COMPENDIUM II

COMPENDIUM

OF

COPYRIGHT OFFICE PRACTICES

Under the Copyright Law Which
Became Fully Effective on
January 1, 1978, Including
Title 17 of the United States
Code and Amendments Thereto

COPYRIGHT OFFICE
THE LIBRARY OF CONGRESS
WASHINGTON, D. C. 20559

1984

PREFACE

This Compendium (designated as Compendium II) reflects Copyright Office practices under the copyright law which became fully effective on January 1, 1978, including Title 17 of the United States Code and amendments thereof.

An earlier Compendium (now called Compendium I) was issued a number of years ago to reflect Copyright Office practices under the Copyright Act of 1909, as amended. Compendium I applies to Copyright Office actions, in situations which it covers, where the provisions of the Copyright Act of 1909, as amended, are dispositive.

The Compendium is a manual intended primarily for the use of the staff of the Copyright Office as a general guide to its examining and related practices. It is not a book of rules that is meant to provide a ready-made answer to all questions that arise. Any new case presented to the Office may require special analysis.

The practices of the Copyright Office are subject to constant review and modification in the light of new experience and continuing reappraisal. Accordingly, additions, deletions, and other amendments will be made from time to time. The Copyright Office will provide an up-to-date copy of the Compendium for public inspection and copying. The Office will likewise maintain a separate record of all material withdrawn from the Compendium as superseded.

Section 201.1(b)(3) of the Copyright Office Regulations, Title 37 of the Code of Federal Regulations, which are authorized under section 702 of the current copyright law, provides for a compendium of Office practices.

Copies of Compendium II are available for purchase from the Superintendent of Documents, United States Government Printing Office, as a looseleaf publication; amendments and supplements will be published by the Superintendent of Documents in the form of additional or replacement pages as such changes are made.

Copies of the earlier Compendium (Compendium I) may be purchased from the National Technical Information Service, United States Department of Commerce.

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CHAPTER 100

BASIC POLICIES

101 Basic policies. Set forth below are the policies upon which the examining and related practices of the Copyright Office are based.

102 The constitutional provision. The Constitution of the United States provides, in Article 1, Section 8, that the "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."

103 The copyright law. The U.S. copyright law is based upon the above provision of the Constitution, especially as it relates to the "Writings" of "Authors." The current copyright law is the Copyright Act which became fully effective on January 1, 1978, including Title 17 of the United States Code, and amendments thereof. The previous law was the Copyright Act of 1909, as amended.

104 The Copyright Office. The copyright law provides that all administrative functions and duties which it imposes are, except as otherwise specified, the responsibility of the Register of Copyrights as director of the Copyright Office of the Library of Congress and that the Register, together with subordinate officers and employees of the Office, shall be appointed by the Librarian of Congress and shall act under the Librarian's general direction and supervision. See 17 U.S.C. 701(a). The Copyright Office is a department of the Library of Congress, and the Register of Copyrights is also Assistant Librarian of Congress for Copyright Services. In addition to its principal function, which is the performance of all duties relating to the registration of copyrights, the policies and practices of the Copyright Office are also designed to promote the overall objectives of the Library of Congress. See the Library of Congress Regulations, LCR 215.

105 Statutory authority for examination. Section 410(a) of the current law specifies that when, "after examination, the Register determines that . . . the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements . . . have been met, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office." Section 410(b) provides that in "any case in which the Register of Copyrights 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." Section 205(a) states that any "transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office." These provisions, together with other pertinent sections of the law, constitute the statutory basis for the examining and related practices of the Copyright Office.

106 Copyright Office Regulations. The Register of Copyrights is authorized by section 702 of the copyright law to establish, subject to the approval of the Librarian of Congress, regulations not inconsistent with law for the administration of the functions and duties made the responsibility of of the Register. The Copyright Office Regulations, including those relating to examination, registration, and recordation, are embodied in Title 37 of the Code of Federal Regulations.

107 The establishment, maintenance, and availability of a public record. The foregoing constitute the basis for the establishment and maintenance by the Copyright Office of a reliable and useful public record which includes all registrations of copyright claims and recordations of documents pertaining to copyrights. This record is made available to the public by the Copyright Office through (1) the issuance of certificates of copyright registration which attest that registration

107 The establishment, maintenance, and availability of a public record. (cont'd)

has been made and which may constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate, (2) the publication of the Catalogs of Copyright Entries, which provide the basic facts of registration for all registered works, (3) the issuance of certificates certifying that transfers of copyright ownership or other documents pertaining to copyrights have been recorded, (4) the issuance of certified copies of applications, deposit copies, documents, and various other materials submitted to the Copyright Office in connection with registrations and recordations, (5) the maintenance in the Copyright Office of the Copyright Card Catalog, for public use in searching for completed registrations and recorded documents, and (6) the providing of a Copyright Office reference service to furnish, by means of written search reports, the facts of registration and recordation contained in the files of the Office. This system depends, for its reliability and usefulness, primarily upon the examination process.

108 The examination process. The examination process, which is the principal means of creating and maintaining a reliable and useful public record, includes the examination of (1) the copies or phonorecords of works submitted for registration, (2) the application for registration, (3) all other material and correspondence submitted with the claim, and (4) copies of any Copyright Office correspondence relating to the registration of the claim.

108.01 Nature of examination. Examination is made to determine (1) whether or not the work for which registration is sought constitutes copyrightable subject matter and (2) whether or not the other legal and formal requirements have been met, including those set forth in the Copyright Office Regulations and in the Compendium of Copyright Office Practices.

108 The examination process. (cont'd)

108.02 Scope of examination. The Copyright Office registers claims to copyright whenever the requirements of the law appear to be met. It does not grant copyrights.

108.03 Comparison of works. The Copyright Office does not generally make comparisons of copyright deposits to determine whether or not particular material has already been registered.

108.04 Extent of copyright claims. In general the registration of a claim to copyright is considered to extend to all the component parts of the work which are the subject matter of copyright and in which the applicant has the right to claim on the basis of the particular application under consideration. Where part of the work was previously published or was covered by a previous registration, the copyright claim as reflected in the application should generally be limited to the new material covered by the claim being registered. Also, where a work contains material which is unpublished and unregistered, and where the claim does not extend to such material, the application should reflect this limitation in the scope of the registration. Moreover, the coverage of a registration cannot, subject to certain exceptions, extend beyond the material deposited to make that registration.

108.05 Factual determinations. In connection with its examining and related activities, the Copyright Office does not ordinarily make findings of fact with respect to publication or any other thing done outside the Copyright Office.

108.05(a) Requests for explanation. The Copyright Office reserves the right to request, in appropriate cases, explanations of statements made by an applicant.

108 The examination process. (cont'd)

108.05 Factual determinations. (cont'd)

108.05(b) Administrative notice. The Copyright Office may take notice of matters of general knowledge. It may use such knowledge as the basis for questioning applications that appear to contain or be based upon inaccurate or erroneous information.

108.06 Adverse claims. The sequence of receipt in the Copyright Office of separate claims by two or more applicants plays no part in determining registrability. Where the Copyright Office is aware that two or more persons or organizations are adversely claiming copyright in, and are seeking separate registrations for, the same material, the Office may inform each applicant of the existence of the other claim(s) and inquire concerning the basis of each claim. All such claims will be registered if they are reasserted and if they are in order as confirmed by the response to the Copyright Office inquiry. The Copyright Office does not conduct "opposition" or "interference" proceedings such as those provided by the Federal trademark and patent laws.

108.07 The rule of doubt. The Copyright Office will register the claim even though there is a reasonable doubt about the ultimate action which might be taken under the same circumstances by an appropriate court with respect to whether (1) the material deposited for registration constitutes copyrightable subject matter or (2) the other legal and formal requirements of the statute have been met.

108.08 Cautionary or warning letters. When registration is made under the rule of doubt, the Copyright Office will ordinarily send a letter to the applicant cautioning that the claim may not be valid and stating the reason; and such letter may warn, where appropriate, that the

108 The examination process. (cont'd)

108.08 Cautionary or warning letters. (cont'd)

problem may exist for future works and point out how it can be avoided. The Office may send the letter and withhold the application until specifically authorized by the applicant to make registration, or it may make registration before sending the letter.

108.09 Refusal to register. The Copyright Office will not register a claim where (1) the material deposited does not constitute copyrightable subject matter or (2) the claim is invalid for any other reason. See also section 108.07 above concerning the rule of doubt. The Office will notify the applicant in writing of the reasons for such refusal.

108.10 Obscene or pornographic works. The Copyright Office will not ordinarily attempt to examine a work to determine whether it contains material that might be considered obscene or pornographic.

108.11 Works containing classified information. When, in examining or processing materials received in the Copyright Office, it is noted that such material contains, or reasonably appears to contain, information classified by the U.S. Government for such reasons as national defense or national security, (1) the appropriate security official of the Library of Congress should be immediately notified through supervisory channels, (2) the material should be held or disposed of in accordance with instructions from that official, and (3) the examination or other processing of the material by the Copyright Office should be suspended until the matter is resolved.

109 Communications between the applicant and the Copyright Office. Communications between the Copyright Office and applicants may be by letter or other written means, by telephone, or by personal interview.

109 Communications between the applicant and the Copyright Office. (cont'd)

109.01 In general. As a general policy the Copyright Office may register claims without communicating with the applicant whenever possible. The Copyright Office will communicate with the applicant before registration only when the claim as a whole is not in substantial compliance with the practices of the Copyright Office as reflected in this Compendium.

109.02 Copyright Office communications. All Copyright Office communications should be clear in meaning, concise in statement, and polite in tone.

109.03 Opinions and advice. Copyright Office communications that result from the examination of claims should be limited to questions concerning registration and related matters. They should conform to the general policy of the Copyright Office by avoiding the expression of opinions or the offer of advice on such matters as the rights of persons in connection with contracts or alleged infringements. Also, there should be no offer or undertaking to resolve disputes concerning conflicting claims to copyright or similar matters. See section 108.06 above, concerning adverse claims.

109.04 One letter concerning more than one application. When more than one application is submitted to the Copyright Office by an applicant in one package, the Office will ordinarily attempt to deal in a single letter with all of those applications which require correspondence, rather than produce a separate letter for each one. Also, the Office may deal in one letter with materials received separately from a single applicant.

109.05 Communications from applicants. The Copyright Office will generally consider all statements and materials submitted by applicants. However, any abusive or scurrilous written materials

109 Communications between the applicant and the Copyright Office. (cont'd)

109.05 Communications from applicants. (cont'd)

directed to the Office or any of its employees will be returned unanswered; see 37 C.F.R. 201.2(c)(4). Similarly, Copyright Office employees will terminate any conversation or interview, if an applicant makes abusive or scurrilous statements, or engages in threatening behavior.

109.06 Languages. The Copyright Office will ordinarily write to applicants only in the English language and will ordinarily conduct conversations and interviews with applicants only in English. As a general rule, the Office is willing to entertain applications and record documents that are in languages other than English, and to deal with correspondence from applicants which is in a language other than English. In special cases, however, the Office may require the submission of an English translation of statements on applications, documents, or correspondence before it takes action.

110 Applicants. The applicant for registration may be the author or other copyright claimant, or the owner of exclusive right(s) in the work. Moreover, a duly authorized agent may apply for registration on behalf of such author, claimant, or owner.

110.01 Minors. The author, claimant, or owner can be a minor, even though State law may regulate or control business dealings involving minors. The Copyright Office will generally accept an application submitted either by a minor or by the minor's parents or guardian, if it is otherwise in order.

110.02 Mental incompetents. The author, claimant, or owner can be a mentally incompetent person. If a committee or guardian has been appointed for a person adjudged to be incompetent, such committee or guardian should generally serve as agent of the applicant.

110 Applicants. (cont'd)

110.03 Prisoners. The author, claimant, or owner can be an inmate of a prison or other penal institution. The Copyright Office will generally accept an application submitted by such a person as applicant, if it is otherwise in order.

110.04 Paupers. There is no provision of law which requires or permits the waiver or reduction of the registration fee or any other registration requirement of the copyright law on the grounds that the applicant is a pauper or is otherwise impecunious.

110.05 Agents. Any duly authorized agent may act on behalf of the applicant. The Copyright Office will generally accept the statement of a person that he or she is acting as the agent of the author, claimant, or owner. However, the Office may, in special cases, request such agent to submit documentation showing that he or she is empowered to act for the author, claimant, or owner. Where such author, claimant, or owner is other than a natural person (for example, where a corporate entity is the claimant), the application must be submitted by a natural person acting as agent. The name of a corporate entity or other organization is not acceptable as the signature of the applicant or agent unless it is accompanied by the signature of a natural person authorized to sign on behalf of such entity or organization.

110.06 Attorneys. The Copyright Office does not require that the author, claimant, or owner be represented by an attorney, although the Office may suggest in special cases that the applicant consider seeking the advice of an attorney. No special qualifications or test is imposed on lawyers as a condition to dealing with the Copyright Office.

110 Applicants. (cont'd)

110.07 False representation. The copyright law provides that any person who knowingly makes a false representation of a material fact in an application for registration, or in any written statement filed in connection with an application, shall be guilty of a criminal offense and shall be fined not more than $2,500. See 17 U.S.C. 506(e).

111 Territorial limitations. The U.S. copyright law has no extraterritorial effect in that generally its provisions with respect to infringement extend only to violations occurring in the United States. Since the practices of the Copyright Office spring solely from the U.S. law, ordinarily the Compendium of Copyright Office Practices deals only with U.S. copyright, unless it expressly states otherwise.

112 Recordations and Import Statements. The basic policies set forth above also apply, with some few alterations and exceptions, to the recordation of transfers of copyright ownership and other documents pertaining to copyrights, and to requests for the issuance of Import Statements. See Chapter 1200: MANUFACTURING PROVISIONS, and Chapter 1500: CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT OFFICE RECORDS; SUPPLEMENTARY REGISTRATIONS.

[END OF CHAPTER 100]

Chapter 200

COPYRIGHTABLE MATTER - IN GENERAL

Outline of Topics

201 Copyrightable matter: in general.

202 Original works of authorship.

202.01 Originality.
202.02 Authorship.

203 Fixation.

204 Compilations and derivative works.

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CHAPTER 200

COPYRIGHTABLE MATTER - IN GENERAL

201 Copyrightable matter: in general. The clause of the U.S. Constitution cited in section 102 of Chapter 100: BASIC POLICIES, as the basis for the copyright law empowers Congress to secure to authors the exclusive right in their writings. Based on this provision, the current copyright law, which took full effect on January 1, 1978, provides that copyright 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; and the law specifies that works of authorship include the following categories: (1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; and (7) sound recordings. See 17 U.S.C. 102(a).

202 Original works of authorship. In order for a work to be the subject matter of copyright under the current law, it must be an original work of authorship. Quality, aesthetic merit, ingenuity, and uniqueness are not considered in determining the copyrightability of a work.

202.01 Originality. A work must owe its origin to the author in order for it to be original in the copyright sense. The work must neither be one in the public domain nor be copied from any other work. The work need not be "novel," that is, new to the world; to be original it need only be new to the author, that is, not taken from any other source.

202.02 Authorship. In order to be an original work of "authorship," the work must contain at least a certain minimum amount of original creative expression.

202 Original works of authorship. (cont'd)

202.02 Authorship. (cont'd)

202.02(a) De minimis. Works that lack even a certain minimum amount of original authorship are not copyrightable. Such works are often described as "de minimis," in reference to the principle embodied in the Latin maxim "de minimis non curat lex."

202.02(b) Human author. The term "authorship" implies that, for a work to be copyrightable, it must owe its origin to a human being. Materials produced solely by nature, by plants, or by animals are not copyrightable.

202.02(c) Ideas. The copyright law specifies that copyright protection 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 a work. See 17 U.S.C. 102(b).

202.02(d) Facts and events. A fact or event, as distinguished from the manner in which it is described in a particular work, is not copyrightable.

202.02(e) Computations and the like. To be an original work of authorship, the work must not be a mere computation based upon a concept or formula, or be the mere extrapolation or application of an idea or system, which would always produce substantially the same result whenever done correctly by anyone. For example, the computation of interest based upon a particular rate is not copyrightable, nor is the mere transposition of music from one key to another. In connection with transposition, see Chapter 400: COPYRIGHTABLE MATTER - WORKS OF THE PERFORMING ARTS AND SOUND RECORDINGS.

202 Original works of authorship. (cont'd)

202.02 Authorship. (cont'd)

202.02(f) Useful articles. No copyright can subsist in a "useful article" as defined by the copyright law. However, elements incorporated or embodied in a useful article that can be identified separately from, and are capable of existing independently of, the useful article may be copyrightable. See Chapter 500: COPYRIGHTABLE MATTER - PICTORIAL, GRAPHIC, AND SCULPTURAL WORKS.

202.02(g) Blank forms. Blank forms, such as time cards, graph paper, account books, bank checks, scorecards, address books, report forms, order forms, and the like, which are designed for recording information and do not in themselves convey information or contain other copyrightable matter are not copyrightable. See 37 C.F.R. 202.1(c).

202.02(h) Information that is common property. Works consisting entirely of information that is common property containing no original authorship, such as, for example, standard calendars, height and weight charts, tape measures and rulers, schedules of sporting events, and lists or tables taken from public documents or other common sources are not copyrightable. See 37 C.F.R. 202.1(d).

202.02(i) Words and short phrases. Words and short phrases such as names, titles, and slogans are not copyrightable. See 37 C.F.R. 202.01(a).

202.02(j) Familiar symbols, typeface, and design of printed material. Familiar symbols or designs, and mere variations of typographic ornamentation, lettering, or coloring, are

202 Original works of authorship. (cont'd)

202.02 Authorship. (cont'd)

202.02(j) Familiar symbols, typeface, and design of printed material. (cont'd)

not copyrightable. See 37 C.F.R. 202.1(a). Typeface is not copyrightable, nor is the design, format, or layout of books and other printed material. See Chapter 300: COPYRIGHTABLE MATTER - NONDRAMATIC LITERARY WORKS.

202.02(k) Listings. The mere listing of ingredients or contents is not copyrightable. See 37 C.F.R. 202.1(a).

202.02(l) Characters. The copyright law does not provide for the copyright registration of characters as such. However, original works of authorship describing, depicting, or embodying a character are registrable if otherwise in order.

202.02(m) Use of protected characters, names, and slogans. Occasionally, works incorporate names, titles, or slogans whose utilization is subject to restrictions by other laws. As these restrictions have nothing to do with copyright, the incorporation of these elements does not prevent registration. Where the Copyright Office is aware that a use of certain elements within a work may be in violation of existing law, it may inform the applicant of the possible restriction and direct the applicant to the agency involved. Some examples of restricted names and characters are: "Olympic," "Olympiad," (36 U.S.C. 380); "Woodsy Owl" (18 U.S.C. 711a); and "Smokey Bear" (18 U.S.C. 711).

202 Original works of authorship. (cont'd)

202.03 Works in the public domain. Works in the public domain in the United States cannot be the subject of U.S. copyright protection. Since such works may be copied and used by anyone insofar as the U.S. copyright law is concerned, they may be freely combined with new matter or otherwise incorporated or embodied in compilations or in abridgments, adaptations, arrangements, dramatizations, translations, or other derivative forms. If the new matter contains sufficient original authorship to support a copyright, registration may be based on such new matter. However, in any such case, copyright extends only to the new material and does not imply any exclusive right in the public domain material. Works in the public domain include those whose once valid U.S. copyright has expired and works otherwise dedicated to the public either voluntarily or by operation of law. Also considered part of the public domain are edicts of government, which are uncopyrightable for reasons of public policy; see section 206.01 below. In addition, works of the U.S. Government, that is, works prepared by officers or employees of the U.S. Government as part of such persons' official duties are not copyrightable; see section 206.02 below.

203 Fixation. In order to be subject to copyright registration, a work must be fixed in a tangible medium of expression by or under the authority of the author. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" if a fixation of the work is being made simultaneously with its transmission. See 17 U.S.C. 101 and 102. Special problems with respect to the fixation of sound recordings are treated in Chapter 400: COPYRIGHTABLE MATTER - WORKS OF THE PERFORMING ARTS AND SOUND RECORDINGS.

204 Compilations and derivative works. The copyright law specifies that the subject matter of copyright includes compilations and derivative works but that copyright 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. See 17 U.S.C. 103(a). The law also specifies (1) that copyright in a compilation or derivative work extends only to the material contributed by the author of such work and does not imply any exclusive right in the preexisting material and (2) that the copyright in such work is independent of, and does not affect or enlarge the scope, duration, or subsistence of, any copyright in the preexisting material. See 17 U.S.C. 103(b).

204.01 Compilations defined. The copyright law 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. The law also states that the term "compilation" includes "collective works," which are works, 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. Hence, in effect, compilations are either (1) collective works, or (2) other compilations, the latter being works consisting of the collection and assembling of preexisting materials or data other than separate and independent works. See 17 U.S.C. 101.

204.02 Derivative works defined. The copyright law 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, abridgment, condensation, or other form in which a work may be recast, transformed, or adapted. The law also states that a work consisting of editorial

204 Compilations and derivative works. (cont'd)

204.02 Derivative works defined. (cont'd)

revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a derivative work. See 17 U.S.C. 101.

204.03 Standards for copyrightability of compilations and derivative works. The standards for the copyrightability of compilations and derivative works include the following requirements: (1) they must be original works of authorship, and (2) they must comply with the other provisions of the law.

204.04 Status of compilations and derivative works unlawfully employing preexisting copyrighted material. Copyright 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. See 17 U.S.C. 103(a).

- This means that where a work is based on a preexisting work, without authorization of the copyright owner and unlawfully, the new material may be subject to copyright protection only to the extent that it can be separated from the preexisting work.

- Where the new matter (such as certain editorial revisions, translations, and musical arrangements) is inextricably integrated with the preexisting work, without authorization of the copyright owner, registration for the new matter cannot be made.

- However, where the new matter (such as new lyrics set to an existing melody) is capable of existing separately, registration may be possible, even though the use may be an infringement of the copyright in the preexisting work.

204 Compilations and derivative works. (cont'd)

204.05 Musical arrangements made under the compulsory license for phonorecords. Where phonorecords of nondramatic musical works are made under the compulsory license provisions of 17 U.S.C. 115, a new arrangement of the musical work may be made without the consent of the copyright owner of the preexisting work. However, such arrangement is not subject to copyright protection as a derivative work without the express consent of the copyright owner of the preexisting work. See Chapter 400: COPYRIGHTABLE MATTER - WORKS OF THE PERFORMING ARTS AND SOUND RECORDINGS.

204.06 Ephemeral recordings. The copyright law provides that ephemeral recordings may lawfully be made of certain copyrighted works without the authority of the owners of copyright. However, transmission programs embodying such works are not subject to copyright protection as derivative works without the express consent of the owners of copyright in the preexisting works. See 17 U.S.C. 112.

