquired the renewal copyright in a work by means of legal succession from the vested owner in whose name no renewal registration was previously made.

Supplementary registration. A registration made upon application under Section 408(d) of the Copyright Act of 1976, "to correct an error in a copyright registration or to amplify the information given in a registration. . . . The information in a supplementary registration augments but does not supersede that contained in the earlier registration." 17 U.S.C. § 408(d).

Syndication. For renewal registration purposes, the distribution of radio shows and television shows to multiple radio stations and television stations for broadcast by those stations. It was common where broadcast programming was scheduled by television networks with local independent affiliates, particularly here in the United States.

Timely renewal registration. A renewal registration made during the renewal filing period.

To vest. To give a fixed, noncontingent right of present or future enjoyment of the renewal copyright in a work. Although the vested right in a renewal copyright may have been determined by a timely renewal registration, the exercise of such right did not commence until the beginning of the renewal term.

U.C.C. (Universal Copyright Convention). The U.C.C. is an international copyright treaty to which the United States is a party. The treaty was drafted in Geneva in 1952 and came into force in the United States on September 16, 1955. The treaty was revised and the United States is a party to the version as revised at Paris in 1971 as of July 10, 1974. The practical purpose of the Convention was to reduce formalities for securing copyright among participating countries for certain literary, artistic, and scientific works. As a general rule, the U.C.C. required a participating country to give the same protection to foreign works that meet the Convention requirements as it gives to its own domestic works. To be eligible for renewal registration under the Convention, a work should have been authored by a national of a participating country, or should have been published for the first time in a participating country.

U.C.C. author. A national of a participating U.C.C. country (other than the United States) who was not domiciled in the United States at the time of first publication.

U.C.C. country. A country, other than the United States, that adheres to the Universal Copyright Convention, Geneva, 1952. For a list of participating countries to the Convention, and their dates of adherence, see U.S. COPYRIGHT OFFICE, UNITED STATES COPYRIGHT RELATIONS OF CURRENT INTEREST (1960).

U.C.C. works. In general, a work is eligible for U.S. copyright protection as a U.C.C. work if the author was a national of a country (other than the United States) that was a party to the U.C.C. at the time of first publication, or if the work was first published in a U.C.C. country (other than the United States) after September 16, 1955, and was not published in the United States within the next thirty days. To be a U.C.C. work, copies had to bear the copyright notice prescribed by the U.C.C. from the time of first publication. This notice consisted of the symbol © accompanied by the name of the copyright proprietor and the year date of publication. The notice had to be located on the work in such manner and location as to give reasonable notice of the copyright claim. U.C.C. works were exempt in the United States from certain registration and deposit requirements

and the manufacturing clause. (These exemptions were not applicable to works by U.S. nationals or domiciliaries, or to works first published in the United States.) U.C.C. works secured statutory protection in the United States automatically upon publication with the required copyright notice. Although no registration was required to secure the full original term of copyright in the United States, renewal registration during the last year of the original term was required to extend copyright into the renewal term. An affidavit attesting to the facts of first publication and proof of copyright notice had to accompany the renewal claim, if no registration was made for the original term.

Unitary work. For renewal registration purposes, a single work which has a common design or overarching theme and where, if there are component parts within the work, the parts are joined together, merged, or otherwise absorbed into an integrated or unified whole. The component parts may be inseparable (as in a novel or a mural painting or certain types of dramatic works), or separable but interdependent (as in a motion picture or the words and music of a song). A unitary work, with its requisite elements of merger and unity, can be contrasted with a published collection in which independent or disparate works of authorship are assembled or gathered together, but not merged or absorbed into a unified whole, and with a composite work, which lacks a common design or unity. *See* U.S. COPYRIGHT OFFICE, STUDY NO. 12: JOINT OWNERSHIP OF COPYRIGHTS (1958).

United States. For renewal registration purposes, the United States comprise the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, U.S. Virgin Islands, Panama Canal Zone, America Samoa, and other trust territories. For the manufacturing requirements, unorganized areas under the jurisdiction of the United States (such as Guam, Panama Canal Zone, Virgin Islands, and American Samoa) are not considered a part of the United States.

Unpublished collection. Under a Copyright Office policy established in 1953, certain types of unpublished works could be grouped together and registered for the original term as a single work. Generally, to be registered as an unpublished collection, the group of works had to be unpublished at the time of registration and meet certain criteria. For information concerning these requirements, see Section 2125.

URAA. On December 8, 1994, the Copyright Act of 1976 was amended by the enactment of the Uruguay Round Agreements Act ("URAA"), which provided (among other provisions) for the automatic restoration of copyright in certain foreign works (or statutory protection in the case of foreign sound recordings) that were in the public domain in the United States but not in their "source country." Copyright in the United States was automatically restored (or secured) for such works on January 1, 1996 (or on the date of adherence or proclamation of the source country, if later) and endures for the remainder of the term a work would have otherwise been granted in the United States. (For published or constructed architectural works, the effective date of restoration of U.S. copyright is December 1, 1990.) Claims in restored copyrights may be registered on Form GATT, but renewal registration is not appropriate, even when a restored copyright is in its renewal term.

U.S. author. For renewal registration purposes, an individual author who is a national or domiciliary of the United States, or a proprietary author which is registered or headquartered in the United States at the time of first publication.

U.S. work. For renewal registration purposes, works written by an author who was stateless, or who was a U.S. national or domiciliary at the time of first publication. A work first published in the United States may not be a U.S. work (as when the author is neither a U.S. national or domiciliary, nor a national of a country with which the United States has copyright relations). All unpublished photographs were regarded to be of U.S. origin for registration purposes regardless of the nationality or domicile of the author.

Vested owner. A party in whom the renewal copyright vested on the first day of the renewal term. A renewal claim filed during the renewal term must identify at least one vested owner.

Vesting date. For renewal registration purposes, the vesting date is the first day of the renewal term.

Widow or Widower. "The author's 'widow' or 'widower' is the author's surviving spouse under the law of the author's domicile at the time of his or her death, whether or not the spouse has later remarried." 17 U.S.C. § 101.

Writing of an author. To be regarded as a "writing," a work should contain at least a certain minimum amount of original literary, pictorial, or musical material.

Work copyrighted by a corporate body otherwise than as assignee or licensee of the author. For renewal registration purposes, a type of work created by persons (plural) related to a corporation neither as employees for hire nor as assignors or licensors in which the mutual contributions are fused so as to be indistinguishable. For example, members of a religious order who have renounced ownership of worldly possessions, or board members of a corporation who create a textual presentation on their own time but for the corporation.

Work made for hire. For renewal registration purposes, a type of proprietary work which allows "an employer for whom such work is made for hire" to claim the renewal copyright. Pub. L. No. 61-281, § 24, 61 Stat. 652, 659 (1947). *See* U.S. COPYRIGHT OFFICE, "WORK MADE FOR HIRE" UNDER THE 1909 COPYRIGHT LAW (2005).

Works of foreign origin (foreign works). For renewal registration purposes, works, other than U.C.C. works, by foreign authors (including joint works by one or more foreign authors), that, if published, were first published outside the territorial limits and jurisdiction of the United States. A work by an author who was a national or domiciliary of the United States at the time of first publication is not considered a work of foreign origin.

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Notice of Copyright

2201 What This Chapter Covers

This Chapter discusses the notice requirements for U.S. works published in copies and phonorecords in the United States between January 1, 1978 and February 28, 1989, when copyright notice was required for published works.

This Chapter does not cover works published before January 1, 1978 under the Copyright Act of 1909. For information on the notice requirements for works first published prior to January 1, 1978, see Chapter 2100 (Renewal Registration).

2202 Works Exempt From the Notice Requirement

2202.1 Unpublished Works

A copyright notice has never been required for unpublished works. The U.S. Copyright Office will register an unpublished work that does not bear a notice, regardless of whether the work was created before or after March 1, 1989.

2202.2 Post-Berne Works

Notice is optional for works first published on or after March 1, 1989.

The Berne Convention Implementation Act of 1988 amended the Copyright Act of 1976 by making notice optional for works published on or after this date. The Uruguay Round Agreements Act amended the statute by restoring copyrights for foreign works that lost copyright protection in the United States for failure to comply with notice requirements prior to March 1, 1989. This includes (i) works created by an author who is a citizen of, or domiciled in, a country that has entered into a copyright treaty with the United States, and (ii) works first published, or sound recordings first fixed, in a country that has entered into a copyright treaty with the United States. For a detailed discussion of foreign works, see Chapter 2000.

For purpose of this Chapter, these types of works are collectively referred to as "Post-Berne Works."

2202.2(A) Advantages to Using Notice on Post-Berne Works

Although notice is optional for unpublished works, foreign works, or works published on or after March 1, 1989, the U.S. Copyright Office strongly encourages copyright owners to use a notice for the following reasons:

- It puts potential users on notice that copyright is claimed in the work.
- In the case of a published work, a notice may prevent a defendant in a copyright infringement action from attempting to limit his or her liability for damages or injunctive relief based on an innocent infringement defense.
- It identifies the copyright owner at the time the work was first published for parties seeking permission to use the work.
- It identifies the year of first publication, which may be used to determine the term of copyright protection in the case of an anonymous work, a pseudonymous work, or a work made for hire.
- It may prevent the work from becoming an orphan work by identifying the copyright owner and/or specifying the term of the copyright.

See 17 U.S.C. §§ 401(d), 402(d), 405(b), 406(a), 504(c)(2).

Copyright owners may use any form of notice for an unpublished work, a foreign work, or a work published on or after March 1, 1989. As a general rule, Post-Berne works do not need to comply with the notice requirements set forth in Sections 401 or 402 of the Copyright Act or any of the other requirements discussed in Sections 2203 through 2209 below.

NOTE: There is limited exception to this rule. Works published on or after March 1, 1989 may require a notice that complies with Sections 401 or 402 to prevent a defendant from invoking an innocent infringement defense in a copyright infringement action. *See* 17 U.S.C. §§ 401(d), 402(d), 504(c)(2).

2202.2(B) Examination Guidelines for Post-Berne Works

Because a notice is not required for a Post-Berne work, the omission of a notice from the copies or phonorecords of that work has no effect on the validity of the copyright. However, if the information provided in the application is inconsistent with the information contained in the notice, the registration specialist may communicate with the applicant.

2203 Requirement of Notice

2203.1 Works First Published Between January 1, 1978 and February 28, 1989

Prior to March 1, 1989, when a copyrighted work was published with the authority of the copyright owner in the United States or elsewhere, the copyright law generally required that a notice be placed "on all publicly distributed copies from which the work can be visually perceived." Likewise, the copyright law generally required that a notice be placed "on all publicly distributed phonorecords of [a] sound recording" published in the United States or elsewhere with the authority of the copyright owner. *See* Copyright Act of 1976, §§ 401(a), 402(a), 90 Stat. 2541, 2576-77 (1976) (current version at 17 U.S.C. §§ 401(a), 402(a)). However, certain omissions of notice before March 1, 1989 could be cured under the 1976 Act. *See* Section 2203.4.

For a definition and discussion of publication, see Chapter 1900.

2203.2 Visually Perceptible Copies

Prior to March 1, 1989, a notice was required for visually perceptible copies of a work published with the authority of the copyright owner. Copies are "material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or indirectly with the aid of a machine or device." 17 U.S.C. § 101 (definition of "copies").

A copy is considered visually perceptible if the work is fixed in a tangible medium of expression and if the work can be visually perceived, either directly or with the aid of a machine or device. Examples of works fixed in visually perceptible copies include books, sheet music, and photographs. By contrast, a literary, dramatic, or musical work fixed in a phonorecord is not considered a visually perceptible copy of that work.

2203.3 Phonorecords

Prior to March 1, 1989, a notice was required when a U.S. sound recording was published on phonorecords with the authority of the copyright owner.

There is a fundamental distinction between a sound recording and a phonorecord. A sound recording is a work of authorship that results from the fixation of a series of sounds, such as a recording of a song, a recording of a speech, or other types of audio recordings. By contrast, a phonorecord is a material object that contains a sound recording, such as a vinyl disc, cassette, compact disc, digital audio file (*e.g.*, .mp3, .wav), or other recording medium. Specifically, the Copyright Act defines phonorecords as "material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." 17 U.S.C. § 101 (definition of "phonorecords").

Although notice was required for U.S. sound recordings, notice was not required when a musical work, literary work, or dramatic work was published on phonorecords, because a phonorecord is not a visually perceptible copy of these types of works.

Compare Copyright Act of 1976, § 402(a), 90 Stat. 2541, 2577 (1976) (stating that whenever a sound recording "is published in the United States or elsewhere by authority of the copyright owner" a notice "shall be placed on all publicly distributed phonorecords of the sound recording") *with id.* § 401(a), 90 Stat. at 2576 (stating that "[w]henever a work protected under this title is published in the United States or elsewhere by authority of the copyright owner," a notice "shall be placed on all publicly distributed copies from which the work can be visually perceived").

2203.4 Omission of Notice on Works First Published Between January 1, 1978 and February 28, 1989

The omission of a notice on a work published between January 1, 1978 and February 28, 1989 with the authority of the copyright owner does not invalidate the copyright, provided that one of the following conditions has been met:

- The notice was omitted from no more than a relatively small number of copies or phonorecords distributed to the public; or
- The work was registered before or within five years after the publication without notice and a reasonable effort was made "to add notice to all copies or phonorecords that are distributed to the public in the United States after the omission has been discovered;" or
- The omission was "in violation of an express requirement in writing that, as a condition of the copyright owner's authorization of the public distribution of copies or phonorecords, they bear the prescribed notice."

17 U.S.C. § 405(a). Likewise, the omission of a notice on a work published between January 1, 1978 and February 28, 1989 does not invalidate the copyright in that work if the notice was removed from the copies or phonorecords without the authorization of the copyright owner. *See* 17 U.S.C. § 405(c).

2204 The Form of the Notice

2204.1 Notice for Works Fixed in Copies

A notice for a work published before March 1, 1989 that has been fixed in copies should include the following elements:

- The symbol © or the word "Copyright" or the abbreviation "Copr.";
- The year of first publication for the work; and
- The name of the copyright owner, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

17 U.S.C. § 401(b). Each of these terms are discussed in Sections 2204.4 and 2205 below. The elements of the notice should appear as a single continuous statement containing the copyright symbol or the word "Copyright" or the abbreviation "Copr.," followed by the year of first publication, followed by the name of the copyright owner.

Examples:

- © 1978 John Doe
- Copyright 1980 John Doe
- Copr. 1982 John Doe

In the case of a pictorial, graphic, or sculptural work, the year of publication may be omitted if the work is reproduced on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful article.

2204.2 Notice for Sound Recordings Fixed on Phonorecords

A notice for a sound recording fixed in phonorecords and published before March 1, 1989 should include the following elements:

- The symbol ℗ (*i.e.*, the letter P in a circle);
- The year of first publication; and
- The name of the copyright owner for the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

17 U.S.C. § 402(b). Each of these terms are discussed in Sections 2204.4 and 2205 below. The elements of the notice should appear as a single continuous statement containing the ℗ symbol, followed by the year of first publication, followed by the name of the copyright owner.

Example:

- ℗ 1984 John Doe Records

If the producer of the sound recording is named on the labels or containers for the phonorecord, and if no other name appears in conjunction with the notice, the producer's name is considered part of the notice. *See id.*

2204.3 Omission of the © or ℗ Symbol or the Word "Copyright"

If a U.S. work was publicly distributed by authority of the copyright owner between January 1, 1978 and February 28, 1989, and if the copies or phonorecords do not contain the word "Copyright," the abbreviation "Copr.," or an appropriate symbol that could reasonably be regarded as part of the notice, the U.S. Copyright Office considers the work to be published without any notice. *See* 17 U.S.C. § 405.

2204.4 Variations on the © or ℗ Symbol or the Word "Copyright"

Some variants on the symbols © or ℗ or the word "copyright" may be acceptable and the use of such variants may not result in a defective notice. By contrast, an unacceptable variant will be treated as an omission of the notice.

2204.4(A) Variants for the © Symbol

A variant of the symbol © is acceptable only if it resembles the © closely enough to indicate clearly that the variant is intended to be the copyright symbol. Acceptable variants include:

- The letter c with a parenthesis over the top.
- The letter c with a parenthesis under the bottom.
- (c
- c)
- (c)
- The letter c with an unenclosed circle around it.

Examples of unacceptable variants on the © symbol include the following:

- CO
- C
- C/O
- @ (*i.e.*, the letter a in a circle).
- The letter c with a circle attached to the bottom of the letter.
- The letter c in a square.
- [c]

2204.4(B) Variants for the ℗ Symbol

A variant of the symbol ℗ is acceptable only if it resembles the ℗ closely enough to indicate clearly that the variant is intended to be the symbol for a sound recording copyright. Acceptable variants include:

- The letter P with a parenthesis over the top.
- The letter P with a parenthesis under the bottom.
- (P
- P)
- (P)
- The letter P with an unenclosed circle around it.

2204.4(C) Variants for the Word "Copyright"

A misspelled or variant form of the word "Copyright" or the abbreviation "copr." may be accepted if it is clear that the term is intended to be "copyright." Acceptable variants include:

- Copyrighted
- Copywrite
- Copywritten
- Copyright Pending
- Copyright Applied For
- Copyright and Registered
- Registered U.S. Copyright Office
- Copy
- Copyr.

The term "All Rights Reserved" or the like is not an element of the notice prescribed by U.S. law, and it is not an acceptable variant or substitute for the word "copyright" or the abbreviation "Copr." The same is true for similar statements in other languages, such as "Todos los Derechos Reservados." However, the use of such terms in juxtaposition with an acceptable notice is permitted.

Examples:

- Copyright 1986 Frontier Medicine. All Rights Reserved.
- © 1988 Abigail Villagros de Izaguirra. Todos los Derechos Reservados.

2205 Elements of Notice

2205.1 Year

2205.1(A) Year of Publication

As a general rule, the notice on visually perceptible copies and on phonorecords of sound recordings must include the year of first publication. The notice on copies of a compilation or derivative work incorporating previously published material only requires the year of first publication for the compilation or derivative work. 17 U.S.C. §§ 401(b)(2), 402(b)(2).

A notice may be accepted if the year of publication is presented in any of the following forms:

- Arabic numerals (*e.g.*, 1981).
- Abbreviations of Arabic numerals (*e.g.*, '81).
- Roman numerals (*e.g.*, MCMLXXXI).
- Numeric words (*e.g.*, Nineteen Hundred Eighty-One).
- The year of first publication followed by multiple year dates (*e.g.*, 1981, 1982, 1983).

2205.1(B) Year of Publication Omitted

If a U.S. work was publicly distributed by authority of the copyright owner between January 1, 1978 and February 28, 1989, and if the copies or phonorecords contain no year date that could reasonably be regarded as part of the notice, the U.S. Copyright Office considers the work to be published without any notice.

2205.1(C) Antedated Notice: Date in the Notice Earlier than the Actual Year of First Publication

An antedated notice is a notice that contains a date that is earlier than the year that the work was first published.

Example:

- Monster Trucks, Inc. first published a parts catalog in 1986 with an antedated notice that reads: "© 1985 Monster Trucks."

If a U.S. work was publicly distributed by authority of the copyright owner between January 1, 1978 and February 28, 1989 with an antedated notice, it is considered an error in the date. This error does not affect the validity of the copyright in that work. 17 U.S.C. § 406(b), (c).

If the date in the notice is only one year (or less) earlier than the date of publication specified in the application, the registration specialist will register the claim and will add an annotation, such as: "Regarding publication: Year date in notice ____." If the date is two or more years earlier than the date of publication specified in the application, the specialist will communicate with the applicant to determine if the publication date is correct. If the date specified in the application is incorrect, the specialist may add the correct date to the application, register the claim, and add a note to the registration record. If the date specified in the application is correct and the work is not a derivative work, the registration specialist will register the claim and add an annotation, such as: "Regarding publication: Year date in notice ____. Publication date confirmed correct in phone call/email with ____ on ____."

NOTE: Using an antedated notice in an anonymous work, pseudonymous work, or work made for hire may affect the term of the copyright if the work was first published in the United States between January 1, 1978 and February 28, 1989. In such cases, the term is computed from the year of publication that appears in the notice, rather than from the actual year of first publication.

2205.1(D) Postdated Notice: Date in the Notice Later than the Actual Year of First Publication

A postdated notice is a notice that contains a date that is later than the year that the work was first published.

Example:

- A song book first published in 1985 with a postdated notice that reads: "Copyright 1986 Arpeggio Music."

If a work was publicly distributed by authority of the copyright owner with a postdated notice between January 1, 1978 and February 28, 1989, it is considered an error in the date. 17 U.S.C. § 406(b), (c).

If the date in the notice is no more than one year later than the date of publication specified in the application, the registration specialist generally will register the claim without communicating with the applicant, although he or she will add an annotation to the record, such as: "Regarding publication: Year date in notice ____."

If a U.S. work was publicly distributed by authority of the copyright owner between January 1, 1978 and February 28, 1989, and if the date in the notice is two or more years later than the year in which the work was first published, the U.S. Copyright Office considers the work to be published without any notice. If the work is submitted for registration more than five years after the date of first publication, the registration specialist will refuse to register the claim if he or she determines that the work is a U.S. work.

NOTE: This policy equally applies to certain works of visual art, such as jewelry, dolls, or toys that contain a postdated notice, notwithstanding the fact that a year date is not required in the notice for such works.

2205.1(E) Dispersed Date in a Notice

A year of publication that is separated from the rest of the notice may be acceptable if it is an appropriate date and if it is reasonably identifiable as part of the notice. For example, an appropriate year of publication may be acceptable if it is the only date that appears on the same page as the other elements of the notice.

Likewise, a year of publication that is prominently displayed elsewhere on copies or phonorecords may be acceptable if it is an appropriate date and if it can reasonably be considered part of the notice. For instance, the U.S. Copyright Office may accept a date that appears in the "Library of Congress Cataloging in Publication Data" or in the year of issue for a periodical, even if the date does not appear on the same page as the rest of the notice.

In those cases where a year is required and no year of publication can be reasonably identified as part of the notice, the Office will consider the work to be published without notice.

2205.1(F) Multiple Dates in a Notice

If the notice contains two or more dates and if none of those dates represent the year of first publication, the registration specialist will use the most recent date to determine if the work was published with an adequate notice.

If the notice contains earlier dates as well as the actual year of first publication, the specialist may communicate with the applicant if it appears that the work is a derivative work and the earlier dates refer to the date of publication for an earlier version(s) or edition(s) of the work. In this case the specialist will ask the applicant to complete the Limitation of Claim field/space in order to limit the claim to the new material appearing in the derivative work for the first time. Likewise, the specialist may communicate with the applicant if it appears that the earlier dates refer to the date of registration for any unclaimable material that has been incorporated into the work.

2205.2 Name

2205.2(A) Name of Copyright Owner

As a general rule, the copyright notice on both copies and phonorecords must include one of the following:

- The name of the owner of copyright in the work or an abbreviation by which the name can be recognized, or
- A generally known alternative designation of the owner.

17 U.S.C. §§ 401(b)(3), 402(b)(3).

Ordinarily, the U.S. Copyright Office will not communicate with the applicant if the name in the notice appears sufficient to identify the copyright owner.

2205.2(B) Name of Copyright Owner Omitted

If a U.S. work was publicly distributed by authority of the copyright owner between January 1, 1978 and February 28, 1989 and if the notice does not contain a name that could reasonably be considered a part of the notice, the U.S. Copyright Office considers the work to be published without any notice.

2205.2(C) Owner Named in the Notice

For purposes of notice, the copyright owner is the "claimant" or proprietor of all rights at the time the work was published. For purposes of registration, the copyright claimant must be (i) the author of the work or (ii) a person or organization that has obtained all the exclusive rights of copyright that initially belonged to the author.

In most cases, the name provided in the application will be the same as the name that appears in the notice. In some cases, the claimant named in the application and the copyright owner named in the notice may be different. Both names may be correct, provided that the copyright was assigned to the copyright claimant between the date that the work was first published and the date that the application was submitted to the U.S. Copyright Office. In such situations, a transfer statement must be provided in the application.

If the claimant named in the application does not appear to be the author or owner of all U.S. rights in the work based on information provided elsewhere in the registration materials or obtained from other sources, the specialist will communicate with the applicant to resolve any inconsistency between the name provided in the application and the name in the notice.

2205.2(D) Variants, Abbreviations, Alternative Designations, or Pseudonyms for the Copyright Owner

A notice may contain an abbreviation by which the copyright owner can be recognized or a generally known alternative designation. In such cases, the applicant should provide the legal name of the claimant and specify the relationship between the legal name and the name that appears in the notice.

A recognizable abbreviation for the copyright owner's full name typically contains an abbreviation for each significant word in that name.

Example:

- "Merc. Rec." for Mercury Records Corporation.

A generally known alternative designation for the copyright owner's full name may contain part of that name, the copyright owner's well-known initials, or a completely different name.

Examples:

- "Atlantic" for Atlantic Recording Corporation.
- "NBC" for National Broadcasting Company.
- "Melodium" for Genius Recording Co.

If the notice appears to identify the copyright owner to people who are likely to obtain copies or phonorecords of the work, the notice will be considered acceptable.

Likewise, if the name appearing in the notice is a pseudonym for an individual who is named in the application as a copyright claimant, the notice will be considered acceptable if the claimant is generally known by that pseudonym.

If the name, abbreviation, or alternative designation in the notice is so vague, truncated, or ambiguous that it could not identify any person or entity as a copyright owner, the U.S. Copyright Office will consider the work to be published without any name in the notice.

2205.2(E) Deceased Person Named in the Notice

A deceased person cannot own copyright or any other property. If the work was published during the owner's lifetime and the name provided in the notice was correct, and if the work is submitted for registration after the owner's death, the applicant must name the owner of all rights at the time the application is submitted for registration and provide a transfer statement explaining how that party obtained ownership of the copyright.

If the U.S. Copyright Office has reason to believe that the person named in the notice died before the first publication of the work, the Office will treat this as an error in the notice. If the publication was authorized by the copyright owner, the error will not affect the validity or ownership of the copyright in the work. However, it may allow a third party to assert an innocent infringement defense unless one of the following events has occurred:

- The work was registered in the name of the copyright owner before the alleged infringement began; or
- A document executed by the person named in the notice showing the ownership of the copyright was recorded before the alleged infringement began.

See 17 U.S.C. § 406(a).

2205.2(F) Copyright Owner Identified by Reference

A notice that identifies the copyright owner by reference, such as "copyright by author" or "copyright by publisher," is acceptable if the copies or phonorecords contain a name, abbreviation, or a generally known designation that identifies the copyright owner as the author, the publisher, or another person or legal entity.

If the copies or phonorecords do not contain the name, an abbreviation of the name, or generally known designation that identifies the copyright owner, the U.S. Copyright Office considers the work to be published without notice. 17 U.S.C. § 406(c).

2205.2(G) Multiple Names in the Notice

When two or more names appear in the notice, but only one of those parties is named in the application as the copyright claimant, the registration specialist generally will register the claim without communicating with the applicant.

2205.2(H) Name of the Copyright Owner Separated from Other Elements in the Notice

If the copies or phonorecords contain a name, abbreviation, or generally known alternative designation for the copyright owner that is separated from the other elements of the notice, the notice may be accepted, provided that the name can reasonably be considered part of the notice.