205 National origin. The copyright law provides that all unpublished works otherwise subject to copyright protection are registrable without regard to the nationality or domicile of the author. However, the law provides that published works are subject to copyright protection and eligible for registration only under certain specified conditions relating to their national origin. See Chapter 1100: ELIGIBILITY.

206 Government works. Certain government works are subject to special rules.

206.01 Edicts of government. Edicts of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar official legal documents are not copyrightable for reasons of public policy. This applies to such works whether they are Federal, State, or local as well as to those of foreign governments.

206 Government works.

206.02 U.S. Government works. The copyright law provides that works of the U.S. Government, defined in the law as works prepared by an officer or employee of the U.S. Government as part of that person's official duties, are not copyrightable. This provision applies to such works whether they are edicts of government or otherwise. However, the fact that a copyright may have been transferred to the U.S. Government is not determinative of its status. U.S.C. 101 and 105. Similarly, the fact that the work has been printed by the U.S. Government does not determine its copyright status.

206.02(a) Standard Reference Data Act. Under the Standard Reference Data Act, 15 U.S.C. 290e, the Secretary of Commerce may secure copyright on behalf of the United States as author or proprietor of any standard reference data that the Secretary prepares or makes available under the Act.

206.02(b) U.S. Postal Service. Works of the U.S. Postal Service, as now constituted, are not considered U.S. Government works.

206.02(c) District of Columbia. Works of the government of the District of Columbia, as now constituted, are not considered U.S. Government works.

206.02(d) Commonwealth of Puerto Rico. Works of the government of Puerto Rico are not considered to be U.S. Government works.

206.02(e) Territorial areas under the jurisdiction of the U.S. Government. Works of the governments of the "organized territories" under the jurisdiction of the U.S. Government are acceptable for registration under the rule

206 Government works. (cont'd)

206.02 U.S. Government works. (cont'd)

206.02(e) Territorial areas under the jurisdiction of the U.S. Government. (cont'd)

of doubt. Works of the governments of other territorial areas under the jurisdiction of the U.S. Government are considered to be U.S. Government works. See Chapter 1100: ELIGIBILITY.

206.03 Copyrightable government works. Works (other than edicts of government) prepared by officers or employees of any government (except the U.S. Government) including State, local, or foreign governments, are subject to registration if they are otherwise copyrightable. In addition, the copyright law specifies that works first published by the United Nations or any of its specialized agencies, or by the Organization of American States, are subject to copyright protection. See 17 U.S.C. 104(b)(3); see also Chapter 1100: ELIGIBILITY.

[END OF CHAPTER 200]

Chapter 300

COPYRIGHTABLE MATTER: NONDRAMATIC LITERARY WORKS

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Chapter 300

COPYRIGHTABLE MATTER: NONDRAMATIC LITERARY WORKS

301 Applicability of this chapter. This chapter concerns itself solely with nondramatic literary works.

302 Definition: literary works. Literary works are defined 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.

303 Definition: nondramatic literary works. A nondramatic literary work is one that explains, describes, or narrates a particular idea, theme, or subject; it does not usually employ dialog or action to represent or give directions for representing all or a substantial portion of a story as actually occurring.

304 Copyrightable literary expression. To be registrable, a nondramatic literary work must contain at least a certain minimum amount of literary expression owing its origin to the author. See Chapter 200: COPYRIGHTABLE MATTER - IN GENERAL.

305 Noncopyrightable material. The following are not copyrightable and therefore cannot serve as a basis for registration.

305.01 Names, titles, slogans, and other short phrases. Names, titles, slogans, and other short phrases or expressions are not copyrightable, even if such expressions are novel, distinctive, or lend themselves to a play on words. Similarly, a mere listing of ingredients or contents is not copyrightable. See 37 C.F.R. 202.1(a).

305 Noncopyrightable material. (cont'd)

305.02 Ideas, methods, or systems. Ideas, methods, systems, or the like are not copyrightable, regardless of the form in which they may be described, explained, or embodied in a work. In no case does copyright protection for an original work of authorship 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. See 17 U.S.C. 102(b).

305.03 Measuring and computing devices. Devices and similar articles designed for computing and measuring are not copyrightable. Common examples of such devices are slide rules, wheel dials, and nomograms that contain insufficient original literary or pictorial expression.

305.04 Works consisting entirely of information that is common property. Examples of these kinds of works include standard calendars, height and weight charts, tape measures and rulers, schedules of sporting events, and lists or tables taken from public documents or other common sources. However, such a work may contain sufficient copyrightable material, such as instructional text, to warrant a registration, but such a registration would not extend protection to the uncopyrightable material. See 37 C.F.R. 202.1(d).

305.05 Blank forms. Blank forms, such as time cards, graph paper, account books, diaries, bank checks, scorecards, address books, report forms, order forms, and the like, which are designed for recording information, and do not in themselves convey information, are not copyrightable. See 37 C.F.R. 202.1(c). However, the Copyright

305 Noncopyrightable material. (cont'd)

305.05 Blank forms. (cont'd)

Office will register a work containing a certain minimum amount of original, creative expression, regardless of whether the work contains uncopyrightable elements designed for simple recordation of information. Thus, textual works, such as contracts, insurance policies, and the like, and bank checks containing pictorial authorship, may be registrable if they contain a sufficient amount of original literary or artistic expression.

305.06 Format or layout. Copyright does not protect either the general format or layout, or the idea expressed by either of these.

305.07 Book design. Book designs may include choice of style and size of typeface, leading (space between lines of type), placement of folio (page numbers), arrangement of type on pages, and placement, spacing, and juxtaposition of text and illustrative matter -- in short, all the physical and visual attributes of a book. After having issued a notice of proposed rulemaking and having held a hearing, the Copyright Office decided not to change its long-standing practice of not registering claims to copyright in book design. The Office concluded that "the arrangement, spacing, or juxtaposition of text matter which is involved in book design falls within the realm of uncopyrightable ideas or concepts." See 46 Fed. Reg. 30651 (1981).

305.08 Limits on copyrightability. Certain categories of nondramatic literary works are not copyrightable, even though they may contain a substantial amount of textual material. They include the following:

305 Noncopyrightable material. (cont'd)

305.08 Limits on copyrightability. (cont'd)

305.08(a) Works in the public domain. Works in the public domain in the United States cannot be the subject of U.S. copyright protection. See section 203 of Chapter 200: COPYRIGHTABLE MATTER - IN GENERAL.

305.08(b) Nondramatic literary works unlawfully employing other works under copyright protection. Nondramatic literary works that unlawfully employ another work under copyright protection are not themselves subject to copyright protection if they are inseparably intertwined with the preexisting work. See 17 U.S.C. 103(a) and H.R. Rep. 94-1476, 94th Cong., 2d Sess. 57-8 (1976). For example, an unlawful English-language translation that cannot be separated from the original French-language version would not be registrable. However, the Copyright Office does not generally investigate the copyright status of preexisting material or whether it has been used lawfully. Where a work unlawfully employs preexisting copyrighted material that is separate from the new material, the new work is registrable.

305.08(c) Works of the U.S. Government. Works of the U.S. Government are works prepared by an officer or employee of the U.S. Government as part of that person's official duties. Ordinarily, such works are in the public domain in the United States. See section 206 of Chapter 200: COPYRIGHTABLE MATTER -- IN GENERAL.

305 Noncopyrightable material. (cont'd)

305.08 Limits on copyrightability. (cont'd)

305.08(c) Works of the U.S. Government. (cont'd)

305.08(c)(1) Standard Reference Data Act. An exception exists under the Standard Reference Data Act (15 U.S.C. 290e) for any standard reference data that the Secretary of Commerce prepares or makes available under the Act. Claims registered under this Act should be annotated to read as follows: "Claim registered under the Standard Reference Data Act, P.L. 90-396 (15 U.S.C. 290e)."

305.08(c)(2) Transfer of copyright to the U.S. Government. The fact that copyright protection is not possible for works authored by officers or employees of the U.S. Government, except as stated in section 305.08(c) above, does not prevent the U.S. Government from receiving and holding copyrights transferred to it. See 17 U.S.C. 105.

305.08(d) Edicts of government. Edicts of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar official legal documents, are not copyrightable for reasons of public policy. This applies to such works whether they are Federal, State, or local as well as to those of foreign governments.

305.09 Use of protected characters, names, slogans, symbols, and seals. Occasionally, works incorporate names, titles, slogans, symbols, or seals whose utilization is subject to restrictions by other laws. As these restrictions have nothing to do with copyright, the incorporation of these elements

305 Noncopyrightable material. (cont'd)

305.09 Use of protected characters, names, slogans, symbols, and seals. (cont'd)

does not prevent registration. Where the Copyright Office is aware that a use of certain elements within a work may be in violation of existing law, it may inform the applicant of the possible restriction and direct the applicant to the agency involved. Some examples of restricted names and characters are "Olympic," "Olympiad" (36 U.S.C. 380); "Woodsy Owl" (18 U.S.C. 711a); and "Smokey Bear" (18 U.S.C. 711).

306 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.

306.01 Extent of claim. The copyright in a derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such 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). Where a work contains a substantial amount of previously registered, published, or public domain material, the application should contain a statement of the preexisting material as well as the new copyrightable material.

306 Derivative works. (cont'd)

306.02 Types of nondramatic literary derivative works. Examples of nondramatic literary derivative works are as follows:

306.02(a) Translations. A translation is a rendering of a work from one language to another, as, for example, a work translated from Russian into French, or from German into English. However, transliterations and similar processes by which letters or sounds from one alphabet are converted to another are not copyrightable since the conversion is merely a mechanical act. Thus, merely changing a work from the Cyrillic to the Roman alphabet would not be copyrightable.

306.02(b) Fictionalizations. A fictionalization is a treatment of a factual work in which the elements are recast, transformed, or adapted to produce a work of fiction. A work which is only loosely based on the ideas or facts found in an earlier work, is not considered to be a derivative work.

306.02(c) Abridgments. An abridgment is commonly defined as a shortened or condensed version retaining the general sense and unity of the original work. An abridgment of a nondramatic literary work may be registrable, but more selectivity is required than merely omitting a section from the beginning or end.

307 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. The term "compilation" includes collective works. 17 U.S.C. 101.

307 Compilations. (cont'd)

307.01 Registrability. A compilation is registrable if its selection, coordination, or arrangement as a whole constitutes an original work of authorship. The greater the amount of material from which to select, coordinate, or order, the more likely it is that the compilation will be registrable. Where the compilation lacks a certain minimum amount of original authorship, registration will be refused. Any compilation consisting of less than four selections is considered to lack the requisite original authorship. See also section 625 of Chapter 600: REGISTRATION PROCEDURES.

Examples:

(1) The selection and ordering of 20 of the best short stories of O. Henry would be registrable as a compilation.

(2) Where all three of an author's plays were previously published and the present publication consists of all three plays, no registration based on compilation authorship is possible.

307.02 Telephone books, directories, price lists, and the like. Telephone books, directories, price lists, and the like may be registered if they contain sufficient authorship in the form of compilation or other copyrightable material.

307.03 Coordination and arrangement. Reference to "coordinated" or "arranged," as used in the definition of a "compilation" in 17 U.S.C. 101, does not refer to format, but to the original ordering or grouping of the items.

308 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.

308 Collective works. (cont'd)

308.01 In general. Generally, collective works incorporate two different types of material: first, the collective work as a whole, which includes the elements of compilation, revision, editing, and similar authorship that goes into putting the work into final form; and secondly, any individual, self-contained contributions.

308.02 Collective works made for hire. The collective work as a whole is often a work made for hire, and in such cases, the author is the employer or other person for whom the work was prepared. See 17 U.S.C. 201(b).

308.03 Registration of collective works. For a collective work, the application should generally contain the title of the collective work, and the volume, number, and issue date, if any, in the appropriate space on the application form.

308.04 Periodicals other than daily newspapers. The following practices govern the registrability of periodicals other than daily newspapers:

308.04(a) Separate editions. Where an issue of a periodical is published in two or more separate editions containing different copyrightable matter, separate registrations may be made.

Examples:

1) English, Spanish, and French editions of a magazine.

2) Eastern, Midwestern, and West Coast editions of a weekly news magazine, in which some of the contents are changed to correspond with the regional interests of readers.

308 Collective works. (cont'd)

308.04 Periodicals other than daily newspapers. (cont'd)

308.04(b) Difference in advertising matter. Where the only difference between the editions is in advertising matter, separate registrations will not be made unless the advertisements are asserted to belong to the copyright claimant for the periodical.

308.04(c) Difference in uncopyrightable elements. Where the only difference between the editions is in uncopyrightable elements such as typography, size, coloring, paper stock, or the like, separate registrations will not be made.

308.05 Daily newspapers: various editions. A single registration may be made for the various editions of a daily newspaper or for a daily newspaper which contains different regional supplements. If the application for registration refers to the various editions or supplements, the deposit must include such editions or supplements.

309 Certain periodicals not collective works. Certain periodicals are not collective works since they consist entirely of a single contribution. The application should, in such event, assert a basis of claim in "text," if original, rather than "collective work."

310 Contributions to collective works. An individual contribution that was written independently and not as a "work made for hire" is considered a separately copyrightable work. See 17 U.S.C. 201(c). Where the owner of copyright in a collective work has not obtained ownership of all rights initially belonging to the author of a particular contribution, such person cannot be the "claimant" of copyright in that contribution. See 37 C.F.R. 202.3(a)(3). To register

310 Contributions to collective works. (cont'd)

such a contribution, a separate application must be submitted naming as claimant the author of the contribution, or the person or organization that has obtained ownership of all rights in the contribution that the author originally owned.

310.01 All rights to an independent contribution owned by claimant of collective work. Where the copyright claimant in a collective work is also the owner of all rights in a particular contribution, the author of that contribution may be included as an author in the appropriate space on the application form. If such an individual author is identified on the application, the transfer space should be completed showing how the claimant obtained all rights in the contribution. However, the Copyright Office does not require that all authors of contributions covered by the copyright claim be identified on the application.

311 Unit registration for contributions to periodicals. The practices concerning unit registration for contributions to periodicals will be dealt with in Chapter 1400: GROUP REGISTRATIONS.

312 Book jackets. Book jackets often contain several kinds of authorship such as text, illustrations, and photographs. A claim in a book jacket may be registered if it contains a sufficient amount of copyrightable authorship. Where the copyright claimant of the authorship in the book jacket is not the same as the claimant in the book, a separate registration must be made for the book jacket. Where the claim in a book jacket is based solely on "design," that is, the arrangement, spacing, and juxtaposition of uncopyrightable elements, registration will be refused. See section 305.07 above.

[Number 313 is reserved].

314 Tests and answer material for tests. The Copyright Office will register claims to copyright in tests and machine scorable answer sheets provided the works contain a minimum level of original textual or compilation expression. The work may consist of a test, a test accompanied by an answer sheet, or merely an answer sheet. In a case where the work consists of an answer sheet lacking textual expression, registration can only be considered on the basis of substantial compilation authorship and the application should describe the extent of the claim as compilation. All such registrations are made under the rule of doubt. Answer sheets having insufficient elements on which to base a claim of compilation authorship are not registrable. This practice is in accord with the decision in Harcourt, Brace & World, Inc. v. Graphic Controls Corp., 329 F.Supp. 517, 38 C.O.Bull. 312 (S.D.N.Y. 1971).

315 Secure tests. Secure tests are nonmarketed tests administered under supervision at specified centers on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. For these purposes a test is not marketed if copies are not sold but it is distributed and used in such a manner that ownership and control of copies remain with the test sponsor or publisher. This category encompasses tests used in conjunction with admissions to educational institutions, high school equivalency, placement in or credit for undergraduate and graduate course work, awarding of scholarships and professional certification. See 37 C.F.R. 202.20(b)(4). In the case of tests, and answer material for tests, published separately from other literary works, the deposit of one complete copy will suffice in lieu of two copies. In the case of any secure test, the Copyright Office will return the deposit to the applicant promptly after examination, provided that sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit. See 37 C.F.R. 202.20(c) (2)(vi). For further information on deposit, see Chapter 800: DEPOSIT FOR REGISTRATION.

316 Copyright ownership as distinct from ownership of material object. Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of the material object does not of itself convey any rights in the copyrighted work, nor, in the absence of an agreement, does the transfer of ownership of a copyright convey property rights in any material object. See 17 U.S.C. 202.

316.01 Letters and diaries. In the case of letters, the author of the letter and not the recipient or possessor has the right to claim copyright. Similarly, the mere possession of a diary does not entitle the possessor to claim copyright, regardless of whether the material object was purchased or found. Letters and diaries are often published with additional new material such as a foreword or explanatory notes; registration may be made for this new material, provided that it represents at least a certain minimum amount of copyrightable authorship. However, applications for works consisting of letters or diaries should contain information regarding the author of these works only where the claimant named on the application is authorized to claim copyright in this material. Where the author of the letter or diary is named on the application and is not also the claimant, the application must state how the rights in the letter or diary were transferred to the claimant.

317 Interviews. A work consisting of an interview often contains copyrightable authorship by the person interviewed and the interviewer. Each has the right to claim copyright in his or her own expression in the absence of a valid agreement to the contrary. Where an application for such a work names only the interviewee or the interviewer as author and claimant, and where

317 Interviews. (cont'd)

the nature of authorship is described as "entire text," it is unclear whether the claim actually extends to the entire work, or only to the text by the interviewee or the interviewer. In any case where the extent of the claim is not clear, the Copyright Office must communicate with the applicant for clarification.

318 Facts, historical data, and "news." Works are often submitted for registration which contain "news" or other factual data, or which recount historical events. A distinction should be made between the original expression which the author uses and the noncopyrightable data, news, or facts which are set forth in the work. If it appears that the applicant is seeking to extend the claim to such uncopyrightable material, the Copyright Office will generally communicate with the applicant for clarification.

318.01 Research. The function or activity which constitutes "research" is not copyrightable. However, the expression embodied in the product or result of research may be copyrightable if it contains at least a certain minimum amount of original authorship.

319 Author deceased before date of creation of work. Where the application names as author an individual who was deceased on the date of creation of the work, and who is alleged to have dictated his or her writings "from the beyond," the Copyright Office will generally write to explain the requirements of the law regarding authorship and ownership. Ordinarily, works of this kind will contain additional material, such as an introduction, and registration may be made for this material, provided there is sufficient copyrightable authorship. Where the only author named was deceased on the date of creation and that person is named as claimant, the Office

319 Author deceased before date of creation of work. (cont'd)

will refuse to register the claim, since a deceased person cannot be a copyright claimant. Where the deceased person is named as the only author and another person or an organization is named as claimant, the Office will also refuse registration, since any "transfer" from the deceased author to the claimant could not fulfill the requirement of the copyright law that transfers of copyright ownership be in writing and signed by the transferor.

320 Machine-readable works. A machine-readable work is either an unpublished work which is fixed, or a published work which is published only in the form of machine-readable copies from which the work cannot ordinarily be perceived except with the aid of a machine or device. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform), and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category. Examples of nondramatic literary works which are machine-readable are computer programs and data bases. Such works may be embodied in the form of magnetic tapes or disks, computer chips, punched cards, or the like. See 37 C.F.R. 202.20(c)(2)(vii).

320.01 Literary works embodied in machine-readable form. Nondramatic literary works embodied in machine-readable form include computer programs and data bases, as well as other textual works, such as, instructional manuals, educational coursework, and the like.

321 Computer programs. A "computer program" is 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.

321 Computer programs. (cont'd)

Because computer programs do not generally contain textual information, the claim to copyright in a computer program is generally made on the basis of authorship expressed in "numerical symbols or indicia" contained in the program. Computer programs are ordinarily considered "literary works" and can be considered for registration on Form TX.

Examples:

1) A program that calculates the orbit of a rocket.

2) A program that computes wages and salaries for a payroll.

3) A self-teaching mathematics program for elementary students.

321.01 Source code. Source code is the computer program code as the programmer writes it, using a particular programming language, generally a program written in high-level language, such as, BASIC, COBOL, or FORTRAN. A program in source code must be changed into object code before the computer can execute it. This change is accomplished by a separate program within the computer called an assembler or a compiler to enable the program to be run on a particular brand and model computer (e.g., a compiler on a TRS-80 Model III would enable source code to be executed on that particular brand and model computer).

321.02 Object code. Object code is the representation of the program in machine language (e.g., binary coding using zeros and ones or hexadecimal coding using letters and numbers or octal coding using 0 to 7) which the computer executes.

321 Computer programs. (cont'd)

321.03 Relationship between source code and object code. The Copyright Office considers source code and object code as two representations of the same computer program. For registration purposes, the claim is in the computer program rather than in any particular representation of the program. Thus separate registrations are not appropriate for the source code and object code representations of the same computer program. However, where a work in source code is registered in unpublished form, and the published version of the same work is submitted for registration in object code form, registration will be made.

322 Copyrightable subject matter. To be registrable, a computer program must contain at least a certain minimum amount of original authorship in the form of statements or instructions.

323 Derivative computer programs. A derivative computer program is one that is based on or incorporates material from a previously published or registered or public domain program that has been revised, augmented, abridged, or otherwise modified so that the modifications, as a whole, represent an original work of authorship. See also section 306 above.

323.01 Registrability of a derivative computer program. Registration for a derivative computer program covers only the additions, changes, or other new material appearing in the program for the first time. Therefore, the new material itself must be original and represent copyrightable authorship. Where only a few minor revisions or additions have been made, or where those that were made are of a rote nature predetermined by the functional considerations of the hardware, registration for the new material is not possible.

323 Derivative computer programs. (cont'd)

323.01 Registrability of a derivative computer program. (cont'd)

Examples:

1) A derivative program would be registrable where a substantial new program code has been added to a previously published program to enable it to accomplish additional functions.

2) A student-programmer translates a previously published program from COBOL to FORTRAN [both are source-code programming languages]. The resulting translation would represent a copyrightable derivative work.

3) A previously published program is adapted to run on a different model or brand of computer. The Office will question the nature and extent of the adaptation to determine registrability. If the changes were functionally predetermined, registration will be refused.

4) An applicant files two applications for the same program: one specifically for the source code and the other for the object code. Since the object code version does not contain copyrightable differences, there is no basis for a separate registration for the object code. The Office will communicate with the applicant suggesting a single registration for the computer program.

324 Deposit for registration: identifying material. Where a computer program is fixed or published only in the form of machine-readable copies, the deposit for registration purposes shall consist of one copy of identifying portions of the program, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes,

324 Deposit for registration: identifying material. (cont'd)

"identifying portions" shall mean either the first and last 25 pages or equivalent units of the program if reproduced on paper, or at least the first and last 25 pages or equivalent units of the program if reproduced in microform, together with the page or equivalent unit containing the copyright notice, if any. See 37 C.F.R. 202.20(c)(2)(vii). If the computer program is less than 50 pages in length, the entire program should be deposited. For registration of a derivative computer program, identifying portions of the new material should be included in the deposit.