If the copies or phonorecords contain two or more names, abbreviations, or alternative designations that are equally identifiable with the rest of the notice, the notice may be accepted if any of those names, abbreviations, or alternative designations is capable of identifying any person or entity as a copyright owner.

If none of the names, abbreviations, or alternative designations is identifiable with the rest of the notice, the U.S. Copyright Office considers the work to be published without any notice.

2205.2(I) Error in the Name of the Copyright Owner

When the person named in the notice was authorized by the copyright owner to publish the work, but is not the actual copyright owner, it is considered to be an error in the name. This does not affect the validity or ownership of the copyright. In such cases, the work may be registered at any time before the copyright expires, provided that the applicant identifies the claimant who owns the copyright at the time when the application is submitted to the U.S. Copyright Office.

17 U.S.C. § 406(a).

2206 Affixation of the Notice

2206.1 Affixation and Position of the Notice

The Copyright Act states that the notice shall be affixed on publicly distributed copies and phonorecords in such a manner and in a location that provides reasonable notice to the public of the claim to copyright.

In all cases, the acceptability of a notice depends upon its being permanently legible to an ordinary user of the work and affixed to the copies in such manner and position that it is not concealed from view upon reasonable examination.

2206.2 Affixation of Notice on Copies

If a notice is not affixed to copies or phonorecords in such manner and location as to give reasonable notice of the claim to copyright, the U.S. Copyright Office considers the work to be published without notice. 17 U.S.C. §§ 401(c), 402(c), 405.

2206.3 Affixation of Notice on Phonorecords

When a work is publicly distributed on phonorecords, a notice shall be placed on the surface of the phonorecord or on the label or container for the phonorecord in such manner and location as to give reasonable notice of the claim to copyright. 17 U.S.C. § 402(c).

2206.4 Handwritten, Typewritten, or Rubber-Stamped Notice on Published Copies or Phonorecords

As a general rule, if a handwritten, typewritten, or rubber-stamped notice appears on copies or phonorecords of a work published between January 1, 1978 and February 28, 1989, the U.S. Copyright Office may ask the applicant whether a similar notice appeared on all the copies or phonorecords when the work was first published.

2206.5 Legibility of the Notice

A blurred notice may be acceptable if it is legible, but a notice that is so badly blurred as to be illegible will be treated as an omission of notice.

2206.6 Microscopic Notice

In general, a notice that is so small that it cannot be read without a magnifying glass is considered unacceptable and will be treated as if the work was published without notice, unless the work itself requires magnification for its ordinary use and provided that the notice is readable when the work has been magnified.

2206.7 Concealed Notice

A concealed notice that is permanently covered so that it cannot be seen without damaging or tearing the work apart is unacceptable. The U.S. Copyright Office considers such works to be published without notice. To be acceptable, a notice must be legible to

an ordinary user of the work under normal conditions of use and affixed to the copies in such a manner and position that when affixed it is not concealed from view upon reasonable examination by the Office or the ordinary user. *See* 17 U.S.C. §§ 401(c), 402(c).

Examples:

- A notice on the margin or back of a painting that is concealed under a permanent frame or mat is unacceptable.
- A notice on the bottom of a figurine that is cemented on a base so that the notice is concealed is unacceptable.

2206.8 Notice Visible Upon Ordinary Use

A notice that is not visible on casual inspection of the work may be acceptable if the notice becomes visible in the ordinary use of the work.

Example:

- A notice for a computer program that becomes visible when the program is run.

2207 Location and Placement of the Notice

The Copyright Act directs the Register of Copyrights to adopt specific regulations for the placement of copyright notice for various works. 17 U.S.C. § 401(c). These regulations are found at 37 C.F.R. § 202.2.

2207.1 Literary Works

As explained in Section 2202.2, notice is optional for works published on or after March 1, 1989. Prior to that date, a notice was required when a U.S. literary work was publicly distributed in visually perceptible copies, such as a book or a magazine. When a notice is included on a copy of a literary work, it is considered acceptable if it appears in any of the locations described in Sections 2207.1(A) through 2207.2.

NOTE: For purposes of this Section, the term "leaf" means a sheet of paper or the like, that may exist as a separate item or as a part of a book or similar publication. A "page" is a single side of a leaf.

2207.1(A) Literary Works Published in Book Form

In the case of works published in book form, a notice is acceptable if it appears on the copies in any of the following positions:

- The title page, if any.
- The page immediately following the title page, if any.

- Either side of the front cover, if any, or if there is no front cover, on either side of the front leaf of the copies.
- Either side of the back cover, if any, or if there is no back cover, either side of the back leaf of the copies.
- The first page of the main body of the work.
- The last page of the main body of the work.
- Any page between the front page and the first page of the main body of the work, if (i) there are no more than ten pages between the front page and the first page of the main body of the work, and (ii) the notice is reproduced prominently and is set apart from the other matter on the page where it appears.
- Any page between the last page of the main body of the work and the back page, if (i) there are no more than ten pages between the last page of the main body of the work and the back page, and (ii) the notice is reproduced prominently and is set apart from the other matter on the page where it appears.

37 C.F.R. § 202.2(c)(4)(i)-(viii).

2207.1(B) Single Leaf Works

In the case of a literary work consisting of a single leaf, a notice is acceptable if it is reproduced in the copies anywhere on the front or back of the leaf. 37 C.F.R. § 202.2(c)(5).

2207.1(C) Dust Jackets

A notice of copyright on the dust jacket of a book is not an acceptable notice for the book, because the dust jacket is not permanently attached to the book. Likewise, a notice appearing in a book is not an acceptable notice for the dust jacket or any material appearing on that dust jacket, even if the book refers to the jacket or material appearing on the jacket.

2207.1(D) Literary Works Embodied in Phonorecords

A notice is not required for literary works published solely in phonorecords, because phonorecords are not considered visually perceptible copies of such works.

2207.1(E) Periodicals or Other Serials

The notice for a work published as an issue of a periodical or other serial may be acceptable if it appears in any of the locations discussed in Section 2207.1(A) or if it is located:

- As part of, or adjacent to, the masthead, or on the page containing the masthead; or

- Adjacent to a prominent heading, appearing at or near the front of the issue, containing the title of the periodical or other serial and any combination of the volume and issue number and date of the issue.

37 C.F.R. § 202.2(c)(4)(i)-(ix).

2207.2 Contributions to Collective Works

A general notice for a collective work as a whole covers the separate contributions that it contains (regardless of ownership), except for any advertisements inserted on behalf of persons other than the copyright owner for the collective work.

In addition, a separate notice for a contribution to a collective work may be acceptable if it appears in any of the following positions:

- Where the contribution is reproduced on a single page, a notice is acceptable if it appears (i) under the title of the contribution on that page; (ii) adjacent to the contribution; or (iii) on the same page if through format, wording, or both, the application of the notice to the particular contribution is made clear.

- Where the contribution is reproduced on more than one page of the collective work, a notice is acceptable if it appears (i) under a title appearing at or near the beginning of the contribution; (ii) on the first page of the main body of the contribution; (iii) immediately following the end of the contribution; or (iv) on any of the pages where the contribution appears, provided that the contribution is reproduced on no more than twenty pages of the collective work; the notice is reproduced prominently and is set apart from other matter on the page where it appears; and through format, wording, or both, the application of the notice to the particular contribution is made clear.

Alternatively, a separate notice for a contribution to a collective work may be acceptable if it clearly appears in juxtaposition with a separate listing of the contribution by full title and author and is located either:

- On the page bearing the notice for the collective work as a whole (if any); or

- In a clearly identified and readily accessible table of contents or listing of acknowledgments appearing near the front or back of the collective work.

If the contribution is a musical work, a notice is acceptable if it appears in any of the locations discussed above or if it is located on the first page of music for the contribution. 37 C.F.R. § 202.2(c)(6).

If a collective work was publicly distributed with a notice for the collective work as a whole — but without a separate notice for the contributions to that work — the notice covers the contributions, even if the copyright owner named in the notice is not the copyright owner of those contributions (except for advertisements inserted on behalf of persons other than the owner of the collective work).

2207.3 Musical Works

2207.3(A) Musical Works Embodied in Copies

As explained in Section 2202.2, notice is optional for works published on or after March 1, 1989. Prior to that date, a notice was required when a U.S. musical work was publicly distributed in visually perceptible copies, such as sheet music or liner notes. When a notice is included on a copy of a musical work, it is considered acceptable if it appears in any of the locations described in Sections 2207.1(A) or 2207.1(E) or if the notice appears on the first page of the music. 37 C.F.R. § 202.2(c)(4)(i)-(x).

2207.3(B) Musical Works Embodied in Phonorecords

A notice is not required for musical works published solely in phonorecords, because phonorecords are not considered visually perceptible copies of such works.

2207.4 Sound Recordings

As explained in Section 2202.2, notice is optional for works published on or after March 1, 1989. Prior to that date, a notice was required when a U.S. sound recording was publicly distributed on phonorecords, such as an album or cassette.

When a notice is included on a phonorecord that contains a sound recording, the notice is considered acceptable if it appears anywhere on the surface of the phonorecord or the phonorecord label or container. 17 U.S.C. § 402(c). A container includes the jacket housing a disc, or the box or jewel case housing a cassette or compact disc, but does not include an outer mailing or packaging box, envelope, or other wrapper intended for disposal once the phonorecord is put into use.

If the label(s) or container(s) for the phonorecord identify the producer of the sound recording and "if no other name appears in conjunction with the notice, the producer's name shall be considered as part of the notice." 17 U.S.C. § 402(b)(3).

Example:

- An application names Doe Recording Co. as author of the sound recording published in 1981. The work made for hire box is checked "yes." The following notice appears on the left side of the label on a 45 rpm disk: "℗ 1981."

- The following statement appears on the right side of the label: "Doe Recording Company, Produced and arranged by Jay Jones."
- The following statement appears along the bottom of the label: "Mfg. by Doe Recording Co."

2207.5 Dramatic Works

2207.5(A) Dramatic Works Embodied in Copies

As explained in Section 2202.2, notice is optional for works published on or after March 1, 1989. Prior to that date, a notice was required when a U.S. dramatic work was publicly distributed in visually perceptible copies, such as a script. When a notice is included on a copy of a dramatic work, it is considered acceptable if it appears in any of the locations described in Sections 2207.1(A) or 2207.1(E) or if the notice appears on the first page of the work.

2207.5(B) Dramatic Works Embodied in Phonorecords

A notice is not required for dramatic works published solely in phonorecords, because phonorecords are not considered visually perceptible copies of such works.

2207.6 Motion Pictures and Other Audiovisual Works

Acceptable methods for affixing and positioning the notice on a motion picture or other audiovisual work include:

- A notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear whenever the work is performed in its entirety, and that is located:
  - with or near the title;
  - with the cast, credits, and similar information;
  - at or immediately following the beginning of the work; or
  - at or immediately preceding the end of the work.
- In the case of a motion picture or other audiovisual work that is distributed to the public for private use, the notice may be affixed, in any of the locations listed above, or on the housing, or container if it is a permanent receptacle for the work.
- In the case of an untitled motion picture or other audiovisual work whose duration is sixty seconds or less, a notice is acceptable if it appears in any of the locations listed above or if it is embodied in the copies by a photomechanical or electronic process in such a position that it ordinarily would appear to the projectionist or broadcaster when preparing the work for performance, provided that it is located on the leader of the film or tape immediately preceding the beginning of the work.

37 C.F.R. § 202.2(c)(8).

2207.7 Pictorial, Graphic, and Sculptural Works

Acceptable methods for affixing and positioning the notice on a pictorial, graphic, or sculptural work include:

- Where a work is reproduced in two-dimensional copies, a notice is acceptable if it is affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, on the front or back of the copies, or to any backing, mounting, matting, framing, or other material to which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed.

- Where a work is reproduced in three-dimensional copies, a notice is acceptable if it is affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, to any visible portion of the work, or to any base, mounting, framing, or other material on which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed.

37 C.F.R. § 202.2(c)(9)(i)-(ii).

2207.7(A) Works of Unusual Size or Characteristics

If it is impossible or extremely impractical to affix a notice directly to the copies or by means of a durable label because of the size or physical characteristics of the material in which the work is reproduced, a notice is acceptable if it appears on a tag that is of durable material, so as to withstand normal use, and if it is attached to the copy with sufficient durability that it will remain with the copy while it is passing through its normal channels of commerce. 37 C.F.R. § 202.2(c)(9)(iii).

2207.7(B) Works Consisting of Sheet-Like or Strip Material

Where a work is reproduced in copies consisting of sheet-like or strip material bearing multiple or continuous reproductions of the work, the notice may be applied to:

- The reproduction itself; or

- The margin, selvage, or reverse side of the material at frequent and regular intervals; or

- If the material contains neither a selvage nor a reverse side, to tags or labels attached to the copies and to any spools, reels, or containers housing them in such a way that a notice is visible while the copies are passing through their normal channels of commerce.

37 C.F.R. § 202.2(c)(9)(iv).

2207.7(C) Works with Separable Parts Published in a Permanent Container

As a general rule, when the separate component parts of a work are permanently housed in a container, such as a game or puzzle box, a single, general notice reproduced on the permanent container is acceptable for the visually perceptible parts. 37 C.F.R. § 202.2(c)(9)(v).

2207.7(D) Reversible Works

In the case of a mold, decal, or other work that is the reverse of the product that is intended to result from its use, a notice is acceptable even if it is printed in reverse.

2207.7(E) Year of First Publication Omitted

The year of publication may be omitted from a notice when a pictorial, graphic, or sculptural work with accompanying text (if any) is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or a useful article.

NOTE: A label is not considered a useful article for these purposes. Textiles and fabrics are useful articles, but they do not require a year of publication. When a copyright notice for a textile or a fabric is contained on a label affixed to the textile or fabric and the year of publication is omitted from the notice, the notice is acceptable with respect to the textile or fabric.

2207.8 Multi-Part Works

One notice per unit of publication is adequate for multi-part works (*e.g.*, box sets, multimedia kits, score, and parts) published in copies or phonorecords, provided that a proper notice is used and it is affixed in a manner and location that gives reasonable notice of the claim to copyright in the entire unit of publication.

Although one notice per unit of publication is legally sufficient, placing a notice on each part of a multi-part work ensures that the public is put on notice that the copyright owner has asserted a claim to copyright in each part of the unit.

Examples:

- A notice on the first disk of a twelve disc collection is acceptable for the entire collection, but a notice on the sixth disc of a twelve disc collection is only acceptable for that disc.
- A notice properly positioned on a unit consisting of a musical score and parts is acceptable for the entire unit, but a notice only on one or more of the parts is acceptable only for those parts.
- A notice on the permanent container or box for a multimedia kit is acceptable.

2207.9 Works Published in Machine-Readable Copies

For works published in machine readable copies, such as semiconductor chips, optical discs, magnetic tapes, or similar storage media that cannot ordinarily be perceived without the aid of a machine or device, a notice may be acceptable if it appears in the following manner:

- The notice is embodied in visually perceptible printouts of the work, provided that it appears either with or near the title or at the end of the work.
- The notice is displayed at the user's terminal at sign-on.
- The notice continuously appears on a terminal display.
- The legible notice is reproduced durably, so as to withstand normal use, on a gummed or other label securely affixed to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copies.

37 C.F.R. § 202.2(c)(7).

NOTE: Works that require the use of a machine or device to optically enlarge the work, such as films, filmstrips, and works published in any variety of microfilm, are not considered machine-readable works.

2208 Government Works

Protection under the Copyright Act is not available for any work of the United States government. However, if a work consists of both a work of the United States government and a work protectable under the Copyright Act, the notice should contain a statement identifying those portions of the copies or phonorecord that do or do not contain work(s) that are protected under the Copyright Act. 17 U.S.C. §§ 105, 403.

If the work was published on or after March 1, 1989, the U.S. Copyright Office may register the claim even if this statement does not appear in the notice. By contrast, if the work was published between January 1, 1978 and February 28, 1989, the failure to include this statement may be considered an omission of the notice.

2209 General, Specific, and Restricted Notice

2209.1 General and Specific Notice

A general notice is a notice that contains the elements listed in Sections 2204.1 or 2204.2 (*e.g.*, © 1981 John Doe). A specific notice is a notice that identifies the portions or features of the work that belong to the copyright owner (*e.g.*, "Introduction and illustrations © 1981 Popular Publishing Co." or "Arrangement © 1981 Newstyle Music Co.").

A general notice may be used on a work of authorship, even if the claim is limited to a specific portion of that work, such as the introduction to a biography or the new material that appears in the second edition of a textbook.

If the work contains a specific notice that identifies specific aspects of the work, the registration specialist may communicate with the applicant if those aspects are not reflected in the application or if the claim is unclear.

2209.2 Restricted Notice

A restricted notice is a notice that contains a statement indicating that the notice does not cover certain material that appears in the work.

Example:

- "Copyright 1980 XYZ Publisher, no copyright claimed in illustration."

If the notice specifies only the material that has been excluded from the claim, the registration specialist may add an annotation to the registration record, such as: "Regarding deposit: In notice: [quote notice that appears on the deposit copy]."

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Recordation

2301 What This Chapter Covers

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

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

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

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

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

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

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

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

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

2302 The Recordation Section

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

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

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

2303 Recordation Distinguished from Registration

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

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

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

A transfer of copyright ownership, a document pertaining to copyright, and other types of documents may be recorded, even if the copyright has not been registered with the

Office. However, recording a document is not a substitute for registering a copyright claim, and registering a copyright claim is not a substitute for recording a document.

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

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

2304.1 Documents That Must Be Recorded

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

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

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

2304.1(A) Notices of Termination

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

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

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

2304.1(B) Security Interests in Registered Works

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

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

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

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

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

2304.2 Documents That May Be Recorded

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

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

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

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

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

2305 Overview of the Recordation Process

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

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

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

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

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

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

When a document is recorded, the Office will assign a unique identifying number to the document, such asV9920 D781. The letters "V" and "D" refer to the volume and document numbers that have been assigned to the document.

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

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

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

The fact that a document has been recorded is not a determination by the U.S. Copyright Office concerning the validity or the effect of that document. That determination can only be made by a court of law. As discussed above, the Office only examines documents to determine if they comply with the requirements of the Copyright Act and the Office's regulations. The Office will not attempt to interpret the substantive content of any document that has been submitted for recordation. Likewise, the Office will not attempt to determine whether a document satisfies the legal requirements that may be necessary for it to be effective or enforced.

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

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

2306 Indexing

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

2306.1 The Online Public Record

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

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

- The registration number(s) for those work(s) (if they were listed in the document).
- The date of execution specified in the document (if any).

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

2306.2 Indexing Guidelines

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

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

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

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

Examples:

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

2306.3 Titles Listed in the Recorded Document

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

2306.4 Registration Numbers Listed in the Recorded Document

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

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

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

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

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

Published Literary Works:

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

Published Work of the Performing Arts:

Correct format: PA0009999999
Incorrect format: PA 9999999

Unpublished Work of the Visual Arts:

Correct format: VAU009999999
Incorrect format: VAu 999 9 999

Renewal Registration:

Correct format: RE0009999999
Incorrect format: RE9999999

Musical Work Published Before January 1, 1978:

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

Unpublished Dramatic Work Registered Before January 1, 1978:

Correct format: DU0009999999
Incorrect format: Registration Number Du 9999999

Preregistration:

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

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

2306.5 Parties Named in the Recorded Document

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

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

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

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

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

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

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

2306.6 Date of Execution

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

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

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

2306.7 Effective Date

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

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

2307 Special Handling

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

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

2308 Correcting Errors or Omissions in a Recordation

2308.1 Errors or Omissions in a Recorded Document

A document recorded with the U.S. Copyright Office will be made a permanent part of the public record, and the Office will not modify that document or remove it from the record once a certificate of recordation has been issued.

The Recordation Section will not make any changes or corrections to a document that has been submitted for recordation, even if the recordation specialist has been authorized or instructed to do so by the party that submitted the document.

If the remitter discovers an error or omission in a document that has been submitted for recordation, the remitter may send a corrected version of that document to the address specified in Section 2309.6. The document should be submitted together with a cover letter explaining that the document is a corrected version of a document that was previously submitted for recordation. If the remitter previously discussed the error or omission with a recordation specialist, the letter should be addressed to that specialist. If the corrected version is received within ten business days after the date that the document was initially received in the Office, the Recordation Section will substitute the corrected version for the incorrect version.

In all other cases, the remitter may correct an error or omission in a document by using one of the following options:

- The remitter may prepare a new document that contains the correct or missing information and may submit that document for recordation, along with the appropriate filing fee.
- If the Office issued a certificate of recordation and returned the document to the remitter, the remitter may correct that copy and resubmit the corrected copy for recordation, along with the appropriate filing fee.
- The remitter may prepare a declaration or affidavit describing the error or omission in the document and may submit that declaration or affidavit for recordation, along with the appropriate filing fee.

If the relevant requirements have been met, the Office will record the corrected document and will return that document to the remitter, along with a certificate of recordation. In addition, the Office will create an online public record for the corrected document that contains the information set forth in Section 2306.1 above.

When the Office records a corrected document, it does not cancel the recordation or the identifying number for the document that was initially submitted to the Office. Likewise, the Office will not change the information set forth in the certificate of recordation or the online public record for that document. Instead, the Office will assign a separate identifying number and date of recordation to the corrected document. The recordation

for the initial document and the corrected document will coexist with each other in the public record, and the recordation for the corrected document augments — but does not supersede — the recordation for the initial document.

2308.2 Errors or Omissions in the Online Public Record for a Recorded Document

If the remitter submits a document together with an electronic title list and if that list contains errors or omissions, similar errors or omissions may appear in the online public record for that document. In such cases, the remitter may correct the record by submitting a corrected version of the electronic title list. For information concerning this procedure, see Section 2309.13(C).

If the Office made a clerical or typographical error in indexing a document that was not caused by a corresponding error in the electronic title list for that document (if any), the remitter should contact the Office in writing using the form posted on the Office's website. If appropriate, the Office will attempt to correct the error in the online public record.

2309 Recordation of Transfers of Ownership and Other Documents Pertaining to Copyright

Sections 2309.1 through 2309.13 discuss the practices and procedures for recording a transfer of ownership or other document pertaining to copyright. The practices and procedures described in these Sections also apply to documents pertaining to mask works and vessel designs.

2309.1 What Is a Transfer of Ownership?

Section 205(a) of the Copyright Act states that "[a]ny transfer of copyright ownership . . . may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document."

Section 101 of the Copyright Act states that a "transfer of copyright ownership" is "an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect . . ." It also states that a nonexclusive license is not a transfer of copyright ownership.

The copyright in a work of authorship initially belongs to the author or co-authors of that work. Section 201(d)(1) of the Copyright Act states that "[t]he ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession."

As a general rule, a transfer of copyright ownership must be made in writing and it must be signed by the owner of the rights conveyed or the owner's duly authorized agent.

17 U.S.C. §§ 101, 201(d), 204(a).

2309.2 What Is a Document Pertaining to Copyright?

A document pertaining to copyright is a document that has a direct or indirect relationship to the existence, scope, duration, or identification of a copyright, or a direct or indirect relationship to the ownership, division, allocation, licensing, transfer, or exercise of rights under a copyright. These relationships may be past, present, future, or potential.

Examples:

- Nonexclusive licenses.
- Wills.
- Powers of attorney.
- Affidavits.
- Declarations.
- Bankruptcy decrees.
- Certificates of change of corporate title.
- Statements regarding a change of address.

If a document does not appear to have any direct or indirect relationship to a copyright claim, the recordation specialist may communicate with the remitter and may refuse to record the document.

Example:

- A bill of lading referring to a shipment of motion pictures.
- An assignment of rights in a patent or trademark.

2309.3 Benefits of Recording Transfers and Other Documents Pertaining to Copyright

As discussed in Section 2304.1(B), some courts have held that a security interest in a registered work must be recorded with the U.S. Copyright Office as a condition for perfecting that interest. As discussed in Section 2304.1(A), a notice of termination must be recorded with the U.S. Copyright Office in a timely manner in order for the notice to take effect. For additional information concerning security interests and notice of termination, see Sections 2309.3(E) and 2310.

By contrast, recording a transfer or other document pertaining to copyright is optional, although it does provide certain benefits that are discussed in Sections 2309.3(A) through 2309.3(D).

2309.3(A) Constructive Notice

Recording a transfer or other document pertaining to copyright may provide constructive notice — a legal concept meaning that members of the public are deemed to have knowledge of the facts stated in the document. *See* Fees, 63 Fed. Reg. 43,426, 43,427 (Aug. 13, 1998).

Section 205(c) of the Copyright Act states that recordation "gives all persons constructive notice of the facts stated in the recorded document," but only if (i) "the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work," and (ii) the work has been registered with the Office.

2309.3(B) Establishing Priority Between Conflicting Transfers

Recording a transfer of ownership with the U.S. Copyright Office may establish priority between two or more transfers involving the same copyrighted work.

If a copyright owner issues two transfers involving the same work, the transfer that was executed first will prevail, provided that the document is recorded (i) within one month after the transfer was executed (in the case of a transfer executed in the United States), (ii) within two months after execution (in the case of a transfer executed in another country), or (iii) at any time before the other document was recorded with the Office.

Otherwise, the later transfer will prevail, provided that (i) the transfer is taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, (ii) the transfer is taken without notice of the earlier transfer, and (iii) the transfer is recorded in a manner required to give constructive notice.

17 U.S.C. § 205(d).

2309.3(C) Establishing Priority Between a Conflicting Transfer and a Nonexclusive License

If a copyright owner issues a transfer of copyright ownership and a nonexclusive license involving the same work, the license will prevail (regardless of whether it has been recorded with the Office), provided that the license is evidenced by a written instrument signed by the owner of the rights licensed or such owner's duly authorized agent, and provided that one of the following conditions has been met:

- The license was taken before the execution of the transfer; or
- The license was taken in good faith before the transfer was recorded with the Office and without notice of that transfer.

17 U.S.C. § 205(e).

2309.3(D) Limiting the Innocent Infringer Defense

Recording a transfer of ownership with the Office may limit a defendant's ability to assert an innocent infringement defense in a copyright infringement action involving a work published before March 1, 1989.

If the person named in the notice is not the copyright owner, the defendant may assert a defense in an infringement action by proving that he or she was misled by the notice and that he or she used the work in good faith based on a purported transfer or license from the person named in that notice. However, the innocent infringement defense does not apply (i) if the work was registered in the name of the copyright owner before the infringement began, or (ii) if a document executed by the person named in the notice and showing the ownership of the copyright was recorded before the infringement began.

17 U.S.C. § 406(a).

2309.3(E) Perfection of Security Interests

Some courts have held that a security interest in a registered work must be recorded with the U.S. Copyright Office in order to perfect the creditor's interest. In order to perfect the creditor's interest in an unregistered work, some courts have held that the interest must be recorded under a state law version of Article 9 of the Uniform Commercial Code. *See, e.g., Aerocon Engineering, Inc. v. Silicon Valley Bank (In re World Auxiliary Power Co.*), 303 F.3d 1120 (9th Cir. 2002); *Morgan Creek Productions, Inc. v. Franchise Pictures LLC* (*In re Franchise Pictures LLC*), 389 B.R. 131 (Bankr. C.D. Cal. 2008).

A security interest in a registered or unregistered work may be recorded with the U.S. Copyright Office by following the practices and procedures described in Sections 2309.1 through 2309.13 concerning the recordation of transfers of ownership or other documents pertaining to copyright.

2309.4 Who May Record a Transfer or Other Document Pertaining to Copyright?

Any person may record a transfer or other document pertaining to copyright, provided that he or she complies with the recordation requirements set forth in Sections 2309.7 through 2309.11. The person who submits a document for recordation is known as the "remitter."

2309.5 When May a Transfer or Other Document Pertaining to Copyright Be Recorded?

A transfer or other document pertaining to copyright may be recorded at any time.

2309.6 How to Record a Transfer or Other Document Pertaining to Copyright

To record a transfer or other document pertaining to copyright, the remitter should submit a signed, complete, and legible copy of the document to the following address together with the appropriate filing fee:

Library of Congress
U.S. Copyright Office-DOC
101 Independence Avenue SE
Washington, DC 20559-6000

For information concerning the legibility, completeness, and signature requirements, see Sections 2309.8 through 2309.10 below. For information concerning the procedure for calculating the filing fee, see Section 2309.11 below. For information concerning the methods for paying the filing fee, see Chapter 1400, Sections 1403.3 through 1403.5.

When recording a transfer or other document pertaining to copyright, remitters are encouraged—but not required—to submit the document together with Form DCS. For information concerning the benefits of submitting this form, see Section 2309.12(A) below. For guidance in completing and submitting Form DCS, see Section 2309.12(C).

2309.7 Recordation Requirements for Transfers and Other Documents Pertaining to Copyright

A transfer of copyright ownership or other document pertaining to copyright may be recorded with the U.S. Copyright Office, provided that the following requirements have been met:

- The document is legible.
- The document is complete.
- The document bears the actual signature or signatures of the person or persons who executed it, or in the case of a signed document that has been scanned or photocopied, the document is accompanied by a sworn certification or an official certification confirming that the reproduction is a true copy of the original, signed document.
- The document is submitted together with the correct filing fee.

If a transfer or other document pertaining to copyright does not comply with these requirements, the recordation specialist may communicate with the remitter or may refuse to record the document.

The legibility, completeness, signature, and filing fee requirements are discussed in more detail in Sections 2309.8 through 2309.11 below.

2309.8 The Legibility Requirement

A transfer or other document pertaining to copyright may be recorded, provided that the document is legible and is capable of being imaged or otherwise reproduced in legible copies using the technology employed by the U.S. Copyright Office.

A document should be submitted in a visually perceptible form, it should be sufficiently legible for the recordation specialist to examine and index the contents of that document, and it should be sufficiently legible for the Office to scan the document into the public record. To facilitate the imaging process, documents and any attachments

thereto should be 8 ½ by 11 inches in size, and the pages should be clipped together rather than stapled.

If the document is illegible or if it cannot be legibly reproduced by the Office, the recordation specialist may communicate with the remitter or may refuse to record the document.

2309.9 The Completeness Requirement

A transfer or other document pertaining to copyright may be recorded, provided that the document is complete by its own terms. A document is considered complete by its own terms if it is submitted for recordation together with any exhibit, schedule, appendix, addendum, or similar attachment that is referenced in the document.

If the document appears to be incomplete, the recordation specialist may communicate with the remitter or may refuse to record the document.

Examples:

- An assignment of copyright is submitted with an attachment titled "Schedule A." The first sentence of the assignment reads: "The assignor hereby assigns the copyright in the musical composition(s) listed in Schedule A to this Assignment to the Assignee." The recordation specialist will record the assignment and the attachment thereto without communicating with the remitter.

- A publishing agreement is submitted together with three attachments titled "Exhibit A: Assignment," "Exhibit B: Bill of Sale," "Exhibit C: Servicing Agreement." Each attachment appears to be a self-contained part of the publishing agreement. The recordation specialist will record the publishing agreement together with the attachments thereto without communicating with the remitter.

2309.9(A) Document Submitted without Attachments

If a transfer or other document pertaining to copyright indicates that an exhibit, schedule, appendix, addendum, or other attachment has been made a part of the document or has been attached thereto, the recordation specialist may communicate with the remitter if the document is submitted without the attachment. The remitter may respond by submitting a legible copy of the attachment referenced in the document. If so, the document will be recorded together with the attachment, and the date of recordation will be based on the date that the attachment was received by the Office.

In the alternative, the recordation specialist may return the document to the remitter upon request. The remitter may delete the reference to the missing attachment and resubmit the document, provided that the deletion is signed or initialed by the person or persons who executed the document or their authorized representatives. If so, the

document will be recorded, and the date of recordation will be based on the date that the amended document was received by the Office.

In the alternative, the remitter may ask the recordation specialist to record the document without the attachment, provided that the remitter confirms the following:

- The attachment is completely unavailable for recordation;
- The attachment is not essential to identify the subject matter of the document; and
- It would be impossible or wholly impracticable for the person(s) who executed the document (or their representatives) to sign or initial an amendment deleting the reference to the attachment.

The remitter may provide this information in a cover letter or other written communication, or by completing Form DCS and checking the box containing the phrase "One or more attachments referenced in this document is missing." In this situation, the specialist will record the document without communicating with the remitter and will add an annotation to the online public record for that document, such as: "Document is not complete. Recorded 'as is.'"

For information concerning Form DCS, see Section 2309.12.

2309.9(B) Self-Contained Parts of a Larger Document

An exhibit, schedule, appendix, addendum, or other attachment that is a self-contained part of a larger document may be recorded if the remitter confirms in writing that the document is complete by its own terms. The remitter may provide this information by submitting a cover letter or other written communication or by completing Form DCS and checking the box marked "All attachments referenced in this document are included." For information concerning Form DCS, see Section 2309.12.

Example:

- The Office receives an assignment marked "Exhibit A" and a bill of sale marked "Attachment B." Each document appears to be a self-contained part of a larger document. In both cases the remitter submitted Form DCS and checked the box marked "All attachments referenced in this document are included." The recordation specialist will record the documents without communicating with the remitter.

2309.9(C) Incorporation by Reference

If the transfer or other document pertaining to copyright merely references another document or merely incorporates terms set forth in another document, the recordation specialist will record the document without communicating with the remitter.

Example:

- The Office receives an assignment of copyright. The first sentence reads: "In accordance with the terms of mutual understanding previously entered into between the parties on January 2, 2008, which are incorporated by reference herein, the assignor hereby assigns the copyright in the musical composition to the assignee." The recordation specialist will record the assignment without communicating with the remitter.

2309.9(D) Failure to Identify the Work

The Office will record a transfer or other document pertaining to copyright, even if it does not identify the work that is the subject of the transaction. In this situation, the recordation specialist will record the document without communicating with the remitter, but will add an annotation to the record, such as: "No titles given."

Although the document will be recorded, the recordation may not provide constructive notice of the facts stated in the document. As discussed in Section 2309.3(A), a recordation provides constructive notice only if the work has been registered and if "the document or the materials attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work." 17 U.S.C. § 205(c).

Example:

- The Office receives an exclusive license involving "an unpublished novel about New York's Empire State Building, by Jack Douglas." The recordation specialist will record the license with an annotation, such as: "No titles given." Because the license does not identify the title of the work, the recordation may not provide constructive notice of the facts stated in the document.

2309.9(E) Redacted Documents

The Office has adopted an interim practice that allows a remitter to record a redacted document provided that the following conditions have been met:

- The remitter must satisfy the recordation requirements specified in Section 2309.7.
- The blank or blocked out portions of the document must be initialed or labeled "redacted" (regardless of whether the redactions appear in the document itself or the attachments thereto).
- Each page of the document must be accounted for.

The remitter may redact an entire page of a transfer or other document pertaining to copyright, provided that the page contains a brief statement indicating that the entire page has been redacted and provided that the page numbers for the entire document (if

any) remain visible. If pages appear to be missing, the recordation specialist will return the document to the remitter and explain that the completeness requirement has not been met.

Although the Office will record a redacted document, the Office does not intend to suggest that it is appropriate to redact large portions of a transfer or other document pertaining to copyright. Remitters should redact only those portions of a document that contain sensitive information, such as financial terms. Excessive redactions limit the benefits of constructive notice, because this presumption only applies to the "facts stated in the recorded documents." 17 U.S.C. § 205(c).

NOTE: The Office may adopt final regulations that may alter the interim practice described in this Section. *See* Recordation of Documents, 70 Fed. Reg. 44,049, 44,051 (Aug. 1, 2005).

2309.10 Signature Requirements

To be recordable, a transfer of copyright ownership or other document pertaining to copyright must be signed by the person who executed the document. A photocopy or other reproduction of a signed document may be recorded, provided that the document is submitted with a sworn certification or an official certification confirming that the reproduction is a true copy of the signed original.

These requirements are discussed in Sections 2309.10(A) through 2309.10(E) below.

2309.10(A) Actual Signatures

The signature that appears on the document should be the actual signature of an individual person and the signature should contain that individual's own name.

If an individual executed the document on behalf of another person or organization, the signature should contain that individual's own name as well as the name of the party that he or she represents (*e.g.*, "Robert Penn on behalf of Cursive Enterprises, LLC").

The following are representative examples of signatures that satisfy these requirements:

- A handwritten signature.
- A hand-printed signature.

A handwritten or hand-printed signature does not need to be legible. A signature does not need to include the full name of the individual that signed the document, provided that his or her name is sufficiently identified elsewhere in the document. Likewise, the Office may accept a signature consisting of an individual's mark if it is accompanied by another individual's signature attesting to the authenticity of that mark.

The following are representative examples of signatures that may be questioned:

- A printed signature.

- A typewritten signature.
- A rubber-stamped signature.
- A signature consisting of initials or a monogram.
- A photocopy, facsimile, or other reproduction of a signature that is not accompanied by a sworn certification or an official certification concerning the authenticity of the signed document.

2309.10(B) Date of Execution

When signing a transfer or other document pertaining to copyright, parties are encouraged to provide the month, day, and year that the document was executed. As discussed in Sections 2309.3(B) and 2309.3(C), recordation may establish priority in the event of a conflicting transfer involving a particular work, depending on the date that the document was executed and recorded with the U.S. Copyright Office.

If the document specifies the precise month, day, and year that it was executed, then as discussed in Section 2306.6, the recordation specialist will include that information in the online public record. If the date of execution appears to be incomplete, the specialist will include whatever month, day, and/or year that is specified in the document.

If the document does not specify a date of execution, the specialist will record the document with an annotation, such as: "No date given."

2309.10(C) Photocopies or Other Reproductions of a Signed Document

The Office may record a legible photocopy or other legible facsimile reproduction of a signed document, provided that the remitter submits a sworn certification or an official certification stating that the reproduction is a true copy of the signed document.

These options are discussed in Sections 2309.10(C)(1) through 2309.10(C)(4) below.

2309.10(C)(1) What Is a Sworn Certification?

A sworn certification is defined as:

- "An affidavit under the official seal of any officer authorized to administer oaths within the United States, or"
- "[I]f the original is located outside of the United States, [an affidavit] under the official seal of any diplomatic or consular officer of the United States or of a person authorized to administer oaths whose authority is proved by the certificate of such an officer, or"
- "A statement in accordance with section 1746 of title 28 of the United States Code."

37 C.F.R. § 201.4(a)(3)(i).

2309.10(C)(2) Requirements for a Sworn Certification

As a general rule, a sworn certification may be used to verify that a photocopy or other reproduction of a signed document is a true copy of the original.

The certification must be signed under oath by one of the parties to the document or by an authorized representative of that party. The certification does not need to be signed by the actual person or persons who executed the original document. However, the Office cannot accept a certification that has been signed by a successor in interest to one or more of the parties to the document. Likewise, the Office cannot accept a statement from a notary public confirming that the photocopy or other reproduction of a signed document is a true copy of the original (as opposed to a statement from a notary confirming the identity of the individual who signed the certification).

The oath may be self-administered by providing an appropriate statement, such as: "I declare under penalty of perjury that the accompanying document is a true and correct copy of the original document. Executed on [date]." As discussed in Section 2309.12(C)(4), the remitter may provide this statement by completing space 9 of Form DCS. The remitter also may provide this statement in a cover letter or other written communication with the U.S. Copyright Office. In the alternative, the oath may be administered by a notary public or any other person authorized to administer oaths.

The sworn certification should be submitted together with a legible reproduction of the signed document. The certification should contain the original signature of the party that executed the certification. The Office cannot accept a photocopy or other reproduction of a signed certification.

NOTE: A sworn certification cannot be used if the original signed document has been validated by or filed with a government office. In this situation, the reproduction must be submitted with an official certification, as discussed in Section 2309.10(C)(4) below.

2309.10(C)(3) What Is an Official Certification?

An official certification is a certification, issued by an appropriate government official, that the original of the document is on file in a public office and that the reproduction is a true copy of the original.

Examples:

- A copy of a certificate of corporate merger that has been submitted for recordation together with an official certification

issued by the Secretary of State for the jurisdiction where the original document has been filed.

- A judicial decree establishing a change of name for a person that has been submitted for recordation together with an official certification from the clerk of the court that issued the decree.

2309.10(C)(4) Requirements for an Official Certification

To record a photocopy or other reproduction of a signed document that has been validated by or filed with a government office, the remitter must submit the reproduction together with an official certification.

The official certification should state that the original signed document is on file in the public office and that the reproduction is a true copy of the original.

In all cases, the reproduction should be submitted together with the original official certification. The Office cannot accept a photocopy or other reproduction of an official certification.

2309.10(D) Notarization and Certificate of Acknowledgement

A signed document may be recorded with the U.S. Copyright Office, regardless of whether the signature(s) have been verified by a notary public.

Likewise, a signed document may be recorded, regardless of whether the signature(s) have been verified by a certificate of acknowledgment.

2309.10(E) Unsigned Documents

As discussed in Section 2309.10(A), a transfer or other document pertaining to copyright should contain the actual signature or signatures of the person or persons who executed the document. Documents that have not been signed will be returned to the remitter. If the remitter subsequently submits a signed copy of the document, the recordation specialist may record the document if the requirements set forth in Section 2309.7 have been met. The date of recordation will be based on the date that the signed document was received by the Office.

2309.11 The Filing Fee Requirement

To record a transfer or other document pertaining to copyright, the remitter must submit the correct filing fee. The current fee is set forth in the U.S. Copyright Office's fee schedule. 37 C.F.R. § 201.3.

Specifically, the remitter must pay a basic recording fee for each document that is submitted for recordation. The basic recording fee is listed in the Office's fee schedule under the heading "Recordation of Documents: Recordation of document, including a notice of intention to enforce (containing no more than 1 title)."

If the document contains multiple titles the remitter must pay the basic recording fee plus an additional filing fee. The additional fee is listed in the fee schedule under the heading "Recordation of Documents: Additional titles (per group of 10 or fewer titles)."

These fees are discussed in more detail below. For information concerning the methods for paying the filing fee, see Chapter 1400, Sections 1403.3 through 1403.5.

2309.11(A) [Reserved]

2309.11(B) The Fee for Additional Titles

The amount of the filing fee for a transfer or other document pertaining to copyright varies depending on the number of titles listed in the document.

- If the document contains only one title the remitter should submit the basic recording fee discussed in Section 2309.11.
- If the document contains two or more titles the remitter should submit the basic recording fee discussed in Section 2309.11 plus an additional filing fee.

The amount of the additional filing fee is based on the number of titles listed in the document. Specifically, the remitter should submit an additional filing fee for each group of ten titles or less that are listed in the document.

For general guidance in calculating the filing fee for documents that contain two or more titles, see *Calculating Fees for Recording Documents and Notices of Termination in the Copyright Office* (Circular 12A). For guidance in identifying the number of titles listed in a document, see Sections 2309.11(B)(1) through 2309.11(B)(5).

2309.11(B)(1) Identifying the Titles Listed in the Document

To calculate the additional filing fee for documents that contain two or more titles, the remitter should count each title listed in the document.

The remitter should not count the number of parties listed in the document. Likewise, the remitter should not count the titles for any patents, trademarks, domain names, trade secrets, or other forms of uncopyrightable subject matter that may be listed in the document.

Examples:

- The first paragraph of the document states "Serendipity Productions hereby transfers to Sumner Studios all right, title, and interest in the works listed in the attached schedule." Three works are listed in the schedule, including a screenplay titled "Help Me," a motion picture titled "Help Me," and a sound recording titled "Help Me." The remitter should submit the basic recording fee for the title of the screenplay, plus an additional

filing fee to cover the title of the motion picture and the sound recording.

- The first paragraph of the document states "Kolkata Films hereby transfers all right, title, and interest in the assets listed in the attached schedule to Desi Studios, Udaipur Productions, and Shami Ghazal Films." The schedule lists the titles of six motions pictures, thirty musical compositions, two trademarks, and twelve domain names. The remitter should submit the basic recording fee for the title of the first motion picture listed in the schedule. The remitter also should submit the additional filing fee for the five other motion pictures and the thirty musical compositions. The amount of this fee would be four times the amount listed in the fee schedule under the heading "Recordation of Documents: Additional titles (per group of 10 or fewer titles)."

2309.11(B)(2) Subtitles and Alternative Titles

When counting the number of titles, the remitter should include any subtitles, alternative titles, or variant titles listed in the document, including "previous titles," "formerly known as titles," or "also known as titles" that have been assigned to the same work.

Example of a single title:

- "How to Get Ahead in Life or Ten Ways to Improve Your Memory."

Examples of multiple titles:

- "Money Isn't Everything," also known as "Who Wants To Be Rich?"
- "Café Tales," formerly known as "Draw One."

2309.11(B)(3) Translated Titles

When the title of a work is listed in the document together with a translation of that title, both the original title and the translated title should be counted as separate titles.

Examples of multiple titles:

- "On the Water" ("Auf dem Wasser").
- "Blanco y Negro" (originally published as "Blanc et Noir").

2309.11(B)(4) Single Titles Distinguished from Multiple Titles

As a general rule, when the title of a particular work is repeated multiple times throughout the same document, it should be counted as a single title.

There is a limited exception to this rule. When the same title is repeated multiple times throughout the same document followed by different registration numbers, issue numbers, volumes numbers, chapter numbers, installment numbers, or the like, each entry should be counted as a separate title when calculating the additional filing fee.

Examples of multiple titles:

- Help Is On The Way (TX 2-536-224)
  Help Is On The Way (PA 3-718-116)
  Help Is On The Way (SR 3-290-390)
- *Fan Club News*, vol. 1, no. 3 (June 2011)
  Fan Club News, vol. 1, no. 4 (July 2011)
  Fan Club News, vol. 1, no. 5 (Aug. 2011)
- "Trapped in the Snack Bar," Installment I
  "Trapped in the Snack Bar," Installment II

2309.11(B)(5) Descriptive Statements Indicating Multiple Works or Multiple Versions of the Same Work

When a title is listed once in a document together with a version number, publication date, author name, or other descriptive information, it should be counted as a single title.

Examples of a single title:

- "You Are The One (Romantic Song)"

By contrast, when the same title is repeated multiple times throughout the same document with different version numbers, publication dates, author names, or other descriptive information, each entry should be counted as a separate title.

Examples of multiple titles:

- "You Are The One (from Summer Romance)"
  "You Are The One (from Sunny Days)"

- "Rondo (Massenet)"
  "Rondo (Respighi)"

- InkJet Writer (v. 2.0)
  InkJet Writer (v. 3.0)
  InkJet Writer (v. 4.0)

2309.11(C) Refunds

Once a document has been submitted for recordation, the Office will not refund the basic recording fee, regardless of whether the Office issues a certificate of recordation.

If the Office refuses to record a document containing multiple titles and if the fee for the additional titles is more than $50, the Office will refund the fee automatically. If the fee is $50 or less the Office may issue a refund if the remitter makes a specific request.

2309.12 Form DCS

2309.12(A) Benefits of Using Form DCS

When recording a transfer of ownership or other document pertaining to copyright, the remitter is strongly encouraged but not required to submit the document together with Form DCS. Submitting this form is optional, but it does provide certain benefits.

- Form DCS assists the recordation specialist in determining whether the remitter complied with the requirements for recording the document with the Office. For information concerning these requirements, see Sections 2309.8 through 2309.11.

- Upon request, the Office will issue a return receipt confirming that the document was received on a particular date, but only if the remitter submits the document together with two copies of Form DCS. For information concerning this procedure, see Section 2309.14 below.

- The remitter may use Form DCS to notify the Office that the document has been submitted together with an electronic title list. For information concerning electronic title lists, see Section 2309.13 below.

- An exhibit, schedule, appendix, addendum, or other attachment that is a self-contained part of a larger document may be recorded if the remitter confirms in writing that the document is complete by its own terms. The remitter may provide this information by completing Form DCS and checking the box marked, "All attachments referenced in this document are included." For information concerning this procedure, see Section 2309.9(B) above.

- If a transfer or other document pertaining to copyright indicates that an exhibit, schedule, appendix, addendum, or other attachment has been made a part of the document or has been attached thereto and if the remitter submits the document for recordation without the attachment, the recordation specialist may record the document if the remitter completes Form DCS and checks the box containing the phrase "One or more attachments referenced in this document is missing." For information concerning this procedure, see Section 2309.9(A) above.

- The Office may record a photocopy or other reproduction of a signed document if the remitter submits a sworn certification stating that the reproduction is a true copy of the original. The remitter may provide this statement by submitting a copy of Form DCS that has been signed by one of the parties to the document or an authorized representative of that party. For information concerning this procedure, see Section 2309.10(C)(2) above.

- When the remitter submits a document together with Form DCS, the form becomes part of the public record for that submission. If the Office subsequently records the document, the Office will return the original document to the remitter along with a certificate of recordation and a copy of the form. In this respect, Form DCS serves as a summary of the newly created record and improves recordkeeping and communication between the Office and the remitter.

NOTE: A document submitted with Form DCS will be processed in the same manner as a document submitted without a cover sheet. As discussed in Section 2306.2, recordation specialists will index the document by transcribing information from the document itself or the electronic title list for that document (if any) but will not transcribe any information from Form DCS. Likewise, documents submitted with or without a form will not be processed on an expedited basis unless the remitter requests special handling. For a discussion of this procedure, see Section 2307.

See generally Changes to Recordation Practices, 79 Fed. Reg. 41,470, 41,471 (July 16, 2014).

2309.12(B) Form DCS Distinguished from an Instrument or Conveyance That Transfers the Copyright from One Party to Another

Form DCS is distinct from a legal instrument, conveyance, or other document that transfers copyright ownership from one party to another. A document cover sheet does not convey any rights in the copyright; it is merely a form that may be used to facilitate the recordation of a transfer of ownership or other document pertaining to copyright.

2309.12(C) Completing Form DCS

This Section provides guidance for completing Form DCS. Remitters may obtain copies of this form from the Office's website or by contacting the Public Information Office at the address specified in Chapter 200, Section 204.1(B)(3).

NOTE: Form DCS should only be used if the remitter intends to record a transfer of copyright ownership or other document pertaining to copyright. It should not be used if the remitter intends to record a notice of termination, an interim designation of agent

for an online service provider, statements identifying anonymous or pseudonymous authors, statements concerning the death of an author, a document pertaining to shareware, or visual arts registry statements. Likewise, it should not be used to file documents with the Licensing Division.

2309.12(C)(1) Spaces 1 and 2: First Party Name Given in the Document / First Title Given in the Document

In space 1 of Form DCS, the remitter should provide the name of the first party listed in the document. In space 2, the remitter should provide the first title listed in the document.

The Office may use this information to connect the form with the document in the event they are separated from each other. However, the recordation specialist will not use the information in spaces 1 or 2 when he or she creates the online public record for the document. When indexing a document, the specialist may include the parties and titles listed in the document itself, in the attachments to the document, or in the electronic title list for that document (if any), but as discussed in Section 2306.2, the specialist will not include parties or titles listed on Form DCS.

2309.12(C)(2) Space 3: Total Number of Titles in the Document

In space 3 of Form DCS the remitter should provide the total number of titles listed in the document.

As discussed in Section 2309.11(B), the fee for recording a document is based, in part, on the number of titles listed therein (if any). The recordation specialist may use the information provided in space 3 to determine whether the correct fee has been paid. For guidance in counting the number of titles listed in a document, see Sections 2309.11(B)(1) through 2309.11(B)(5).

2309.12(C)(3) Space 4: Return Receipt Requested

Upon request the Office will issue a return receipt acknowledging that a transfer or other document pertaining to copyright has been received in the Office. To request a receipt, the remitter must check the box on space 4 of Form DCS and must submit the document to the Office together with two copies of the form and a self-addressed envelope bearing an appropriate amount of postage. For more information concerning this option, see Section 2309.14.

2309.12(C)(4) Space 5: Electronic Title List Enclosed

The remitter should check the box in space 5 of Form DCS if the remitter intends to submit the document together with an electronic title list. For information concerning this option, see Section 2309.13.

2309.12(C)(5) Spaces 6 and 7: Amount of Fee Calculated / Fee Enclosed

A transfer or other document pertaining to copyright should be submitted together with the appropriate filing fee. The remitter should specify the amount of the filing fee in

space 6 of Form DCS, and in space 7 the remitter should specify whether the fee will be paid by check, by money order, or with a deposit account. If the remitter intends to use a deposit account, the remitter should provide the account number and the name of the account holder.

As discussed in Section 2309.11(B), the fee for recording a document is based, in part, on the number of titles listed therein (if any). For additional information concerning the methods for paying the filing fee, see Chapter 1400, Sections 1403.3 through 1403.5.

2309.12(C)(6) Space 8: Completeness of Document

As discussed in Section 2309.9, a transfer or other document pertaining to copyright may be recorded, provided that the document is complete by its own terms. If the document appears to be incomplete, the recordation specialist may communicate with the remitter, which may delay the examination of the document.

For example, the specialist may communicate with the remitter if the document appears to be an exhibit, schedule, appendix, addendum, or other attachment to another document. However, if the remitter checks the box in space 8 of Form DCS marked "All attachments referenced in this document are included," the specialist will record the document without communicating with the remitter. For information concerning this procedure, see Section 2309.9(B) above.

Likewise, if the document indicates that an exhibit, schedule, appendix, addendum, or other attachment has been made a part of the document or is attached thereto, the specialist may communicate with the remitter if the document is submitted without the attachments. However, the specialist will record the document without communicating if the remitter checks the box in space 8 of Form DCS attesting to the following statement: "One or more attachments referenced in this document is missing but (a) the attachment is completely unavailable for recordation; (b) the attachment is not essential to the identification of the subject matter of the document; and (c) it would be impossible or wholly impracticable to have the parties to the document sign or initial a deletion of the reference to the attachment." For information concerning this procedure, see Section 2309.9(A) above.

2309.12(C)(7) Space 9: Certification of Photocopied Documents

If the remitter intends to submit a photocopy or other reproduction of a signed document, the remitter must submit a sworn certification stating that the reproduction is a true copy of the original.

As discussed in Section 2309.10(C)(2), this certification may be provided by completing space 9 of Form DCS. The certification must be signed by one of the parties to the document or an authorized representative of that party. The date provided in space 9 should be the date that the certification was signed (rather than the date that the original document was signed).

NOTE: If the remitter intends to submit a photocopy or other reproduction of a document that has been validated by or is on file with a public office, the reproduction must be submitted together with an official certification. The certification that appears

on space 9 of Form DCS cannot be used for this purpose. For information concerning official certifications, see Section 2309.10(C)(4).

2309.12(C)(8) Space 10: Mailing Address and Contact Information

As discussed in Section 2305, when a document is recorded with the U.S. Copyright Office, the Office will scan the document and return the original to the remitter along with the certificate of recordation.