NOTE: Works fixed or published in both machine-readable and visually-perceptible form are not considered machine-readable works for purposes of deposit for registration. The appropriate deposit requirements for the visually-perceptible form apply. See section 806.12 of Chapter 800: DEPOSIT FOR REGISTRATION.

324.01 Title on identifying material. The identifying material deposited should bear a title clearly identifying the work for which registration is sought. Where the title is given on the application but not on the identifying material (for a published or unpublished work), the Copyright Office will add the title to the identifying material if it is clear that the identifying material represents the work specified on the application.

324.02 Notice on identifying material. The identifying material should include the page or equivalent unit containing the copyright notice if copies of the computer program were published with notice. Where the copyright notice is encoded within the object

324 Deposit for registration: identifying material. (cont'd)

324.02 Notice on identifying material. (cont'd)

code so that its presence and content are not readily discernible, the notice should be underlined or highlighted and its contents decoded.

324.03 Source code as best deposit. The Copyright Office considers the source code to be the best representation of the copyrightable authorship in a computer program. Thus the identifying material deposited for a computer program should be in source code.

324.04 Rule of doubt. Where the applicant is unable or unwilling to deposit identifying material in source code, depositing only object code instead, registration for the computer program will be made under the rule of doubt if the applicant confirms in writing that the work as deposited contains copyrightable material. See also section 108.07 of Chapter 100: BASIC POLICIES.

NOTE: Because object code is basically unintelligible to copyright examiners, it is not possible to examine the deposit to determine the presence of copyrightable authorship. The doubt in this instance does not concern the copyrightability of computer programs in general.

324.05 Special relief. Special relief is a procedure which allows the Register of Copyrights to grant the requester the option of depositing less than or other than that which is required under the general deposit provisions. Special relief is an option available to computer program applicants when they are unable or unwilling to deposit the usual identifying material in source code format. See section 808 of Chapter 800: DEPOSIT FOR REGISTRATION; see also 37 C.F.R. 202.20(d).

324 Deposit for registration; identifying material. (cont'd)

324.05 Special relief. (cont'd)

324.05(a) Trade secrets and special relief. When a computer program contains trade secrets or other confidential material that the applicant is unwilling to disclose by depositing the first and last 25 pages in source code, the Copyright Office is willing to consider special relief requests enabling the applicant to deposit less than or other than the usual 50 pages of source code. Special relief requests for the following three deposit options are presently being granted upon receipt of the applicant's written request for special relief:

1) First and last 25 pages of source code with some portions blocked out, provided that the blocked-out portions are proportionately less than the material still remaining.

2) At least the first and last ten pages of source code alone (with no blocked-out portions).

3) First and last 25 pages of object code plus any ten or more consecutive pages of source code (with no blocked-out portions).

324.06 Specific deposit examples. The following examples concern various deposit situations.

1) Source code and object code with one application. Where the first and last 25 pages each of source code and object code (total of 100 pages) are deposited with one application on Form TX for a single computer program, the registration is made using the combined source code and object code identifying material.

324 Deposit for registration: identifying material. (cont'd)

324.06 Specific deposit examples. (cont'd)

2) Object code only. When the identifying material is deposited only in object code, the Copyright Office will correspond with the applicant requesting either the deposit of source code or, as a prerequisite to registration under the rule of doubt, the applicant's written confirmation that the computer program represented by the object code deposit contains copyrightable authorship.

3) Object code plus other clearly copyrightable material. If the deposit consists of identifying material in object code for a computer program plus other clearly copyrightable material (such as a user's manual) and the single claim is in the entire work, there is still doubt as to the presence of copyrightable authorship in the computer program even though the claim includes clearly copyrightable text in the manual. The Copyright Office will communicate with the applicant about the deposit of object code and request either the deposit of source code or, as a prerequisite to the computer program portion of the claim being registered under the rule of doubt, the applicant's written assurance that the computer program as deposited represents copyrightable authorship.

4) Incomplete deposit of identifying material. If the identifying material is less than 50 pages in length, the Copyright Office will consider that the deposit constitutes the entire program for which registration is sought. However, if there is information to the contrary (such as missing page numbers or obvious wide gaps in line numbers), the Office will inquire as to the completeness of the deposit.

324 Deposit for registration: identifying material. (cont'd)

324.06 Specific deposit examples. (cont'd)

5) Single application for computer program and manual published as a unit. When the deposit consists of one copy of identifying material plus one copy of the published manual, the Copyright Office will not require deposit of a second copy of the published manual.

6) Separate applications for computer program and manual published as a unit. If the deposit for these two claims consists of one copy of identifying material for the computer program and one copy of the published manual, the Copyright Office will request a second copy of the published manual.

325 Completing the application form. An application for registration of a computer program should be completed with regard to the copyrightable authorship in the computer program. For example, an application describing the authorship or extent of claim as "object code" will be questioned.

325.01 Asserting a claim in a derivative computer program. Ordinarily, the application for a derivative computer program should limit the claim to the copyrightable new material, excluding the preexisting material that was previously registered or published or that is in the public domain. To limit the claim appropriately in such cases, the "material added" statement on the application should be completed.

325 Completing the application form. (cont'd)

325.01 Asserting a claim in a derivative computer program. (cont'd)

325.01(a) When a "material added" statement is not required. When the preexisting material has never been registered or published or when the amount of preexisting material is not substantial, the "material added" statement on the application need not be completed.

Examples:

1) A computer program entitled "X-103 Program, Version 3" incorporating material from two earlier developmental versions that remained unregistered and unpublished would not be considered a derivative computer program for registration purposes. No "material added" statement would be required.

2) The application for a derivative program containing a total of 5,000 lines of program text, 50 of which were published previously, would not be required to give a "material added" statement. However, if such a statement were given, the Office would not ask to have it deleted.

325.01(b) When a "material added" statement is required. The Copyright Office will require a "material added" statement on an application for a derivative computer program only when the previously published or registered or public domain material contained in the new version of the program is substantial or, in relation to the work as a whole, represents a significant portion of the work.

325 Completing the application form. (cont'd)

325.02 Nature of authorship and extent of claim. In an application for an entirely new computer program, the "nature of authorship" space is intended not only to describe the authorship but is also intended to delineate the extent of the claim. In an application for a derivative computer program, the "material added" statement generally delineates the extent of the claim. NOTE: For specific definitions of the terms listed below, see the Glossary of Terms in section 326 below. The following lists are illustrative and not exhaustive.

325.02(a) Copyrightable elements. The following descriptions of authorship or of material added will ordinarily not be questioned:

- computer program
- entire computer code
- entire program
- entire program code
- entire text
- entire work
- module, new modules, revised modules
- program
- program instructions
- program listing
- program text, programming text
- revised program
- routine, new routines, revised routines
- software, computer software
- subroutine, new subroutines, revised subroutines
- text
- text of computer game
- text of . . . (except "text of object code" or "text of algorithm")
- text of program
- translation from (one programming language) to (another programming language)
- wrote program

325 Completing the application form. (cont'd)

325.02 Nature of authorship and extent of claim. (cont'd)

325.02(b) Unclear elements. The following terms as commonly used with reference to computer software may or may not represent copyrightable authorship. Therefore, the Copyright Office will generally question an application describing the claim or the authorship in these terms:

- adaptation or translation (where program appears to have been adapted merely to run on different hardware)
- compilation
- debugging
- enhancements
- error corrections
- features
- patching
- translation (listed alone)

325.02(c) Noncopyrightable elements. Where the Copyright Office has determined that the claim is based only on the following, registration will be refused:

- algorithm (or text of algorithm)
- analysis
- cassette
- chip
- disk
- encrypting
- EPROM
- firmware
- formatting
- functions
- language (alone)
- logic
- mnemonics
- printout
- PROM
- ROM
- software methodology
- system
- system design(er)

326 Glossary of terms. The following is a list of terms commonly used with reference to computer programs.

ALGORITHM	--	A prescribed set of well defined rules or processes for the solution of a problem.
ASSEMBLER	--	A computer program that changes assembly language into the language that the computer operates on directly -- the "object code."
ASSEMBLY LANGUAGE	--	A language -- verbs, nouns, syntax, etc. -- used by programmers to write computer programs. It is relatively "low level" in that the programmer must keep many machine details in mind. The source language for an assembler.
BASIC	--	A rather simple programming language that is widely used with the new micro-computers.
BUG	--	A mistake or malfunction.
CARTRIDGE	--	A very ambiguous term meaning some form of removable magnetic data storage medium, used along with a fixed (non-removable) medium. It may use magnetic tape or magnetic disk as the medium.

326 Glossary of terms. (cont'd)

CASSETTE	--	A small, self-contained volume of magnetic tape used for data storage. Similar to a sound-recording cassette.
CHIP	--	In microcircuitry, a single device, either a transistor or a diode, that has been cut from a larger wafer of silicon.
COBOL (Common Business Oriented Language)	--	A high-level language developed in the early 1960's and used primarily for business applications.
CODE	--	Can be used as verb or noun. As a noun, it can apply to (1) the data, meaning the series of bits used to represent the characters, or (2) the programs, meaning the computer instructions as written in the programming language. As a verb, it means creating the coded data or programs.
CODING	--	The act of actually writing program statements.
COMPILE	--	To prepare a machine language program from a computer program written in another programming language by making use

326 Glossary of terms. (cont'd)

COMPILE (cont'd)	--	of the overall logic structure of the program, or generating more than one machine instruction for each symbolic statement, or both, as well as performing the function of an assembler.
COMPILER	--	A computer program that is used to change a high-level programming language into machine language. It is similar to an assembler.
COMPUTER	--	A data processor that can perform substantial computation, including numerous arithmetic or logic operations, without intervention by a human operator during the run.
DEBUGGING	--	The process of detecting and removing the errors in a computer program or a set of programs. Typically, errors are detected by trying to run a program with a series of transactions designed to test the main portions of the program, and observing the correctness of results.

[1984]

326 Glossary of terms. (cont'd)

DISK	--	The popular form of bulk data storage with rapid access capabilities. Data is recorded in tracks on a magnetic medium on the disk surface. The two main forms are "floppy disks" and "hard disks."
DUMP	--	The term applied to the process of making a copy of some or all data stored in a storage device, usually for backup purposes.
ENCRYPTION	--	The process of systematically turning messages (information) into gibberish, as a security measure. The inverse process of decryption is needed for recovering the original messages.
ENHANCEMENTS	--	Changes or refinements made to an existing computer program.
EPROM (Erasable Programmable Read-Only Memory)	--	A type of computer memory device for storing data within a computer; can be erased and reprogrammed.
FEATURES	--	Particular capabilities or functions of a given computer program.

[1984]

326 Glossary of terms. (cont'd)

FIRMWARE -- This term is applied to computer programs that are stored in a type of memory (a ROM) that can in general only be read, not erased or changed easily. Firmware is used both for protection and for higher speed.

FLOPPY DISK -- A thin plastic disk, usually 5-1/4 inches or 8 inches in diameter, enclosed in a square, protective envelope, with a magnetic surface for storing information; a diskette.

FORTRAN -- The FORmula TRANslation programming language, originally developed in the late 1950's for engineering and scientific programming. It is still the most widely used language for these types of programs.

HARDWARE -- The term applied to the computer equipment -- the processor unit, the storage devices, input devices, printers, etc. Hardware is differentiated from "software" and "firmware."

INTERPRETER -- A computer program in the same general class as "assembler" and "compiler." All three

326 Glossary of terms. (cont'd)

INTERPRETER (cont'd)	--	translate or change a programmer's source code into the object code that the computer uses.
LANGUAGE	--	In the computer field, the term generally means a programming language used by a programmer for writing a computer program. This program usually must be translated or changed (assembled, compiled, interpreted) into object code before the computer can execute the program.
MACHINE LANGUAGE (MACHINE CODE OR OBJECT CODE)	--	The instructions the machine actually executes.
MNEMONIC CODE	--	Symbols used in programming to assist the human memory, e.g., an abbreviation such as "MPY" for "multiply."
MODULE	--	A series or group of related instructions within a computer program, analogous to a chapter of a book.
OBJECT CODE	--	This is the program in actual machine language which the computer executes. It has been changed from the programming language used by the programmer by means of an "assembler," "compiler," or "interpreter."

326 Glossary of terms. (cont'd)

PATCH, PATCHING	--	Segments of program code (individual statements or routines) added to the body of a completed computer program to enhance or amend the program.
PRINTOUT	--	A visually perceptible printed copy. Is used variously to mean a listing of the computer instructions that form a program or the product resulting from the operation of the computer program.
PROM (Programmable Read-Only Memory)	--	A programmable ROM.
RAM (Random-Access Memory)	--	Computer storage device in which words may be "written" (stored) or "read" (recovered) in any order at random. Conventional internal memory.
ROM (Read-Only Memory)	--	A computer device containing a program or data permanently stored when the unit was made. In theory, it can apply to either internal memory or large-volume, external data storage. Today, it is applied to the former. Programs stored in ROM cannot be changed easily and they

326 Glossary of terms. (cont'd)

ROM (cont'd)	--	execute faster; see also above entry under FIRMWARE.
ROUTINE OR PROGRAMMED ROUTINE	--	A series or group of instructions usually contained within a main program; analogous to a paragraph within a textual work.
SOFTWARE	--	A set of computer programs, procedures, and possibly associated documentation concerned with the operation of a data processing system, e.g., compilers, library routines, manuals, circuit diagrams. Contrasts with hardware.
SOURCE CODE	--	This is the computer program code as the programmer originally writes it, in the programming language being used. It must be changed into object code before the computer can execute it, unless the program was originally written in object code.
SUBROUTINE	--	A routine that can be part of another routine; analogous to a sentence within a paragraph of narrative text.
TAPE, MAGNETIC	--	Large volume data storage medium for computers.

327 Instructional booklets, flowcharts, and the like. Registration of claims to copyright may be made for instructional booklets, flowcharts, and other material related to the development or explanation of the computer program. Because the authorship in such material is generally visually perceptible rather than machine-readable, identifying materials may not be submitted in lieu of an actual copy or copies.

328 Automated data bases. An automated data base is a body of facts, data, or other information assembled into an organized format, suitable for use in a computer and comprising one or more files. Where all the data in an automated data base has been previously published or registered, or is in the public domain, the claim would be limited to the authorship involved in the compilation. Where the data is substantially or wholly new, the claim could include additional text, compilation and revised text, updates, or the like.

[END OF CHAPTER 300]

COPYRIGHTABLE MATTER: WORKS OF THE PERFORMING ARTS AND SOUND RECORDINGS

Outline of Topics

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405 Physical embodiment of musical works.

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408 Musical derivative works.

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408 Musical derivative works. (cont'd)

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418 Claim in literary content.

419 Literary content.

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430 Dramatic works.

431 Dramatic works defined.

432 Characteristic features of dramatic works.

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461 Pantomime content.

462 Distinction between pantomime and choreography.

463 Embodiment of pantomimes.

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470 Audiovisual works.

471 A motion picture is a kind of audiovisual work.

472 Series of related images.

473 Sounds accompanying an audiovisual work.

474 Forms of embodiment.

475 Authorship in an audiovisual work.

475.01 Visually perceptible authorship.
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476 Derivative audiovisual works.

477 Multimedia works.

477.01 Classification of multimedia works.

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480 Motion pictures.

480.01 Requirement of fixation.
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480.04 Motion pictures as derivative works and compilations.

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485 Motion pictures: special problems.

485.01 Fixation as it relates to publication.
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486 Deposit requirements for motion pictures.

486.01 Description required.
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486.04 Definition of "best edition."
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486.06 Motion Picture Agreement.
486.07 Motion Picture Agreement: Standard Modification.
486.08 Motion Picture Agreement: Supplemental Property Agreement

487 Separately registrable works of authorship fixed in film, videotape, or the like.

[Numbers 488 and 489 are reserved.]

490 Sound recordings.

491 Sound recording distinct from underlying work.

492 Sound recording distinct from sounds accompanying audiovisual work.

492.01 Classification.
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493 Forms of embodiment.

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493.02 Types of phonorecords.
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494 Date of fixation as it affects eligibility.

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495 Copyrightable subject matter.

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495.02 Authorship on the part of the performer.
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496 Sound recordings as derivative works.

496.01 Derivative sound recordings.
496.02 Types of derivative sound recordings.
496.03 Registrability of derivative authorship.

497 Compilations.

497.01 Registrable compilations.
497.02 Non-registrable compilations.

498 Multimedia works.

498.01 Audiovisual multimedia works.
498.02 Nonaudiovisual multimedia works.

[Numbers 498.03 through 498.99 are reserved.]

499 Glossary of terms.

Chapter 400

COPYRIGHTABLE MATTER: WORKS OF THE PERFORMING ARTS AND SOUND RECORDINGS

401 Musical works; in general. Musical works, including any accompanying words, are registrable without regard to aesthetic standards. The range of registrable works consists of music produced by traditional and electronic means, including works whose production involves the use of a computer. An electronic composition utilizing tones produced by synthesizer or altered by omitting characteristics of its timbre, such as omitting decay or attack, may be registered. A discussion of the elements of musical works, criteria for copyrightability, forms of embodiment, and derivative musical works follows.

402 Music defined. Music is a succession of pitches or rhythms, or both, usually in some definite pattern.

403 Elements of music. The elements of music are melody, rhythm, and harmony. They are defined below.

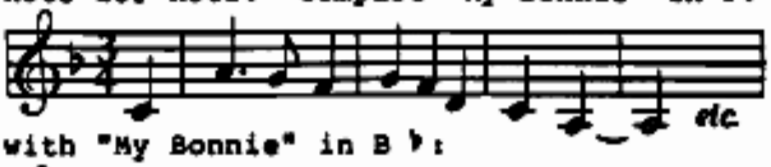
403.01 Definitions. Melody: a succession of single tones; rhythm: a grouping of pulses according to emphasis and length; harmony: the combination, simultaneously, or nearly so, of different pitches. These tones are spaced at certain prescribed distances from one another in related progressions. Although a musical work will be registered if any of these three elements can be considered to constitute a work of authorship, melody, the predominant element by which a work is perceived, usually determines whether a work is copyrightable. Even melody, however, may be too minimal for copyright protection, as it is in "Johnny One-Note," (excluding the "break"), while other elements, such as the rhythm and harmony in this composition, supply all or substantially all of the copyrightable content.

404 Musical content. The criteria for copyrightability of music are: 1) The work must contain at least a minimum amount of creative musical expression; 2) The work must not have been copied from another source. See Chapter 200: COPYRIGHTABLE MATTER - IN GENERAL.

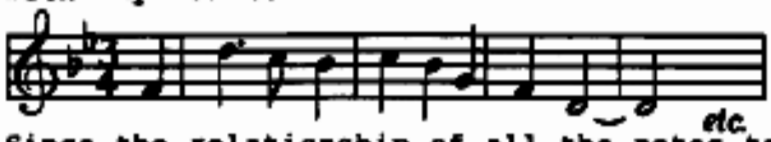
404.01 No numerical standard. There is no predetermined number of notes or measures that will automatically qualify a work for copyright registration.

404.02 Words and short phrases. Words and short phrases, such as names, titles, and slogans, are not subject to copyright. 37 C.F.R. 202.1(a). Just as words and short phrases cannot be registered, phrases consisting of only a few musical notes, such as clock chimes, i.e., "mi do re sol, sol re mi do" cannot be registered.

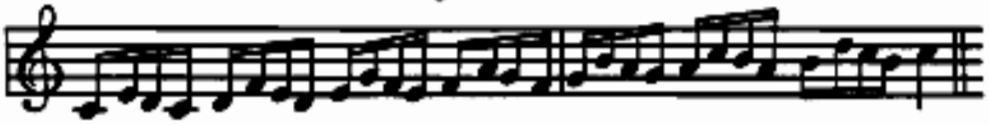
404.03 Transposition. Transposition is the act of transferring music from one key to another, note for note. Compare "My Bonnie" in F:



with "My Bonnie" in B ♭:

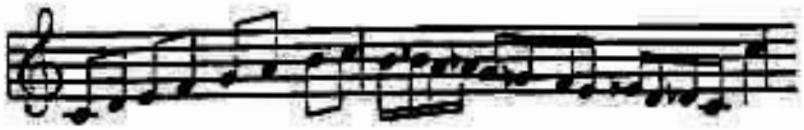


Since the relationship of all the notes to one another remains the same, and all that is required is the mere act of measuring intervals, transposition is a mechanical act and, as such, is not subject to copyright protection. There is no creative musical expression in a transposition. This turnabout four-note pattern repeated at a certain melodic interval from the preceding statement is essentially a transposition, and therefore is not registrable.



404 Musical content. (cont'd)

404.04 Works consisting entirely of information that is common property. Works consisting entirely of information that is common property are not subject to copyright. 37 C.F.R. 202.01(d). Diatonic and chromatic scales, as such are considered works consisting entirely of information that is common property. Thus, works of this kind are excluded from copyright protection.



404.05 "Melodiousness" and harmony. "Melodiousness" and conventional (triadic) harmony are not criteria for registration. A musical composition based on a tone row, or a quarter-tone scale, for example, may be accepted for registration. Claims to copyright in composition with harmony based on intervals of seconds, fourths, or any other combination of tones may also be registered.

405 Physical embodiment of musical works. Music may be embodied in either copies or phonorecords. No basic registration is possible, however, without some kind of physical representation of the work -- a copy, or phonorecord, or, where applicable, identifying material. See Chapter 800: DEPOSIT FOR REGISTRATION.

405.01 Physical embodiment: copies. The term "copies" includes every kind of embodiment of the work acceptable for registration, except phonorecords and certain identifying material.

405.01(a) Copies required before 1978. Until 1978, a copy was the only form in which a musical work could be accepted for registration. Various kinds of copies, however, were acceptable.

405 Physical embodiment of musical works. (cont'd)

405.01 Physical embodiment: copies. (cont'd)

405.01(b) Copies: musical notation. Standard musical notation, using the five-line, four-space staff is the form most frequently employed to embody musical works. Precision equal to that offered by conventional notation is not required, although the deposit should constitute as precise a representation of the work as possible. Any graphic representation of pitch, rhythm, or both, suffices as long as the notation is capable of being performed. Examples: graphically drawn hand signals, fret notation, staves with more or fewer lines than the conventional staff, and "new music," combining graphic art with music notation.

405.01(c) Copies: literary description. A copy may be in the form of textual instructions for performance, e.g., a description of notes and rhythms. However, in order to be registrable as a musical composition, such instructions must be specific enough for the work to be performed.

405.02 Physical embodiment: soundtracks. Where music is embodied in a motion picture soundtrack, the motion picture is the copy. Although the deposit ordinarily required would be the motion picture, an exception to the deposit requirements permits the deposit of identifying material instead of a copy. See Chapter 800: DEPOSIT FOR REGISTRATION.