When completing Form DCS, the remitter should provide the name of the person or organization to whom the document and the certificate should be sent, along with the street address, city, state, and zip code for that person and/or organization. In addition, the remitter should provide the email address, phone number, and/or fax number for the person or persons who should be contacted if the recordation specialist has questions or concerns regarding the submission.

2309.12(D) Submitting the Document and Form DCS

The remitter should prepare two copies of Form DCS for each transfer of ownership or other document pertaining to copyright that will be submitted for recordation. One copy will be used to image the form for the public record while the other copy may be used to create a return receipt for the remitter.

The remitter should place the document, the filing fee, and the forms in the same envelope or package and should mail them to the address specified in Section 2309.6. If the remitter intends to submit an electronic title list, then as discussed in Section 2309.13(B), the remitter should include that item in the envelope or package that contains the rest of the submission. If the remitter would like to receive a return receipt confirming that the Office received the submission, then as discussed in Section 2309.14, the remitter should check box 4 of Form DCS and should include a self-addressed postage-paid envelope with the submission.

2309.13 Electronic Title Lists

When recording a transfer of copyright ownership or other document pertaining to copyright, the remitter may submit the document together with an electronic title list if the document contains 100 titles or more. The procedures for preparing and submitting an electronic title list are discussed in Sections 2309.13(A) and 2309.13(B) below.

Submitting an electronic title list is optional, but it does provide certain benefits. At the present time, documents must be submitted for recordation in paper form. When the recordation specialist indexes a document, the specialist manually transcribes certain information from the document, including the titles and registration numbers for the works listed therein. Once this information has been converted into an electronic format, the specialist prepares an online public record for the document. Transcribing the titles and registration numbers listed in a document is a labor-intensive and time-consuming process, since many documents contain hundreds or even thousands of titles and registration numbers.

To facilitate this process, the remitter may submit a document together with an electronic file containing a list of the titles and registration numbers specified in the document. This reduces the amount of time and labor needed to index the document, the potential for inaccuracies in the public record, and the amount of time needed to record the document and issue a certificate of recordation.

Submitting an electronic title list is not mandatory. However, this option may only be used if the document contains 100 titles or more (including titles listed in any exhibit, schedule, appendix, addendum, or other attachment to the document).

If the remitter submits a document together with an electronic title list, the recordation specialist will index the titles and registration numbers specified in the document using the information provided in the electronic title list. In addition, the specialist will add a note to the online public record indicating that the document was indexed using an electronic title list.

The specialist may "spot check" some of the entries in the electronic title list and may communicate with the remitter if he or she discovers discrepancies. However, the remitter will bear the consequences (if any) if there are inaccuracies in the list or discrepancies between the information contained in the list and the information contained in the actual document. Therefore, remitters are strongly encouraged to confirm that the electronic title list fully and accurately reflects the information contained in the document before it is submitted to the Office.

For information concerning the procedure for correcting an error or omission in an electronic title list, see Section 2309.13(C).

See generally Changes to Recordation Practices, 79 Fed. Reg. 55,633, 55,634-35 (Sept. 17, 2014); Changes to Recordation Practices, 79 Fed. Reg. 41,470, 41,471-72 (July 16, 2014).

2309.13(A) Preparing the Electronic Title List

To prepare an electronic title list, the remitter should create a table that contains a complete list of all the titles listed in the document. The title of each work should be provided in a separate row of the table, and the titles should be listed in the same order that they appear in the document. If the document lists the author of a particular work and/or the registration number for that work, the remitter should include that information in the table.

The table must be submitted in Excel (.xls) format or an equivalent electronic format that has been approved by the Office, and should contain only letters, numbers, or other printable characters that appear in the ASCII 128 character set.

The remitter should divide the table into four columns with headings from left to right entitled "Article," "Title," "Authorship Information," and "Registration Number(s)." The remitter should complete each column using the procedures described in Sections 2309.13(A)(1) through 2309.13(A)(4).

The remitter should include all four columns in the table, even if the remitter does not intend to enter information in one or more of those columns. For example, the remitter should include a column entitled "Authorship Information" even if the document does not identify the author of each work and should include a column entitled "Registration Number(s)" even if the works have not been registered with the Office.

The remitter should not provide the title, author, or registration number for a particular work unless that information is listed in the actual document or the attachments thereto. For example, if the document merely lists the title for a particular work, the remitter should include that information in the "Title" column but should not include the name of the author or the registration number in the columns titled "Authorship Information" and "Registration Number(s)." Instead, those columns should be left blank.

If the remitter fails to comply with these requirements the Office may communicate with the remitter or may refuse to accept the electronic title list. This will delay the examination of the document, which in turn, will delay the issuance of the certificate of recordation.

2309.13(A)(1) The "Article" Column

If any of the titles in the document begin with an article, such as "a," "an," "the," or any other article listed below, the remitter should separate that article from the rest of the title and should place it in the first column under the heading entitled "Article." For example, if the title of the work is "*A Suitable Boy*," the remitter should place the word "*A*" in the first column. Similarly, if the title of the work is "*The Moor's Last Sigh*," the remitter should place the word "*The*" in the first column. Separating these articles from the rest of the title will assist the Office in sorting the records within its database.

In all cases, the following articles should be included in the first column of the table:

- *English-language titles*: A, An, The.
- *Spanish-language titles*: Un, Una, El, La, Lo, Las, Los.
- *French-language titles*: L' (as in *L'Innommable*), Le, La, Les, Un, Une.
- *German-language titles:* Der, Die, Das, Einer, Eine, Ein.

If a particular title does not begin with an article, or if the title begins with an article that is not listed above, or if the title is written in a language other than English, Spanish, French, or German, the remitter should include the first column in the table but the "Article" column for that particular work should be left blank. For instance, if the document contains the title "*Il Postino*," the remitter should include the "Article" column in the table, but the remitter should not include the article "*Il*" in that portion of the table.

2309.13(A)(2) The "Title" Column

The title of each work listed in the document should be included in the second column of the table. However, if a title begins with any of the articles listed in Section

2309.13(A)(1), the remitter should include that article in the first column entitled "Article" rather than the second column entitled "Title." For example, if the title of the work is "*A New Hope*" or "*The Empire Strikes Back*," the remitter should put the words "*A*" and "*The*" in the first column and should put "*New Hope*" and "*Empire Strikes Back*" in the second column. By contrast, if the title of the work is "*Return of the Jedi*," the remitter should leave the first column blank and should put the entire title in the second column.

2309.13(A)(3) The "Authorship Information" Column

In the third column the remitter should provide the names of the authors who are listed in the document. In each case, the entry should include the word "By" followed by the name of the author or co-authors of the work, as in "By Steven Sondheim" or "By Benny Andersson, Tim Rice, and Björn Ulvaeus."

If an author is identified in the document with a designation such as "performer known as," "also known as," or the like, the remitter should include that designation in the "Authorship Information" column, as in "By Gerald Sheldon Herman, also known as Jerry Herman."

If the document contains an abbreviated designation – such as a.k.a. (also known as), d/b/a (doing business as), or the like – the remitter should include that abbreviation in the third column without punctuation between the letters, as in "By Ella Yelich-O'Connor pka Lorde," rather than "By Ella Yelich-O'Connor p/k/a Lorde."

NOTE: As discussed in Section 2309.13(A), the remitter should include the "Authorship Information" column in the table, even if the document does not identify the authors of the works listed therein.

2309.13(A)(4) The "Registration Number(s)" Column

In the fourth column the remitter should include any copyright registration numbers that are listed in the document. If there are multiple registration numbers for a particular work, the remitter should place a comma between each number.

Regardless of how they appear in the document, the remitter should use the following format when providing registration numbers in an electronic title list:

- Each registration number should begin with a prefix. The prefix should contain one, two, or three letters, such as E, EU, SR, or VAU. The prefix should be presented in capital letters (as in "PAU" rather than "PAu" or "pau") and there should be no spaces, hyphens, or other punctuation between the letters.

- Each registration number should contain twelve characters, including the prefix and the numbers that follow. If a registration number contains less than twelve characters, the remitter should insert zeroes between the prefix and the numeric portion of that registration number. For example, if the document contains registration number "SR-320-918," that number should be transcribed in the fourth column as "SR0000320918." If the document contains registration number "VAu-598-764," that number should be transcribed in the fourth column as

"VAU000598764." For additional examples that illustrate the proper format for transcribing registration numbers, see Section 2306.4.

- **NOTE**: As discussed in Section 2309.13(A), the remitter should include the "Registration Number(s)" column in the table, even if the document does not identify the registration numbers for the works listed therein.

2309.13(B) Submitting the Electronic Title List

The table should be saved on a compact disc, flash drive, or other digital storage medium approved by the Office, and should be clearly labeled with the following information:

- The name of the remitter.
- The name of the first party listed in the document.
- The first title listed in the document.
- The number of titles listed in the document.
- The date the document will be mailed or delivered to the Office.

The remitter should place the document, the storage device, the cover letter, and the appropriate filing fee in the same envelope or package and should mail them to the address specified in Section 2309.6. To request a return receipt acknowledging the receipt of these items, the remitter should use the procedure described in Section 2309.14.

2309.13(C) Correcting an Error or Omission in an Electronic Title List

If an electronic title list contains errors or omissions, corresponding errors or omissions may appear in the online public record for that document. To correct these errors or omissions the remitter may submit a corrected version of the electronic title list. A corrected title list may be submitted at any time after the Office issued a certificate of recordation and created an online public record for the document.

Specifically, the party that submitted the document should prepare a table using the procedures described in Section 2309.13(A). The table must be prepared in Excel (.xls) format or an equivalent electronic format that has been approved by the Office. The table should contain a complete list of all the titles listed in the recorded document, and each row that contains corrected information should be identified with colored highlighting. The header for the table should contain the phrase "CORRECTED TITLE LIST," the volume and document number that the Office assigned to the recorded document, as well as the name of the computer file containing the corrected title list.

The table should be saved on a compact disc, flash drive, or other digital storage medium approved by the Office. The file name for the table should include the volume number and document number that the Office assigned to the recorded document. The storage device should be clearly labeled with the following information:

- The name of the remitter that submitted the document for recordation.
- The name of the first party listed in the recorded document.
- The first title listed in the recorded document.
- The number of titles listed in the recorded document.
- The date the document was mailed or delivered to the Office for recordation.

In addition, the remitter should prepare a cover letter that contains the following information:

- The volume number and document number that the Office assigned to the recorded document.
- The name of the remitter that submitted the document for recordation.
- The name of the first party listed in the recorded document.
- The first title listed in the recorded document.

The remitter should place the storage medium, the cover letter, and the appropriate filing fee in the same envelope or package and should mail them to the address specified in Section 2309.6. To request a return receipt acknowledging the receipt of these items, the remitter should use the procedure described in Section 2309.14.

The current filing fee for submitting a corrected title list is set forth in the U.S. Copyright Office's fee schedule under the heading "Correction of online Public Catalog data due to erroneous electronic title submission (per title)." The amount of the fee is based on the number of titles included in the corrected list.

A recordation specialist will review the submission, and if appropriate, will correct the errors or omissions that appear in the online public record. In addition, the specialist will add a note indicating that the record has been corrected and the date that the corrections were made.

See generally Fees for Submitting Corrected Electronic Title Appendices, 79 Fed. Reg. 68,622, 68,622 (Nov. 18, 2014); Changes to Recordation Practices, 79 Fed. Reg. 55,633, 55,635 (Sept. 17, 2014).

2309.14 Return Receipts for Transfers of Ownership or Other Documents Pertaining to Copyright

When a transfer of ownership or other document pertaining to copyright is submitted for recordation it may be several months or more before the remitter receives word from the Office concerning the status of the submission.

Upon request the Office will provide a return receipt confirming that the Office received a document. To request a receipt, the remitter must check the box on space 4 of Form

DCS, and must submit two copies of the form in the same envelope or package with the document, the filing fee, and a self-addressed envelope bearing the appropriate amount of postage. When the submission is received, the Office will attach a date-stamped receipt to one of the forms and will mail these items to the remitter in the self-addressed envelope.

NOTE: Form DCS should only be used if the remitter intends to record a transfer of ownership or other document pertaining to copyright. It should not be used if the remitter intends to record a notice of termination, an interim designation of agent for an online service provider, or any other type of document discussed in this Chapter. To request a return receipt for these types of documents the remitter should follow the procedures described in Sections 2310.6, 2311, 2312, 2313.7, or 2314.8.

Requesting a return receipt is optional. A receipt indicates that the Office received the document described in the form on a particular date, but it does not establish that the document is eligible for recordation or guarantee that the Office will issue a certificate of recordation. Moreover, if the document is recorded, the date stamped on the receipt may or may not be the same as the date of recordation set forth in the certificate.

See generally Changes to Recordation Practices, 79 Fed. Reg. 41,470, 41,472 (July 16, 2014).

2309.15 Date of Recordation for a Transfer or Other Document Pertaining to Copyright

When the Office records a transfer of ownership or other document pertaining to copyright, the Office assigns a date of recordation to the certificate of recordation. The date of recordation is the date when the Office receives a proper filing fee and a proper document regardless of when the recordation specialist examines and records the document. If the document and the filing fee are received on different dates, the date of recordation is based on the date of receipt for the last item that is received by the Office. Likewise, if the document is returned to the remitter for correction, the date of recordation is based on the date that the corrected document is received by the Office. 37 C.F.R. § 201.4(c), (e).

Example:

- On July 1st, the remitter submits an assignment of copyright containing twelve titles, together with the correct filing fee for eleven titles. On November 1st the recordation specialist notifies the remitter that the correct filing fee has not been paid. On November 2nd, the remitter submits the appropriate filing fee for the other titles listed in the document. The document will be recorded with a date of recordation of November 2nd.

2310 Notices of Termination

The Copyright Act allows authors or their heirs, under certain circumstances, to terminate an agreement that transferred or licensed the author's copyright to a third

party. These termination provisions are set forth in Sections 203, 304(c), and 304(d) of the statute.

2310.1 How to Terminate a Grant

To terminate a grant, the author or the author's heirs must serve an advance written "notice of termination" on the grantee or the grantee's successor in title and must record a copy of that notice with the U.S. Copyright Office.

The notice of termination must specify the date that the termination goes into effect. The effective date must fall within a five-year termination period. The beginning and ending of this five-year period is based on a number of factors, such as whether the grant was executed before or after January 1, 1978.

The notice must be served and recorded before the effective date of termination. Specifically, the notice must be served on the grantee no less than two years and no more than ten years before the effective date, and the notice must be recorded with the Office before the effective date.

Failing to specify an effective date that falls within the five-year termination period, or failing to serve and record the notice in a timely manner is a fatal mistake. If the author or the author's heirs do not comply with these requirements the notice of termination will be invalid, "the agreement will continue according to its own terms," and "all rights covered by an existing grant will continue unchanged…." H.R. REP. NO. 94-1476, at 126, 128 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5742, 5744.

The types of grants that may be eligible for termination are discussed in Section 2310.2. The specific procedures for terminating a grant are discussed in Sections 2310.3 through 2310.5, including who may terminate a grant, when a grant may be terminated, what should be included in the notice of termination, and how the notice should be served. The procedure for recording a notice of termination with the U.S. Copyright Office is discussed in Sections 2310.6 and 2310.7.

2310.2 What Types of Grants May Be Terminated?

Sections 203, 304(c), and 304(d) allow authors or their heirs to terminate an exclusive or nonexclusive transfer or license of the copyright in the author's work or an exclusive or nonexclusive transfer or license of any right under a copyright. This includes assignments, mortgages, exclusive licenses, or any other conveyances, alienations, or hypothecations of a copyright or any of the exclusive rights comprised in a copyright. However, the termination provisions do not apply to grants made by will, grants involving a work made for hire, or grants involving rights arising under any other federal, state, or foreign law.

Determining whether a particular grant is subject to termination under Sections 203, 304(c), or 304(d) depends on a number of factors, including the date the grant was executed, the person(s) who executed the grant, and in some cases, the date that copyright was secured in the work.

- Section 203 only applies to grants executed by the author on or after January 1, 1978, regardless of whether the copyright in the work was secured before or after that date.

- Section 304(c) only applies to grants executed before January 1, 1978, and only if the copyright in the work was secured before January 1, 1978.

- Section 304(d) only applies to grants executed before January 1, 1978, and only if the copyright in the work was secured between January 1, 1923 and October 26, 1939.

The Office has developed a series of questionnaires that may be useful in determining whether a particular grant may be eligible for termination under Sections 203, 304(c), or 304(d). These questionnaires are set forth in Section 2310.13.

The specific procedures for terminating a grant under Section 203 are discussed in Section 2310.3. The specific procedures for terminating a grant under Sections 304(c) and 304(d) are discussed in Sections 2310.4 and 2310.5.

17 U.S.C. §§ 203, 304(c), 304(d).

2310.3 Terminating a Grant Under Section 203

2310.3(A) What Types of Grants May Be Terminated Under Section 203?

A grant may be terminated under Section 203, but only if the grant was executed by the author on or after January 1, 1978.

As the legislative history explains, Section 203 only applies "to inter vivos transfers or licenses executed by the author." H.R. REP. NO. 94-1476, at 125 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5740; S. REP. NO. 94-473, at 108 (1975). Grants executed on or after January 1, 1978 by the author's heirs are not subject to termination under the Copyright Act. Likewise, Section 203 does not apply to grants made by will, grants involving a work made for hire, or grants involving rights arising under any other federal, state, or foreign law.

2310.3(B) Who May Terminate a Grant Under Section 203?

A grant made by the author of a work may be terminated by that individual.

If the author is deceased, and if that individual did not exercise his or her right to terminate under Section 203, the grant may be terminated by the heirs holding a majority share of the author's termination interest. The heirs may include the author's widow or widower, the author's children, and/or the children of any child who predeceased the author. *See* 17 U.S.C. § 203(a)(2)(A)-(C).The Copyright Act defines a "widow" or "widower" as "the author's surviving spouse under the law of the author's domicile at the time of his or her death, whether or not the spouse has later remarried." 17 U.S.C. § 101. The author's "children" are defined as "that person's immediate

offspring, whether legitimate or not, and any children legally adopted by that person." *Id*.

If all of the author's heirs are deceased, and if the author never exercised his or her right to terminate under Section 203, the grant may be terminated by the author's executor, administrator, personal representative, or trustee, and that party "shall own the author's entire termination interest." *See* 17 U.S.C. § 203(a)(2)(D).

If the grant was executed by two or more authors of a joint work, the grant may be terminated by "a majority of the authors who executed" the grant. *See* 17 U.S.C. § 203(a)(1). If a joint author is deceased, that person's termination interest may be exercised by the heirs holding a majority share of that interest. In this situation, the grant may be terminated by a majority of the joint authors and/or the heirs holding the majority share of the authors' termination interests.

By contrast, if the joint authors executed separate grants, then each grant may be terminated by the individual who executed that grant, or if that individual is deceased, by the heirs holding a majority share of his or her termination interest.

2310.3(C) When May a Grant Be Terminated Under Section 203?

A grant may be terminated under Section 203 during a five-year "termination period." The beginning and ending of this period varies depending on whether the grant conveyed the right to publish the work.

- If the grant conveyed the right to publish the work, the termination period begins either thirty-five years after the date that the work was published under the grant, or forty years after the date that the grant was executed (whichever is earlier).

- If the grant did not convey the right to publish the work, the termination period begins thirty-five years after the date that the grant was executed.

17 U.S.C. § 203(a)(3). The method for calculating the beginning and ending of the termination period is discussed in more detail in Sections 2310.3(C)(1) and 2310.3(C)(2) below.

In all cases, the author or the author's heirs (if the author is deceased) must comply with the following requirements in order to terminate a grant under Section 203:

- Select an effective date of termination that falls within the five-year termination period;

- Serve a notice of termination on the grantee or the grantee's successor in title not less than two years and not more than ten years before the effective date of termination; and

- Record the notice with the U.S. Copyright Office before the effective date of termination.

17 U.S.C. § 203(a)(4).

If the terminating party selects an effective date that does not fall within the five-year termination period, fails to serve the notice in a timely manner, or fails to record the notice with the Office before the effective date, the termination will be invalid.

2310.3(C)(1) Terminating a Grant That Conveyed the Right of Publication

The Copyright Act defines publication as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending." 17 U.S.C. § 101. Offering to distribute copies or phonorecords to a group of persons for the purpose of further distribution, public performance, or public display also constitutes publication under the law. *Id*.

If the author conveyed the right to publish his or her work, then the beginning and ending of the termination period may be based on the month, day, and year that the grant was executed, or in the alternative, it may be based on the month, day, and year that the work was published. *See* 17 U.S.C. § 203(a)(3). Specifically, the termination period for a grant that conveyed the right of publication begins either thirty-five years after the date that the work was published under the grant, or forty years after the date that the grant was executed (whichever is earlier). *See id*.

The legislative history states that "[t]his alternative method of computation is intended to cover cases where years elapse between the signing of a publication contract and the eventual publication of the work." H.R. REP. NO. 94-1476, at 126 (1976), *reprinted in* 1976 U.S.C.C.A.N 5659, 5742; S. REP. NO. 94-473, at 110 (1975). It also states that "this principle should apply to any publication contract, and not just to contracts involving first publication…." H.R. REP. NO. 89-2237, at 122 (1966); H.R. REP. NO. 90-83, at 93 (1967); *but see Baldwin v. EMI Feist Catalog,* 805 F.3d 18, 33 (2d Cir. 2015) (concluding that "the publication of a work is a one-time event" for purposes of § 203(a)(3)).

In other words, if the grant conveyed the right to publish the work and if the work was published within five years after the grant was executed, then the beginning of the termination period is based on the date of publication under that grant. By contrast, if the work was published more than five years after the grant was executed or if the work was never published under the grant, then the beginning of the termination period is based on the date of execution.

Examples:

- On March 10, 1980, the author sent his publisher an outline for an unpublished novel titled, *The Revered and the Reviled*. On April 10, 1980 the author and the publisher executed a book publication contract. The author completed the novel several years later, and the publisher eventually published the work on August 23, 1987.

  For purposes of § 203(a)(3), the contract conveyed the right of publication, because it gave the publisher the right to distribute

copies of this work to the public. Because the novel was published more than five years after the author executed the contract, the beginning of the termination period is based on the date of execution, rather than the date of publication under the grant. Specifically, the five-year termination period begins on April 10, 2020 (forty years from the execution of the contract), rather than April 10, 2015 (thirty-five years from the execution of the contract) or August 23, 2022 (thirty-five years from the date that the work was published under the grant). The termination period ends on April 10, 2025. If the author decides to make the termination effective on January 1, 2024, the notice may be served as early as January 1, 2014, and it must be served no later than January 1, 2022. The notice must be recorded with the U.S. Copyright Office, and the date of recordation assigned to the notice must be no later than December 31, 2023. *See* S. REP. NO. 94-473, at 110 (1975). (For information concerning the requirements for establishing a date of recordation, see Section 2310.10.)

- A novel titled *The Saddest Boy in the World* was first published in hardback form on December 1, 1986. On September 2, 1987 the author executed a contract to publish the novel in audiobook form. The publisher eventually published the audiobook on January 3, 1988.

  For purposes of § 203(a)(3), the audiobook contract conveyed the right to publish this work, because it gave the publisher the right to distribute copies of this work to the public in audio form. Because the audiobook was published within five years after the grant was executed, the five-year termination period begins on January 3, 2023 (thirty-five years from the date that the audiobook was published), rather than December 1, 2021 (thirty-five years from the date that the work was published in hardback form), or September 2, 2027 (forty years from the execution of the audiobook contract). The termination period ends on January 3, 2028.

  If the author decides to make the termination effective on January 3, 2023 (which is the earliest possible date), the notice may be served as early as January 3, 2013 and it must be served no later than January 3, 2026. The notice must be recorded with the U.S. Copyright Office, and the date of recordation assigned to the notice must be no later than January 2, 2023. *See* S. REP. NO. 94-473, at 110 (1975).

If the grant conveyed the right of publication, the following chart may be useful in determining whether the beginning of the termination period should be based on the

date that the grant was executed or the date that the work was published under the grant:

1.	Identify the month, day, and year that the grant was executed.
2.	Identify the month, day, and year that the work was published under the grant.
3.	Add forty years to the date of execution identified in line 1.
4.	Add thirty-five years to the date of publication identified in line 2.

Is the date identified in line 3 earlier than the date identified in line 4? If so, the beginning and ending of the termination period should be calculated using the date that the grant was executed.

Is the date identified in line 4 earlier than the date identified in line 3? If so, the beginning and ending of the termination period should be calculated using the date that the work was published under the grant.

The Office has developed a set of tables that may be useful in identifying the beginning and ending of the termination period for a grant that conveyed the right of publication. These tables also may be useful in selecting an effective date of termination and for calculating the relevant deadlines for serving a notice of termination on the grantee and for recording the notice with the Office.

- Use this table if the grant conveyed the right of publication and if the termination period is based on the date that the grant was executed.
- Use this table if the grant conveyed the right of publication and if the termination period is based on the date that the work was published under the grant.

NOTE: The beginning and the end of the termination period are not based on the beginning or end of the calendar year, unless the date of execution or the date of publication happens to fall on January 1st or December 31st.

2310.3(C)(2) Terminating a Grant That Did Not Convey the Right of Publication

If the grant did not convey the right to publish the work, then the beginning and ending of the termination period is based on the month, day, and year that the grant was executed. Specifically, the termination period begins thirty-five years after the date that the grant was executed, and it ends forty years after the date of execution. 17 U.S.C. § 203(a)(3).

Example:

- On September 2, 1987 the author executed a contract to perform a work on a theatrical stage. For purposes of § 203(a)(3), the contract did not convey the right of publication. The author authorized the theatre to perform the work, but did not authorize the theatre to distribute copies or phonorecords of the work to the public. Therefore, the five-year termination period begins on September 2, 2022 (thirty-five years from the date of execution). The termination period ends on September 2, 2027. If the author decides to make the termination effective on September 2, 2022 (which is the earliest possible date), the notice may be served as early as September 2, 2012, and it must be served no later than September 2, 2020. The notice must be recorded with the U.S. Copyright Office, and the date of recordation assigned to the notice must be no later than September 1, 2022. *See* S. REP. NO. 94-473, at 110 (1975).

(For information concerning the requirements for establishing a date of recordation, see Section 2310.10.)

The Office has posted a table on its website that may be useful in identifying the beginning and ending of the termination period for a grant that did not convey the right of publication. This table may also be useful in selecting an effective date of termination and for calculating the relevant deadlines for serving a notice of termination on the grantee and for recording the notice with the Office.

NOTE: The beginning and the end of the termination period are not based on the beginning or end of the calendar year, unless the date of execution happens to fall on January 1st or December 31st.

2310.3(C)(3) Gap Grants

What if the author signed a written agreement or entered into an oral agreement before January 1, 1978 involving a work that was created on or after that date? These types of grants are known as "gap grants."

As discussed above, Section 203 applies to grants executed by the author on or after January 1, 1978. The Office has concluded that gap grants may be terminated under this provision, "because as a matter of copyright law, a transfer that predates the existence of the copyrighted work cannot be effective (and therefore cannot be 'executed') until the work of authorship (and the copyright) come into existence." Gap in Termination Provisions, 76 Fed. Reg. 32,316, 32,316 (June 6, 2011).