NOTE: Music published in a soundtrack before 1978 can be registered apart from the motion picture as a whole, only if the motion picture bore a separate copyright notice for the music. Music published in a soundtrack after 1977 may be registered apart from the motion picture, without a notice of copyright on the motion picture in the name of the music claimant.

405 Physical embodiment of musical works. (cont'd)

405.03 Physical embodiment: phonorecords. On January 1, 1978, phonorecords, including tapes, disks, sound sheets, soundwheels, and piano rolls, became acceptable deposits for registering claims to copyright in music recorded on them. Moreover, music embodied only in phonorecords before 1978 is now acceptable for registration in that form. If such phonorecords were available for sale or public distribution on January 1, 1978, after having been sold or publicly distributed earlier, the musical work would be considered published and the date of such publication is January 1, 1978. See section 909, Chapter 900: PUBLICATION.

406 Limitations on copyrightability. By reason of certain limitations in the copyright law, some works are not registrable though they might otherwise appear to be the subject matter of copyright.

406.01 Copyright term expired. A work whose copyright term has expired is not subject to copyright protection. Once a work has entered the public domain, its term cannot be extended or the protection revived. See section 103, Transitional and Supplementary Provisions of the current Act.

406.02 Certain musical arrangements. Musical arrangements embodied in a phonorecord and made pursuant to a compulsory license to make and distribute phonorecords of nondramatic music are not subject to copyright protection without the express consent of the copyright owner. See 17 U.S.C. 115(a)(2).

406.03 Chord charts. Chord charts ordinarily contain a significant number of public domain standard chords. To be registrable, works embodying chord charts must qualify as a compilation or as some other original work of authorship. See section 408.02 below.

406 Limitations on copyrightability. (cont'd)

406.04 Musical works unlawfully employing other works under copyright protection. Musical works that unlawfully employ another work under copyright protection are not themselves subject to copyright protection if they are inseparably intertwined with the preexisting work. See 17 U.S.C. 103(a) and H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 57-8 (1976). For example, an unlawful four-part reharmonization of "All The Things You Are" that cannot be separated from the previous melody and harmony would not be registrable. However, the Copyright Office does not generally investigate the copyright status of preexisting material or whether it has been used lawfully. Where a work unlawfully employs preexisting copyrighted material that is separable from the new material, the new work is registrable.

407 Use of protected characters, names, and slogans. Occasionally musical works incorporate names, titles, or slogans whose utilization is subject to restrictions under other Federal laws, but the incorporation of such items does not prevent copyright registration. Where the Copyright Office is aware that a use of certain elements within a work may be in violation of existing law, it may inform the applicant of the possible restriction and direct the applicant to the Government agency that deals with the item in question. Some examples of restricted names and characters are: "Olympic," "Olympiad," (36 U.S.C. 380); "Woodsy Owl" (18 U.S.C. 711a); and "Smokey Bear" (18 U.S.C. 711).

408 Musical derivative works. A derivative work is a work based upon one or more preexisting works, such as . . . musical arrangements. 17 U.S.C. 101. In the case of derivative works, only certain kinds of preexisting material need be excluded from the claim on an application for

408 Musical derivative works. (cont'd)

copyright registration, namely, that which constitutes a significant amount of previously registered published, or public domain material.

1) Where the work does not incorporate any preexisting copyrightable material, but is merely based on a preexisting idea, the work is considered a new work, and not a derivative work.

Example:

A song about crossing a river inspired by the painting, "Washington Crossing the Delaware."

2) Where the work incorporates only a negligible amount of previously registered, published, or public domain material, the work is considered a new work; thus, the claim to copyright need not exclude the preexisting material.

Example:

A musical work incorporating only the first three notes of "Also sprach Zarathustra," by Richard Strauss.

3) Where a work incorporates preexisting material that was theretofore unregistered and unpublished, the work is considered a new work, for purposes of most registrations.

Examples:

a) An author writes song lyrics in 1978 and files them away in his home. In 1981, the author sets the lyrics to new music. Even though the lyrics were preexisting when the music was composed, the lyrics are not considered a preexisting work, for purposes of registration.

408 Musical derivative works. (cont'd)

3) (cont'd)

Examples: (cont'd)

b) A composer receives authority to set to music unpublished song lyrics that have never been registered, but is not authorized to claim copyright in the lyrics. Since the lyrics have not been previously published or registered, they are not considered a preexisting work for purposes of registration, but they should nevertheless be excluded from the claim.

408.01 Musical arrangements. A musical arrangement is a work that results from the addition of new harmony to a preexisting work. The standard of originality for arrangements takes into consideration the fact that a melody carries with it a certain amount of implied harmony.

408.01(a) Harmonic chord symbols. Chord symbols represent the presence of three or more specific notes. However, the individual notes in the chords are not specifically distributed as are chord members in a written-out harmony or in harmony recorded on a phonorecord. To reach the "minimal amount" requirements, harmonic chord symbols must go beyond standard chords in common sequences.

Example:

Chord symbols C (major), a (minor), d (minor), and G (major) are submitted with original words. The harmony is not registrable because this chord sequence is both too short and standard. The words, if substantial enough, may be registered.

408 Musical derivative works. (cont'd)

408.01 Musical arrangements. (cont'd)

408.01(b) Instrumentation. Music may also be arranged by distributing or redistributing harmonic elements among different instruments.

Examples:

1) An orchestration of Debussy's "Reverie," a work originally composed for piano.

2) A marching band arrangement of Beethoven's String Quartet in G major, Opus 18, No. 2.

Transpositions are not copyrightable. See section 404.03 above. Therefore, the Copyright Office will not make multiple registrations for the same work in different keys.

Example:

"Madame Evanti's Solfege Songs" is submitted in a different key each for High, Medium, and Low voice. The applicant may select the version to be registered, but only one registration may be made.

Moreover, the notation of a musical work necessary to enable transposing instruments to play in the same key is not copyrightable.

Example:

The transposition of the standard four-part setting of the hymn "Abide With Me" for E-flat, A-flat, and B-flat saxophones and C clarinet, assigning a different part to each instrument, is not registrable.

408 Musical derivative works. (cont'd)

408.02 Adaptation. An adaptation results from reworking a preexisting melody, possibly including rhythmic variation as well. An example might be a jazz version of the "Battle Hymn of the Republic." This definition of adaptation is not as widely known as the definition of arrangement; thus, the Copyright Office will accept a claim on adaptation where the primary change is in the harmony. Where there is no registrable harmony, an application stating the claim as arrangement will not be accepted, but the Copyright Office will request that the basis of the claim be changed to adaptation, if appropriate.

408.03 Setting. A setting is a harmonization, or arrangement of a preexisting melody, or entirely new music set to preexisting words. Settings are similar to arrangements, except that they are more closely associated with preexisting words and chorale-type harmony.

408.04 Variations. Variations are adaptations and arrangements of one basic theme in various moods and styles. The basic theme is usually the preexisting work. Variations are treated as new works for purposes of registration, where the treatment results in substantial divergence from the preexisting material, or where the new material overwhelmingly predominates in comparison to the theme, such as where the theme or motive consists of only a few notes.

Example:

Because of substantial divergence from the theme, utilization of the Paganini motive in this phrase of Rachmaninoff's "Rhapsody on a Theme of Paganini," Opus 43,

408 Musical derivative works. (cont'd)

408.04 Variations. (cont'd)

Example: (cont'd)

would not have prevented the Rachmaninoff work from being registered as a new work.

408.05 Editing. Music editing generally consists of markings for the performance of music, such as additional or altered fingering, accents, dynamics, and the like.

408.06 Additional music. Additions of music can be registered, such as the completion of an unfinished work or a reconstruction of missing music.

408.07 Abridgment. An abridgment of a musical work may be registrable provided that there is a substantial amount of selectivity, for example, more than merely omitting a section from the beginning or end.

408.08 "As a Whole" criterion. A derivative musical work may be registrable in the aggregate, even though the individual changes, examined separately, may not be.

Example:

A revision consisting of a change of fingering in two measures, added dynamics in four measures, and three measures of additional music could, in the aggregate, constitute a derivative musical work.

409 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. The term "compilation" includes collective works. 17 U.S.C. 101.

409 Compilations. (cont'd)

409.01 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.

Example:

> A folio of selected Rodgers and Hammerstein songs.

However, a work will be rejected for registration if the claim is on compilation, unless it appears that enough basic material has been compiled.

Example:

> A compilation claim on Sides 1 and 2 of a 45-r.p.m. phonorecord containing a musical selection on each side will be refused. A claim in the music, however, will be accepted if the music appears to meet the standards of originality. See section 404 above.

409.02 Method books. Method books that contain only previously published material, such as public domain chords, scales, exercises, and other information that is common property, may be registered as compilations if the works contain at least a certain minimum amount of compilation authorship. In view of the limited protection available, the Copyright Office will not suggest a compilation claim on its own initiative unless the contribution is obviously substantial.

[Numbers 410 through 416 are reserved.]

417 Words accompanying music. Words accompanying music are considered an integral part of the musical work. There is no specific manner in which words shall accompany music. The words may be narrated to background music, sung to music on a phonorecord, set above the notes to which they are to be sung on a notated copy, or may be written on a separate sheet with no instructions as to how they are to be performed. The Copyright Office will question whether words accompany music only where it appears improbable that the words and music are meant to be performed or otherwise used together.

418 Claim in literary content. The words must be sufficiently substantial in themselves to support a claim on words. If the words are insufficient, the Copyright Office will request that the claim on words be deleted from the application. The words may still be included as part of the deposit.

419 Literary content. In addition to ordinary words used in the conventional manner, nonsense syllables, nonsyntactical words, or coined words may be registered. The verbal expression, however, must have been originated by a human being and be of a sufficient amount.

420 Nondramatic literary works prepared for performance. Nondramatic literary works prepared for performance may be registered in Class PA. Nondramatic literary works not intended for performance should be registered in Class TX. See Chapter 300; COPYRIGHTABLE MATTER -- NONDRAMATIC LITERARY WORKS.

420.01 Song lyrics. Song lyrics, unaccompanied by music, may be registered in published or unpublished form in Class PA.

420.02 Comedy sketches. Jokes and other comedy routines may be registered if they contain at least a certain minimum amount of original expression in tangible form. Short quips and slang expressions consisting of no more than short phrases are not registrable.

420 Nondramatic literary works prepared for performance. (cont'd)

420.03 Embodiment of nondramatic literary works prepared for oral delivery. Nondramatic literary works intended for oral delivery may be embodied in copies or phonorecords. Human or mechanical agents, including computers, may be used to fix the words in tangible form.

[Numbers 421 through 429 are reserved.]

430 Dramatic works. The term "dramatic works" includes plays prepared for stage presentation, as well as those prepared for cinema, radio, and television. Applications for registration of claims to copyright in dramatic works should be submitted on Form PA.

431 Dramatic works defined. A dramatic composition is one that portrays a story by means of dialog or acting and is intended to be performed. It gives directions for performance or actually represents all or a substantial portion of the action as actually occurring, rather than merely being narrated or described. Examples of narration or description alone might be: the Bible story of Shadrach, Meshach, and Abednego, or a narration of the "Three Little Pigs." If the narrator is to devise or improvise his or her own action, the dramatic content is not fixed and thus the work is not a drama.

432 Characteristic features of dramatic works. Some of the features which are characteristic of dramas are the following:

432.01 Plot. A drama contains a thread of consecutively related events, either as a theme or in segments. A story delivered by narration alone, however, should be registered as a nondramatic work.

432 Characteristic features of dramatic works. (cont'd)

432.02 Characters. A work may be considered a drama even though it contains only one character. The script of a soliloquy or monolog that tells a story may be registered as a drama, provided that it includes sufficiently explicit stage directions from which it can be performed.

Example:

A poem, such as "Invictus," with directions for acting out the story.

432.03 Dialog. Dialog alone will constitute a drama only if characters and a plot are inherent therein.

432.04 Directions for action. While directions for action by themselves do not constitute a drama, such instructions (or the actual representation of the action) are essential to drama.

432.05 Drama without words. A drama may be represented silently, provided there is visual dramatic action or pantomime, as for example, a new drama in the Noh style. However, a still tableau depicting a story incident does not meet this criterion.

433 Amount of dramatic content necessary. The work should have enough action to avoid the conclusion that the dramatic contribution is too minimal for copyright protection as a dramatic work. While a mere outline or narrative summary of the idea for a drama is not registrable as a dramatic work, every element of the drama need not be set out. A scenario may be registered as a dramatic work if it is adequate to serve as the basis for directing its action, even though the directions are brief and some details are

433 Amount of dramatic content necessary. (cont'd)

left unspecified. Also, a recorded narration coupled with directions for the dramatic representation of some story incidents is registrable as a drama.

Example:

> The script for a children's radio program narrating a visit to the zoo, containing detailed instructions to actors for characterizations of various animal antics.

434 Works not registrable as dramas. Simple directions for using scenery, stage settings, or ideas for sound effects do not in themselves constitute dramatic content. Where the version submitted is not an acting version, the work will not be registered as a drama. However, a work that does not meet the criteria for registration as a dramatic work may contain enough copyrightable content in another category to be registrable on some other basis.

435 Embodiment of dramatic works. A drama may be embodied in manuscript, typescript, or printed copy, on a video-recording, such as a videocassette, or another form of copy, or in a phonorecord. The fixation of a drama may be made simultaneously with its transmission or live performance.

436 Dramatic derivative works. Copyrightable additions or other changes to dramatic works may be made in one or more of several categories. Where a drama is translated, the work remains dramatic in nature and can be described as such on the application. Since the copyrightable addition is not dramatic, the new claim is on translation and not on drama. Where a drama is made into a novel, the addition is not dramatic and thus neither is the new work. Where a novel is made into a drama, the copyrightable new material is dramatic. Where a preexisting drama has been

436 Dramatic derivative works. (cont'd)

substantially revised or new dramatic material has been added, the result is a dramatic derivative work.

437 Compilations. A collection of dramas can be registered as a collective work. If the individual selections consist of dramatic works, the collection can be registered in Class PA, even though the dramas are not then under copyright protection.

438 Music accompanying dramas. To be a dramatico-musical composition, a sufficiently substantial part of the dramatic action or dialog should be combined with the music.

Examples:

> Singspiel, musical comedy, operetta, and opera, including music drama.

A group of songs with instructions for expressive delivery, however, is not a dramatico-musical work. Where music is to accompany a dramatic work, such music must be fixed in the deposit and must be copyrightable on its own to support a claim in music; it need not be interwoven with drama, however, as long as it is intended to form an integral part of the drama.

439 Components of dramatico-musical works. The music and book of a dramatico-musical work are registrable together as one unit, or they may be registered separately. Components that are not copyrightable cannot be registered separately.

[Numbers 440 through 449 are reserved.]

450 Choreographic works. Under the current law, choreography is included as a specified category of works in which copyright subsists. See 17 U.S.C. 102(a)(4); see also section 460 below.

450.01 Definition. Choreography is the composition and arrangement of dance movements and patterns, and is usually intended to be accompanied by music. Dance is static and kinetic successions of bodily movement in certain rhythmic and spatial relationships. Choreographic works need not tell a story in order to be protected by copyright.

450.02 Presentation before an audience. Although some reference works define choreography as "dancing, especially for the stage," presentation before an audience is not required for registration as a choreographic work.

450.03 Characteristics of choreographic works. Most choreography includes the following general characteristics:

450.03(a) Compositional arrangement. Choreography represents a related series of dance movements and patterns organized into a coherent whole. The movements must be more than mere exercises, such as "jumping jacks" or walking steps.

450.03(b) Movement or execution. Choreography is primarily executed by the torso, limbs, or both, in rhythm.

450.03(c) Capacity for performance. The specific movements of dancers are set out in a form from which the work can be performed. See section 450.06 below.

450.04 Abstract choreography. The Copyright Office will register claims to copyright in all choreographic works, including abstract choreographic works, that constitute original works of authorship fixed in tangible form.

450 Choreographic works. (cont'd)

450.05 Requirement for registration. To be registrable, the choreographic work must contain at least a certain minimal amount of copyrightable matter in the form of dance steps or other movements in a coherent compositional arrangement. It must also be capable of performance as submitted.

450.06 Choreographic content: social dance steps and simple routines. Social dance steps and simple routines are not copyrightable under the general standards of copyrightability. Thus, for example, the basic waltz step, the hustle step, and the second position of classical ballet are not copyrightable. However, this is not a restriction against the incorporation of social dance steps and simple routines, as such, in an otherwise registrable choreographic work. Social dance steps, folk dance steps, and individual ballet steps alike may be utilized as the choreographer's basic material in much the same way that words are the writer's basic material.

450.07 Embodiment of choreography. Broad outlines in which the movements of the dancers have not been set out with any certainty are not registrable as choreography. If the basic movements of the dancers have been fixed, however, registration will not be refused simply because there is room for improvisation, or because some improvisation is intended. See section 450.09 below.

450.07(a) Choreographic works embodied in motion-picture form. A choreographic work may be embodied in motion-picture form. If such a motion picture constitutes the deposit for registration, the registration extends only to what is disclosed therein.

450 Choreographic works. (cont'd)

450.07 Embodiment of choreography. (cont'd)

450.07(b) Notation systems. Labanotation, Sutton Movement Shorthand, Benesch Choreology, and other systems of notation are appropriate forms of embodiment to represent the precise movements of the dancers. Such notation, however, is considered a system, and, therefore, is not registrable. See 17 U.S.C. 102(b).

450.07(c) Textual description. Precise explanations in narrative form, whether in copies or phonorecords, are acceptable if the description is specific enough to indicate detailed movements of the dancers. Where the description is not sufficiently specific, it cannot be registered as a choreographic work, but may be registrable as a literary work.

450.07(d) Combinations of various formats. A description might include a combination of forms of embodiment, for example, pictorial or graphic diagrams, or detailed verbal descriptions narrated to music on a phonorecord.

450.08 Derivative choreographic works. When substantial new choreographic material has been added to preexisting choreography, it may be registered as a new choreographic work.

Example:

An addition of a new section to Petipa's "Don Quixote."

When the only preexisting material is a few public domain steps, for example, a waltz, or ballet positions, the work is not considered derivative. See section 450.05 above.

450 Choreographic works. (cont'd)

450.08 Derivative choreographic works. (cont'd)

450.08(a) Other derivative works based on choreography. Nonchoreographic additions may be made to a choreographic work, for example, where a nonchoreographic comedy routine is interspersed between choreographic scenes. In this case, the claim should be made on the new nonchoreographic material. As a practical matter, however, the added material may dictate changes in the choreography as well, especially when new music or new dramatic scenes are added.

450.09 Status of improvisation. Registration cannot be made for improvisation to be provided by the dancer unless such improvisation is fixed.

[Numbers 451 through 459 are reserved.]

460 Pantomimes. Pantomimes are distinct from choreographic works, and thus their registrability does not depend on choreographic criteria.

460.01 Definition. Pantomime is the art of imitating or acting out situations, characters, or some other events with gestures and body movement. Mime is included under this category. Pantomimes need not tell a story or be presented before an audience to be protected by copyright.

461 Pantomime content. To be registrable, pantomimes must include more than a few stock gestures. As there is no copyright protection for ideas in general, a style of movement imitating mechanical dolls, for example, would not be protectible. A significant amount of copyrightable matter in the form of specific gestures in

461 Pantomime content. (cont'd)

such style and embodied in some tangible form, however, may be registered. Tableaux employing less than a minimum amount of action are not registrable as pantomimes. See section 433 above.

462 Distinction between pantomime and choreography. In general, pantomime movement is more restricted than dance although, within its narrower scope, pantomime employs more gestures of the arms and facial expressions. Also, pantomime is usually more representational than choreography, in that it imitates or is a caricature of some event or situation. Pantomime movement is synchronized with music less often than is choreography. In fact, pantomimes are often performed without music, and any accompanying sound is dictated by the situation being portrayed. Most often, however, pantomimes are performed without sound or measured rhythm.

463 Embodiment of pantomimes. Unlike choreography, pantomimes are not usually fixed using a specific form of symbolic notation. Conceivably, however, the same systems could be used for notating pantomimes as for dance. To register a work as a pantomime, the movements must be described in sufficient detail to enable the work to be performed from such description, or an actual performance must be captured on some form of film or videotape. Subject to this requirement, any form of copy or a narrative description on a phonorecord will suffice.

[Numbers 464 through 469 are reserved.]

470 Audiovisual works. 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, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied. 17 U.S.C. 101.

471 A motion picture is a kind of audiovisual work. Motion pictures are 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. For a separate discussion of motion pictures, see section 480 et seq. below. It is possible for the series of related images to be embodied in a medium that is traditionally used for motion pictures, for example, film or videotape, and not impart an impression of motion. In such cases, the work is audiovisual, but not a motion picture. A series of related photographs or drawings embodied in the film stock would not be considered a motion picture, unless, when shown, the images give an impression of motion. Such an impression of motion could be accomplished by incorporating certain cinematic techniques, such as panning in and out and dissolving.

472 Series of related images. It is the presence of the series of related images embodied in a filmstrip slides, or the like, which generally determines that a work is audiovisual even where this element does not predominate. For example, where a work consists of a series of related pictorial images, accompanied by a set of booklets containing nondramatic literary printed matter, the claim is usually appropriately registered in Class PA, even though the printed matter predominates.

473 Sounds accompanying an audiovisual work. When sounds are present, they do not need to be physically integrated with the series of related images to be considered "accompanying sounds," for example, a filmstrip with a separate audio cassette. By definition, there is a distinction between the "accompanying sounds" of an audiovisual work and the series of sounds in a "sound recording." While sound recordings are works that result from the fixation of a series of musical, spoken, or other sounds, such sounds do not include "sound accompanying a motion picture or other audiovisual work."

474 Forms of embodiment. The series of related images in an audiovisual work may be embodied in several different media, for example, a filmstrip, slides, or transparencies. Any accompanying sounds may be embodied in an audio cassette, reel-to-reel tape, or disk. They may also be physically integrated with the related images, for example, in a cartridge. For embodiments of audiovisual works which are motion pictures, see section 480.02 below.

475 Authorship in an audiovisual work. Audiovisual works embody several categories of authorship.

475.01 Visually perceptible authorship. Any kind of visually perceptible material such as photographs and artwork may be embodied in the related images of the audiovisual work.

475.02 Aurally perceptible authorship. If an aural element is present, it may embody several kinds of authorship such as dramatic or nondramatic literary material, or music which is recorded, as well as the "accompanying sounds."

476 Derivative audiovisual works. For registration purposes, a derivative audiovisual work is a work that incorporates previously published, registered, or public domain material. If an audiovisual work contains some photographs by Mathew Brady as well as some new photographs, the Form PA should be completed to show the extent of the claim. Or, if the text recorded in the aural element contains numerous Biblical quotations, the quotations should be excluded from the claim.

477 Multimedia works. A multimedia work is one which combines two or more kinds of authorship in two or more media, for example, a filmstrip and cassette, or a booklet and slides.

477 Multiple works. (cont'd)

477.01 Classification of multimedia works. The content of the multimedia work determines which class is appropriate for registration. For example, the presence of a series of related images makes the work audiovisual in nature, and registration is generally appropriate in Class PA. See section 490 et seq. for a discussion of multimedia works that do not include an audiovisual element.

[Numbers 478 and 479 are reserved.]

480 Motion pictures. Motion pictures are 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.

480.01 Requirement of fixation. To be eligible for copyright protection, a motion picture must be fixed. See Chapter 200: COPYRIGHTABLE MATTER -- IN GENERAL. A telecast transmission of a live performance is not considered a "motion picture." However, a motion picture is created when an authorized fixation is made of a live performance or telecast.

480.02 Forms of embodiment. Motion picture authorship may be embodied in several different forms, including the following:

1) Film - a thin sheet or strip of flexible cellulose material coated with a photosensitive emulsion.

2) Videotape - a magnetic tape containing video signals or picture information recorded by a television camera system.

3) Videodisk - a magnetic alloy-plated aluminum disk on which picture information is recorded.

480 Motion pictures. (cont'd)

480.02 Forms of embodiment. (cont'd)

4) Hologram - a special photographic film or plate which, when developed and illuminated from behind by a coherent light beam, produces an intangible three-dimensional image in space. No visual image appears on the film or plate whose function is to record photographically a light-wave interference pattern made by intersecting beams of coherent light.

480.03 Copyrightable subject matter. A motion picture may embody the contributions of many persons whose efforts are brought together to make a cinematographic work of authorship. Some examples of copyrightable elements might be camerawork, directing, editing, sound engineering, and other cinematographic contributions. By contrast, however, mere mechanical acts cannot serve as the basis for copyright registration; for example, a claim based on conversion from 35-mm film to one-half-inch videocassette is not subject to registration.

480.04 Motion pictures as derivative works and compilations. Generally, motion pictures by their nature are derivative works. For registration purposes, the motion picture is considered derivative only when it incorporates previously registered, published, or public domain material. In these cases, the application should identify such preexisting material incorporated in the work and also include a "material added" statement. The following examples reflect how this should be stated in the appropriate space on the application form:

480 Motion pictures. (cont'd)

480.04 Motion pictures as derivative works and compilations. (cont'd)

	Preexisting material	"Material added" statement
1)	Previously published film footage from a 1924 silent movie.	1) All other cinematographic material.
2)	Novel: "The Ghost of Hawk Mountain."	2) Television dramatization.
3)	Screenplay registered in 1960.	3) Cinematographic material.

Compilation authorship in a motion picture is generally combined with editing authorship. The following example reflects how this can be stated on an application for registration:

Preexisting material	"Material Added" statement
Assorted newsreel footage, still photographs, and radio commentaries from 1938 to 1940, drawn from various sources.	Compilations and editing of old materials, plus new script and narration, and some new cinematographic material.

[Numbers 481 through 484 are reserved.]

485 Motion pictures: special problems. Discussed below are special problems and policies that are peculiar to motion pictures.

485.01 Fixation as it relates to publication. The definition of "publication" includes the offering to distribute copies . . . to a group of persons for purposes of further distribution, public performance, or public

485 Motion pictures: special problems. (cont'd)

485.01 Fixation as it relates to publication. (cont'd)

display. 17 U.S.C. 101. This sentence is generally recognized as including motion picture distribution practices. Inherent within the definition as a whole is the presumption that copies are in existence and ready for distribution before a work can be published. Thus, offers in the form of advertising, and catalog or other distribution offers made before or during production of the motion picture, do not constitute publication. For a general discussion of fixation, see Chapter 100: BASIC POLICIES.

485.02 Works made for hire. A "work made for hire" is a work prepared by an employee within the scope of his or her employment; or . . . a work specially ordered or commissioned for use . . . as a part of a motion picture or other audiovisual work . . . 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. Ordinarily, a motion picture embodies the contributions of a number of persons who are employees in a work made for hire, either by virtue of being employees working within the scope of their employment, or by special written agreement that their contribution shall be considered a work made for hire. In the case of a work made for hire, the employer, and not the individual employees who actually created the work, is considered the "author" for copyright purposes. For a general discussion of authorship, see Chapter 200: COPYRIGHTABLE MATTER -- IN GENERAL.

486 Deposit requirements for motion pictures. The deposit required to accompany an application for registration of copyright claims for published and unpublished motion pictures is discussed below. For a discussion of deposit requirements for motion pictures, see Chapter 800: DEPOSIT FOR REGISTRATION, sections 806.13 and 807.

486.01 Description required. In all cases, whether the motion picture is published or unpublished, the deposit must include a written description of the contents of the motion picture. This may be a shooting script or continuity, a pressbook, or a detailed synopsis. 37 C.F.R. 202.20(c)(2)(ii). The separate description should contain full, complete, and detailed information about the work, including the running time. When the Copyright Office is asked, it will encourage the deposit of a shooting script as the description. NOTE: This description does not in any way extend the registration coverage beyond the material fixed in the motion picture.

486.02 Unpublished motion pictures. The deposit required to accompany an application for registration of a copyright claim in an unpublished motion picture, in addition to the description, can be either of the following:

1) One complete copy of the motion picture containing all the visual and aural elements that the registration covers; or

2) Identifying material consisting of one of the following:

   a) An audio cassette or other audio recording reproducing the entire soundtrack or other sound portion of the motion picture; or

486 Deposit requirements for motion pictures. (cont'd)

486.02 Unpublished motion pictures. (cont'd)

2) (cont'd)

b) A set of prints consisting of one frame enlargement or similar visual reproduction from each ten-minute segment of the motion picture. Where the work is a videorecording, prints taken from the viewing monitor are the preferred form of deposit.

486.03 Published motion pictures. The deposit required to accompany an application for registration of a claim to copyright in a published motion picture, in addition to the written description, is one complete copy of the best edition.

486.04 Definition of "best edition." The "best edition" is that 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. 37 C.F.R. 202.20(b)(1) and 202.19(b)(1). The criteria, listed in descending order of preference, are:

1) Film rather than any other medium.

a) Preprint material, by special arrangement
b) Most widely distributed film gauge
c) 35 mm rather than 16 mm
d) 16 mm rather than 8 mm
e) Special formats (for example, 70 mm) only in exceptional cases
f) Open reel rather than cartridge or cassette

486 Deposit requirements for motion pictures. (cont'd)

486.04 Definition of "best edition." (cont'd)

2) Videotape rather than videodisk

a) Most widely distributed tape gauge
b) Two-inch tape
c) One-inch tape
d) Three-quarter-inch tape cassette
e) One-half-inch tape cassette

See generally Appendix, 43 Fed. Reg. 763-771 (1978).

486.05 Definition of "complete." A copy of any published or unpublished motion picture is "complete" if 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 from 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)(vi).

486.06 Motion Picture Agreement. The Copyright Office Regulations permit copyright depositors of published motion pictures to enter into an agreement with the Library of Congress allowing for the return of deposit copies to such depositors under certain conditions. 37 C.F.R. 202.20(c)(2)(ii). The Motion Picture Agreement provides that after copyright registration has been completed, the deposit copy will be returned to the depositor (upon written request and at the depositor's expense) and is subject to recall for the collections of the Library of Congress within a period of two years. The depositor, in signing the Motion Picture

486 Deposit requirements for motion pictures. (cont'd)

486.06 Motion Picture Agreement. (cont'd)

Agreement, agrees to provide the Library of Congress with a copy of archival quality if and when such a copy is requested. See 43 Fed. Reg. 12,320-4 (1978) and Chapter 800: DEPOSIT FOR REGISTRATON.

486.07 Motion Picture Agreement: Standard Modification. Works initially published outside the United States, but later published in the United States prior to the date of deposit are governed by the basic Motion Picture Agreement. Works published only outside the United States may be made subject to the Motion Picture Agreement if the Standard Modification is executed by the depositor in addition to the basic Motion Picture Agreement. See Chapter 800: DEPOSIT FOR REGISTRATION.

486.08 Motion Picture Agreement: Supplemental Property Agreement. The purpose of the Supplemental Property Agreement is to allow the depositor to submit something other than the "best edition" for registration. See Chapter 800: DEPOSIT FOR REGISTRATION. By filing a Supplemental Property Agreement, the depositor agrees to submit a best-edition copy of archival quality, if the Library calls for a copy of the motion picture under the terms of the Motion Picture Agreement. See 43 Fed. Reg. 12,320-4 (1978).

487 Separately registrable works of authorship fixed in film, videotape, or the like. For a discussion of deposit requirements for separately registrable works of authorship fixed in film, videotape, or the like, see Chapter 800: DEPOSIT FOR REGISTRATION, section 806.13(b)(4).

[Numbers 488 and 489 are reserved.]

490 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 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.

491 Sound recording distinct from underlying work. Copyright in a sound recording relates only to the particular series of sounds constituting the recording. It is not the same as, nor is it a substitute for, copyright in a musical, dramatic, or literary work, the performance of which is recorded.

492 Sound recording distinct from sounds accompanying audiovisual work. Sounds accompanying audiovisual works, whether physically integrated with the audiovisual work (such as a soundtrack on a motion picture) or fixed on a separate tape, disk, or other such object, are not sound recordings under the statute.

492.01 Classification. Where a sound recording claim is asserted in sounds accompanying an audiovisual work, and the complete audiovisual work is being registered, the Copyright Office will request a new application in the class appropriate to audiovisual works. See section 470 et seq. above.

Example:

A multimedia kit containing a filmstrip and an accompanying cassette tape is submitted in Class SR with a claim on "sounds, text, and photographic material." Since this is an audiovisual work, the sounds are not considered a "sound recording," and are not registrable as such. The claim to copyright should be registered in Class PA as an audiovisual work. See sections 470 and 477 above.

492 Sound recording distinct from sounds accompanying audiovisual work. (cont'd)

492.02 Extent of claim. Where a sound recording contains sounds previously published as part of a motion picture, the claim must be limited to the material not contained in the motion picture. See section 496.03 below.

Example:

> Album jacket states "original soundtrack recording," and application asserts an unlimited claim in sounds. The Copyright Office will question whether the sounds are the same as those originally fixed in the motion picture, or whether they have been altered. If the sounds are unchanged, they are not considered a "sound recording," and the claim cannot be registered as a sound recording. (The sounds could be, and generally are, covered by the registration for the motion picture.) However, if the sounds are substantially altered from those in the motion picture, perhaps remixed from the original multi-track tapes, a claim in the sounds may be registered, but it must be limited to the new material, as for example, the remixing.

493 Forms of embodiment. Sound recordings are embodied in phonorecords.

493.01 Statutory definition of phonorecords. "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. The term "phonorecords" includes the material object in which the sounds are first fixed. 17 U.S.C. 101.

493 Forms of embodiment. (cont'd)

493.02 Types of phonorecords. Examples include the following:

1) Vinyl disks: common types are 45-r.p.m. and 33-r.p.m.

2) Audio tapes: open reels, cartridges, and cassettes.

3) Player piano rolls: perforated sheets on a roll.

4) Sound cards: cards with sound embodied in horizontal tape strip.

5) Sound sheets: paper backed with an oxide cover.

6) Perforated metal disks: such disks include sprocketed disks often used in music boxes.

493.03 Distinction between phonorecords and sound recordings. The term "phonorecord" refers only to the material object in which a work is embodied; the phonorecord itself is not a work of authorship. A "sound recording," on the other hand, is a work of authorship, regardless of the type of phonorecord in which it is embodied.

493.04 Distinction between phonorecords and copies. "Copies" are material objects, other than phonorecords, in which a work is fixed. See 17 U.S.C. 101. The term "copy" usually applies to a material object from which a work can be visually perceived (with or without the aid of a device or machine), but may also refer to a material object in which sounds accompanying a audiovisual work are fixed. The term "phonorecord" applies to a material object in which sounds are fixed, other than those sounds accompanying an audiovisual work.

494 Date of fixation as it affects eligibility. No sound recording fixed before February 15, 1972, is subject to Federal copyright protection. See 17 U.S.C. 301(c). Any sounds fixed before February 15, 1972, must be excluded from the claim. Where it appears that all or a substantial part of the sounds may have been fixed before February 15, 1972, the basis of the claim will be questioned.

494.01 Definition of fixation. 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. 17 U.S.C. 101.

Examples:

1) Phonorecord jacket states: "Recorded live in 1970." The Copyright Office will question the date of fixation.

2) Phonorecords indicate that the work is a compilation of disk jockey radio shows of the 1940's with some new musical and narrative material. The Copyright Office will question the fixation date of the sounds from the disk jockey radio shows. If fixed before February 15, 1972, these sounds should be excluded from the claim.

3) Phonorecords state that the work consists of some of the last live performances of a musician who died before February 15, 1972. The Copyright Office will question the date of fixation. If all sounds were fixed before February 15, 1972, the only possible claim is in the compilation.

494 Date of fixation as it affects eligibility. (cont'd)

494.01 Definition of fixation. (cont'd)

4) The work recorded is an opera. Phonorecords state: "The famous radio broadcast of this opera on December 7, 1940, is made available for the first time." The Copyright Office will question the date of fixation. If the sounds in the radio broadcast were fixed at the time of original transmission, the sound recording is not registrable.

494.02 State protection for sound recordings fixed before February 15, 1972. With respect to sound recordings fixed before February 15, 1972, any rights or remedies under the common law or statutes of any State shall not be annulled or limited by the copyright law until February 15, 2047. 17 U.S.C. 301(c).

495 Copyrightable subject matter. To be registrable, there must be an appreciable amount of original sound recording authorship. Registration as a sound recording is not authorized if original authorship is lacking, as for example, where there is no human authorship and the recording results from a purely mechanical process.

495.01 Types of copyrightable authorship. Sound recording authorship may be contributed by the performer or the record producer. Usually, authorship is contributed by both performer and producer. The Copyright Office will accept an application naming the performer or the producer or both as author(s) of the sound recording, provided it is clear that the author(s) named contributed copyrightable authorship.

495 Copyrightable subject matter. (cont'd)

495.02 Authorship on the part of the performer. Only a human performer can contribute performance authorship. Such performance will presumably result in a sound recording when the performance is fixed on a phonorecord.

495.02(a) Musical sounds. Included are sounds produced by vocalists and instrumentalists.

Examples:

1) A recording of a vocalist performing selected songs of a well-known contemporary composer.

2) A recording of a pianist performing a Beethoven sonata.

495.02(b) Spoken sounds. Included are sounds spoken by an actor, orator, lecturer, or the like.

Examples:

1) A recording of an actor portraying Hamlet.

2) A recording of a preacher delivering a sermon.

495.03 Authorship on the part of the producer. This type of authorship involves capturing and electronically processing the sounds, and compiling and editing them to make the final recording.

495.03(a) Producer's contribution in the recording of musical or spoken sounds. Where there is sound recording authorship on the part of the performer, the producer may have also contributed copyrightable sound engineering authorship to the sound recording.

495 Copyrightable subject matter. (cont'd)

495.03 Authorship on the part of the producer. (cont'd)

495.03(b) Producer's contribution in the recording of other sounds. In some cases, for example where sounds are produced by nature or non-human sources, the copyrightability of the sound recording depends on the contribution of the record producer in selecting, recording, and mixing the sounds.

Examples:

1) Recording of bird calls.

2) Recording of sounds of racing cars.

496 Sound recordings as derivative works. A derivative work is one based upon one or more pre-existing 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. A sound recording usually embodies a pre-existing musical composition or literary work, and in that sense is usually a derivative work.

496.01 Derivative sound recordings. For registration purposes, a derivative sound recording is one in which previously published or registered recorded sounds are rearranged, remixed, or otherwise altered in sequence or character. A sound recording consisting of an entirely new and independent fixation of original sounds is not a derivative sound recording for registration purposes. This

496 Sound recordings as derivative works. (cont'd)

496.01 Derivative sound recordings. (cont'd)

distinction is important since it determines when a "material added" statement will be required on the application.

Examples:

1) A sound recording of a Beethoven symphony may be considered a derivative work under the definition in the statute, in the sense that it embodies a preexisting musical composition. If it is an entirely new recording, however, the Copyright Office does not regard it as a derivative sound recording for registration purposes.

2) If a previously released recording of a Beethoven symphony was later remixed, the resulting sound recording would be a derivative sound recording.

496.01(a) When a "material added" statement will not be required. On an application for registration, a statement of material added will not be required for a sound recording consisting of an entirely new fixation where the authorship statement refers only to the sound recording.

496.01(b) When a "material added" statement will be required. On an application for registration, the Copyright Office will require a statement of material added for a sound recording containing previously published or registered sounds, or sounds fixed before February 15, 1972. The Copyright Office will also require a statement of material added if the authorship statement on the application refers to element(s) other than the sound recording (for example, the underlying work or artwork on the record jacket) which have been previously published or registered.

496 Sound recordings as derivative works. (cont'd)

496.02 Types of derivative sound recordings. These include sound recordings with additional recorded material or preexisting sounds recast.

496.03 Registrability of derivative authorship. A new version is registrable only if it contains at least a certain minimum amount of recast sounds or new recorded material. Where only a few slight variations or minor additions of no substance have been made, registration is not possible. Also, where the changes are the result of mechanical rather than creative processes, registration will be refused.

496.03(a) Additional recorded material. Where more than a certain minimum amount of new recorded material is added to previously released or registered sounds, the new version is registrable. The claim should be limited accordingly.

496.03(b) Preexisting sounds recast. This includes recordings reissued with substantial editorial revisions or abridgments of the recorded material. NOTE: For specific definitions of terms listed below, see the Glossary of Terms in section 499 below.

496.03(b)(1) Copyrightable elements. The following elements are acceptable as descriptions of material added:

-- Remixed
-- Remixed for quad from original multitrack sound sources
-- Remixed for continuity and balance
-- Resequencing
-- Sweetening
-- New mix
-- Remixed for stereo

496 Sound recordings as derivative works. (cont'd)

496.03 Registrability of derivative authorship. (cont'd)

496.03(b) Preexisting sounds recast. (cont'd)

496.03(b)(1) Copyrightable elements. (cont'd)

-- Remixed for monaural sound
-- Compilation (see also section 497 below).

496.03(b)(2) Noncopyrightable elements. Claims based solely on the following elements will be refused:

-- New master cut
-- Remastering
-- Enhanced stereo
-- Encoding a two-track master onto four channels
-- Reprocessing
-- Compatible stereo
-- Simulated stereo
-- Electronically rechanneling for stereo (or quad)
-- Electronically enhanced
-- Derived 4-channel
-- Declicking
-- Reissue
-- Dolbyized

NOTE: Any claim in a sound recording originally fixed before February 15, 1972, must be limited to whatever sound recording authorship may have been added on or after February 15, 1972. See section 494 above. Where the original fixation was in a monophonic recording, the possibility of adding copyrightable authorship by editing or mixing in the course of reprocessing is minimal or nonexistent, so that the copyrightable

496 Sound recordings as derivative works. (cont'd)

496.03 Registrability of derivative authorship. (cont'd)

496.03(b) Preexisting sounds recast. (cont'd)

496.03(b)(2) Noncopyrightable elements. (cont'd)

NOTE: (cont'd)

content of the original sounds and the new ones remains essentially unchanged. In such a case, the date the original recording was made is the date of fixation, and there is generally no new sound recording authorship (except compilation, where appropriate) on which to base a claim. Most recordings made before 1960 fall into this category.

496.03(b)(3) Minimal contributions. The following elements may involve effort, but registration based on them alone will be refused. However, where they are included in addition to clearly copyrightable new material, the claim should be registered.

-- Changing the treble (highs) and bass (lows)
-- Equalization
-- Reverberation
-- Balancing

496.03(b)(4) Elements whose registrability is subject to question. These include the following:

1) Editing. The Copyright Office will question "editing" when this is the only statement of new material. A claim based on "editing" should be defined in terms of specific sound engineering techniques employed.

496 Sound recordings as derivative works. (cont'd)

496.03 Registrability of derivative authorship. (cont'd)

496.03(b) Preexisting sounds recast. (cont'd)

496.03(b)(4) Elements whose registrability is subject to question. (cont'd)

2) Abridgment. Such a claim will not be questioned unless there is reason to doubt its substantiality.

3) Overdub. If there is newly recorded material added, the Copyright Office will register the claim; otherwise, an explanation of the nature and extent of the claim will be requested.

4) Re-engineering. The Copyright Office will request an explanation.

496.03(b)(5) Ambiguous or unfamiliar terms. The Copyright Office will question ambiguous or unfamiliar terms.

497 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.

497.01 Registrable compilations. A collection of previously published or registered sound recordings, or of sound recordings fixed before February 15, 1972, in which the assembling, selection, or combination of works represents original authorship, constitutes a registrable compilation.

497 Compilations. (cont'd)

497.01 Registrable compilations. (cont'd)

Examples:

1) "The Greatest Country & Western Recordings of 1975"

2) "The Greatest Recordings of the Nine Beethoven Symphonies" (a recording of the nine Beethoven symphonies, each performed by a different orchestra and conductor)

497.02 Non-registrable compilations. A mere republication together of several previously released or registered sound recordings, where no appreciable degree of original authorship was involved in putting the sound recordings together, does not constitute a registrable compilation.

Examples:

1) Combination of three previously released recordings. The Copyright Office will refuse a claim in compilation, since the compilation of only three selections does not represent enough authorship to support such a claim.

2) A well-known conductor's recordings of the Nine Beethoven Symphonies with the same orchestra, where all nine symphonies have been previously released separately. The Copyright Office will refuse to register the claim in compilation. Merely grouping together a single conductor's recordings of the nine Beethoven symphonies with the same orchestra does not represent enough original authorship to support a claim.

498 Multimedia works. A multimedia work is one which, excluding the physical housing of its components, combines two or more kinds of authorship in two or more of the following media: phonorecords, copies from which the work may be visually perceived without the aid of a machine or device, and copies from which the work is intrinsically intended to be perceived with the aid of a machine or device.

498.01 Audiovisual multimedia works. These incorporate an audiovisual work; any accompanying sound element is not registrable as a sound recording. See sections 492 and 470 above.

498.02 Nonaudiovisual multimedia works. A nonaudiovisual multimedia work generally incorporates a sound recording accompanied by material which can be perceived visually without the aid of a machine or device (for example, textual material in a booklet). The sound recording and any material published with it, such as underlying text, or accompanying text or illustrations, may be registered together in Class SR. For registrability of various elements, see sections appropriate to each such element.

[Numbers 498.03 through 498.99 are reserved.]

499 Glossary of terms. The following is a list of terms commonly used with reference to sound recordings.

BALANCE -- relative level or volume, for example, between different or instruments, bass and treble, or different tracks or channels.