In cases where the author agreed, prior to January 1, 1978, to transfer or license the copyright in a work that was created on or after January 1, 1978, the Office may record a notice of termination under Section 203 if the notice states that the date of execution for the grant is the date that the work was created. 37 C.F.R. § 201.10(f)(5).

2310.3(D) How to Prepare and Serve a Notice of Termination Under Section 203

The regulatory requirements for terminating a grant under Section 203 are discussed in Sections 2310.3(D)(1) through 2310.3(D)(3).

2310.3(D)(1) Content Requirements

To terminate a grant under Section 203, the notice of termination must include a clear identification of the following:

- A statement that the grant is being terminated under Section 203.
- The name of each grantee whose rights are being terminated or the name of the grantee's successor in title.
- A statement identifying each address at which the notice is being served.
- The date of execution of the grant.
- If the grant conveyed the right to publish the work, the date of publication of the work under the grant.
- For each work covered by the notice of termination, the title of the work and the name of the author — or in the case of a joint work, the authors — who executed the grant, and if possible and practicable, the original copyright registration number.
- A brief statement reasonably identifying the grant to which the notice of termination applies.
- The effective date of termination.

If an author is deceased and if the right to terminate the grant under Section 203 is being exercised by his or her heirs, the notice also should include the following information:

- The names of the following individuals and a statement identifying his or her relationship to the author:
  - The author's surviving widow or widower;
  - All of the author's surviving children; and
  - If any of the author's children are deceased, all of the surviving children of any such deceased child of that author.
- A specific indication of the person or persons executing the notice who constitute more than one-half of that author's termination interest.

In the alternative, the notice may include a statement containing as much information concerning the author's heirs "as is currently available to the person or persons signing

the notice, with a brief explanation of the reasons why full information is or may be lacking," and "[a] statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under 17 U.S.C. [§] 203, or by their duly authorized agents." 37 C.F.R. § 201.10(b)(2)(vii)(A)-(B).

NOTE: The use of the word "currently" is intended to avoid any implication that the terminating party is required to conduct an investigation in order to comply with this portion of the regulations.

In all cases, the terminating party or parties must provide "a complete and unambiguous statement of facts in the notice itself, without incorporation by reference of information in other documents or records." 37 C.F.R. § 201.10(b)(3).

2310.3(D)(1)(a) The Date of Execution and Date of Publication

If the grant did not convey the right to publish the work, then as discussed in Section 2310.3(C)(2), the beginning and the ending of the termination period are based on the date the grant was executed. If the grant conveyed the right of publication, then as discussed in Section 2310.3(C)(1), the beginning and ending of this period may be based on the date of execution or the date of publication under the grant (whichever is earlier).

For these reasons, the notice must specify the date the grant was executed. (If the termination involves a gap grant, then as discussed in Section 2310.3(C)(3), the notice may be recorded if it states that the date of execution is the date that the work was created.) If the grant conveyed the right to publish the work, the notice must specify the date that the work was first published under the grant.

2310.3(D)(1)(b) Naming the Authors of a Joint Work

If the grant was executed by two or more authors of a joint work, then as discussed in Section 2310.3(B), the grant may be terminated by a majority of the joint authors who executed the grant or by a majority of his or her heirs if joint author is deceased. For these reasons, the notice of termination should identify all of the joint authors who executed the grant.

2310.3(D)(1)(c) A Copy of the Grant Is Not Required

In most cases, the party issuing the notice of termination may not have a copy of the grant that is being terminated or may not have access to a copy. For these reasons, the terminating party does not need to identify the location of the grant, offer to produce a copy of the grant, or attach a copy of the grant to the notice.

2310.3(D)(1)(d) Providing a Registration Number

Parties are encouraged to provide a registration number for each work listed in the notice of termination (if any), because this information may be useful in identifying the work to which the notice applies. However, this information needs to be provided only if it is possible and practicable.

2310.3(D)(2) Signature Requirements

The notice of termination must be signed by each author who is terminating the grant or by his or her duly authorized agent.

If an author is deceased the notice must be signed by the required number and proportion of the owners of that author's termination interest or by their duly authorized agents. In addition, the notice shall contain a brief statement specifying each person's relationship to the deceased author, such as "widow," "widower," "child," or "grandchild."

If the notice is signed by a duly authorized agent, the notice shall clearly identify the person or persons that the agent represents.

In all cases, the notice should contain a handwritten signature and a typewritten or legibly hand printed statement containing the full name and address of each party or agent who signed the notice.

37 C.F.R. § 201.10(c)(3)-(5).

2310.3(D)(3) Service Requirements

This Section discusses the requirements for serving a notice of termination under Section 203. The same requirements also apply to notices issued under Sections 304(c) or 304(d).

A notice of termination must be served upon each grantee whose rights are being terminated, or the grantee's successor in title. The notice must be served by personal service or by first class mail. Service by registered mail or certified mail is not required.

The notice must be sent to the address that, after a reasonable investigation, is found to be the last known address of the grantee or successor in title.

The service requirements set forth in the statute will be satisfied if the terminating party takes the following steps:

- The person or persons executing the notice conducts a reasonable investigation before the notice is served as to the current ownership of the rights being terminated; and
- If there is no reason to believe that such rights have been transferred by the grantee to a successor in title, the notice is served on the grantee; or
- If there is reason to believe that such rights have been transferred by the grantee to a particular successor in title, the notice is served on that successor in title.

In this context, a "reasonable investigation" includes, but is not limited to the following:

- A search of the records in the U.S. Copyright Office.

- In the case of grant involving a musical composition where the performing rights are licensed by a performing rights society, a reasonable investigation also includes a report from that society identifying the person or persons claiming current ownership of the rights being terminated.

37 C.F.R. § 201.10(d)(1)-(3)

2310.4 Terminating a Grant Under Section 304(c)

2310.4(A) What Types of Grants May Be Terminated Under Section 304(c)?

Under the previous copyright law, the copyright in a work could be secured by publishing the work with a proper copyright notice or by registering the work with the U.S. Copyright Office. The term of the copyright was divided into two consecutive terms: an initial term of twenty-eight years and a renewal term that lasted for another twenty-eight years. The initial term began when the copyright was originally secured through registration or publication with notice. The renewal term began twenty-eight years thereafter if the copyright owner filed a renewal application with the Office.

When Congress enacted the current copyright law, it maintained the renewal system for works that were protected by copyright as of January 1, 1978. In addition, Congress extended the length of the copyright term to seventy-five years, consisting of an initial term of twenty-eight years and a renewal term of forty-seven years. The nineteen additional years that Congress added to the renewal term are known as the "extended renewal term."

At the same time, Congress created a procedure that allows an author or the author's heirs to terminate a grant that transferred or licensed the copyright to a third party and to reclaim the copyright for the duration of the extended renewal term. This procedure is set forth under Section 304(c) of the Copyright Act. *See generally* H.R. REP. NO. 94-1476, at 140-42 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 5756-58; S. REP. NO. 94-473, at 123 (1975); Notice of Termination, 66 Fed. Reg. 22,139, 22,139 (May 3, 2001).

Section 304(c) of the Copyright Act may be used to terminate a grant executed before January 1, 1978 involving the copyright in the renewal term or any right under the renewal term, provided that the grant was executed by one or more of the following parties:

- The author of the work.
- The author's widow, widower, or children.
- The author's executors.
- The author's next of kin.

See 17 U.S.C. § 304(a)(1)(C), (c).

Grants executed on or after January 1, 1978 are not subject to termination under Section 304(c). Likewise, this provision does not apply to grants made by will, grants involving a work made for hire, or grants involving rights arising under any other federal, state, or foreign law.

2310.4(B) Who May Terminate a Grant Under Section 304(c)?

2310.4(B)(1) Grants Executed by the Author

A grant executed by the author of a work may be terminated by that individual under Section 304(c).

If the grant was executed by two or more authors of a joint work, the grant may be terminated by any of the joint authors who executed the grant. "There is no requirement of unanimity, majority interest, or the like, among granting co-authors." Termination of Transfers and Licenses Covering the Extended Renewal Term, 42 Fed. Reg. 45,916, 45,917 (Sept. 13, 1977). When a particular author issues a notice of termination under Section 304(c), the termination only applies to that author's share of the ownership of the renewal copyright.

If an author or co-author is deceased and if that individual never exercised his or her right to terminate, the grant may be terminated under Section 304(c)(1)-(2) by the heirs holding a majority of the author's termination interest. The heirs may include the author's widow or widower, the author's children, and/or the children of any child who predeceased the author.

If all of the author's heirs are deceased and if the author never exercised his or her right to terminate, the grant may be terminated under Section 304(c)(2)(D) by the author's executor, administrator, personal representative, or trustee.

2310.4(B)(2) Grants Executed by Persons Other Than the Author

As discussed above, a grant executed by one or more of the following persons may be terminated under Section 304(c):

- The author's widow, widower, or children.
- The author's executors.
- The author's next of kin.

If the grant was executed by one person, the right to terminate must be exercised by that individual.

If the grant was executed by two or more persons, the grant must be unanimously terminated by all of the individuals who executed the grant. If one or more of those persons is deceased, the grant must be unanimously terminated by the other persons who are alive as of the date that the termination is made.

2310.4(C) When May a Grant Be Terminated Under Section 304(c)?

A grant may be terminated under Section 304(c) during a five-year termination period. The beginning and the end of this period are based on the month, day, and year that copyright was originally secured in the work. Specifically, the termination period begins fifty-six years after the date that the work was originally secured or January 1, 1978, whichever is later. The termination period ends sixty-one years after the original registration or publication date.

NOTE: The beginning and end of the termination period is not based on the beginning or end of the calendar year, unless the work happened to be registered or published on January 1st or December 31st.

To terminate a transfer or license under Section 304(c), the author or the author's heirs (if the author is deceased) must comply with the following requirements:

- Select an effective date of termination that falls within the five-year termination period (*e.g.,* at least fifty-six years after the date that the work was originally registered or published with a proper copyright notice (whichever is earlier), but no more than sixty-one years after the original date of registration or publication);
- Serve a notice of termination on the grantee or the grantee's successor in title not less than two years and not more than ten years before the effective date of termination; and
- Record the notice with the U.S. Copyright Office before the effective date of termination.

If the author or the author's heirs (if the author is deceased) select an effective date that does not fall within the five-year termination period, fail to serve the notice in a timely manner, or fail to record the notice before the effective date, the termination will be invalid.

The Office has developed a table that may be useful in identifying the beginning and ending of the termination period for a grant that is eligible for termination under Section 304(c). This table may also be useful in selecting an effective date of termination and for calculating the relevant deadlines for serving a notice of termination on the grantee and for recording the notice with the Office.

2310.4(D) How to Prepare and Serve a Notice of Termination Under Section 304(c)

The regulatory requirements for terminating a grant under Section 304(c) are discussed in Sections 2310.4(D)(1) through 2310.4(D)(3).

2310.4(D)(1) Content Requirements

To terminate a grant under Section 304(c), the notice of termination must include a clear identification of the information listed below. The same requirements also apply to notices issued under Section 304(d):

- A statement that the grant is being terminated under Sections 304(c) or 304(d).
- The name of each grantee whose rights are being terminated or the name of the grantee's successor in title.
- A statement identifying each address at which the notice is being served.
- For each work covered by the notice of termination, the title of the work, the name of at least one author, the date copyright was originally secured, and if possible and practicable, the original copyright registration number.
- A brief statement reasonably identifying the grant to which the notice of termination applies.
- The effective date of termination.

If the grant was executed by a person or persons other than the author, the notice also should include a list of the surviving person or persons who executed the grant.

If an author is deceased and if the right to terminate the grant under is being exercised by his or her heirs, the notice also should include the following information:

- The names of the following individuals and a statement identifying his or her relationship to the author:
  - The author's surviving widow or widower;
  - All of the author's surviving children; and
  - If any of the author's children are deceased, all of the surviving children of any such deceased child of that author.
- A specific indication of the person or persons executing the notice who constitute more than one-half of that author's termination interest.

In the alternative, the notice may include a statement containing as much information concerning the author's heirs "as is currently available to the person or persons signing the notice, with a brief explanation of the reasons why full information is or may be lacking," and "[a] statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under Section 304 of title 17, U.S.C., or by their duly authorized agents." 37 C.F.R. § 201.10(b)(1)(vii)(A)-(B).

NOTE: The "[u]se of the word 'currently,' is intended to avoid any implication that this paragraph of the regulation itself requires that terminating parties first conduct an investigation." Part 201-General Provisions Termination of Transfers and Licenses Covering Extended Renewal Term, 42 Fed. Reg. 45,916, 45,918 (Sept. 13, 1977).

In all cases, the terminating party or parties must provide "a complete and unambiguous statement of facts in the notice itself, without incorporation by reference of information from other documents or records." 37 C.F.R. § 201.10(b)(3).

2310.4(D)(1)(a) A Copy of the Grant Is Not Required

In most cases, the party issuing the notice of termination will not have a copy of the grant that is being terminated or will not have access to a copy. For these reasons, the terminating party does not need to state the location of the grant document, include an offer to produce it, or attach a copy of the document to the notice.

2310.4(D)(1)(b) Date of Execution Not Required

The notice of termination must identify the date that the copyright was secured, but it does not need to identify the date of the grant.

2310.4(D)(1)(c) Naming the Author and His or Her Heirs

Parties are encouraged to provide the name of at least one author of the work(s) listed in the notice of termination, because this information may be useful in identifying the work(s) to which the notice applies.

As discussed in Section 2310.4(B)(1), a grant may be terminated under Section 304 by any of the granting authors, or that author's surviving heirs, to the extent of that author's share of the copyright. For this reason, there is no need to identify all the authors of the work or to demonstrate unanimity, majority interest, or the like, among granting co-authors.

Likewise, when issuing a notice of termination on behalf of an author who is deceased, there is no need to provide information as to other, non-terminating, surviving authors or the surviving heirs of other deceased authors.

2310.4(D)(1)(d) Providing a Registration Number

Providing a registration number may be useful in identifying the work to which the notice of termination applies. However, this information is not required.

2310.4(D)(2) Signature Requirements

This Section discusses the signature requirements for terminating a grant under Section 304(c). The same requirements also apply to a notice of termination issued under Section 304(d).

If the grant was executed by one or more of the authors of the work, the notice of termination for any one author's share must be signed by that author or by his or her duly authorized agent.

If the author is deceased the notice must be signed by the required number and proportion of the heirs who own that author's termination interest or by their duly authorized agents. In addition, the notice shall contain a brief statement specifying each

person's relationship to the deceased author, such as "widow," "widower," "child," or "grandchild." *See* Termination of Transfers and Licenses Covering Extended Renewal Term, 42 Fed. Reg. 45,916, 45,919 (Sept. 13, 1977).

If the grant was executed by the author's widow, widower, children, executors, or next of kin, the notice must be signed by all of the surviving person or persons who executed the grant or by their duly authorized agents.

If the notice is signed by a duly authorized agent, the notice shall clearly identify the person or persons whom the agent represents.

In all cases, the notice should contain a handwritten signature and a typewritten or legibly hand printed statement containing the full name and address of each party or agent who signed the notice.

37 C.F.R. § 201.10(c)(1)-(2), (4)-(5).

2310.4(D)(3) Service Requirements

For information concerning the requirements for serving a notice of termination under Section 304(c), see Section 2310.3(D)(3).

2310.5 Terminating a Grant Under Section 304(d)

2310.5(A) What Types of Grants May Be Terminated Under Section 304(d)?

In 1998 Congress amended the copyright law by adding another twenty years to the copyright term. For works that were protected by copyright as of January 1, 1978, the length of the copyright term was extended to ninety-five years, consisting of an initial term of twenty-eight years and a renewal term of sixty-seven years.

At the same time, Congress created a procedure that allows an author or the author's heirs to terminate a grant that transferred or licensed the copyright to a third party and to reclaim the copyright for the duration of the twenty-year extension. This procedure is set forth under Section 304(d) of the Copyright Act.

Section 304(d) may be used to terminate a grant executed before January 1, 1978 involving the copyright in the renewal term or any right under the renewal term, provided that the following requirements have been met:

- The grant involves the copyright in a work that was originally registered or published with notice between January 1, 1923 and October 26, 1939.
- The grant was executed by one or more of the following parties:
  - The author.
  - The author's widow, widower, or children.

  - The author's executors.
  - The author's next of kin.

- The author or the author's heirs have not exercised the right to terminate the grant under Section 304(c) of the Copyright Act.

Grants executed on or after January 1, 1978 are not subject to termination under Section 304(d). This provision does not apply to grants involving a work that was originally registered or published on or after October 27, 1939. It does not apply to grants made by will, grants involving a work made for hire, or grants involving rights arising under any other federal, state, or foreign law. Likewise, it does not apply if the author or the author's heirs already exercised their right to terminate under Section 304(c).

17 U.S.C. § 304(d); 37 C.F.R. § 201.10.

2310.5(B) Who May Terminate a Grant Under Section 304(d)?

As discussed above, a grant may be terminated under Section 304(d), provided that the author or the author's heirs have not exercised their right to terminate under Section 304(c).

If the grant was executed by the author of a work, the grant may be terminated by any of the parties listed in Section 2310.4(B)(1).

If the grant was executed by the author's widow, widower, children, executor, or next of kin, the grant may be terminated by any of the parties listed in Section 2310.4(B)(2).

NOTE: When a joint author terminates a grant under Section 304(c), the termination only applies to that author's share of the ownership of the renewal copyright. In other words, Section 304(c) permits joint authors to exercise their termination rights separately. Therefore, if a joint author has not exercised his or her right to terminate under Section 304(c), that author or his or her heirs may terminate the grant under Section 304(d) — even if other joint author(s) have exercised their right to terminate the grant under Section 304(c).

2310.5(C) When May a Grant Be Terminated Under Section 304(d)?

A grant may be terminated under Section 304(d) during a five-year termination period. The beginning and the end of this period are based on the month, day, and year that copyright was originally secured in the work. Specifically, the termination period begins seventy-five years after the date that the work was originally registered with the U.S. Copyright Office or the date that the work was originally published with a proper copyright notice (whichever is earlier). The termination period ends eighty years after that original registration or publication date.

NOTE: The beginning and the end of the termination period are not based on the beginning or end of the calendar year, unless the work happened to be registered or published on January 1st or December 31st.

To terminate a transfer or license under Section 304(d), the author or the author's heirs (if the author is deceased) must comply with the following requirements:

- Select an effective date of termination that falls within the five-year termination period (*i.e.,* at least seventy-five years after the date that the work was originally registered or published with a proper copyright notice (whichever is earlier), but no more than eighty years after the original date of registration or publication);
- Serve a notice of termination on the grantee or the grantee's successor in title not less than two years and not more than ten years before the effective date of termination; and
- Record the notice with the U.S. Copyright Office before the effective date of termination.

If the author or the author's heirs (if the author is deceased) select an effective date that does not fall within the five-year termination period, fail to serve the notice in a timely manner, or fail to record the notice with the Office before the effective date, the termination will be invalid.

The Office has developed a table that may be useful in identifying the beginning and ending of the termination period for a grant that is eligible for termination under Section 304(d). This table may also be useful in selecting an effective date of termination and for calculating the relevant deadlines for serving a notice of termination on the grantee and for recording the notice with the Office.

2310.5(D) How to Prepare and Serve a Notice of Termination Under Section 304(d)

The regulatory requirements for terminating a grant under Section 304(d) are discussed in Sections 2310.5(D)(1) through 2310.5(D)(3).

2310.5(D)(1) Content Requirements

To terminate a grant under Section 304(d), the notice of termination must include a clear identification of the following information:

- A statement that the grant is being terminated under Section 304(d).
- A statement that termination of renewal term rights under Section 304(c) has not been previously exercised.
- All of the other information specified in sections 201.10(b)(1)(ii) through 201.10(b)(vii) of the Copyright Office's regulations. (For information concerning these regulatory requirements, see Section 2310.4(D)(1).)

2310.5(D)(2) Signature Requirements

For information concerning the signature requirements for terminating a grant under Section 304(d), see Section 2310.4(D)(2).

2310.5(D)(3) Service Requirements

For information concerning the requirements for serving a notice of termination under Section 304(d), see Section 2310.3(D)(3).

2310.6 How to Record a Notice of Termination

Any person may record a notice of termination with the U.S. Copyright Office, provided that the grant is eligible for termination under Sections 203, 304(c), or 304(d) of the Copyright Act, and provided that he or she complies with the recordation requirements set forth in Sections 2310.7. The person who submits a notice for recordation is known as the "remitter."

The remitter should submit a signed copy of the notice to the following address together with the appropriate filing fee:

U.S. Copyright Office
Notices of Termination
P.O. Box 71537
Washington, DC 20024-1537

For information concerning the procedure for calculating the filing fee, see Section 2310.7(D).

In the alternative, the notice and the filing fee may be delivered by hand to the Public Information Office at the address specified in Chapter 200, Section 204.1(B)(3). The Public Information Office will provide the remitter with a date-stamped receipt that lists the title of no more than one of the works listed in the notice.

Submitting the notice to any other address may result in substantial delays in the receipt and examination of the notice. If the notice does not comply with the statutory or regulatory requirements, the remitter may be required to resubmit the notice or may be required to serve another notice on the grantee. This will change the date of recordation, and in some cases, it may prevent the remitter from recording the notice in a timely manner. Because a delay in examination may have serious consequences, remitters should send the notice and the filing fee to the appropriate address in all cases.

NOTE: The remitter should not submit a notice of termination with Form DCS. As discussed in Sections 2309.7 and 2309.12, Form DCS should only be used if the remitter intends to record a transfer of copyright ownership or other document pertaining to copyright.

2310.7 Recordation Requirements for Notices of Termination

A notice of termination may be recorded with the Copyright Office, provided that the grant is eligible for termination under Sections 203, 304(c), or 304(d) of the Copyright Act and provided the following requirements have been met:

- The notice is legible.

- The notice is complete.
- The notice bears the actual signature or signatures of the person or persons who signed the notice.
- The notice is submitted together with the correct filing fee.

If a notice does not comply with these requirements, the recordation specialist may communicate with the remitter, may refuse to record the notice, or may refuse to index the notice as a notice of termination.

The legibility, completeness, signature, and filing fee requirements are discussed in more detail in Sections 2310.7(A) through 2310.7(D) below.

2310.7(A) The Legibility Requirement

A notice of termination may be recorded, provided that it is legible and is capable of being imaged or otherwise reproduced in legible copies using the technology employed by the U.S. Copyright Office.

A notice should be submitted in a visually perceptible form, it should be sufficiently legible for the recordation specialist to examine and index the contents of the notice, and it should be sufficiently legible for the Office to scan the notice into the public record. To facilitate the imaging process, notices and any attachments thereto should be 8 ½ by 11 inches in size, and the pages should be clipped together rather than stapled.

When the Office records a notice of termination, it creates a public record that reflects the nature of the document. These records may be searched by entering certain key information, such as the title of the work. If the notice is illegible or if it cannot be legibly reproduced by the Office, the recordation specialist may communicate with the remitter or may refuse to record the notice.

37 C.F.R. § 201.10(f)(1)(iii).

2310.7(B) The Completeness Requirement

A notice of termination will be recorded, provided that the remitter submits a complete and exact duplicate of the notice that was served on the grantee.

NOTE: If the terminating party served separate copies of the same notice on more than one grantee or successor in title, the remitter should submit only one copy of the notice.

The document submitted for recordation should contain a statement specifying the date that the notice was served on the grantee and the manner of service (*e.g.,* by personal service, by first class mail). This statement may be provided in the notice itself or in a separate document.

NOTE: If the notice was served by first class mail, the date of service is the date that the notice was deposited with the U.S. Postal Service.

If the notice of termination appears to be incomplete, if it does not appear to be an exact duplicate of the notice that was served on the grantee, or if it does not specify the date and manner of service, the recordation specialist may communicate with the remitter or may refuse to record the notice.

2310.7(C) The Signature Requirement

A notice of termination may be recorded, provided that it contains the actual signature or a reproduction of the actual signature of the person or persons who signed the notice.

The Office will record a legible photocopy or other legible facsimile reproduction of a signed notice. In such cases, there is no need to submit a sworn certification or an official certification stating that the reproduction is a true copy of the signed notice. Likewise, a signed notice may be recorded, regardless of whether the signature(s) have been verified by a notary public or a certificate of acknowledgment.

Notices that have not been signed will be returned to the remitter. If the remitter subsequently submits a signed copy of the notice, the recordation specialist may record the document if the requirements set forth in Section 2310.7 have been met. The date of recordation will be based on the date that the signed notice was received by the Office.

2310.7(D) The Filing Fee Requirement

To record a notice of termination, the remitter must submit the correct filing fee. The current fee is set forth in the Office's fee schedule. 37 C.F.R. § 201.3(c)(16).

Specifically, the remitter must pay a basic recording fee for each notice of termination. The basic recording fee is listed in the fee schedule under the heading "Recordation of document, including a notice of intention to enforce (single title)."

If the notice contains two or more titles the remitter must pay the basic recording fee plus an additional filing fee. The additional filing fee is listed in the fee schedule under the heading "Additional titles (per group of 10 or fewer titles)."The amount of the additional filing fee is based on the number of titles listed in the notice.

For general guidance in calculating the filing fee for notices that contain two or more titles, see *Calculating Fees for Recording Documents and Notices of Termination in the Copyright Office* (Circular 12A). For guidance in identifying the number of titles listed in a notice, see Sections 2309.11(B)(1) through 2309.11(B)(5). For information concerning the methods for paying the filing fee, see Chapter 1400, Sections 1403.3 through 1403.5.

2310.8 Contesting or Withdrawing a Notice of Termination

When a party serves a notice of termination on a grantee and records the notice with the U.S. Copyright Office, the grantee may respond by sending a letter or other written response that challenges the sufficiency of the notice. The Office refers to this type of document as a "counter notice."

On occasion, the party that served a notice of termination subsequently enters into a written agreement with the grantee whereby the terminating party expressly agrees to

withdraw the notice of termination. The Office refers to this type of document as a "withdrawal."

A counter notice or a withdrawal may be recorded under Section 205(a) of the Copyright Act as a document pertaining to copyright, provided that the following requirements have been met:

- The document is legible.
- The document is complete.
- The document bears the actual signature or an acceptable reproduction of the actual signature of the person or persons who executed it.
- The document is submitted together with the correct filing fee.

See 17 U.S.C. § 205(a); 37 C.F.R. § 201.4(c).

The legibility, completeness, signature, and filing fee requirements are discussed in more detail in Sections 2309.8 through 2309.11. If a document does not comply with these requirements, the recordation specialist may communicate with the remitter or may refuse to record the document.

The remitter should submit a signed copy of the document to the following address together with the appropriate filing fee:

U.S. Copyright Office
Notices of Termination
P.O. Box 71537
Washington, DC 20024-1537

For information concerning the procedure for calculating the filing fee, see Section 2310.7(D).

When preparing a counter notice or a withdrawal, parties are strongly encouraged to include the title(s) and registration number(s) (if any) of the works that are subject to the notice of termination. In addition, parties are encouraged to attach a copy of the notice of termination to the document, and if the notice has been recorded with the Office, to include the identifying number that the Office assigned to that notice (if any). In such cases, the recordation specialist will include the title(s), registration number(s), and identifying number for the notice in the online public record for the counter notice or the withdrawal. In addition, the specialist may add a note to the record, such as: "[Counter notice to / withdrawal of] notice of termination filed under [identifying number], recorded on [date]."