BALANCING -- adjusting the relative levels of voices or instruments, bass and treble, or recorded tracks.

499 Glossary of terms. (cont'd)

CARTRIDGE -- an enclosed package containing a continuous loop of magnetic tape and its winding apparatus, thus removing the need for handling the tape.

CASSETTE -- a sealed package containing a length of magnetic tape and winding apparatus which can be loaded into a player without handling or threading the tape.

CHANNEL -- a single recording path, for example, from microphone to speaker.

DECLICKING -- in reprocessing sounds from an old 78-r.p.m. recording, the process of eliminating the noises or "clicks" produced by groove irregularities, by manually or electronically removing them from the tape made from the old recording.

DECODING -- transforming information from a form suitable for transmission to a form suitable for use. Frequently used in reference to quadraphonic recordings, which require an electronic "decoder" for playback.

DOLBYIZED -- refers to a recording processed through a particular noise reduction device (a "dolby"). The dolby achieves noise reduction by raising the volume of quiet passages while recording and lowering them to proper levels while playing back.

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499 Glossary of terms. (cont'd)

DUB -- to duplicate a sound recording by making an exact recording from that recording; or a duplication of a recording made by dubbing; to dub may also mean to add sounds to a recording or to combine two or more sources of sound (at least one of which is a recording) into one record.

EDITING -- cutting and splicing tape to rearrange recorded material, thus changing content, form, or replacing undesirable material.

ENCODING -- to convert (as a body of information) from one system of communication into another; especially to convert information into code; for example, reprocessing a stereo recording into a quadraphonic format which can be played on equipment with a quadraphonic decoder to produce a quadraphonic effect.

EQUALIZATION -- the process of boosting treble during recording and boosting bass during playback, so as to compensate for losses in recording and reproduction, usually with the intent of achieving a result as close to the original performance as possible.

LOOP -- a length of tape with its ends spliced together for continuous playback.

499 Glossary of terms. (cont'd)

MASTER	--	may refer to the original recording made directly from recording microphones, the final mixed-down tape from which other recordings are made, or the lacquer disk from which stampers are made for vinyl pressings.
MIXING	--	combining many separate tracks into fewer tracks, usually one, two, or four.
MONOPHONIC	--	recorded on a single channel or played back from a single sound source.
MULTI-TRACK	--	refers to a recorder which produces, or a recording which contains, more than two tracks or channels of recorded information, generally eight or more.
OVERDUB	--	mixing previously recorded material with new material.
QUADRAPHONIC	--	four-channel sound reproduction.
REMASTERING	--	cutting a new master from the original recording, usually without remixing.
REMIXING	--	mixing down from multiple tracks to one, two, or four tracks for the second or any subsequent time.
REVERBERATION	--	prolongation of sounds by repetition, resulting from sound reflections in a large hall or simulating such reflections.

499 Glossary of terms. (cont'd)

STEREOPHONIC -- sound reproduction on two or more channels.

COMPATIBLE STEREO -- refers to a recording which may be played on either stereophonic or monophonic equipment without loss of quality.

ENHANCED STEREO -- refers to a stereo recording in which the stereo effect has been augmented by increasing or heightening the separation between channels.

SIMULATED STEREO -- refers to a recording originally made monophonically, reprocessed so as to get a stereo effect.

SWEETENING -- the addition of strings, brass, background vocals, etc. to a previously recorded tape.

[END OF CHAPTER 400]

Chapter 500

COPYRIGHTABLE MATTER: PICTORIAL, GRAPHIC, AND SCULPTURAL WORKS

Outline of Topics

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501.01 Forms of embodiment.

502 Works of art.

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture.

503.01 Style and artistic merit.
503.02 Copyrightable pictorial, graphic, and sculptural expression.
503.03 Works not capable of supporting a copyright claim.

504 Registration requirements for two-dimensional useful articles, three-dimensional works of artistic craftsmanship, and models.

504.01 Material not subject to registration.
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505 Registration requirements for the shapes of three-dimensional useful articles.

505.01 Definition of useful article.
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505.03 Separability test: conceptual basis.
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506 Prints.

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507 Reproductions of pictorial, graphic, or sculptural works.

507.01 Registration requirements.
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508 Photographs, holograms, and individual slides.

508.01 Registration requirements.
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509 Maps.

509.01 Registration requirements.
509.02 Compilations and derivative works.
509.03 Elements not capable of supporting a copyright.

510 Scientific works: architectural and technical drawings and models.

510.01 Registration requirements.
510.02 Uncopyrightable works.
510.03 Ideas, processes, or systems.
510.04 Subjects depicted.

Chapter 500

COPYRIGHTABLE MATTER: PICTORIAL, GRAPHIC, AND SCULPTURAL WORKS

501 Pictorial, graphic, and sculptural works: in general. The copyright law defines "pictorial, graphic, and sculptural works" as including two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams, and models. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, 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. See 17 U.S.C. 101.

501.01 Forms of embodiment. Registrable pictorial, graphic, or sculptural authorship may be embodied in a wide variety of forms. These include works of fine, graphic, and applied art; prints; photographs, holograms, and individual slides; art reproductions; maps, globes, and charts; architectural and technical drawings; diagrams, patterns, models, and the like; and advertisements. Motion pictures, film strips, slide presentations, and other audiovisual works are not "pictorial works" for the purpose of registration.

502 Works of art. These include works of the fine arts, such as paintings, other pictorial works, and sculpture, as well as works of artistic craftsmanship, such as jewelry, glassware, ceramic figurines, table service patterns, wall plaques, grave markers, toys, dolls, stuffed toy animals, models, and the separable artistic features of two-dimensional and three-dimensional useful articles.

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. Generally, in order to be entitled to registration, such works must contain original pictorial, graphic, or sculptural authorship. If the work consists entirely of uncopyrightable elements, registration is not authorized. On the other hand, the mere presence of uncopyrightable elements in a work will not prevent registration on the basis of features that are copyrightable under the statute. Thus a design, otherwise original, may be registrable even though it incorporates uncopyrightable standard forms, such as circles and squares.

503.01 Style and artistic merit. The registrability of a work of the traditional fine arts is not affected by the style of the work or the form utilized by the artist. Thus, the form of the work can be representational or abstract, naturalistic or stylized. Likewise, the registrability of a work does not depend upon artistic merit or aesthetic value. For example, a child's drawing may exhibit a very low level of artistic merit and yet be entitled to registration as a pictorial work.

503.02 Copyrightable pictorial, graphic, and sculptural expression. A claim to copyright in a work of the traditional fine arts will be registrable if the work contains at least a certain minimum amount of pictorial, graphic, or sculptural expression owing its origin to the author. If the expression is pictorial, the authorship could be expressed, for example, in the linear contours of a drawing, the assemblage of diverse fragments forming a collage, or the arrangement and juxtaposition of pieces of colored stone in a mosaic portrait. If the expression is sculptural, the authorship could, for example, be expressed by means of carving, cutting, molding, casting, shaping, or otherwise processing the material into a three-dimensional work of sculpture.

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.02 Copyrightable pictorial, graphic, and sculptural expression. (cont'd)

503.02(a) Minimal standards: pictorial or graphic material. A certain minimal amount of original creative authorship is essential for registration in Class VA or in any other class. Copyrightability depends upon the presence of creative expression in a work, and not upon aesthetic merit, commercial appeal, or symbolic value. Thus, registration cannot be based upon the simplicity of standard ornamentation such as chevron stripes, the attractiveness of a conventional fleur-de-lys design, or the religious significance of a plain, ordinary cross. Similarly, it is not possible to copyright common geometric figures or shapes such as the hexagon or the ellipse, a standard symbol such as an arrow or a five-pointed star. Likewise, mere coloration cannot support a copyright even though it may enhance the aesthetic appeal or commercial value of a work. For example, it is not possible to copyright a new version of a textile design merely because the colors of red and blue appearing in the design have been replaced by green and yellow, respectively. The same is true of a simple combination of a few standard symbols such as a circle, a star, and a triangle, with minor linear or spatial variations.

Examples:

1) An unpublished design for textile fabric is submitted for registration in Class VA. The design consists of a standard unembellished

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.02 Copyrightable pictorial, graphic, and sculptural expression. (cont'd)

503.02(a) Minimal standards: pictorial or graphic material. (cont'd)

Examples: (cont'd)

1) (cont'd)

character of Chinese calligraphy painted upon horizontally striated grass cloth. Practice: Registration is not authorized in this case. Like typography, calligraphy is not copyrightable as such, notwithstanding the effect achieved by calligraphic brush strokes across a striated surface.

2) An applicant for registration has developed a novelty item consisting of transparently clear plastic sheets bonded together around their periphery, and having a small amount of colored liquid petroleum in the air space between the laminated sheets. Any slight pressure upon the external surface results in the formation of undulating patterns and shapes, no two of which are ever identical. Practice: Since the specific outlines and contours of the patterns and shapes formed by the liquid petroleum do not owe their origin to a human agent, it is not possible to claim copyright in such patterns and shapes. The novelty of the idea embodied in the work and the effects achieved by the action of the petroleum under pressure likewise do not warrant registration.

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.02 Copyrightable pictorial, graphic, and sculptural expression. (cont'd)

503.02(b) Minimal standards: sculptural material. The requisite minimal amount of original sculptural authorship necessary for registration in Class VA does not depend upon the aesthetic merit, commercial appeal, or symbolic value of a work. Copyrightability is based upon the creative expression of the author, that is, the manner or way in which the material is formed or fashioned. Thus, registration cannot be based upon standard designs which lack originality, such as common architecture moldings, or the volute used to decorate the capitals of Ionic and Corinthian columns. Similarly, it is not possible to copyright common geometric figures or shapes in three-dimensional form, such as the cone, cube, or sphere. The mere fact that a work of sculpture embodies uncopyrightable elements, such as standard forms of ornamentation or embellishment, will not prevent registration. However, the creative expression capable of supporting copyright must consist of something more than the mere bringing together of two or three standard forms or shapes with minor linear or spatial variations. In no event can registration rest solely upon the fact that an idea, method of operation, plan, or system has been successfully communicated in three-dimensional form. In every case, it is the creative expression of the author which must be able to stand alone as an independent work apart from the general idea which informs it.

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.02 Copyrightable pictorial, graphic, and sculptural expression. (cont'd)

503.02(b) Minimal standards: sculptural material. (cont'd)

Examples:

1) Registration in Class VA is requested for a design or model of a table lamp. Cast in plaster of Paris, the design features the head of a horse mounted on an iron horseshoe with toe and heel calks which supports the entire fixture. Electrical wiring is concealed within the plaster casting. Practice: If the head of the horse is original, registration may be considered on that basis. However, the general idea of embellishing a lighting fixture with a work of art is not copyrightable. The same is true of the decorative idea of using a horseshoe as support for a lamp base, regardless of the pleasing effect thereby achieved.

2) A toy manufacturer conceives a novel idea for a toy consisting of multicolored geometrical spheres, cubes, and cylinders of varying sizes. All of these parts or pieces are magnetized, and will adhere to one another when placed in close proximity. Thus, it is possible to construct an indefinite variety of shapes and figures by means of the magnetized parts or pieces. The manufacturer desires to protect the three-dimensional aspects of the toy before publication occurs. He applies to the

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.02 Copyrightable pictorial, graphic, and sculptural expression. (cont'd)

503.02(b) Minimal standards: sculptural material. (cont'd)

Examples: (cont'd)

2) (cont'd)

Copyright Office for registration of a design for an unpublished sculptural work of art. His application Form VA is accompanied by one complete set of magnetized spheres, cubes, and cylinders arranged in a plain box according to size and color. Practice: We will refuse a registration in Class VA based solely upon the unassembled toy, even though its component parts or pieces are potentially capable of being arranged in copyrightable shapes and forms. The general idea of the toy is uncopyrightable, regardless of its novelty or uniqueness.

3) A work described as a "mobile" consists of nine pieces of translucent colored glass each of which is suspended by wire from an overhead rack designed to rotate about a pivot in a horizontal plane. The suspension wires vary in length and no two pieces of glass share the same shape or outline. Registration is sought in Class VA on the basis of the overall effect produced by the play of light upon the suspended glass components of a work which the applicant describes as "three-dimensional." No copyrightable authorship is claimed in the design of the individual pieces

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.02 Copyrightable pictorial, graphic, and sculptural expression. (cont'd)

503.02(b) Minimal standards: sculptural material. (cont'd)

Examples: (cont'd)

3) (cont'd)

of glass. Practice: Registration based upon the cumulative effect produced by the component members of the mobile will be refused. If these members had contained copyrightable authorship, registration could have been considered on the basis of the two-dimensional design features displayed by the pieces of glass.

503.03 Works not capable of supporting a copyright claim. Claims to copyright in the following works cannot be registered in the Copyright Office:

503.03(a) Works not originated by a human author. In order to be entitled to copyright registration, a work must be the product of human authorship. Works produced by mechanical processes or random selection without any contribution by a human author are not registrable. Thus, a linoleum floor covering featuring a multicolored pebble design which was produced by a mechanical process in unrepeatable, random patterns, is not registrable. Similarly, a work owing its form to the forces of nature and lacking human authorship is not registrable; thus, for example, a piece of driftwood even if polished and mounted is not registrable.

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.03 Works not capable of supporting a copyright claim. (cont'd)

503.03(b) Works containing insufficient expression. No registration is possible where the work consists solely of elements which are incapable of supporting a copyright claim. Uncopyrightable elements include common geometric figures or symbols, such as a hexagon, an arrow, or a five-pointed star, as pointed out in section 503.02(a) above.

503.03(c) Ideas and concepts. Mere ideas and concepts cannot support a copyright claim. In order to be registrable, a work must contain original copyrightable expression. Thus, for example, neither the idea of folding a five-pointed star in a manner that enables it to stand upright, nor the star so folded is registrable.

504 Registration requirements for two-dimensional useful articles, three-dimensional works of artistic craftsmanship, and models. The registrability of two-dimensional useful articles is determined by the presence of at least a certain minimum amount of pictorial or graphic authorship. For three-dimensional works of artistic craftsmanship falling outside the definition of useful articles, such as jewelry, toys, and wall plaques, the authorship may be either sculptural or pictorial in nature, such as carving, cutting, molding, casting, shaping the work, arranging the elements into an original combination, or decorating the work with pictorial matter. Three-dimensional works of artistic craftsmanship are registrable either in assembled form, or in unassembled component pieces, as for example, an unassembled model airplane.

504 Registration requirements for two-dimensional useful articles, three-dimensional works of artistic craftsmanship, and models. (cont'd)

504.01 Material not subject to copyright. Standard elements, as such, are not registrable. Thus, registration cannot be made for glassware devoid of copyrightable ornamentation, or for fabric designs consisting only of polka dots. Moreover, the mechanical or utilitarian aspects of a three-dimensional work of applied art are not subject to copyright protection. Hence, the serrated edge of a knife could not be the basis of a copyright registration.

504.02 Examples. The following are examples of the principles governing the registrability of such works:

1) A textile design consisting of nothing more than polka dots is not registrable. However, a representational image produced by the use of dots is registrable.

2) A jeweled pin consisting of three parallel rows of stones is not registrable, while a pin consisting of a sculpted bee is registrable.

3) A copyright claim in an original stuffed toy lion is registrable, while a plain red cushion shaped as a five-pointed star is not.

505 Registration requirements for the shapes of three-dimensional useful articles. Under the definition of "pictorial, graphic, and sculptural works" in the copyright law, the "design of a useful article" is copyrightable 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. See 17 U.S.C. 101.

505 Registration requirements for the shapes of three-dimensional useful articles. (cont'd)

505.01 Definition of 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. An article that is normally a part of a useful article is considered a "useful article." 17 U.S.C. 101. Examples of useful articles include automobiles, boats, household appliances, furniture, work tools, garments, and the like.

505.02 Separability test. Registration of claims to copyright in three-dimensional useful articles can be considered only on the basis of separately identifiable pictorial, graphic, or sculptural features which are capable of independent existence apart from the shape of the useful article. Determination of separability may be made on either a conceptual or physical basis.

505.03 Separability test: conceptual basis. Conceptual separability means that the pictorial, graphic, or sculptural features, while physically inseparable by ordinary means from the utilitarian item, are nevertheless clearly recognizable as a pictorial, graphic, or sculptural work which can be visualized on paper, for example, or as free-standing sculpture, as another example, independent of the shape of the useful article, i.e., the artistic features can be imagined separately and independently from the useful article without destroying the basic shape of the useful article. The artistic features and the useful article could both exist side by side and be perceived as fully realized, separate works -- one an artistic work and the other a useful article. Thus, carving on the back of a chair, or pictorial matter engraved on a glass vase, could be considered for registration. The test of conceptual separability, however, is not met by merely

505 Registration requirements for the shapes of three-dimensional useful articles. (cont'd)

505.03 Separability test: conceptual basis. (cont'd)

analogizing the general shape of a useful article to works of modern sculpture, since the alleged "artistic features" and the useful article cannot be perceived as having separate, independent existences. The shape of the alleged "artistic features" and of the useful article are one and the same, or differ in minor ways; any differences are de minimis. The mere fact that certain features are nonfunctional or could have been designed differently is irrelevant under the statutory definition of pictorial, graphic, and sculptural works. Thus, the fact that a lighting fixture might resemble abstract sculpture would not transform the lighting fixture into a copyrightable work.

505.04 Separability test: physical basis. The physical separability test derives from the principle that a copyrightable work of sculpture which is later incorporated into a useful article retains its copyright protection. Examples of works meeting the physical separability test include a sculptured lamp base of a Balinese dancer, or a pencil sharpener shaped like an antique car. However, since the overall shape of a useful article is not copyrightable, the test of physical separability is not met by the mere fact that the housing of a useful article is detachable from the working parts of the article.

505.05 Separability test: factors not relevant in determining registrability. In applying the test of separability, the following are not relevant considerations: 1) the aesthetic value of the design, 2) the fact that the shape could be designed differently, or 3) the amount of work which went into the

505 Registration requirements for the shapes of three-dimensional useful articles. (cont'd)

505.05 Separability test: factors not relevent in determining registrability. (cont'd)

making of the design. Thus, the mere fact that a famous designer produces a uniquely shaped food processor does not render the design of the food processor copyrightable.

506 Prints. "Prints" include a wide variety of pictorial prints and illustrations produced by means of lithography, photoengraving or other printing processes, including reproductions of representational and abstract designs and color reproductions of photographic prints. Examples of such works include greeting cards, picture postcards, posters, decals, stationery, table place mats, advertisements, various kinds of wrappers, billboards, shopping bags, and labels.

506.01 Registration requirements. In order to be entitled to registration as a print, the work must contain at least a certain minimum amount of original pictorial or graphic authorship.

506.02 Pictorial or graphic material. Registration is appropriate for original pictorial or graphic material, such as illustrations and representational or abstract design, as well as photographs reproduced in color by lithography, photoengraving, or other printing processes. Although the copyrightability of such material does not depend upon artistic merit or aesthetic value, the material must contain at least a certain minimum amount of original pictorial or graphic expression to be eligible for registration.

506.03 Uncopyrightable elements. In determining the registrability of a print, the copyright claim cannot be based solely upon mere variations of typographic ornamentation, lettering, or coloring. Likewise, the arrangement of type on a printed page cannot support a copyright claim. However,

506 Prints. (cont'd)

506.03 Uncopyrightable elements. (cont'd)

if the type is so arranged as to produce a pictorial representation, the resulting image is registrable. Thus, an advertisement which utilized lettering to achieve a pictorial representation of a person can be registered.

507 Reproductions of pictorial, graphic, or sculptural works. Material comprising "reproductions of pictorial, graphic, or sculptural works" include reproductions of existing works of art. Examples of such reproductions are photoengravings, collotypes, silk-screen prints, mezzotints, and three-dimensional reproductions of sculpture.

507.01 Registration requirements. In order to be registrable, an art reproduction must contain at least a certain minimum amount of original authorship. This authorship may consist of drawing, lithography, photoengraving, etching, original sculpturing or molding, and the like. For example, a reproduction of Rodin's "Hand of God" achieved through sculpturing a miniature version of the original is registrable.

507.02 Derivative works. Art reproductions are derivative works because, by their nature, they are based on preexisting works. Accordingly, a statement identifying the preexisting artistic work and indicating the nature of the authorship in the reproduction should be given in the appropriate spaces on the application form. However, in those cases where the author and claimant of the reproduction are also the author and claimant of the original work of art that has been reproduced, and the original work has not been previously registered or published, registration should be made as an original pictorial, graphic, or sculptural work.

507 Reproductions of pictorial, graphic, or sculptural works. (cont'd)

507.03 Reproductions not capable of supporting a registration. Claims to copyright in the following works cannot be registered in the Copyright Office:

507.03(a) Underlying work not a pictorial, graphic, or sculptural work. Where the underlying work is not a pictorial, graphic, or sculptural work, no registration is possible on the basis of reproduction authorship. For example, a lithographic reproduction of a letter of the alphabet is not registrable.

507.03(b) Mechanical or photomechanical processes. Reproductions made through the mere operation of mechanical or photomechanical processes are not registrable. For example, a photocopy of an original pen and ink drawing is not registrable as an art reproduction.

508 Photographs, holograms, and individual slides. Works considered for registration on the basis of photographic authorship include still photographic prints, holograms, and individual slides.

508.01 Registration requirements. To be entitled to copyright registration, a photograph, hologram, or slide must contain at least a certain minimum amount of original expression. Generally, original photographic or holographic authorship depends on the variety and number of the elements involved in the composition of the photograph or hologram. However, the nature of the thing depicted or the subject of the photograph or hologram, as distinguished from its composition or arrangement, is not regarded as a copyrightable element. Original photographic composition capable of supporting registration may include such elements as time and light exposure, camera angle or perspective achieved, deployment of light and shadow from natural or artificial light sources, and the arrangement or disposition of persons, scenery, or other subjects depicted in the photograph.

508 Photographs, holograms, and individual slides. (cont'd)

508.01 Registration requirements. (cont'd)

In the case of holography, original authorship depends largely upon the selection, arrangement, and disposition of scene and object.

508.02 Uncopyrightable works. Where images are produced through the operation of mechanical or photomechanical processes with no appreciable element of artistic expression, the work is not registrable.

Examples:

1) A microfilm merely reproducing public domain textual matter is not registrable.

2) The photocopy of a public domain pictorial work is not registrable.

509 Maps. The term "map" refers to cartographic representations of area. Common examples include terrestrial maps and atlases, marine charts, celestial maps, and such three-dimensional works as globes and relief models.

509.01 Registration requirements. To be registrable, a map must contain at least a certain minimum amount of original cartographic material. Examples of original cartographic material include drawings or pictorial representations of area based on original surveying or carto-graphic field work and compilations resulting from the original selection and arrangement of essentially cartographic features, such as roads, lakes or rivers, cities, political or geographic boundaries, and the like.

509.02 Compilations and derivative works. The preparation of many maps involves the use of previously published source material to a significant degree, and the copyrightable

509 Maps. (cont'd)

509.02 Compilations and derivative works. (cont'd)

authorship, therefore, is generally based upon elements such as additional compilation and drawing. Additional authorship of this kind may include cartographic representations such as new roads, historical landmarks, or zoning boundaries. Where any substantial portion of the work submitted for registration includes previously published or registered material, or material that is in the public domain, statements describing both the preexisting material as well as the new copyrightable authorship should be given at the appropriate spaces on the application form. See Chapter 700: APPLICATIONS AND FEES.

509.03 Elements not capable of supporting a copyright. A mere reprint of public domain or previously published material is not registrable. Likewise, a claim based upon an obvious selection and arrangement of materials is not registrable. For example, an outline map of the United States containing nothing more than the names of the state capitals does not contain the necessary authorship to support registration.

510 Scientific works: architectural and technical drawings and models. Material comprising scientific works includes architectural blueprints, mechanical drawings, engineering diagrams, astronomical charts, anatomical models, scientific and architectural models, and similar works.

510.01 Registration requirements. In order to be entitled to registration, architectural and technical drawings must contain at least a certain minimum amount of original graphic or pictorial matter. A scientific or architectural model must contain at least a certain minimum amount of original sculptural material.

510 Scientific works: architectural and technical drawings and models. (cont'd)

510.02 Uncopyrightable works. Claims to copyright in the following works cannot be registered in the Copyright Office:

510.02(a) Devices. Devices and similar articles, designed for computing and measuring, cannot be registered. Common examples of such works include slide rules, wheel dials, and nomograms that contain insufficient original literary or pictorial material. The printed material of which a device usually consists (lines, numbers, symbols, calibrations, and their arrangement) cannot be copyrighted, because this material is necessarily dictated by the uncopyrightable idea, principle, formula, or standard of measurement involved.

510.02(b) Blank forms. Blank forms and similar works which are designed for recording information and do not in themselves convey information, cannot be registered. Common examples include: forms calibrated for use in conjunction with a machine or device, report forms, graph paper, account books, scorecards, order forms, vouchers, and the like. See 37 C.F.R. 202.1(c).

510.03 Ideas, processes, or systems. Copyright protection does not extend to ideas, processes, or systems. Scientific or technical works are registrable only if they contain the requisite original copyrightable expression. The following are not protectible by copyright and do not offer a basis for copyright registration: 1) ideas or procedures for doing, making, or building things; 2) scientific or technical discoveries or methods; 3) business operations or procedures; 4) mathematical principles; or 5) any other concept, process, method of operation, or plan of action. See 17 U.S.C. 102(b).

510 Scientific works; architectural and technical drawings and models. (cont'd)

510.04 Subjects depicted. Where registration is sought for a scientific or technical work, the application should describe only the authorship contained in the work and not bear any statements which suggest that registration extends to the subjects depicted. Thus, the application for registration of a claim to copyright in an architectural drawing of a building should contain no statements which imply that the registration extends to the building. See 17 U.S.C. 113(b).

[END OF CHAPTER 500]

CHAPTER 600

REGISTRATION PROCEDURES

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610.06 Registering different versions of a published work: one version more complete.
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CHAPTER 600

REGISTRATION PROCEDURES

601 Applicability of this chapter. This chapter states the Copyright Office practices and procedures for registering original claims to copyright. For renewal registrations, see Chapter 1300: RENEWAL OF COPYRIGHT. For supplementary registrations, see Chapter 1500: CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT OFFICE RECORDS; SUPPLEMENTARY REGISTRATIONS.

602 Registration: in general. Copyright registration is intended to make a public record of the basic facts of a particular copyright. In general, the copyright law does not require registration as a condition of copyright protection; but see section 602.01 below. Registration may, however, provide important advantages to copyright owners. Among these advantages are the following:

a) Registration establishes a public record of the copyright claim.

b) Ordinarily registration is necessary before a copyright action for infringement may be filed in court. See 17 U.S.C. 411(a).

c) If made before or within five years of publication registration is prima facie evidence of the validity of the copyright and of the facts stated in the certificate. See 17 U.S.C. 410(c).

d) Statutory damages and attorney's fees may be awarded to the copyright owner in a court action, if registration is made before infringement occurs or if registration is made within three months after publication. See 17 U.S.C. 412.

See also Chapter 100: BASIC POLICIES.

602 Registration: in general. (cont'd)

602.01 Registration: when necessary to preserve copyright. Copyright registration is required to preserve a copyright that would otherwise be invalidated because one or more of the required elements in the notice was omitted, or because the notice contained an error equivalent to no notice under the statute.

602.02 Registration: when registration may be made. In general, registration may be made at any time during the life of the copyright. See 17 U.S.C. 408(a) and 302-305. With the exception of certain foreign works protected under provisions that implement the Universal Copyright Convention, works published before 1978 must be registered during the first term of copyright to be eligible for renewal registration. During the last year of the first term, an original and renewal claim for a work may be submitted together. See Chapter 1300: RENEWAL OF COPYRIGHT.

602.03 Registration distinguished from recordation. Registration and recordation are two separate acts: claims to copyright are registered; documents are recorded. For registration, the copyright owner sends a deposit, together with an application form and filing fee, in order to make the information concerning the claim to copyright a part of the Copyright Office records; but it is not generally required in order to obtain registration that a document of transfer be submitted. For recordation, the actual document (for example, a transfer or license) is sent. Applications or deposit copies or phonorecords do not serve this purpose.

602 Registration: in general. (cont'd)

602.03 Registration distinguished from recordation. (cont'd)

See 17 U.S.C. 205 and Chapter 1600: RECORDATION OF TRANSFERS AND OTHER DOCUMENTS PERTAINING TO A COPYRIGHT. In addition, the Office will not accept an application for the dual purpose of registering a claim and recording a document. See section 623 below.

603 Elements required for basic registration. The elements required for basic registration are 1) a completed application form; 2) the statutory fee; and 3) the appropriate deposit. See Chapter 700: APPLICATIONS AND FEES, and Chapter 800: DEPOSIT FOR REGISTRATION. These three elements should be sent to the Copyright Office in the same package. In general, if these elements are not sent together, the Office will not begin the registration process. Instead it will return the partial submission and will send the applicant instructions on how to apply for copyright registration. Published deposits received without an accompanying application and either a fee or a deposit account notation, will be forwarded to the appropriate department of the Library of Congress for use or disposal. Such deposits will not thereafter be available for registration. See 37 C.F.R. 202.19(f).

604 Application forms. The Copyright Office prescribes five basic registration forms: Form SE for serials, Form TX for other nondramatic literary works, Form PA for works of the performing arts (musical works, dramatic works, choreographic works, pantomines, motion pictures, and other audiovisual works), Form SR for sound recordings, and Form VA for works of the visual arts (pictorial, graphic, and sculptural works). In general, the application should be submitted in the class most appropriate to the type of authorship that predominates in the work being registered. See Chapter 700: APPLICATIONS AND FEES.

604 Application forms. (cont'd)

604.01 Application forms: continuation sheets. In most cases, there is ample space on the principal application form for all the necessary information. Where there is not, the applicant should use an official continuation sheet provided by the Copyright Office. If the required information is given only on the continuation sheet, the Copyright Office may add it to the principal application (if the application has been signed) and file the continuation sheet, or it may use the continuation sheet with the principal application. If the continuation sheet contains solely duplicate material, the Copyright Office will use only the principal application in making registration. In such cases, the continuation sheet may be discarded.

605 Examination process. When the Copyright Office determines that the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of the copyright law have been met, it will register the claim and send to the applicant a certificate of registration under the seal of the Copyright Office. See 17 U.S.C. 410(a).

605.01 Examination process: communications about registration requirements. Generally, where the registration material is unacceptable or subject to question, the Copyright Office will communicate with the applicant. See Chapter 100: BASIC POLICIES. In general, the Office will not question the accuracy of a statement made on an application. However, the Copyright Office will communicate with the applicant where the material is subject to question, as for example, where the application is ambiguous, substantially incomplete, in conflict with other information in the registration material, or with

605 Examination process. (cont'd)

605.01 Examination process: communications about registration requirements. (cont'd)

information of which the Copyright Office may take administrative notice, or indicates misunderstanding of registration requirements. See also Chapter 100: BASIC POLICIES, section 108.5.

605.02 Examination process: variances. A variance exists when contradictory information is present in the registration materials.

605.02(a) Variances: disregard. Where the variance is immaterial, the Copyright Office will disregard it.

Example:

The application names John Thomas James as author. The phonorecords deposited for registration give the author's name as Jon T. Thomas. The Copyright Office will accept the application.

605.02(b) Variances: annotate. Where the variance is not immaterial but can be resolved for the purposes of registration, the Copyright Office will annotate the application to show the varying information. See section 605.03 below.

Examples:

1) The title of the work on the phonorecord deposited for registration is "The Quick Brown Fox." The application gives the title as "The Brown Quick Fox." The Copyright Office

605 Examination process. (cont'd)

605.02 Examination process: variances. (cont'd)

605.02(b) Variances: annotate. (cont'd)

Examples: (cont'd)

1) (cont'd)

will annotate the application to reflect the title appearing on the phonorecords.

2) The title on the copies is "On Nuclear Rearmament"; the application gives the title as, "No Nuclear Rearmament." The Copyright Office will annotate the application to reflect the title appearing on the copies.

605.02(c) Variances: communicate. Where the variance is substantial, the Copyright Office will communicate with the applicant.

Example:

The application gives the name of the author as "Mary Smith"; the name of the author on the copy is "Jane Amber." In the absence of information that one of the names is a pseudonym or that the work was made for hire, the Copyright Office will ask the applicant to explain the variance in the author's name.

605.03 Examination process: annotations. An annotation is a statement added to the application by the Copyright Office to amplify the record of facts affecting the copyright claim. Specifically, annotations are made for the following purposes:

605 Examination process. (cont'd)

605.03 Examination process: annotations. (cont'd)

1) To reflect certain variances, as noted at section 605.02 above.

2) To add missing information, for example, from the deposit, a continuation sheet or a rider to the application, a previous application, a letter from the applicant, a telephone conversation, or a personal interview.

3) To add comments to the application, for example, to note an antedated copyright notice, to note overlapping claims, to note references by applicant to previous correspondence as "previous registration," to note references to riders or documents, or to note grants of special relief.

4) Where authorized by applicant or where otherwise appropriate, to correct or delete errors on the application.

605.03(a) Annotations: form. Annotations should be typewritten or stamped in the space marked "For Copyright Office Use Only," and should include the source of the information. Amendments should be keyed by asterisks to numbered spaces on the application.

605.04 The examination process: response from applicant. In general, after the Copyright Office has communicated with the applicant about an error or question, the applicant must respond within a reasonable time, or the file will be closed. Once the file has been closed, the applicant must submit a new application, deposit, and filing fee before the Office can reconsider registration.

605.05 Examination process: "rule of doubt." The Copyright Office will register a claim even though there is a reasonable doubt about the ultimate action which might be taken under the same circumstances by an appropriate court with respect to whether (1) the material deposited for registration constitutes copyrightable subject matter or (2) the other legal and formal requirements of the statute have been met. See Chapter 100: BASIC POLICIES.

605.06 Examination process: cautionary or warning letters. When registration is made under the rule of doubt, the Copyright Office may send a letter to the applicant cautioning that the claim may not be valid and stating the reason; and such a letter may warn, where appropriate, that the problem may exist for future works and point out how it can be avoided.

605.07 Examination process: not diminished by special handling. Notwithstanding the expedited treatment accorded special handling cases, these cases receive full examination by the Copyright Office.

606 Refusal to register. In any case in which the Register of Copyrights determines that, in accordance with the copyright law, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Copyright Office will refuse registration and will notify the applicant in writing of the reasons for such refusal. See 17 U.S.C. 410(b), and Chapter 100: BASIC POLICIES.

606 Refusal to register. (cont'd)

606.01 Refusal to register: unregistrable material. Unregistrable material includes the following:

a) Published works ineligible because of the nationality of the author or place of first publication. See 17 U.S.C. 104(b), Chapter 1100: ELIGIBILITY.

b) Works not fixed in a tangible medium of expression; see Chapter 200: COPYRIGHTABLE MATTER - IN GENERAL.

c) Sound recordings fixed before February 15, 1972. See 17 U.S.C. 301(c), and Chapter 400: COPYRIGHTABLE MATTER - WORKS OF THE PERFORMING ARTS AND SOUND RECORDINGS.

d) Works that are not "original works of authorship." See 17 U.S.C. 102(a), and Chapter 200: COPYRIGHTABLE MATTER - IN GENERAL.

e) Works whose term of copyright has expired.

f) Works of the United States Government. See 17 U.S.C. 101 and 105.

g) Certain works that unlawfully employ preexisting copyrighted material. See 17 U.S.C. 103(a).

h) Musical arrangements made under a compulsory license without the express consent of the copyright owner of the preexisting work. See 17 U.S.C. 115.

606 Refusal to register. (cont'd)

606.01 Refusal to register: unregistrable material. (cont'd)

i) Derivative works made under 17 U.S.C. 112(e) without the express permission of the copyright owner of the preexisting works employed in the transmission program. See 17 U.S.C. 112(e).

606.02 Refusal to register: failure to meet other legal requirements of copyright. Where the claim is invalid because certain other legal requirements have not been met, the Copyright Office will refuse registration. Examples include:

1) A work that went into the public domain before 1978, as determined by the law of 1909, as amended. See section 103 of the Transitional and Supplementary Provisions of the current Act and Compendium I.

2) In certain cases, works published under the current act without the required notice which were not registered within five years after such publication. See 17 U.S.C. 405(a), and Chapter 1000: NOTICE OF COPYRIGHT.

606.03 Refusal to register: applicant unauthorized. An application for registration can be submitted only by a person entitled to do so. See 37 C.F.R. 202.3(c)(1). The Copyright Office will refuse to register a claim when it has knowledge that the applicant is not authorized to submit the claim. See section 629.01 below.

606 Refusal to register. (cont'd)

606.04 Refusal to register: request for reexamination. When the Copyright Office has refused a claim as submitted, it notifies the applicant in writing of the refusal to register. After such notification, the applicant may set forth in writing his or her objections to the refusal and request that the Office reconsider its action. If the claim is refused after reconsideration, the head of the appropriate Examining Division section will send the applicant written notification of the reasons for refusal. The applicant may again request reconsideration. If the claim is refused again, the Chief of the Examining Division will notify the applicant in writing of the reasons. The Division Chief's decision constitutes final agency action.

607 Registration as a single unit. Single unitary works are ordinarily registered with one application, deposit, and fee. Under Copyright Office regulation, certain other works may also be registered as a single unit. See 37 C.F.R. 202.3(b)(3).

607.01 Registration as a single unit: published works. Works that are otherwise recognizable as self-contained may be registered on a single application and upon payment of a single fee, if they are first published in a single unit of publication and the copyright claimant of all works in the unit is the same. See 37 C.F.R. 202.3(b)(3)(A); see also 37 C.F.R. 202.3(b)(5).

607.02 Registration as a single unit: unpublished collections. For the purpose of registration on a single application and payment of a single fee, a number of unpublished works may be registered as a single work, if:

607 Registration as a single unit. (cont'd)

607.02 Registration as a single unit: unpublished collections. (cont'd)

1) The elements are assembled in an orderly form;

2) The combined elements bear a single title identifying the collection as a whole;

3) The copyright claimant in all of the elements, and in the collection as a whole, is the same; and

4) All of the elements are by the same author; or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element.

See 37 C.F.R. 202.3(b)(3)(i)(B).

607.02(a) Unpublished collections: conditions not met. Where it is reasonably clear that the conditions for registering unpublished collections have not been met, the application will be questioned. However, where two or more titles are given in the title space on the application, the Copyright Office will annotate the application to show that the collection is indexed only under the first title.

Examples:

1) An application is submitted for four selections naming A as an author of all four selections and B as a co-author of two selections. The copyright notices name A as the

607 Registration as a single unit. (cont'd)

607.02 Registration as a single unit: unpublished collections. (cont'd)

607.02(a) Unpublished collections: conditions not met. (cont'd)

Examples: (cont'd)

1) (cont'd)

sole claimant of the selections of which he or she was sole author, and the notices for the other two selections name A and B. The Copyright Office will communicate with the applicant to determine whether all four selections are the subject of a single claim.

2) Seven works are submitted with an application naming A and B as authors and claimants. A wrote the first three works in the collection, and B wrote the other four selections. The Copyright Office will request that the applicant regroup the works and submit applications and fees for two collections. Or, the applicant may wish to submit separate applications and fees for each work.

3) Form SR gives author A as author of words, music, and performance for all songs in the collection and author B as author of words and music only. The claimants are A and B. The Copyright Office will communicate with the applicant to verify whether author B (apparently having contributed no sound recording authorship), is a joint claimant of the sound recording. If author B is a joint

607 Registration as a single unit. (cont'd)

607.02 Registration as a single unit: unpublished collections. (cont'd)

607.02(a) Unpublished collections: conditions not met. (cont'd)

Examples: (cont'd)

3) (cont'd)

claimant, a transfer statement will be requested. See section 623 below. If he or she is not, the common claimant requirement has not been met as to the sound recording. In that case, the Copyright Office will request a separate Form PA for the words and music and a separate Form SR for the sound recording, as well as an additional fee.

607.02(b) Unpublished collections: extent of claim. Registration of an unpublished collection extends to each copyrightable element in the collection and to the authorship, if any, involved in selecting and assembling the collection. See 37 C.F.R. 202.03(b)(3)(i)(B).

608 Works containing elements that are separately owned. Works embodied in a single unit that are separately owned must be registered separately.

Example:

A book containing a literary work by one author and pictorial illustrations by another author is submitted with an application naming both authors as authors and claimants. An accompanying letter states that each

608 Works containing elements that are separately owned. (cont'd)

Example: (cont'd)

author is the owner of his or her respective contribution. The Copyright Office will request for each work a separate fee and separate application containing appropriate limiting statements. One appropriate deposit will suffice. See Chapter 800: DEPOSIT FOR REGISTRATION.

609 One basic registration per work. In general, the copyright owner may make only one basic registration per work. See 37 C.F.R. 202.3(b)(6).

609.01 One registration per work: exceptions. The rule of one basic registration per work is subject to certain exceptions, for example:

1) A work registered in unpublished form is later published without change. See 37 C.F.R. 202.3(b)(6)(i);

2) After another claimant has registered the work, the author seeks another basic registration, naming the author as claimant. See 37 C.F.R. 202.3(b)(6)(ii); see also section 624.01(a) below;

3) A qualified applicant states that an earlier registration was unauthorized and invalid. See 37 C.F.R. 202.3(b)(6)(iii).

See also Chapter 100: BASIC POLICIES, section 108.06.

609.01(a) Applications that overlap in part received at the same time on behalf of the same claimant for the same work in different classes. In general, where the

609 One basic registration per work. (cont'd)

609.01(a) One registration per work: exceptions. (cont'd)

Examiner is aware that applications that overlap in part were received at the same time on behalf of the same claimant in different classes, the Copyright Office will register both claims and indicate by annotation that the claims overlap in part.

Examples:

1) Forms PA and SR, submitted for unpublished works on behalf of the same claimant, are received in the Copyright Office on the same day. Each application describes the claim as "Music and Sound Recording." Both claims will be registered. The Form PA will be annotated to state: "Sound recording registered separately in Class SR." The Form SR will be annotated to state: "Music registered separately in Class PA."

2) A corporation submits two applications, one on Form VA and the other on Form TX, for two posters published on the same day. One poster contains artwork: the other contains the same artwork plus copyrightable text. The Form TX will be annotated to state: "Artwork registered separately in Class VA."

609.02 Separate applications for separately identifiable parts. Separate applications will be accepted for separately identifiable parts of a work.

609 One basic registration per work. (cont'd)

609.02 Separate applications for separately identifiable parts. (cont'd)

Example:

A multimedia kit, including a motion picture and a workbook, is submitted along with two applications, a Form PA stating a claim on the motion picture, and a Form TX stating a claim on the workbook. Each application names the same claimant. Both of the applications are acceptable.

610 Registering different versions of a work. The definition of "created" (17 U.S.C. 101) states that different versions constitute separate works. When registration is sought for different versions and separate applications are submitted to the Copyright Office at the same time, the manner of registering these works depends on whether they contain copyrightable differences distinguishable under the copyright law, and whether they have been published.

610.01 Registering different copyrightable versions of a work: unpublished works. Where two or more unpublished versions of a work are submitted together and each version contains different copyrightable material sufficient to support a claim on its own, the Copyright Office will register the claims separately, if separate applications and fees are submitted. The applications need contain no limiting statements to account for the similar material being registered in the other versions. See section 621 below. If a single application, fee, and single title are provided for the works and the other requirements are met, the Office will register the different versions as an unpublished collection.

610 Registering different versions of a work. (cont'd)

610.01 Registering different copyrightable versions of a work: unpublished works. (cont'd)

Examples:

1) Applicant submits three applications and three versions of an unpublished musical composition for SSA, SATB, and SAB voice groupings, the three versions containing essentially the same melody and rhythm. If the versions contain copyrightable differences -- if, for example, they contain different harmonic arrangements -- each claim may be registered without limitations.

2) A single application and fee are submitted with a group of T-shirt designs. The artwork on several of the designs is identical, except that the captions are different. The claim is in "artwork." The claim will be registered as submitted.

610.02 Registering different copyrightable versions of a work: published works. As a rule, works published separately must be registered separately, including versions which have been published separately on the same day. An exception to this rule is made for newspapers, which may be registered with one application and fee, provided the editions or sections were published on the same day.

610 Registering different versions of a work. (cont'd)

610.02 Registering different copyrightable versions of a work: published works. (cont'd)

Examples:

1) A single application giving a single date of publication is submitted with copyrightably different versions of the same musical composition -- for SSA, SAB, and SATB. If there is no indication that these versions were not first published as a unit, the Copyright Office will register the claims.

2) An application giving a single date of publication is submitted with a newspaper, "The Washington Daily," and regional inserts from Prince George's County, Montgomery County, and the District of Columbia. The application and deposit will be considered acceptable.

3) An application is submitted with two versions of a newspaper, the Morning Edition and the Late Edition of the "Baltimore Post." Although the editions were published at different times during the day, the application will be considered acceptable.

610.03 Registering different versions of an unpublished work: versions containing uncopyrightable differences. Where two or more unpublished versions of a work contain only uncopyrightable differences, the applicant

610 Registering different versions of a work. (cont'd)

610.03 Registering different versions of an unpublished work: versions containing uncopyrightable differences. (cont'd)

may make only one registration. All versions of the work, however, may be included in one deposit.

Example:

> An applicant submits three Christmas cards with the same visual and textual content; each card is a different color. Three applications and fees are submitted. The Copyright Office will communicate with the applicant stating that only one registration may be made, but that all versions may be included in a single registration.