2310.9 Examination Guidelines

To record a notice of termination, the terminating party must submit an exact duplicate of the notice that was served on the grantee or the grantee's successor in title. The copy

must include either an actual signature or an acceptable reproduction of an actual signature, a statement setting forth the date the notice was served, an indication of the manner of service, and must be submitted together with the appropriate filing fee. The recordation specialist will review a notice of termination for each of these elements and may refuse to record the notice if any of them are missing.

Failing to serve and record a notice of termination in a timely manner is a fatal mistake that prevents the termination from taking effect. Therefore, the specialist will examine each notice to confirm that the relevant statutory deadlines have been met. However, the specialist will not attempt to confirm the validity of the alleged facts that are set forth in a notice.

The Office may refuse to record a document as a notice of termination if the notice appears to be untimely. In such cases, the recordation specialist will take the following actions:

- If the notice is premature, the specialist will return it to the remitter so that the notice may be resubmitted within the proper statutory window.
- If the notice is late, the specialist will offer to record and index it as a document pertaining to copyright under Section 205(a) of the Copyright Act. The specialist will not record the document as a notice of termination, meaning that it will not be indexed as such.

The following are representative examples of situations where a notice of termination may be considered untimely:

- The effective date of termination does not fall within the five-year termination period specified in Section 203(a)(3), 304(c)(3), or 304(d)(2).
- The document indicates that the notice of termination was served less than two or more than ten years before the effective date of termination.
- The document was received by the Office on or after the effective date of termination.
- The notice of termination was issued under Section 203, but the document indicates that the date of execution for the grant falls before January 1, 1978.

2310.10 Date of Recordation for a Notice of Termination

To be effective, a notice of termination must be recorded with the U.S. Copyright Office before the effective date of termination.

The date of recordation for a notice of termination is the date when the Office receives the proper filing fee and a notice that satisfies the relevant requirements set forth in Section 201.10(f) of the regulations, regardless of when the recordation specialist examines and records the notice.

If the notice and the filing fee are received on different dates, the date of recordation is based on the date of receipt for the last item that is received by the Office. Likewise, if the notice is returned to the remitter for correction, the date of recordation is based on the date that the corrected notice is received by the Office.

See 37 C.F.R. § 201.10(f)(3); *see also* Filing of Agreements Between Copyright Owners and Public Broadcasting Entities, Termination of Transfers and Licenses Covering the Extended Renewal Terms, Etc., 41 Fed. Reg. 221, 221 (Nov. 15, 1976).

2310.11 Recording a Notice of Termination Distinguished from the Legal Sufficiency of a Termination Notice

Recording a notice of termination with the U.S. Copyright Office is a mandatory requirement for terminating a grant under Sections 203, 304(c), or 304(d). However, the fact that the Office recorded a notice of termination does not create a legal presumption that the termination has been properly effected or that the notice is valid.

2310.12 Harmless Errors in a Notice of Termination

Harmless errors in a notice of termination do not render the notice invalid. As a general rule, an error may be considered harmless if it "do[es] not materially affect the adequacy of the information required" under sections 203, 304(c), or 304(d) of the statute. 37 C.F.R. § 201.10(e)(1).

The following are representative examples of harmless errors that will not affect the validity of a notice, provided that the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information:

- Errors in identifying the date of registration or registration number.
- Errors in listing the names of the author's heirs.
- Errors in describing the precise relationships between the author and his or her heirs.

See 37 C.F.R. § 201.10(e)(2).

If it turns out that the date of execution specified in the notice of termination is not the actual date of execution of the grant, the error may be considered harmless if it is as accurate as the terminating party is able to ascertain, and if the date is provided in good faith and without any intention to deceive, mislead, or conceal relevant information. *See id*. Providing an erroneous date of execution, however, may not be considered harmless if the grant would have properly been subject to termination under section 203, rather than section 304 (or *vice versa*). *See* 37 C.F.R. § 201.10(e)(1) (requiring that the error not "materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. [§§] 203, 304(c), or 304(d), whichever applies").

2310.13 Is the Grant Subject to Termination Under Sections 203, 304(c), or 304(d)?

The author or the author's heirs—not the U.S. Copyright Office—must determine whether a grant is eligible for termination under Sections 203, 304(c), or 304(d). Upon

request, the Office will provide general information about these provisions and will explain the relevant procedures for recording a notice of termination. The Office cannot provide specific legal advice on the rights of persons, issues involving a particular use of a copyrighted work, or other matters of a similar nature. *See* 37 C.F.R. § 201.2(a)(3).

2310.13(A) General Questionnaire

This questionnaire may be useful in determining whether a grant may be eligible for termination under Sections 203, 304(c), or 304(d) of the Copyright Act (although if the grant involves a sound recording or an architectural work the questionnaires set forth in Sections 2310.13(B) or 2310.13(C) should be used instead).

Question 1: Was the grant made by will, bequest, or other form of inheritance?

If the answer is "yes," the grant cannot be terminated under Sections 304(c) or 304(d).

If the answer is "no," proceed to Question 2.

Question 2: Is the work a "work made for hire"?

NOTE: The U.S. Copyright Office has created a separate "work made for hire questionnaire," which may be useful in determining whether a particular work may be considered a work made for hire. This questionnaire is set forth in Chapter 500, Section 506.4(B).

If the answer is "yes, the work is a work made for hire," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

If the answer is "no," proceed to Question 3.

Question 3: Was the grant executed by the author of the work?

If the answer is "yes," proceed to Question 4.

If the answer is "no," the grant cannot be terminated under Section 203. To determine if the grant may be eligible for termination under Sections 304(c) or 304(d), proceed to Question 6.

Question 4: Was the grant made on or after January 1, 1978?

If the answer is "yes," the grant may be eligible for termination under Section 203. For information concerning the procedure for terminating a grant under this provision, see Section 2310.3.

If the answer is "no, the grant was made on or before December 31, 1977," proceed to Question 5.

Question 5: Was the work created on or after January 1, 1978?

If the answer is "yes," the grant may be eligible for termination as a gap grant under Section 203. For information concerning the procedure for terminating a gap grant, see Section 2310.3(C)(3).

If the answer is "no, the work was created on or before December 31, 1977," the grant cannot be terminated under Section 203. To determine if the grant may be eligible for termination under Sections 304(c) or 304(d), proceed to Question 6.

Question 6: Was the grant executed by the author? Was the grant executed by the author's heirs?

NOTE: If the author is deceased, the author's "heirs" may include the author's widow, widower, or children (if any), the author's executor (if the author's widow, widower, and children (if any) are deceased), or the author's next of kin (if the author died without leaving a will).

If the answer to either of these questions is "yes," proceed to Question 7.

If the answer to both of these questions is "no," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

Question 7: Has the work been published?

If the answer is "yes," proceed to Question 8.

If the answer is "no" proceed to Question 10.

Question 8: Was the work first published on or before December 31, 1977?

If the answer is "yes," proceed to Question 9.

If the answer is "no, the work was first published on or after January 1, 1978" proceed to Question 10.

Question 9: Was the work first published on or after January 1, 1952?

If the answer is "yes," the grant may be eligible for termination under Section 304(c). For information concerning the procedure for terminating a grant under this provision, see Section 2310.4.

If the answer is "no, the work was first published on or before December 31, 1951," the grant cannot be terminated under Sections 203 or 304(c). To determine if the grant may be eligible for termination under Section 304(d), proceed to Question 13.

Question 10: Has the work been registered with the U.S. Copyright Office?

If the answer is "yes," proceed to Question 11.

If the answer is "no," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

Question 11: Was the work first registered with the Copyright Office on or before December 31, 1977?

If the answer is "yes," proceed to Question 12.

If the answer is "no, the work was first registered on or after January 1, 1978," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

Question 12: Was the work first registered with the Copyright Office on or after January 1, 1952?

If the answer is "yes," the grant may be eligible for termination under Section 304(c). For information concerning the procedure for terminating a grant under this provision, see Section 2310.4.

If the answer is "no, the work was first registered on or before December 31, 1951," the grant cannot be terminated under Sections 203 or 304(c). To determine if the grant may be terminated under Section 304(d), proceed to Question 13.

Question 13: Was the work first published on or before October 26, 1939?

If the answer is "yes," proceed to Question 14.

If the answer is "no, the work was first published on or after October 27, 1939," proceed to Question 15.

Question 14: Was the work first published on or after January 1, 1933?

If the answer is "yes," proceed to Question 17.

If the answer is "no, the work was first published on or before December 31, 1932," the grant is not eligible for termination under Sections 203, 304(c), or 304(d).

Question 15: Was the work first registered with the U.S. Copyright Office on or before October 26, 1939?

If the answer is "yes," proceed to Question 16.

If the answer is "no, the work was first registered on or after October 27, 1939," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

Question 16: Was the work first registered with the U.S. Copyright Office on or after January 1, 1933?

If the answer is "yes," proceed to Question 17.

If the answer is "no, the work was first registered on or before December 31, 1932," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

Question 17: Has the author exercised his or her right to terminate the grant under Section 304(c)? Have the author's heirs exercised their right to terminate the grant under Section 304(c)?

NOTE: If the author is deceased, the author's "heirs" may include the author's widow, widower, or children (if any) the author's executor (if the author's widow, widower, and children (if any) are deceased) or the author's next of kin (if the author died without leaving a will).

If the answer to either of these questions is "yes," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

If the answer to both of these questions is "no," the grant may be eligible for termination under Section 304(d). For information concerning the procedure for terminating a grant under this provision, see Section 2310.5.

2310.13(B) Termination Questionnaire for Sound Recordings

This questionnaire may be useful in determining if a grant involving a sound recording may be eligible for termination under Sections 203 or 304(c) of the Copyright Act. (A grant involving this type of work cannot be terminated under Section 304(d) of the statute.)

NOTE: If the grant involves an architectural work, the questionnaire set forth in Section 2310.13(C) may be used to make this determination. The questionnaire set forth in Section 2310.13(A) may be used if the grant involves any other type of work.

Question 1: Was the grant made by will, bequest, or other form of inheritance?

If the answer is "yes," the agreement cannot be terminated under Sections 203, 304(c), or 304(d).

If the answer is "no," proceed to Question 2.

Question 2: Is the sound recording a "work made for hire"?

NOTE: The U.S. Copyright Office has created a "work made for hire questionnaire," which may be useful in determining whether a

particular sound recording may be considered a work made for hire. This questionnaire is set forth in Chapter 500, Section 506.4(B).

If the answer is "yes, the sound recording is a work made for hire," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

If the answer is "no," proceed to Question 3.

Question 3: Was the sound recording first fixed on or after February 15, 1972?

If the answer is "yes," proceed to Question 4.

If the answer is "no, the sound recording was first fixed on or before February 14, 1972," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

Question 4: Was the grant executed by the author of the work?

If the answer is "yes," proceed to Question 5.

If the answer is "no," the grant cannot be terminated under Sections 203 or 304(d). To determine if the grant may be eligible for termination under Section 304(c), proceed to Question 7.

Question 5: Was the grant made on or after January 1, 1978?

If the answer is "yes," the grant may be eligible for termination under Section 203. For information concerning the procedure for terminating a grant under this provision, see Section 2310.3.

If the answer is "no, the grant was made on or before December 31, 1977," proceed to Question 6.

Question 6: Was the work first fixed on or after January 1, 1978?

If the answer is "yes," the grant may be eligible for termination as a gap grant under Section 203. For information concerning the procedure for terminating a gap grant, see Section 2310.3(C)(3).

If the answer is "no, the work was first fixed on or before December 31, 1977," the grant cannot be terminated under Sections 203 or 304(d). To determine if the grant may be eligible for termination under Section 304(c), proceed to Question 7.

Question 7: Was the grant executed by the author? Was the grant executed by the author's heirs?

NOTE: If the author is deceased, the author's "heirs" may include the author's widow, widower, or children (if any) the author's executor (if

the author's widow, widower, and children (if any) are deceased) or the author's next of kin (if the author died without leaving a will).

If the answer to either of these questions is "yes," proceed to Question 8.

If the answer to both of these questions is "no," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

Question 8: Has the sound recording been published?

If the answer is "yes," proceed to Question 9.

If the answer is "no, the sound recording has not been published," the grant cannot be terminated under Sections 304(c) or 304(d). To determine if the grant may be eligible for termination under Section 203, proceed to Question 3.

Question 9: Was the sound recording first published on or before December 31, 1977?

If the answer is "yes," proceed to Question 10.

If the answer is "no, the sound recording was first published on or after January 1, 1978," the grant cannot be terminated under Sections 304(c) or 304(d). To determine if the grant may be eligible for termination under Section 203, proceed to Question 3.

Question 10: Was the sound recording first published on or after February 15, 1972?

If the answer is "yes," the grant may be eligible for termination under Section 304(c). For information concerning the procedure for terminating a grant under this provision, see Section 2310.4.

If the answer is "no," the grant cannot be terminated under Sections 304(c) or 304(d). To determine if the grant may be eligible for termination under Section 203, proceed to Question 3.

2310.13(C) Termination Questionnaire for Architectural Works

This questionnaire may be useful in determining if a grant involving an architectural work may be eligible for termination under Section 203 of the Copyright Act. (A grant involving this type of work cannot be terminated under Sections 304(c) or 304(d) of the statute.)

NOTE: If the grant involves a sound recording, the questionnaire set forth in Section 2310.13(B) may be used to make this determination. The questionnaire set forth in Section 2310.13(A) may be used for a grant involving any other type of work.

Question 1: Was the grant made by will, bequest, or other form of inheritance?

If the answer is "yes," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

If the answer is "no," proceed to Question 2.

Question 2: Is the architectural work a "work made for hire"?

NOTE: The U.S. Copyright Office has created a separate "work made for hire questionnaire," which may be useful in determining whether a particular architectural work may be considered a work made for hire. This questionnaire is set forth in Chapter 500, Section 506.4(B).

If the answer is "yes, the architectural work is a work made for hire," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

If the answer is "no," proceed to Question 3.

Question 3: Was the grant executed by the author of the work?

If the answer is "yes," the grant may be eligible for termination under Section 203. For information concerning the procedure for terminating a grant under this provision, see Section 2310.3.

If the answer is "no," the grant cannot be terminated under Sections 203, 304(c), or 304(d).

2311 Abandonment

The U.S. Copyright Office may record an affidavit, declaration, statement, or any other document purporting to abandon a claim to copyright or any of the exclusive rights granted to copyright owners under Sections 106 or 106A of the Copyright Act, provided that the following requirements have been met:

- *Content of the document.* The document should identify the claim that is subject to the abandonment, preferably including the author(s), title(s), and registration number(s) for the works (if any). It should provide the full name of the party who signed the document, and it should state that the party is the current owner or co-owner of the copyright and/or the exclusive rights in the work. It should state that the rights specified in the document have been abandoned. The document does not need to provide a reason or justification for the owner's decision to abandon the copyright and/or the exclusive rights specified in the document. However, the document should be legible and capable of being imaged or otherwise reproduced by the technology employed by the Office at the time of its submission. 37 C.F.R. § 201.4(c)(3).

- *Signature*. The document should be signed by the current owner or co-owners of the rights specified in the document or by an authorized representative of such

owner(s). If the copyright has been registered, the document should be signed by the copyright claimant(s) named in the certificate of registration or by an authorized agent of the copyright claimant(s). If the copyright has been transferred or assigned to a party who is not named in the certificate, or if the copyright has not been registered, the document should be signed by all of the owners or co-owners of the rights specified in the document or by an authorized agent of such owner(s). In all cases, the document must contain the actual signature(s) of the person or person(s) who executed the document or a legible photocopy or other facsimile of the signature together with a sworn certification that satisfies the requirements set forth in Section 201.4(c)(1) of the regulations.

- *Filing fee*. The remitter should submit the appropriate filing fee. The fee for recording an abandonment is the same as the fee for recording a document pertaining to copyright. For information concerning this fee, see Section 2309.11 above.

To record an abandonment, the remitter should submit a signed copy of the document to the following address together with the appropriate filing fee:

Library of Congress
U.S. Copyright Office-DOC
101 Independence Avenue SE
Washington, DC 20559-6000

In the alternative, the document and the filing fee may be delivered by hand to the Public Information Office at the address specified in Chapter 200, Section 204.1(B)(3). The Public Information Office will provide the remitter with a date-stamped receipt that lists the title of no more than one of the works listed in the abandonment.

The Office will record an abandonment as a document pertaining to copyright without offering any opinion as to the legal effect of the document. The document will be returned to the party that submitted it, along with a certificate of recordation. In addition, the Office will create an online public record that identifies the title and registration number (if any) for the first work listed in the document, the name of the party who executed the document, the date of execution, the document number assigned to the recorded document, and the date of recordation. However, the Office will not cross-reference this record with the online public record for the registration(s) referenced in the document (if any).

2312 Designation of Agent to Receive Notifications of Alleged Infringement Under Section 512(c) of the Copyright Act

The Digital Millennium Copyright Act ("DMCA") provides safe harbors from copyright infringement liability for online service providers. In order to qualify for safe harbor protection, certain kinds of service providers – for example, those that allow users to post or store material on their systems, and search engines, directories, and other information location tools – must designate an agent to receive notifications of claimed copyright infringement.

To designate an agent, a service provider must do two things: (1) make certain contact information for the agent available to the public on its website; and (2) provide the same information to the U.S. Copyright Office, which maintains a centralized online directory of designated agent contact information for public use. The service provider must also ensure that this information is up to date.

In 2016, the Office introduced an online registration system and electronically generated directory to replace its prior paper-based system and directory. As of December 1, 2016, the Office no longer accepts paper designations. To designate an agent, a service provider must register with and use the Office's online system. Use of the online system is governed by 37 C.F.R. § 201.38, which also sets forth what is required of service providers to remain compliant with Section 512(c)(2).

More information is available on the Office's website. From there, one can access the Office's directory, create or login to a registration account to designate an agent, review regulations, watch video tutorials demonstrating how to use the system, read answers to frequently asked questions about the system, or contact the Office with any questions.

2313 The Computer Shareware Registry

This Section discusses the procedure for recording documents pertaining to computer shareware with the U.S. Copyright Office.

2313.1 What Is Computer Shareware?

Shareware is a method for marketing computer programs, rather than a specific type of program. Under this approach, the copyright owner distributes copies of his or her program to third parties to give potential users the opportunity to test and review the program. If a user decides to use the program, that person may be required to register his or her use with the copyright owner and to pay a registration fee. Typically, the party that owns the copyright in the computer program generates income through these registration fees, which tend to be lower than the purchase price for similar programs that are sold through commercial channels.

NOTE: Electronic databases or other works of authorship are not considered computer shareware. *See* H.R. REP. NO. 101-735, at 17 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6935, 6948.

See generally General Provisions—Computer Shareware Registry, 58 Fed. Reg. 29,105 (May 19, 1993); General Provisions—Registry of Documents Pertaining to Computer Shareware and the Donation of Public Domain Software, 56 Fed. Reg. 50,657 (Oct. 8, 1991).

2313.2 The Purpose of the Computer Shareware Registry

When Congress created a rental right for computer programs, interested parties expressed concern that this might adversely affect the shareware industry. Allowing interested parties to record documents pertaining to shareware was intended to address this concern by providing "a means for notifying the public of the licensing terms applicable to individual programs marketed on a shareware basis." *See* 58 Fed.

Reg. at 29,106; *see also* H.R. REP. NO. 101-735, at 16 (1990), *reprinted in* 1990 U.S.C.C.A.N. at 6947 (explaining that the legislation was intended "to encourage individuals desiring to permit unrestricted, or liberal, use of software they create, to file documents to that effect with the Copyright Office").

2313.3 Registration Distinguished from the Computer Shareware Registry

Recording a document pertaining to computer shareware is optional, but it is not a substitute for registering the copyright in a computer program. In particular, it does not provide copyright owners with the ability to claim statutory damages or attorney's fees under Section 412 of the Copyright Act. Nor does it create a presumption concerning the validity of the copyright in a shareware program.

Likewise, recording a document pertaining to shareware is not a substitute for recording a document that transfers ownership of the copyright in a shareware program, such as an assignment, exclusive license, security interest, or other type of transfer. If the copyright in a shareware program has been transferred, that document should be recorded as a transfer of ownership under Section 205 of the Copyright Act, rather than a document pertaining to shareware. Recording a license or other document pertaining to shareware does not provide constructive notice against a subsequent *bona fide* purchaser of the same rights. It simply creates a public record concerning the terms of use for that program.

See generally General Provisions—Computer Shareware Registry, 58 Fed. Reg. 29,105 (May 19, 1993); General Provisions—Registry of Documents Pertaining to Computer Shareware and the Donation of Public Domain Software, 56 Fed. Reg. 50,657 (Oct. 8, 1991).

2313.4 Recordation Requirements for Documents Pertaining to Computer Shareware

Congress has authorized the U.S. Copyright Office to record documents pertaining to computer shareware. *See* Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 805, 104 Stat. 5089, 5136 (authorizing the Register of Copyrights "to maintain current, separate records relating to the recordation of documents" pertaining to shareware). Specifically, the Office may record any document that is clearly designated as a document pertaining to computer shareware, provided that the document governs the legal relationship between the owner of a computer program that is marketed as shareware and persons who disseminate or use that program and provided that the document is submitted together with the correct filing fee. *See* 37 C.F.R. § 201.26(d)(1), (e).

2313.5 Who May Record a Document Pertaining to Computer Shareware?

A document pertaining to computer shareware may be recorded by the author or copyright owner of that program or his or her duly authorized representative. The person who submits the document for recordation is known as the "remitter."

2313.6 When May a Document Pertaining to Computer Shareware Be Recorded?

A document pertaining to computer shareware may be recorded at any time.

2313.7 How to Record a Document Pertaining to Computer Shareware

To record a document pertaining to computer shareware, the remitter should submit a legible photocopy or other facsimile reproduction of the document. The document should be clearly designated as a document pertaining to computer shareware and should be sent to the following address together with the filing fee specified in Section 2313.8:

Library of Congress
U.S. Copyright Office-DOC
101 Independence Avenue SE
Washington, DC 20559-6000

In the alternative the remitter may deliver the document and the filing fee to the Public Information Office at the address specified in Chapter 200, Section 204.1(B)(3). The Public Information Office will provide the remitter with a date-stamped receipt that lists the title of no more than one of the works listed in the document.

2313.8 Filing Fee for Recording a Document Pertaining to Computer Shareware

The filing fee for recording a document pertaining to shareware is the same as the fee for recording a document pertaining to copyright. *See* 37 C.F.R. § 201.26(e).

For information concerning this fee, see Section 2309.11. For information concerning the methods for paying the filing fee, see Chapter 1400, Sections 1403.3 through 1403.5.

2314 The Visual Arts Registry

This Section discusses the practices and procedures for recording statements pertaining to a work of visual art that has been incorporated into a building. Specifically, the Visual Arts Registry provides "information relevant to an artist's . . . right to prevent destruction or injury to works of visual art incorporated in or made part of a building." 37 C.F.R. § 201.25(a).

The term work of visual art is defined in Section 2314.1 below. The purpose of the Visual Arts Registry and the procedure for recording statements pertaining to a work of visual art are discussed in Sections 2314.3 through 2314.9.

2314.1 What Is a Work of Visual Art?

Section 101 of the Copyright Act defines a work of visual art as:

- "A painting, drawing, [or] print … existing in a single copy, [or] in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author …";
- A "sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, … in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author;" or

- "[A] still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author."

17 U.S.C. § 101.

In other words, to qualify as a work of visual art, the work must be a painting, a drawing, a print, a sculpture, or a still photographic image produced for exhibition, and the work must exist in a single copy or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

The legislative history explains that "courts should use common sense and generally accepted standards of the artistic community in determining whether a particular work falls within the scope of [this] definition." H.R. REP. NO. 101-514, at 11 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6915, 6921. For example, the term "painting" includes "murals, works created on canvas, and the like," and the term "'sculpture' includes, but is not limited to, castings, carvings, modelings, and constructions." *Id.* However, the statute expressly states that the following types of works do not qualify as work of visual art:

- Posters.
- Maps, globes, or charts.
- Technical drawings, diagrams, or models.
- Applied art.
- Motion pictures or other audiovisual works.
- Books, magazines, newspapers, or periodicals.
- Databases, electronic information services, electronic publications, or similar publications.
- Merchandising items.
- Advertising, promotional, descriptive, covering, or packaging materials or containers.

17 U.S.C. § 101.

2314.2 A Work of Visual Art Distinguished from Visual Art Works and Works of the Visual Arts

There is an important distinction between a "work of visual art" and the terms "work of the visual arts" and "visual art work," which are used in Chapter 900 and elsewhere in this *Compendium*.

The term work of visual art is defined in Section 101 of the statute. As the legislative history explains, this term "is not synonymous with any other definition in the Copyright

Act and, in particular, it is narrower than the [statutory] definition of 'pictorial, graphic, and sculptural works.'" H.R. REP. NO. 101-514, at 11 (1990), *reprinted in* 1990 U.S.C.C.A.N. at 6921. Specifically, the work must be a painting, a drawing, a print, a sculpture, or a still photographic image produced for exhibition, and the work must exist in a single copy or in a limited edition of 200 copies or fewer copies that are signed and consecutively numbered by the author. *See id*.

The terms "work of the visual arts" and "visual art works" are synonymous with each other. The U.S. Copyright Office uses these terms when referring to (i) pictorial, graphic, and sculptural works, and (ii) architectural works. In other words, a work qualifies as a "work of the visual arts" or a "visual art work" if it falls within the statutory definition of an architectural work or a pictorial, graphic, or sculptural work, regardless of whether the work exists in a single copy or in multiple copies and regardless of whether the copies have been signed or numbered by the author. For a definition and discussion of these terms, see Chapter 900, Section 903.

2314.3 The Purpose of the Visual Arts Registry

Section 106A of the Copyright Act protects the reputation of certain artists and the work of visual art that they create. Specifically, it provides the author of a work of visual art with the right of attribution and the right of integrity.

- The right of attribution allows artists (i) to claim authorship of the work of visual art they create, (ii) to prevent others from identifying them as the author of any work of visual art that they did not create, and (iii) to prevent others from using the artist's name in connection with a work of visual art that has been distorted, mutilated, or modified in a way that would be prejudicial to the artist's honor or reputation. *See* 17 U.S.C. § 106A(a)(1), (2).

- The right of integrity allows the author of a work of visual art to prevent any intentional distortion, mutilation, or other modification of that work that would be prejudicial to his or her honor or reputation, and to prevent any destruction of a work of recognized stature. *See* 17 U.S.C. § 106A(a)(3).

The rights of attribution and integrity apply to work of visual art that have been incorporated in or made a part of a building, such as murals, frescos, mosaics, stained glass windows, architectural sculptures, and similar installations. However, there are a number of exceptions to the right of integrity, which are set forth in Sections 106A(c) and 113(d) of the Copyright Act.

If the owner of a building wishes to remove a work of visual art from a building and if it can be removed without destroying, distorting, mutilating, or modifying the work, the owner may remove that work without violating the author's right of integrity, provided that the following conditions have been met:

- The building owner made a diligent, good faith attempt to notify the author of the owner's intent to remove the work from the building (but did not succeed in notifying the author); or

- The building owner successfully notified the author in writing of the owner's intent to remove the work, but the author failed to remove the work or to pay for its removal within ninety days after receiving such notice.

17 U.S.C. § 113(d)(2).

The statute states that a building owner "shall be presumed to have made a diligent, good faith attempt" to notify the author of a work of visual art if the owner sent the notice to the author by registered mail. *Id.*

Congress recognized that "owners may find it difficult to locate authors whose works have been incorporated into buildings." H.R. REP. NO. 101-514, at 20 (1990), *reprinted in* 1990 U.S.C.C.A.N. at 6930. To address this concern, Congress instructed the Register of Copyrights to establish a system permitting an author of a work of visual art to record his or her identity and address with the U.S. Copyright Office. Congress also instructed the Office to establish a system permitting building owners to record statements concerning their efforts to notify authors of their intent to remove a work of visual art from a building. *See* 17 U.S.C. § 113(d)(3).

In response to this directive, the Office created the Visual Arts Registry. It is intended to benefit both "authors seeking to protect their rights" and "building owners attempting diligently, and in good faith, to notify these authors of proposed removals." H.R. REP. NO. 101-514, at 21 (1990), *reprinted in* 1990 U.S.C.C.A.N. at 6930-31.

2314.4 Registration Distinguished from the Visual Arts Registry

Recording a Visual Arts Registry Statement is optional, but it is not a substitute for registering the copyright in a work of visual art. In particular, it does not provide authors or copyright owners with the ability to claim statutory damages or attorney's fees under Section 412 of the Copyright Act. Nor does it create a presumption concerning the validity of the copyright in a work of visual art.

Likewise, recording a Visual Arts Registry Statement is not a substitute for recording a document that transfers ownership of the copyright in that work, such as an assignment, exclusive license, security interest, or other type of transfer. If the copyright in a work of visual art has been transferred, that document should be recorded as a transfer of ownership under Section 205 of the Copyright Act, rather than recording a statement on the Visual Art Registry.

See General Provisions—Registry of Visual Art Incorporated in Buildings, 56 Fed. Reg. 38,340, 38,341 (Aug. 13, 1991).

2314.5 Recordation Requirements for a Visual Arts Registry Statement

A Visual Arts Registry Statement may be recorded with the Office, provided that the following requirements have been met:

- The statement is designated as a "Visual Arts Registry Statement."

- The statement pertains to a work of visual art that has been incorporated in a building. *See* 37 C.F.R. § 201.25(f).

- The statement is submitted together with the correct filing fee.

See 37 C.F.R. § 201.25(c), (d).

As a general rule, the recordation specialist will not examine the statement or verify the accuracy or completeness of the information set forth therein. However, the specialist may refuse to record a statement if it is illegible or if it does not pertain to a work of visual art that has been incorporated in a building. *See* 37 C.F.R. § 201.25(f); *see also* General Provisions—Registry of Visual Art Incorporated in Buildings, 56 Fed. Reg. 38,340, 38,341 (Aug. 13, 1991).

2314.6 Who May Record a Visual Arts Registry Statement?

A Visual Arts Registry Statement may be recorded by the author of that work, the owner of a building that incorporates that work, or their duly authorized representatives. *See* 37 C.F.R. § 201.25(a). The person who submits a statement for recordation is known as the "remitter."

2314.7 When May a Visual Arts Registry Statement Be Recorded?

A Visual Arts Registry Statement may be recorded at any time.

2314.8 How to Record a Visual Arts Registry Statement

To record a Visual Arts Registry Statement, the remitter should submit a legible photocopy or other reproduction of the statement.

Statements submitted by or on behalf of the author of the work should contain the information set forth in Section 2314.8(A). Statements submitted by or on behalf of a building owner should contain the information set forth in Section 2314.8(B). In all cases, the information contained in the statement should be accurate and as complete as possible. *See* 37 C.F.R. § 201.25(c), (f).

The statement should be sent to the following address together with the filing fee specified in Section 2314.9:

Library of Congress
U.S. Copyright Office-DOC
101 Independence Avenue SE
Washington, DC 20559-6000

In the alternative, the statement and the filing fee may be delivered by hand to the Public Information Office at the address specified in Chapter 200, Section 204.1(B)(3). The Public Information Office will provide the remitter with a date-stamped receipt that lists the title of no more than one of the works listed in the statement.

2314.8(A) Statements Submitted by or on Behalf of the Author of a Work of Visual Art

Statements submitted by or on behalf of the author of a work of visual art that has been incorporated into a building should be designated as follows: "Visual Arts Registry Statement: Registry of Visual Art Incorporated in a Building—Artist's Statement."

The statement should contain the following information:

- The author's name and current age.
- The author's current address and telephone number (if the telephone number is publicly listed).
- The title of the work of visual art (if any).
- The dimensions and physical description of the work.
- The registration number for the work (if known).
- The name (if any) and address of the building that incorporates the work.
- The name or other identifying information for the owner of the building (if known).

In addition, remitters are encouraged, but not required, to submit photographs of the work, photographs of the building, and photographs of the location within the building where the work appears. The images should be clear and in focus and should be submitted on good quality photographic paper.

37 C.F.R. § 201.25(c)(2).

2314.8(B) Statements Submitted by or on Behalf of Building Owners

Statements submitted by or on behalf of the owner of a building that incorporates a work of visual art should be designated as follows: "Visual Arts Registry Statement: Registry of Visual Art Incorporated in a Building—Building Owner's Statement."

The statement should contain the following information:

- The name or other identifying information for the building owner.
- The name of a person who represents the building owner, along with a telephone number (if this information is publicly listed).
- The name (if any) and address of the building.
- The title of the work of visual art (if known).
- The dimensions and physical description of the work.

- The name or other identifying information for the author of the work, including the author's current address (if known).
- A statement concerning the measures taken by the building owner to notify the author of the removal or pending removal of the work from the building.

The statement should be submitted to the address specified in Section 2314.8, together with (i) a photocopy of any contracts between the author and the building owner regarding the author's rights of attribution and integrity, and (ii) a photocopy of the notice that the owner sent to the author.

In addition, remitters are encouraged, but not required, to submit eight by ten inch photographs of the building and the work of visual art. The images should be clear and in focus and should be submitted on good-quality photographic paper.

37 C.F.R. § 201.25(c)(3).

2314.9 Filing Fee for Recording a Visual Arts Registry Statement

The filing fee for recording a Visual Arts Registry Statement is the same as the fee for recording a document pertaining to copyright. 37 C.F.R. § 201.25(d).

For information concerning this fee, see Section 2309.11 above. For information concerning the methods for paying the filing fee, see Chapter 1400, Sections 1403.3 through 1403.5.

2314.10 Date of Recordation for a Visual Arts Registry Statement

When the Office records a Visual Arts Registry Statement, the Office assigns a date of recordation to the certificate of recordation. The date of recordation is the date when the Office receives a statement that satisfies the requirements set forth in Section 201.25(c) of the regulations and the proper filing fee. *See* 37 C.F.R. § 201.25(e). If the statement and the filing fee are received on different dates, the date of recordation is based on the date of receipt for the last item that is received by the Office.

2314.11 Recorded Statements

When a Visual Arts Registry Statement has been recorded, the Office will return the statement to the remitter, along with a certificate of recordation. If the remitter submitted photographs or other documentation, the Office may retain these materials or may offer them to the Library of Congress for its collections. *See* 37 C.F.R. § 201.25(e).

The Office will create an online public record that identifies the title and registration number (if any) for the work listed in the statement, the name of the party who executed the statement, the date of execution, the document number assigned to the recorded statement, and the date of recordation. However, the Office will not cross-reference this record with the online public record for the registration(s) referenced in the statement (if any).

The fact that a statement has been recorded with the Office is not a determination by the U.S. Copyright Office that the statement is accurate, complete, or in compliance with Section 113(d) of the Copyright Act. The fact that information may be omitted from a statement shall not, in and of itself, invalidate the recordation, unless a court of competent jurisdiction finds that the statement is materially deficient and fails to meet the minimum requirements of Section 113(d). *See* 37 C.F.R. § 201.25(f).

2314.12 Amendments

If there is any change in the information reported in a Visual Arts Registry Statement, the author, the building owner, or his or her duly authorized representative may submit an amended statement. The amendment should contain the information set forth in Sections 2314.8(A) or 2314.8(B) and should correct or supplement the information set forth in the previously recorded statement. The amendment should be sent to the address specified in Section 2314.8, together with the filing fee specified in Section 2314.9. *See* 37 C.F.R. § 201.25(c)(4).

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U.S. Copyright Office Services

2401 What This Chapter Covers

This Chapter discusses the practices and procedures for searching, retrieving, viewing, inspecting, copying, and certifying certain public records that are maintained by the U.S. Copyright Office. It also discusses other services provided by the Office, such as issuing additional certificates of registration and arranging for the full-term retention of deposits.

This Chapter does not discuss the Office's policies or procedures for responding to requests submitted under the Freedom of Information Act ("FOIA"). For information concerning FOIA requests, see the Office's FOIA webpage.

For information concerning the practices and procedures for recording a transfer of copyright ownership or other documents pertaining to copyright, see Chapter 2300.

For information concerning services provided by the Licensing Division, including searching, copying, and certifying records related to the compulsory and statutory licenses, see the Licensing Division's webpage.

2402 The Records Research and Certification Section (RRCS)

The Records Research and Certification Section ("RRCS") is the section of the U.S. Copyright Office that is primarily responsible for providing access to the Office's public records, including certificates of registration, applications, deposits, correspondence related to copyright registrations and renewals, recorded documents, and certificates of recordation.

Specifically, RRCS provides the following services to the public:

- Providing access to the Office's completed catalogs, indexes, and/or other public records.
- Searching the Office's public records and preparing written reports concerning the information contained therein.
- Facilitating requests to inspect deposits and other public records.
- Providing copies of the Office's public records for use in litigation or other authorized purposes.
- Preparing additional copies of certificates of registration or renewal.
- Certifying Office records.

These services are described in more detail in Sections 2406 through 2409 below.

RRCS is part of the U.S. Copyright Office's Office of Public Records and Repositories. Among other responsibilities, this Office processes requests for full-term retention of deposits. This service is discussed in Section 2410 below.

2403 Contact Information for RRCS

RRCS is located in Room LM-453 of the James Madison Memorial Building, 101 Independence Avenue SE, Washington, DC 20559. The section is open Monday through Friday from 8:30 a.m. to 5:00 p.m. Eastern Time (except on legal holidays).

To request a search of the Office's public records or to request a cost estimate for a search, members of the public may contact RRCS using the following information:

Email: copysearch@copyright.gov
Telephone: (202) 707-6787
Facsimile: (202) 252-3485

To request a cost estimate for a search, members of the public may contact RRCS by email or telephone or may submit an online request using the form posted on the Office's website.

For information concerning other services provided by RRCS, members of the public may contact RRCS staff using the following information:

Email: copycerts@copyright.gov
Telephone: (202) 707-6787
Facsimile: (202) 252-3485

Search requests, requests for copies of public records, or requests for other services provided by RRCS may be submitted by mail by sending the request to the following address:

U.S. Copyright Office
Records Research and Certification
P.O. Box 70400
Washington D.C. 20559-0400

A request to expedite any of the services provided by RRCS may be submitted by email, by facsimile, or by mail using the contact information listed above.

NOTE: Members of the public who request services from the U.S. Copyright Office via U.S. mail should be aware that mail deliveries may be delayed for the reasons discussed in Section 2405.4.

2404 The Public Records Reading Room

The public may access many of the public records maintained by the U.S. Copyright Office in person in the Office's Public Records Reading Room, which is located in Room LM-404 of the James Madison Memorial Building, 101 Independence Avenue SE,

Washington, DC 20559. The Public Records Reading Room is open Monday through Friday from 8:30 a.m. to 5:00 p.m. Eastern Time (except on legal holidays).

2405 Limitations on U.S. Copyright Office Services and Information

2405.1 Reader Registration Cards

Members of the public must obtain a reader registration card from the Library of Congress in order to search for, view, or inspect certain records that are maintained by the U.S. Copyright Office. Reader registration cards are not required to access records that are made available through the Office's website.

Reader registration cards may be obtained by completing an application and presenting a valid driver's license, passport, or other photo identification at one of the following reader registration stations:

- Room LM-140 of the James Madison Memorial Building, 101 Independence Avenue SE, Washington, DC 20559. This station is open Monday through Friday from 8:30 a.m. to 4:30 p.m. Eastern Time (except on legal holidays) and on Saturdays from 8:30 a.m. to 5:00 p.m. Eastern Time.

- Room LJ-100 of the Thomas Jefferson Building, 10 First Street SE, Washington, DC 20540. This station is open Monday, Wednesday, and Thursday from 4:30 p.m. to 9:00 p.m. Eastern Time (except on legal holidays).

2405.2 Restricted Records

The following records will not be made available to the public, except to the extent that they are available under the Freedom of Information Act ("FOIA"):

- Correspondence, memoranda, reports, opinions, and similar material relating to internal matters of personnel and procedures, office administration, or security matters.

- Correspondence, memoranda, reports, opinions, and similar material relating to internal consideration of policy and decisional matters, including the work product of any attorney.

Records relating to pending applications or pending documents will not be made available to the general public, although specific persons may be permitted to access these records provided that they meet the requirements set forth in the Office's regulations. For information concerning these requirements, see Sections 2407.1(B)(3), 2407.1(B)(4), and 2407.2(B)(2) below.

Direct public access will not be permitted to any financial or accounting records, including those related to deposit accounts.

For additional information concerning restricted records, see *Limitations on the Information and Service Provided by the Copyright Office* (Circular 17).

37 C.F.R. § 201.2(b)(6), (c)(3).

2405.3 Limitations on Services

The U.S. Copyright Office generally does not provide the following services:

- Certifying records maintained by any person or organization other than the U.S. Copyright Office (including works held in the collections of the Library of Congress).
- Providing legal advice.
- Furnishing the names of copyright attorneys, publishers, agents, or other similar information.
- Assisting with the publication, performance, or production of a work.
- Comparing deposits submitted for registration to determine whether a work contains infringing material or is substantially similar to another work.
- Granting permission to use a copyrighted work.
- Conducting copyright enforcement.
- Issuing ISBN, ISSN, or ISRC numbers.

See 37 C.F.R. § 201.2(a).

2405.4 Delays for Requests Submitted by Mail

Members of the public who request services from RRCS via U.S. mail should be aware that all mail sent to the U.S. Copyright Office will be screened offsite before it is delivered. This will delay the delivery of any communication sent to the Office by U.S. mail.

2406 Searches of U.S. Copyright Office Records

2406.1 Searches Conducted by Members of the Public

Any member of the public may search the U.S. Copyright Office's public records using the Copyright Office's Public Catalog. This database is available through the Office's website. It contains records concerning registrations issued by the Office and documents recorded with the Office since January 1, 1978. It also contains records concerning preregistrations issued since November 15, 2005, registrations for vessel designs issued by the Office since July 29, 1999, and registrations for mask works issued since January 7, 1985.

Records relating to works registered before January 1, 1978, may be searched using the Office's card catalog, the *Catalog of Copyright Entries*, or other physical records maintained by the Office. Many of these records are stored in the Public Records

Reading Room and may be accessed by any member of the public who presents a reader registration card.

For additional information on conducting self-searches, see *How to Investigate the Copyright Status of a Work* (Circular 22); *The Copyright Card Catalog and the Online Files of the Copyright Office* (Circular 23); and *Obtaining Access to and Copies of Copyright Records and Deposits* (Circular 6).

2406.2 Searches Conducted by RRCS

Upon request and for a fee, RRCS staff will conduct a search of the Office's public records and will prepare a written report concerning the information disclosed in any particular deposits, registrations, or recorded documents. As discussed in Section 2409.2(A), search reports prepared by the Office may be certified upon request. The Office's fees for these services are discussed in Sections 2406.2(C) and 2409.4 below.

When conducting a search, RRCS staff may consult registrations, renewals, and recorded documents, pending applications and requests for recordation, or other pertinent records maintained by the Office.

The procedure for requesting a search of the Office's records is discussed in Section 2406.2(B) below.

2406.2(A) Who May Request a Search?

Any member of the public may ask RRCS staff to conduct a search of the U.S. Copyright Office's public records.

2406.2(B) How to Request a Search

To request a search of the Office's public records, members of the public should submit a written request to RRCS. Written requests may be submitted by email, facsimile, mail, or in person, and should be sent to the address specified in Section 2403, together with the appropriate search fee. For information concerning the search fee, see Section 2406.2(C).

When requesting a search involving a work of authorship, members of the public should provide (i) the title of the work, (ii) the name(s) of the author(s), and (iii) the name(s) of the copyright claimant(s). The following information (if available) may also be useful:

- Variation(s) on the title of the work.
- Pseudonym(s) for the author of the work.
- The name(s) of the probable copyright owner(s).
- The approximate year when the work was created, published, and/or registered.
- A short description of the type of work (*e.g.,* book, motion picture, stage play, screenplay, musical composition, sound recording, photograph, etc.).

- Copyright registration number(s) and the year of registration (if any).
- Any other data related to the registration.

When requesting a search involving a recorded document, members of the public should provide as much information about the document as possible. The following information (if known) may be helpful:

- The document recordation number(s).
- The title(s) of the work(s) and registration numbers listed in the document (if any).
- The name(s) of the party(ies) who executed the document(s).

2406.2(C) Search Fees

The current fees for conducting a search of the Office's public records and for preparing a written report concerning the results of the search are set forth in the Office's fee schedule under the heading "Retrievals and Copies."

2406.3 Limitations on Information Available for Searches

Searches conducted by RRCS are not necessarily conclusive, and members of the public should not assume that a work is protected by copyright or in the public domain based on the information or the lack of information in the Office's records. Information concerning a particular work may be incomplete or nonexistent for many reasons, including the following:

- The information provided in the search request may not be complete or specific enough to identify the work.
- The work may be registered under a different title or as a part of a larger work.
- A work may or may not be registered as of the date that the search is conducted, because registration is optional for works created or first published on or after January 1, 1978, and registration for such works may be made at any time during the term of the copyright.
- An unpublished work created before January 1, 1978 may or may not be registered as of the date that the search is conducted, because unpublished works were protected under the common law without the need for registration prior to January 1, 1978.
- A registration for a pre-1978 work may or may not be renewed as of the date that the search is conducted. A work registered or first published with notice before January 1, 1964 had to be renewed with the U.S. Copyright Office to prevent the work from falling into the public domain. By contrast, this requirement does not apply to works registered or first published with notice between January 1, 1964 and December 31, 1977. (Works created or first published on or after January 1, 1978, do not have renewal terms.)

- A search may be limited to the information that appears in the Copyright Office's Public Catalog. This database will not include recent registrations or recordations issued by the Office that have not been added to the database as of the date that the search is conducted. In some cases, members of the public may inspect or obtain copies of pending records or obtain limited information concerning such records, subject to the restrictions discussed in Sections 2407.1(B)(3), 2407.1(B)(4), 2407.1(E)(1), 2407.2(B)(2), and 2407.2(E)(1) below.

- Recording a transfer of copyright ownership or other document pertaining to copyright is optional. As a result, documents concerning the ownership of a particular work may or may not be recorded with the Office as of the date that the search is conducted, or the records may be outdated or incomplete.

- The Office does not maintain lists of works that are in the public domain.

- In most cases, the Office's records do not contain a separate title for a contribution to a collective work or a contribution to a database but only the title of the collective work or database as a whole.

- The Office does not maintain records related to trademarks and patents. For information concerning these types of records, visit the U.S. Patent and Trademark Office's website.

2407 Viewing, Inspecting, and Copying U.S. Copyright Office Records

The U.S. Copyright Office allows authorized parties to view, inspect, and obtain copies of the Office's public records, and it provides indexes to assist in locating and retrieving such records. Some records are available online or in the Public Records Reading Room, but not all. "Viewing" a public record may be accomplished by accessing the Office's website (www.copyright.gov) or by visiting the Office's Public Records Reading Room. "Inspecting" a public record may be accomplished only by submitting a written request to RRCS.

The specific parties who are authorized to view, inspect, and obtain copies of applications, deposits, and other registration records are discussed in Section 2407.1(A) below. The procedures for requesting an inspection or obtaining copies of these records are discussed in Sections 2407.1(C) and 2407.1(D) below.

The specific parties who are authorized to view, inspect, and obtain copies of recorded documents and other recordation records are discussed in Section 2407.2(A) below. The procedures for requesting an inspection or obtaining copies of these records are discussed in Sections 2407.2(C) and 2407.2(D) below.

For information concerning the procedures for inspecting or obtaining copies of the Office's administrative manuals, notices of intent to enforce restored copyrights, or designations of agents to receive notification of claimed infringement, see Sections 2407.3 through 2407.5 below.

2407.1 Registration Records

2407.1(A) Who May View, Inspect, or Obtain Copies of the U.S. Copyright Office's Registration Records?

Online Records: Any member of the public may view or make copies of the registration records that are made available through the U.S. Copyright Office's website.

Records in the Public Records Reading Room: Certain registration records may be viewed or copied by any member of the public who presents a reader registration card, including the records located in the Public Records Reading Room.

Pending Applications: As a general rule, records relating to pending applications may be inspected or copied only by the claimant named in a pending application or the claimant's duly authorized agents. The specific types of records that may be inspected or copied and the specific parties who may inspect or obtain copies of those records are discussed in Section 2407.1(B)(3) below.

Deposit Copy(ies): The deposit copy(ies) for a work that has been registered or refused by the Office may be inspected by any member of the public who presents a reader registration card. By contrast, the claimant named in the application and his or her duly authorized agent are generally the only parties who may inspect the deposit copy(ies) for a pending application.

Any of the parties listed below may request a certified or uncertified copy of the deposit copy(ies) or identifying material for a copyright claim, provided that the party satisfies the conditions set forth in Section 2407.1(D)(2):

- The claimant of record for the copyright.
- A designated agent for the claimant of record.
- The owner of any of the exclusive rights in the copyright (including an heir of a deceased author or copyright owner), provided that the ownership can be demonstrated by written documentation of the transfer of ownership.
- An attorney representing the plaintiff or the defendant in actual or prospective litigation involving the copyrighted work.
- A court issuing an order for the reproduction of the deposit for a registered work that is to be submitted as evidence in a case involving that work.

The specific procedures for requesting an inspection or copies of the Office's public records are discussed in Sections 2407.1(C) and 2407.1(D) below.

2407.1(B) Registration Records That May be Viewed, Inspected, or Copied

2407.1(B)(1) Registrations, Applications, and Correspondence

As a general rule, registration records for claims that have been registered or refused by the U.S. Copyright Office may be viewed or copied by any member of the public, including certificates of registration, completed applications, and any written communications between the applicant and the Office.

2407.1(B)(2) Deposits for Claims that Have Been Registered or Refused

As a general rule, the deposit copy(ies) or identifying material for a claim that has been registered or refused by the U.S. Copyright Office may be inspected by any member of the public, provided that the Office has retained a copy of that material. As discussed in Section 2407.1(A), certain parties who satisfy the conditions set forth in Section 2407.1(D)(2) may obtain a reproduction of the deposit for a claim that has been registered or refused.

2407.1(B)(3) Pending Applications

Records related to pending applications for registration may be inspected or copied by the claimant named in the application or an authorized representative of the claimant. This includes the application and any written communications between the applicant and the Office concerning the claim. It also includes any request for reconsideration that is currently pending before the Office.

In exceptional circumstances, the Register of Copyrights may allow someone other than the copyright claimant to inspect or obtain copies of a pending application or the correspondence file for a pending application, provided that (i) the request is made in writing, (ii) the person making the request is properly and directly concerned, and (iii) there is good cause for providing access to the requested materials.

Members of the general public may obtain limited information concerning pending applications using the computers located in the Public Records Reading Room. This information may include:

- The title(s) of the work(s).
- The administrative classification for the work (*e.g.,* TX, PA, VA, SR, etc.).
- The correspondent or the author named in the application.
- The claimant named in the application.
- The date that the application, deposit, and/or filing fee were received by the Office.
- The case number/service request number assigned to the application.
- The status of the application.

37 C.F.R. § 201.2(b)(3)(i), (b)(5), and (c)(1)-(2).

NOTE: The computers in the Public Records Reading Room cannot be used to determine whether a claim is pending or whether it has been registered or refused.

Members of the public may ask RRCS to prepare a written report concerning a pending application. The Office charges a fee for this service, which is discussed in Section 2406.2(C) above. The limited information that will be included in the report is set forth in Section 201.2(b)(3)(i) of the regulations.

2407.1(B)(4) Deposits for Pending Applications

The deposit copy(ies) or identifying material for a pending application may be inspected by the claimant named in the application or an authorized representative of the claimant.

As discussed in Section 2407.1(A), certain parties who satisfy the conditions set forth in Section 2407.1(D)(2) may obtain a reproduction of the deposit for a pending application.

2407.1(C) How to Request an Inspection of the U.S. Copyright Office's Registration Records

This Section discusses the procedure for requesting an inspection of the Office's registration records. The specific parties who are authorized to inspect these records are discussed in Sections 2407.1(A) through 2407.1(B)(4) above. If the request is approved, the requested records will be made available for inspection at the Office during normal business hours. In all cases, the requesting party must present a reader registration card before he or she will be allowed to inspect any public records maintained by the Office.

2407.1(C)(1) Registrations, Applications, and Correspondence

To inspect the certificate of registration, application, or correspondence file for a pending application or a claim that has been registered or refused by the Office, an authorized party should submit a written request to RRCS that contains the following information:

- The party's name and contact information.
- A description of the material the party wishes to inspect.
- The date the party wishes to inspect the materials.
- The registration and/or renewal number(s) (if any) and/or the case number/service request number assigned to the application.

NOTE: RRCS cannot retrieve records for inspection unless the requesting party provides a registration and/or renewal number, a case number, or a service request number.

The following information (if available) may also be useful:

- The title(s) of the work(s).
- The administrative classification for the work (*e.g.*, TX, PA, VA, SR, etc.).
- The author, claimant, and/or correspondent named in the application.
- The date that the registration was issued (if any) or the date that the application, deposit, and/or filing fee were received by the Office.

The request should be sent to RRCS at the address specified in Section 2403 together with the appropriate fee. For information concerning the inspection fee, see Section 2407.6.

2407.1(C)(2) Deposits

To inspect the deposit copy(ies) or identifying material for a pending application or a claim that has been registered or refused by the Office, authorized parties should submit a written request to RRCS at the address specified in Section 2403 together with the appropriate fee. The request should include the information set forth in Section 2407.1(C)(1).

In addition, the requesting party must complete and sign a form titled "Request for Inspection of Copyright Deposit." Copies of this form may be obtained from RRCS at the address provided in Section 2403 above. By signing this form the requesting party agrees not to copy or deface the deposit. Willfully removing, mutilating, obliterating, damaging, or destroying any record deposited with the U.S. Copyright Office is a crime that is punishable under 18 U.S.C. §§ 1361, 2071(a).

During the inspection, the requesting party may take limited notes directly on this form. When the inspection is complete and before the party leaves the inspection area, RRCS staff will review the form to ensure that the party's notes (if any) do not constitute prohibited copying. *See Compuware Corp. v. Serena Software International, Inc.,* 77 F. Supp. 2d 816 (E.D. Mich. 1999) (noting that the Copyright Office imposes "strict limitations" on the inspection of deposit copies).

NOTE: Physical deposits are stored offsite. Therefore, requesting parties should make an appointment with RRCS and should request the item(s) they wish to inspect well in advance of their visit to the Office.

2407.1(D) How to Request Copies of the U.S. Copyright Office's Registration Records

This Section discusses the procedure for requesting copies of the Office's registration records. The specific parties who may obtain copies of these records are discussed in Sections 2407.1(A) through 2407.1(B)(4) above.

2407.1(D)(1) Applications, Correspondence, and Other Registration Records

To obtain copies of an application, correspondence, or other records related to a pending application or a claim that has been registered or refused by the Office, authorized parties should submit a written request to RRCS containing the following information:

- The party's name and contact information.
- A clear identification of the type of records to be copied (*e.g.*, correspondence, copies of deposits, etc.).
- A clear identification of the specific records to be copied, including the following information (if possible):
  - The type of work involved (*e.g.*, novel, lyrics, photograph, etc.).
  - The complete title of the work.
  - The name of the author(s) of the work, including any pseudonym(s) by which the author may be known.
  - The name of the copyright claimant(s).
  - The registration number (if any).
  - The year or approximate year the registration was issued.

The request should be sent to RRCS at the address specified in Section 2403, together with the appropriate fee.

For information concerning the procedure for requesting an additional certificate of registration or renewal, see Section 2408.

2407.1(D)(2) Deposits

To obtain certified or uncertified reproductions of the deposit copy(ies), phonorecords, or identifying material for a copyright claim, authorized parties should submit a written request to RRCS containing the information set forth in Section 2407.1(D)(1).

The Office may provide a reproduction of the deposit for a pending application or a registered or refused claim, provided that the Office has retained the material and provided that one of the following conditions has been met:

- The Office receives written authorization from the copyright claimant of record or his or her designated agent.
- The Office receives written authorization from the owner of any of the exclusive rights in the copyright (including an heir of a deceased author or copyright owner),

provided that the ownership has been demonstrated by written documentation of the transfer of ownership.

- The Office receives a court order for the reproduction of the deposited copy(ies), phonorecord(s), or identifying material for a registered work that is the subject of litigation, provided that the order is issued by a court with jurisdiction over the case and provided that the reproduction is to be submitted as evidence.

- The Office receives a written request from an attorney representing a plaintiff or defendant in litigation involving the work (either actual or prospective), provided that the request contains the following information:

  – The names of all the parties involved.

  – The nature of the controversy.

  – The name of the court in which the case is pending, or in the case of prospective litigation, a full statement of the facts of the controversy involving the work.

  – Satisfactory assurance that the requested copy will be used only in connection with the litigation specified in the request.

In the case of a request from an attorney representing the plaintiff or defendant in actual or prospective litigation, RRCS will ask the attorney to complete and submit a signed litigation statement on Form LS. RRCS will accept an electronic or handwritten signature. The form should contain the information set forth above for each deposit requested, along with the attorney's bar number or equivalent identifying information. However, the litigation statement may not be necessary if the attorney represents the copyright claimant of record in the litigation and if he or she is the designated agent for that claimant.

In all cases, the request for copies and the written authorization for that request should be sent to the address specified in Section 2403, along with the appropriate fee. For information concerning the copying fee, see Section 2407.6.

If the deposit consists of a phonorecord, RRCS will provide a proximate reproduction of the sound recording or the underlying musical, dramatic, or literary work embodied in the deposit, along with a photocopy of the title and the registration number (if any) that appears on the phonorecord. Upon request, RRCS will provide a copy of any printed or other visually perceptible material that appears in the deposit.

If the deposit consists of identifying material, RRCS will provide a copy that depicts or reproduces the deposit with varying degrees of fidelity depending on the requesting party's needs, such as a photocopy of a photograph.

If the work was submitted in a digital format, RRCS will provide a copy of the work in printed form or in digital form on a CD, DVD, or other storage medium.

See 37 C.F.R. § 201.2(d)(2)-(3).

2407.1(E) Limitations on Inspections and Copying of Registration Records

2407.1(E)(1) In Process Files

It is the general policy of the U.S. Copyright Office to deny direct public access to in-process files and to any work space or other areas where such files are kept.

2407.1(E)(2) Custody of Deposits

Once a claim has been registered or refused, the deposit copy(ies) or identifying material may or may not be retained by the Office. As a general rule, if the work is unpublished or if the applicant uploaded a digital copy or phonorecord of the work through the electronic registration system, the Office will retain the deposit copy or identifying material until the copyright expires. By contrast, the Office may or may not retain the deposit for a published work, but will do so if the applicant requests full-term retention. For a discussion of this procedure, see Section 2410.

If the applicant submits physical copies or phonorecords of a published work, the deposit will be offered to the Library of Congress for its collections. If the Library does not select the work for use in its collection, the deposit copies may be retained by the Office, they may be offered to another agency, library, or nonprofit institution, or they may be discarded.

As noted in Sections 2407.1(B)(2) and 2407.1(D)(2), the Office does not provide inspection or copies of deposits that have not been retained by the Office, including copies of works contained in the Library of Congress's collections.

- To request copies of an audiovisual work or other multimedia work contained in the Library's collections, members of the public should contact the Library's Motion Picture, Broadcasting and Recorded Sound Division by sending an email to mpref@loc.gov.
- To request copies of a sound recording contained in the Library's collections, members of the public should contact the Library's Recorded Sound Reference Center by sending an email to rsrc@loc.gov or by calling (202) 707-7833.
- For all other works contained in the Library's collections, members of the public should contact the Library's Duplication Services by sending an email to duplicationservices@loc.gov or by calling (202) 707-5640.

2407.2 Recordation Records

2407.2(A) Who May View, Inspect, or Obtain Copies of the U.S. Copyright Office's Recordation Records?

Online Records: Any member of the public may view or make copies of the recordation records that are made available through the Office's website.

Records in the Public Records Reading Room: Certain recordation records may be viewed or copied by any member of the public who presents a reader registration card, including the records that are located in the Public Records Reading Room.

Pending Records: Records relating to pending documents may be inspected or copied only by a party who executed a document that has been submitted for recordation or that party's duly authorized agent. The specific types of records that may be inspected or copied are discussed in Section 2407.2(B)(2) below.

The specific procedures for requesting an inspection or copies of the Office's public records are discussed in Sections 2407.2(C) and 2407.2(D) below.

2407.2(B) Recordation Records That May Be Viewed, Inspected, or Copied

2407.2(B)(1) Recordations

Documents that have been recorded with the U.S. Copyright Office may be viewed or copied by any member of the public, along with the certificate of recordation for each document and the document cover sheet (if any). Likewise, any member of the public may inspect or obtain a copy of any written communications between the remitter and the Office concerning a recorded document or a document that has been refused by the Office.

2407.2(B)(2) Pending Recordations

Documents that have been submitted for recordation may be inspected or copied by one of the persons who executed the document or an authorized representative of the aforementioned persons. The aforementioned persons also may inspect or obtain copies of any written communications between the remitter and the Office concerning a pending document, including the document cover sheet (if any).

Members of the general public may obtain limited information concerning pending documents using the computers located in the Public Records Reading Room. This information may include (i) the title(s) of the work(s) listed in the document, (ii) the name(s) of the parties who executed the document(s), and (iii) the date that the document was received by the Office, though much of this information may be incomplete.

NOTE: The computers in the Public Records Reading Room cannot be used to determine whether a document has been recorded, and the fact that a document has been submitted for recordation does not necessarily mean that a recordation has been made.

In the alternative, members of the public may ask RRCS to prepare a written report concerning a pending document. The Office charges a fee for this service, which is discussed in Section 2406.2(C) above.

2407.2(C) How to Request an Inspection of the U.S. Copyright Office's Recordation Records

This Section discusses the procedure for requesting an inspection of the Office's recordation records. The specific persons who are authorized to inspect these records are discussed in Sections 2407.2(A) through 2407.2(B)(2) above. In all cases, authorized parties must present a reader registration card before they will be allowed to view or inspect any public records maintained by the Office.

Documents that have been recorded with the U.S. Copyright Office may be viewed in the Public Records Reading Room, including the certificate of recordation for each document and the document cover sheet (if any).

To inspect a pending document that has been submitted for recordation or any written communications concerning a recorded document or pending document, authorized parties should submit a written request to RRCS containing the following information:

- The party's name and contact information.
- The date on which the party would like to inspect the materials.
- The recordation number (if any).
- The case number that has been assigned to the document (if known).

The following information (if available) may also be useful:

- The title(s) of the work(s) listed in the document.
- The name(s) of the part(ies) who executed the document(s).
- The date the document was received by the Office.
- The name of the party who paid the filing fee and the date that the fee was paid.

The request should be sent to RRCS at the address specified in Section 2403, together with the appropriate fee. For information concerning the inspection fee, see Section 2407.6.

2407.2(D) How to Request Copies of the U.S. Copyright Office's Recordation Records

This Section discusses the procedure for obtaining copies of the Office's recordation records. The specific persons who may obtain copies of these records are discussed in Sections 2407.2(A) through 2407.2(B)(2) above.

Documents that have been recorded with the Office may be copied in the Public Records Reading Room, including the certificate of recordation for each document and the document cover sheet (if any).

In the alternative, members of the public may submit a written request to RRCS containing the following information:

- The person's name and contact information.
- The volume and page number for the recorded document.
- Whether the copies should be certified or uncertified.

To request copies of a pending document that has been submitted for recordation or any written communications concerning a recorded document or a pending document, authorized parties should submit a written request to RRCS containing the information set forth above.

In all cases, the request should be sent to RRCS at the address specified in Section 2403, together with the appropriate fee. For information concerning this fee, see Section 2407.6.

2407.2(E) Limitations on Inspections and Copying of Recordation Records

2407.2(E)(1) In Process Files

As discussed in Section 2407.1(E)(1), it is the general policy of the U.S. Copyright Office to deny direct public access to in-process files and to any work space or other areas where such files are kept.

2407.2(E)(2) Refused Recordations

The Office will retain a copy of any document that has been recorded with the Office and any written communications concerning that document. The Office will not retain a copy of a document if recordation has been refused, although it will retain a copy of any written communications between the remitter and the Office concerning such documents.

2407.3 Administrative Manuals

The U.S. Copyright Office maintains various administrative manuals that describe the Office's practices and procedures, including this *Compendium of U.S. Copyright Office Practices, Third Edition*, as well as prior editions of the *Compendium*. These administrative manuals are available for inspection and copying either on the Office's website or upon request.

2407.4 Notices of Intent to Enforce Restored Copyrights

The U.S. Copyright Office maintains a complete list of all notices of intent to enforce restored copyrights that have been filed with the Office under the Uruguay Round Agreements Act ("URAA") and the North American Free Trade Agreement ("NAFTA"). *See* 17 U.S.C. § 104A(e)(1)(B)(ii). These records may be viewed or copied from the Office's website or in the Public Information Office. For a definition and general discussion of restored works, see Chapter 2000, Section 2007.

2407.5 Designation of Agent Information

The Office maintains a directory of agents who have been designated to receive notifications of alleged copyright infringement under Section 512(c) of the Copyright Act. These records may be viewed or copied from the Office's website. For additional information concerning these records, see Chapter 2300, Section 2312.

2407.6 Inspection and Copying Fees

The current fees for obtaining copies of the Office's public records are set forth in the Office's fee schedule under the heading "Copying of Copyright Office records by staff."

Although the Office does not charge a fee for inspecting its records, requesting parties are required to pay a fee for locating and retrieving the requested materials before the materials will be made available for inspection.

The current fees for locating and retrieving copies of the Office's public records for inspection or copying are set forth in the Office's fee schedule under the heading "Retrievals and Copies."

For information concerning the methods for paying these fees, see Chapter 1400, Sections 1403.4 and 1403.5.

2408 Additional Certificates of Registration or Renewal

An additional certificate is a certified copy of an original certificate of registration or renewal. Additional certificates are issued under the seal of the U.S. Copyright Office and they have the same legal effect as the original copy of the certificate.

The form of an additional certificate varies depending upon the date of the original registration.

- *Certificates of Registration and Renewal Issued on or before December 31, 1977*: An additional certificate for a claim registered or renewed on or before December 31, 1977 consists of a photocopy of the original application together with a preprinted certification statement containing the registration or renewal number and the date of the certification. If the Office is unable to prepare a photocopy of the original application, the additional certificate may be created by typing the title of the work, the date of publication, the name of the copyright claimant, the registration or renewal number, and the effective date of registration on a preprinted certification form.

- *Certificates of Registration or Renewal Issued on or after January 1, 1978*: Generally, an additional certificate for a claim registered or renewed on or after January 1, 1978, consists of either a photocopy of the original application or an electronically generated document containing pertinent information from the original application. For some registrations stored on microfilm, an additional certificate may consist of an image from the microfilm attached to a cover sheet that contains the seal of the Office, the signature of the Register of Copyrights, and a statement certifying the facts contained in the image from the microfilm.

In all cases, the signature of the Register of Copyrights and the official seal of the U.S. Copyright Office will appear on the certificate along with a stamp that identifies the document as an additional certificate.

NOTE: The Office will not issue an additional certificate for a registration that has been cancelled.

2408.1 Who May Obtain an Additional Certificate of Registration or Renewal?

Any member of the public may ask RRCS staff to provide an additional certificate of registration or renewal.

2408.2 How to Obtain an Additional Certificate of Registration or Renewal

To obtain an additional certificate of registration or renewal, the requesting party should submit a written request to RRCS containing the following information:

- The party's name and contact information.
- The registration number.
- The year or approximate year the registration was issued.

The request should be sent to RRCS at the address specified in Section 2403 together with the appropriate fee. For information concerning this fee, see Section 2408.3 below.

2408.3 Fees for Additional Certificates of Registration or Renewal

The current fee for obtaining an additional certificate of registration or renewal is set forth in the Office's fee schedule under the heading "Provision of an additional certificate of registration."

For information concerning the methods for paying this fee, see Chapter 1400, Sections 1403.4 and 1403.5.

2409 Certification of U.S. Copyright Office Records

A certification is an official statement from the U.S. Copyright Office attesting to the authenticity of the records and/or search reports specified in the certification. In most cases, a certification consists of a copy of one or more of the Office's records or the relevant portions of those records, and a statement certifying that the record is a true representation of what it purports to be.

Certifications are issued under the name of the Register of Copyrights. They bear the official seal of the U.S. Copyright Office and the date that the certification was issued. For an image of the current seal, see Chapter 100, Section 101.4.

The Office has changed the appearance of its seal over time. *See* Notice of New Copyright Office Seal, 68 Fed. Reg. 71,171 (Dec. 22, 2003); New Copyright Office Seal, 42 Fed. Reg.

64,747 (Dec. 28, 1977). A certification issued under a prior seal is valid, notwithstanding the fact that the Office currently uses a different seal.

A record that lacks the official seal of the U.S. Copyright Office and/or the name of the Register of Copyright is not validly certified. In particular, records bearing the seal of the Library of Congress or any seal other than that used by the U.S. Copyright Office are not validly certified records of the U.S. Copyright Office.

The specific types of records that may be certified by the Office are discussed in Section 2409.2 below.

See generally 17 U.S.C. § 701(c) ("The Register of Copyrights shall adopt a seal to be used on and after January 1, 1978, to authenticate all certified documents issued by the Copyright Office.").

2409.1 Who May Obtain Certification of U.S. Copyright Office Records?

Any member of the public may ask RRCS staff to certify the records discussed in Sections 2409.2(A), 2409.2(B), 2409.2(E), 2409.2(G), or 2409.2(H).

Certain records may be certified upon request from any member of the public, including recorded documents and certain types of registration records. By contrast, records relating to pending applications or pending documents may be certified only upon request from the claimant named in a pending application, the party who executed a document that has been submitted for recordation, their duly authorized agents, or by court order. The specific types of records that may be certified and the specific parties who may request this service are discussed in Sections 2409.2(C) and 2409.2(F) below.

As discussed in Section 2407.1(A), the Office may provide a certified copy of the deposit copy(ies) or identifying material for a pending application or a claim that has been registered or refused by the Office to certain parties that satisfy the conditions set forth in Section 2407.1(D)(2).

The procedure for requesting a certification is discussed in Section 2409.3 below.

2409.2 Records That May Be Certified

2409.2(A) Search Reports

RRCS will certify any search report that has been prepared by the U.S. Copyright Office. For information concerning search reports prepared by RRCS staff, see Section 2406.2.

2409.2(B) Certificates of Registration

The original copy of a certificate of registration is a certified copy of that record, but a photocopy or other reproduction of the original certificate is not considered a certified copy.

As discussed in Section 2408, the Office will issue an additional certificate of registration to any member of the public upon request. An additional certificate of registration, like the original certificate of registration, is considered a certified copy, but a photocopy or other reproduction of an additional certificate is not.

Although a separate certification is not required for the original copy of a certificate issued by the Office, RRCS will issue a so called "double certification" for these types of records if requested to do so.

RRCS will issue a certified copy of a cancelled registration that has been cancelled by the Office, although as discussed in Section 2408, it will not issue an additional certificate for a registration that has been cancelled.

2409.2(C) Registration Records

RRCS will certify records related to claims that have been registered or refused by the U.S. Copyright Office, including completed applications and any written communications between the applicant and the Office.

Records related to pending applications may be certified, provided that the request is submitted by the claimant named in the application or an authorized representative of the copyright claimant. This includes the application and any written communications between the applicant and the Office concerning the claim. It also includes any request for reconsideration that is currently pending before the Office.

A certification for these types of records typically contains the following information:

- A photocopy of the record specified in the request.
- A certified statement that identifies the records.
- The signature of the Register of Copyrights.
- The official seal of the U.S. Copyright Office.
- The date of the certification.

2409.2(D) Deposits

As discussed in Sections 2407.1(A) and 2409.1, RRCS may provide a certified copy of the deposit copy(ies) or identifying material for a pending application or a claim that has been registered or refused by the Office to certain parties that satisfy the conditions set forth in Section 2407.1(D)(2).

2409.2(D)(1) Deposit Copy(ies) and Identifying Material

A certification for the deposit copy(ies) or identifying material for a registered or refused claim typically contains the following information:

- A copy or phonorecord of the deposit or the portion of the deposit specified in the request.
- A certified statement that identifies the title of the work and the registration number (if any).
- The signature of the Register of Copyrights.
- The official seal of the U.S. Copyright Office.
- The date of the certification.

In some cases, the certification may also contain the following information:

- A copy of the page or surface bearing any visually perceptible copyright notice that appears on the deposit.
- A copy of any page or surface bearing the registration number or the date that the deposit was received by the Office.

2409.2(D)(2) Actual Deposits

The U.S. Copyright Office will certify and provide the actual deposit copy(ies) or identifying material that was submitted for registration (as opposed to certifying a reproduction of the deposit), provided that (i) the Office receives a valid order issued by a court with jurisdiction over a case in which the work is at issue, (ii) the work is to be submitted as evidence in the case, and (iii) the deposit has been under the Office's continuous control since the date that it was received. Actual deposits will be made available upon the condition that they will be promptly returned to the custody of the Office within a specified period of time.

When certifying an actual deposit, RRCS will prepare a certified statement confirming that the content of the copy, phonorecord, or identifying material is the same as the content of the copy, phonorecord, or identifying material used in support of the registration.

2409.2(E) Certificates of Recordation

The original copy of a certificate of recordation is a certified copy of that record, but a photocopy or other reproduction of the original certificate is not considered a certified copy.

Although a separate certification is not required for the original copy of a certificate of recordation issued by the Office, RRCS will issue a so called "double certification" for these types of records if requested to do so.

2409.2(F) Recorded Documents

RRCS will certify any document that has been recorded with the Office, as well as any written communications between a remitter and the Office concerning a recorded document or a document that has been refused by the Office.

Documents that have been submitted for recordation and any written communications between the remitter and the Office concerning a pending document may be certified, provided that the request is submitted by one of the persons who executed the document or an authorized representative of the aforementioned persons.

A certification for a recorded document typically contains the following information:

- A photocopy of the document or other record specified in the request.
- A photocopy of the certificate of recordation (if any).
- A photocopy of the document cover sheet (if any).
- A certified statement concerning the volume and page number where the document is recorded and the date of recordation (if any).
- The signature of the Register of Copyrights.
- The official seal of the U.S. Copyright Office.
- The date of the certification.

2409.2(G) Prints or Labels Deposited in the U.S. Patent and Trademark Office Before July 1, 1940

Prior to July 1, 1940, the U.S. Patent and Trademark Office ("USPTO") retained carbon copies of each certificate of registration for prints or labels issued by the USPTO. Copies of these records were transferred to the U.S. Copyright Office on July 1, 1940. An additional certificate of registration for a print or label registered by USPTO before July 1, 1940, consists of the following:

- A photocopy of the index card from the Copyright Card Catalog;
- A carbon copy of the original certificate of registration issued by USPTO; and
- A certified statement that identifies the record.

2409.2(H) Other Records Maintained by the U.S. Copyright Office

RRCS will certify indexes of the Office's records, blank application forms, information circulars, administrative manuals (including this *Compendium* as well as out-of-date publications), and all other public records maintained by the Office.

2409.3 How to Request Certified Copies of U.S. Copyright Office Records

To obtain a certified copy of records maintained by the Office, the requesting party should submit a written request to RRCS containing the following information:

- The party's name and contact information.
- A clear identification of the records to be certified.
- A clear and specific request for certification.

The request should be sent to RRCS as the address specified in Section 2403 together with the appropriate fee.

2409.4 Certification Fees

The requesting party must pay a separate certification fee for each record that is certified by the U.S. Copyright Office. The current fee for certifying a search report or other records is set forth in the Office's fee schedule under the heading "Retrievals and Copies."

In addition, the requesting party will be required to pay a fee for locating, retrieving, and copying the requested materials. For information concerning these fees, see Section 2407.6.

For information concerning the methods for paying these fees, see Chapter 1400, Sections 1403.4 and 1403.5.

2409.5 Limitations on Certification of U.S. Copyright Office Records

As noted in Sections 2407.1(B)(2) and 2407.1(D)(2), certain records may or may not be retained by the Office once a claim has been registered or refused. As discussed in Section 2405.3, the Office will not certify records that have not been retained by the Office. In particular, the Office will not certify works contained in the Library of Congress's collections, except for deposit copies that are temporarily on exhibit at the Library. For information concerning the procedure for obtaining copies of materials maintained by the Library, see Section 2407.1(E)(2) above.

2410 Full-Term Retention of Deposits

As a general rule, the U.S. Copyright Office will retain the deposit copy(ies) or identifying material for an unpublished work for the full term of the copyright.

The deposit for a published work may be retained under the control of the Office for the longest period considered practicable and desirable by the Register of Copyrights and the Librarian of Congress. At the end of this period, the work may be destroyed.

Upon request and payment of the appropriate fee, the Office will retain the deposit copies for a published work for a period of seventy-five years from the date of publication. This service is known as "full-term retention."

17 U.S.C. § 704(d)-(e).

2410.1 Who May Request Full-Term Retention?

Full-term retention may be requested by the applicant who submitted the initial application or the copyright owner of record for the registered work. 37 C.F.R. § 202.23(a)(1).

2410.2 How to Request Full-Term Retention

To request full-term retention, the requesting party should submit a signed, written request containing the following information:

- The name and contact information of the applicant or the copyright owner of record.
- A clear statement of request for full-term retention.
- The title of the work as it appeared in the application for registration or renewal.
- The date of publication for the work.
- The registration number (if the work has been registered).

The request should be sent to the following address, along with the appropriate fee:

U.S. Copyright Office
Attn: Director of the Office of Public Records and Repositories
101 Independence Avenue SE
Washington, DC 20559-6000

A request for full-term retention may be submitted with the application for registration or renewal or at any time thereafter. If the request for full-term retention is submitted together with the application for registration or renewal, the applicant should submit an additional copy or phonorecord of the work, along with a cover letter that clearly requests full-term retention.

If the request is approved, the Office will send a written communication to the requesting party acknowledging payment of the fee and identifying the deposit for which full-term retention has been granted.

The Office may grant a request for full-term retention, provided that the request is made by an authorized party and provided that the Office has retained at least one copy, one phonorecord, or one set of identifying material in its control when the request is received. This includes deposits retained in a federal records center, but it does not include deposits that have been transferred to the collections of the Library of Congress.

The Office may deny a request for full-term retention if the deposit has been selected by the Library of Congress for its collections. Likewise, the Office may deny a request for full-term retention (i) if the storage would place an unreasonable burden on the Office due to the excessive size, fragility, or weight of the deposit, or (ii) if the retention would

result in a health or safety hazard. The Office may nonetheless grant the request in such cases if the requesting party pays for the cost of preparing acceptable identifying materials in lieu of the actual deposit and provided that the payment is received within sixty days after the date that the Office denied the initial request.

37 C.F.R. § 202.23.

2410.3 Full-Term Retention Fees

The current fee for full-term retention is set forth in the Office's fee schedule under the heading "Full-term retention of a published deposit."

For information concerning the methods for paying this fee, see Chapter 1400, Sections 1403.4 and 1403.5.

2411 Expedited Service

Expedited service is a procedure for accelerating the time period for satisfying a request for a search report, certified or uncertified copies of the U.S. Copyright Office's records, or other services provided by the Office. The Office charges an additional fee for expedited service, as discussed in Section 2411.3 below.

2411.1 Who May Request Expedited Service?

Any member of the public may request expedited service.

2411.2 How to Request Expedited Service

A request for expedited service should be submitted in writing and should contain the following information:

- A description of the service to be provided.
- A justification for expedited service, such as pending or prospective litigation, customs matters, contract or publishing deadlines, or the like.

A request for expedited service should be submitted to RRCS using the contact information specified in Section 2403 along with the appropriate fee.

RRCS may deny a request for expedited service if the request is not sufficiently justified or if RRCS is unable to process the request due to limited staff resources. If there are questions or issues that prevent RRCS from providing expedited service, it will notify the requesting party promptly after the request is received.

2411.3 Fees for Expedited Service

The requesting party must pay an additional fee for expedited service, which will be added to the fee for the primary service provided by the staff of RRCS. The additional fee must be paid for each service for which expedited service is requested and granted.

The current fee for an expedited search report and obtaining certified or uncertified copies of the Office's records on an expedited basis is set forth in the Office's fee schedule under the heading "Special services: Special handling fee for records retrieval, search, and certification services (per hour, 1 hour minimum)."

For information concerning the methods for paying this fee, see Chapter 1400, Sections 1403.4 and 1403.5.

2412 Services Provided to Other U.S. Government Agencies

The United States government and any of its agencies, employees, or officers are expected to pay all fees prescribed by the Copyright Act, although the Register of Copyrights has the discretion to waive these fees in occasional or isolated cases involving relatively small amounts. 17 U.S.C. § 708(c).

A request for a waiver of fees should be made in writing and should be submitted along with the request for service.

2413 Denial of Service and Appeals

The U.S. Copyright Office may deny a request for service for one or more of the following reasons:

- The requesting party is not authorized to inspect or obtain copies of the requested record.
- The requested record is not subject to viewing, inspection, or copying.
- The Office has not retained the requested record.
- The request would place undue hardship on the Office.

If the Office determines that the service cannot be provided, it will notify the requesting party in writing or by telephone and will explain the reasons for its decision.

If the Office declines to provide a requested service because the requesting party is not authorized to view, inspect, or obtain copies of the requested record, the party may submit an appeal to the Office of the General Counsel of the U.S. Copyright Office. For information concerning this procedure, the requesting party should contact the Office of the General Counsel.