610.04 Registering different versions of a published work: versions containing uncopyrightable differences.

- Where two or more versions containing the same copyrightable content have been published in the same unit, the Copyright Office will make only one registration, including all components.

- Where the versions have been published separately but at the same time, the Office will register only one claim. In such cases, the applicant should deposit the best edition. See 43 Fed. Reg. 766 and Chapter 800: DEPOSIT FOR REGISTRATION. If none of the published versions can be considered better than the others, the applicant may choose the version he or she wishes to deposit and register.

610 Registering different versions of a work. (cont'd)

610.04 Registering different versions of a published work: versions containing uncopyrightable differences. (cont'd)

. Where the versions have been published separately at different times, the Office will register only one claim. The application should give the date of first publication, and in such cases, the applicant should deposit the best edition. If none of the published versions can be considered better than the others, the applicant may submit whichever version he or she prefers.

Examples:

1) An application, filing fee, and identifying material for jewelry designs are received for a published collection of earrings, bracelet, pendant, and pin. All components of the set contain the same copyrightable authorship. The Copyright Office will register the claim as submitted, accepting the set as the unit of publication. See 37 C.F.R. 202.3(b)(3)(A).

2) Three applications are submitted with high, medium, and low voice versions of a book of musical selections entitled "Wedding Classics." The date of publication on each application is the same. Since the only difference among the versions is that they are in different keys, the Copyright Office will register only one claim. The appropriate deposit depends on the unit of publication. If the versions were published together, the Copyright Office will accept all the

610 Registering different versions of a work. (cont'd)

610.04 Registering different versions of a published work: versions containing uncopyrightable differences. (cont'd)

Examples: (cont'd)

2) (cont'd)

components in making one registration. If they were published separately, the applicant may deposit the version he or she prefers.

3) Separate applications are received for two books of poems. The literary and pictorial content of the books is the same; however, one edition is published in hardcover, while the other edition is paperback. The applications indicate that the hardcover edition was published two months after the paperback edition. Only one claim will be registered. The Copyright Office will use the application giving the first date of publication and the hardcover edition as the best edition as of the date of deposit.

610.05 Registering different versions of an unpublished work: overlapping or duplicate claims in different versions, one version more complete. Where an applicant submits two or more versions of the same unpublished work, separate registrations may be made if the versions contain copyrightable differences. If there are no copyrightable differences, registration will be made for the most complete version, or a single registration may be made for all of the versions, if the conditions for an unpublished collection are

610 Registering different versions of a work. (cont'd)

610.05 Registering different versions of an unpublished work: overlapping or duplicate claims in different versions, one version more complete. (cont'd)

met. See section 607.02 above. However, if there are separable types of authorship into which the work may be divided, separate claims may be registered provided the applications clearly define the extent of each claim.

Examples:

1) Two versions of an unpublished Kiwanis Song Book with separate applications and fees are submitted, one containing only song lyrics, the other containing the song lyrics set to music. Both versions may be registered with an annotation to the application for the most complete version stating "Song lyrics registered separately."

2) Two applications and fees are submitted for an unpublished black and white line drawing and a color version containing the same copyrightable content. The Copyright Office will register only one claim but will include both versions in the deposit for registration.

3) Two applications and fees are submitted with two versions of a drama: a two-act version and a three-act version. The two-act work is a registrable abridgment. Both applications will be accepted.

610 Registering different versions of a work. (cont'd)

610.06 Registering different versions of a published work: one version more complete. The manner of registering published versions -- where one version embodies the entire copyrightable content of another version and also contains additional copyrightable material -- depends on when the versions were published.

610.06(a) Registering different versions of a published work: less complete version published first. If the less complete version was published first, both versions may be registered. The claim in the more complete version should cover only the material not previously published, that is, the application should contain a statement limiting the claim.

Example:

A book of photography is submitted with an application giving a publication date of June 2, 1983. The claim is in "Photographs." Another book containing the same photographs and some sketches is submitted at the same time. The application for this work gives the publication date as June 15, 1983. The claim is in "Photographs and drawings." Both claims may be registered. The application for the book containing the photographs alone may be accepted as submitted. The Copyright Office will communicate with the applicant for a limitation of the claim on the application for the later published book.

610 Registering different versions of a work. (cont'd)

610.06 Registering different versions of a published work: one version more complete. (cont'd)

610.06(b) Registering different versions of a published work: more complete version published first. If the more complete version is published first, the less complete version may not be registered; the Copyright Office will not knowingly register a claim in a work where all of the copyrightable content has been previously published.

Example:

> Separate applications are received for the Teacher's and Student's Edition of a textbook. The Teacher's Edition contains all of the text and pictorial material in the Student's Edition, plus additional instructions, questions, answers, and commentary. The application for the Teacher's Edition gives January 22, 1980 as the publication date. The date of publication for the Student's Edition is February 1, 1980. The Copyright Office will register the Teacher's Edition but will refuse to register the claim in the Student's Edition.

610.06(c) Registering different versions of a published work where one version more complete: versions published at the same time. Where two or more versions are published separately, but at the same time, with one version being more complete, one registration may be made

610 Registering different versions of a work. (cont'd)

610.06 Registering different versions of a published work: one version more complete. (cont'd)

610.06(c) Registering different versions of a published work where one version more complete: versions published at the same time. (cont'd)

for the most complete version. If the applicant wishes, and the more complete versions contain additional copyrightable material, separate registrations may be made. In such case, the applications, preferably at the title space, should clearly distinguish the versions from one another.

Examples:

1) Separate applications are submitted for two versions of a musical composition that are published on the same day. One version contains music and lyrics in the English language, the other contains Spanish lyrics in addition to the English lyrics and music. Both applications claim in "music and lyrics." The Copyright Office will annotate the application for the Spanish version stating: "English lyrics and music registered separately."

2) Separate applications are submitted for two versions of a racetrack program: one, a photograph of "Swale," the 1984 winner of the Kentucky Derby, and another containing that same photograph plus a second photograph depicting his trainer. Both

610 Registering different versions of a work. (cont'd)

610.06 Registering different versions of a published work: one version more complete. (cont'd)

610.06(c) Registering different versions of a published work where one version more complete: versions published at the same time. (cont'd)

Examples: (cont'd)

2) (cont'd)

applications will be accepted, but the application for the version containing the two photographs will be annotated: "Authorship in photograph of horse registered separately."

610.07 Registering different versions of a work published at the same time: overlapping versions. Where different versions are published separately but at the same time, and the elements of one version are not completely subsumed in another version, separate registrations may be made without annotating the applications or otherwise limiting the claims.

Example:

Separate applications are submitted for two versions of a book published on the same day: one in English with illustrations, and the other in Swedish, containing the same illustrations. Both applications state: "Text and illustrations" as the basis of claim. The applications will be accepted as submitted.

[Number 611 is reserved.]

612 Examining practices in regard to space on application form. The following states the general examining practices for each space on the application form.

612.01 General policy: location of information. In general, although the required information should be given in the appropriate space, the Copyright Office will not require a new application where the required information is given elsewhere on the application form or on a "rider." Riders do not remain with the application after the Office has registered the claim. See section 605.03 above.

612.02 General policy: minimum standards. The practices stated below represent minimum standards for the acceptance by the Copyright Office of completed applications. The Office will register a claim where it believes the record of facts about the copyright meets these standards. Where an applicant seeks advice from the Office before preparing the application, however, the Office will suggest that the application be completed in such a manner as to put an optimum claim on record. See Chapter 100: BASIC POLICIES, section 109.03(a).

612.03 General policy: correspondence to cover all informalities. When it is determined that correspondence is required, the Copyright Office may point out all problems raised by the application or deposit, even if those problems standing alone would not be a sufficient reason to delay registration.

613 Title of the work. The application for copyright registration shall include the title of the work, together with any previous or alternative titles by which the work may be identified. See 17 U.S.C. 409(6). In any case where the Office cannot determine that the application and deposit relate to the same work, the Office will communicate with the applicant.

Examples:

1) Title on application: "A History of France"

Deposit: Untitled. (Manuscript appears unrelated to the title.)

The Copyright Office will communicate with the applicant.

2) Title on copy: "Davidson's Biology for Preparatory Study"

Title on application: "Poems for Shona and Liletha"

The Copyright Office will communicate with the applicant.

613.01 Title of the work: omitted. Both the application and the deposit material should give the title of the work. In general, where the title is given in the registration materials, but is omitted from the application or deposit, the Copyright Office will add the title where it is missing, except to published printed material. See section 613.01(c) below.

613.01(a) Title of the work: omitted from application. Where the title is not given on the application but is given in other registration material, the Copyright Office will add the title to the application at the title space with an annotation reading "Added by C.O. from [source]."

613 Title of the work. (cont'd)

613.01 Title of the work: omitted. (cont'd)

613.01(b) Title of the work: omitted from unpublished deposit. Where the title is not given on the deposit for an unpublished work, but is given on the application, the Copyright Office will add the title to the deposit or to a separate page and attach it to the deposit. The title should be keyed by asterisk to the following annotation: "Added by C.O. from appl." Where space is limited, the Copyright Office will add the title to a sticker or tag and attach it to the deposit. The title should be added in the following form: "[title] *C.O."

613.01(c) Title of the work: omitted from published deposit. Where the title is omitted from the deposit of a published work, but a title is given on the application, the Copyright Office will annotate the application with a statement: "No title on deposit." Where the work consists of multiple parts, the annotation should include the number of components, title of first component, if available, and such other identifiers, e.g., numbers or letters, as are available. If the deposit is a print or other visual arts material without text, the title can be added lightly in pencil to the reverse of the deposit. If the deposit is identifying material, the title will be added to the deposit by annotation: "[title] *C.O." or "Added by C.O. from appl."

613.01(d) Title of the work: omitted from application and deposit. In general, where there is no title given for a work on any of the registration materials, the Copyright Office will ask the applicant for

613 Title of the work. (cont'd)

613.01 Title of the work: omitted. (cont'd)

613.01(d) Title of the work: omitted from application and deposit. (cont'd)

the title of the work. When this information is received, the Copyright Office will add it to the work or will annotate the application according to the practices described in section 613.01(b) or (c) above. Where the work has been given a nondescriptive title, such as "Untitled," the Copyright Office will accept the application as submitted. See section 613.02 below.

613.02 Title of the work: nondescriptive titles. For registration purposes, there is no requirement that the title of a work be descriptive. Thus, nondescriptive titles, such as "Untitled," "Print No. 1," or "Study in Black," (for a painting in tones other than black), are acceptable titles. Also, titles consisting solely of letters or numbers, such as "L-1011" and "MX" are acceptable. However, an application whose principal title consists solely of non-alphanumeric characters will not be cataloged under such title. Instead, the work will be cataloged as "nonprintable data."

613.03 Title of the work: foreign-language titles. A title of a work may be given in a foreign language. Works in foreign languages using the Roman alphabet will be cataloged under their foreign language titles. Other foreign-language titles will be transliterated into the Roman alphabet by the Cataloging Division.

613 Title of the work. (cont'd)

613.04 Title of the work: variances. When partial variances occur between the application and deposit, the Copyright Office may annotate the application if the more complete form of the title is given on the deposit. Where complete variances occur between the title given on the application and on the deposit for a work, but it is clear that the application and deposit are for the same work, the Office will annotate the application to show both titles. Any title variance, including minor typographical errors, will be annotated at the option of the Office. In any case where the Office cannot determine that the application and deposit relate to the same work, the Office will communicate with the applicant.

Examples:

1) Title on copy: "The Quest for Rest Among Insomniacs"

   Title on application: "Rest Quest"

   The application will be accepted with the full title added by annotation.

2) Title on copy: "The Quest for Rest Among Insomniacs"

   Title on application: "The Quest for Rest"

   The application may be accepted without annotation.

613.04(a) Variances involving generic titles. Where the title on the deposit adds substantially to the identity of the work and the title given on the application is a generic title, the Copyright Office will add the full title to the application in an annotation.

613 Title of the work. (cont'd)

613.04 Title of the work: variances. (cont'd)

613.04(a) Variances involving generic titles. (cont'd)

Example:

Title on application: "Ballade"

Title on copy: "Ballade No. 6 in E minor"

The application will be accepted with an annotation.

613.05 Title of the work: unpublished collections. Where a number of selections are being registered as an unpublished collection, the application should give one title for the whole collection, but that title may also be the title of one of the individual selections. Individual titles may be given at the space marked: "Previous or Alternative Titles," or preferably, on the continuation sheet. The application and any continuation sheets form part of the registration records for the work; therefore, the Examiner should forward all such sheets for registration. Individual titles generally are not indexed unless they are later made the subject of a supplementary registration. See Chapter 1500: CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT OFFICE RECORDS; SUPPLEMENTARY REGISTRATIONS. Where two or more titles are given in the registration materials for an unpublished collection and no single title is designated, the Copyright Office will add an asterisk to the first title on the application and add the following annotation: "Collection indexed under first title."

613 Title of the work. (cont'd)

613.06 Title of the work: contributions to published collections. If one or more individual contributions to a published collection are being registered, as distinguished from the collective work itself, the application should give the individual titles of the contributions being registered, followed by the title of the collection.

Example:

"'A Song for Malinda' and 'Ol Ballou'" in "Ballads for Jazz Singers"

613.06(a) Title of contributions to published collections: same title as collection. Where the individual title of a contribution and the collective work title are the same, the Copyright Office will not communicate with the applicant unless it is unclear whether the applicant intends to register the individual work or the collective work and registration as either an individual work or a collective work would require correspondence.

Examples:

1) Title on application: "Celebrating You."

Title on phonorecord album: "Celebrating You." The album also contains an individual selection entitled "Celebrating You," along with eight other songs. The author named on the application wrote all songs on the album; two phonorecords are deposited. The application is acceptable without annotation since the Office assumes that the entire collective work is being registered.

613 Title of the work. (cont'd)

613.06 Title of the work: contributions to published collections. (cont'd)

613.06(a) Title of contributions to published collections: same title as collection. (cont'd)

Examples: (cont'd)

2) Title on application: "Lovers and Friends."

Phonorecord title of album: "LOVERS AND FRIENDS" contains an individual selection also entitled "Lovers and Friends." The individual selection is by the author named on the application; other works by different authors are included. One record is deposited. The Copyright Office will annotate the application stating "as contained in LOVERS AND FRIENDS."

3) Title on application: "The Pink Giraffe."

Title on collection of plays: THE PINK GIRAFFE. The collection contains a play by that name and four other plays. The author named on the application wrote three plays, including the one entitled "The Pink Giraffe." Different authors wrote the other two plays. Where the other plays by the author named on the application are not excluded from the claim elsewhere on the application, the Copyright Office will communicate with the applicant to determine whether the claim covers only the play entitled "The Pink Giraffe" or whether it also extends to the other two plays by that author.

613 Title of the work. (cont'd)

613.06 Title of the work: contributions to published collections. (cont'd)

613.06(b) Title of the work: collection title omitted. Where the collection title and the title of the individual work are not the same and the application gives the title of the individual selection being registered but does not give the title of the collection, the application is acceptable without annotation.

613.06(c) Title of the work: completion of "Publication as a Contribution" space. Where the application contains a space marked "Publication as a Contribution" and the application omits information about the collective work, the Copyright Office will add the missing information by annotation except where the work being registered is an advertisement. See section 613.06(d) below. Where the work being registered is clearly a contribution to a collective work, but neither the application nor the deposit copy includes information about the collective work, the Office may request that information.

NOTE: A space for "Publication as a Contribution" is included on Forms VA and TX. See also Form SE.

613.06(d) Title of the work: completion of collective work information where advertisement is being registered. Where the work being registered is an advertisement, but the "Publication as a Contribution" space is not completed, the application is acceptable without annotation.

613 Title of the work. (cont'd)

613.06 Title of the work: contributions to published collections. (cont'd)

613.06(e) Title of the work: variance in collective work information. Where the "Publication as a Contribution" space contains publication information that varies entirely from the information on the deposit, the application is acceptable without annotation if the deposit conforms with the requirement of the "best edition" and this edition contains the same copyrightable content as that in which the work was first published. Where there is a partial variance between the application and deposit such as between issue or volume number, or page numbers, on which the contribution appears, the Copyright Office will annotate the application.

613.07 Title of the work: previous or alternative titles. Previous or alternative titles serve as additional means of identifying the work being registered. These titles may also assist in accounting for variances between the title on the deposit and the title given in the title space on the application. The "Previous or Alternative Titles" space on the application refers to the work being registered rather than to any other version of the work. If, however, someone searching for a registration might be likely to look under titles of other versions, they may appropriately be listed in that space. In any event, the Copyright Office will not initiate correspondence with the applicant regarding these titles.

NOTE: A space for previous or alternative titles is not included on all forms.

614 Nature-of-work space. Forms PA and VA contain a nature-of-work space. This space should give a description of the general nature and character of the work being registered. A description of the physical form of the work is generally acceptable. Ordinarily, the Copyright Office will not consider the omission or incorrect completion of information in the nature-of-work space as a reason, in itself, for communicating with the applicant. The nature-of-work statement may be considered an adequate statement of the basis of the claim where the authorship space is blank or the statement of authorship is not specific. See sections 619 and 626 below. Examples of acceptable nature-of-work statements:

1) PA Applications:

"Audiovisual work"
"Choreography"
"Drama"
"Motion Picture"
"Music"
"Song lyrics"

2) VA Applications:

"Charcoal drawing"
"Etching"
"Fabric design"
"Jewelry design"
"Map"
"Oil painting"
"Photograph"
"Sculpture"
"Technical drawing"

614.01 Nature-of-work space: both nature-of-work and nature-of-authorship statements omitted. Where both the nature-of-work and the nature-of-authorship statements are nondescriptive or are omitted altogether, but the extent of the claim is clear, the Copyright Office will annotate the nature-of-work space and describe the deposit.

Examples of annotations:

1) "Deposit contains artwork."

2) "Lyrics and music deposited."

3) "Deposit consists of identifying material for soft sculpture."

614 Nature-of-work space. (cont'd)

614.01 Nature-of-work space: both nature-of-work and nature-of-authorship statements omitted. (cont'd)

614.01(a) Nature-of-work and nature-of-authorship statements omitted: claim unclear. Where the nature of work and the nature of authorship statements are omitted from the application, or where the statements are nondescriptive, and the extent of the claim is not clear from the deposit, the Copyright Office will communicate with the applicant.

Example:

An application Form VA gives no nature-of-work statement and the nature-of-authorship statement is "Entire work." The deposit is a drawing of a three-dimensional useful article. Because it is not clear from the application and deposit whether the drawing is the subject of the claim or whether it is identifying material for the useful article, the Office will communicate with the applicant.

614.02 Nature-of-work space: elements not contained in deposit. The nature-of-work statement on the application should refer only to elements contained in the deposit. Where the nature-of-work statement describes copyrightable material that is not included in the deposit and it appears clear that a claim is asserted in the missing material, the Copyright Office will communicate with the applicant. Where the terms used to describe the nature of the work broadly imply the presence of elements not contained in the deposit, but the extent of the claim is clear from statements elsewhere on the application, the application

614 Nature-of-work space. (cont'd)

614.02 Nature-of-work space: elements not contained in deposit. (cont'd)

will be accepted. Where the nature-of-work statement refers to a future use of the work, rather than accurately describing the work being registered, but the claim is described elsewhere, the application is acceptable, generally, without annotation. In such cases, the Office will annotate only if the nature-of-work statement clearly raises a question concerning the nature of the work being registered.

Examples:

1) Nature-of-work statement: "Music and lyrics"

Nature of authorship: "Entire work"

Deposit: lyrics only

The Copyright Office will communicate with the applicant unless the claim is limited elsewhere on the application.

2) Nature of work: Dramatico-musical

Nature of authorship: Book and lyrics

The application is acceptable.

3) Nature of work: "Dramatico-musical"

Nature of authorship: "Space left blank"

Deposit: Book and lyrics

The Office will annotate the application: "Book and lyrics deposited."

614 Nature-of-work space. (cont'd)

614.02 Nature-of-work space: elements not contained in deposit. (cont'd)

Examples: (cont'd)

4) Nature of work: "Motion picture"

Nature of authorship: "Screenplay"

Deposit: Screenplay in textual form

The Office will annotate the application as follows: "Deposit contains screenplay in textual form."

614.03 Nature-of-work space: reference to uncopyrightable elements. Where the nature-of-work statement on the application refers to elements that are not within the subject of copyright, as listed in 17 U.S.C. 102(b) or 37 C.F.R. 202.1, but the claim is appropriately stated elsewhere, the Copyright Office will annotate the application to make it clear that copyright does not extend to the uncopyrightable matter. In general, it will not correspond with the applicant where there is an error in describing the kind of work being registered if the claim to copyright is clear.

Examples:

1) Nature of work: "drill press concept"

Nature of authorship: "technical drawing"

The Copyright Office will annotate the application with a statement reading: "Concepts not copyrightable. 17 U.S.C. 102(b)."

614 Nature-of-work space. (cont'd)

614.03 Nature-of-work space: reference to uncopyrightable elements. (cont'd)

Examples: (cont'd)

2) Nature of work: "cartoon character"

Nature of authorship: "cartoon drawing"

The application is acceptable.

615 Name of author. The application shall include, except in the case of an anonymous or pseudonymous work, the name of the author or authors. See 17 U.S.C. 409(2). In general, the name of each author should be given in a separate block on the application. Where the application names two or more authors in the same block, the application will be accepted if sufficient information is given about each author. See section 615.04(d)(3) below.

615.01 Name of author: anonymous and pseudonymous works. An "anonymous work" is a work on the copies or phonorecords of which no natural person is identified as author. A "pseudonymous work" is a work on the copies or phonorecords of which the author is identified under a fictitious name. See 17 U.S.C. 101. In general, the Copyright Office will not correspond with the applicant about the failure to complete the anonymous or pseudonymous questions on the application in an appropriate manner unless there is an unresolvable variance in authorship statements.

615.01(a) Name of author: anonymous works -- completing the space. Where a work is anonymous, the applicant may: 1) leave the name-of-author space blank on the application, and check the appropriate box, 2) state "anonymous," or 3) reveal the author's identity.

615 Name of author. (cont'd)

615.01 Name of author: anonymous and pseudonymous works. (cont'd)

615.01(b) Name of author: pseudonymous works -- completing the space. Where a work is pseudonymous, the applicant may: 1) leave the name-of-author space blank on the application and check the pseudonymous box: "Yes," 2) give the pseudonym and identify it as such, or 3) give the author's legal name, preferably making clear which is the real name and which is the pseudonym, as for example: "Judith Barton, whose pseudonym is Madeline Elster." See 17 U.S.C. 302(c).

615.02 Name of author: performing group designated by a single fictitious name. Where the name of a performing group is given on the copy or phonorecord, that group may be named as the author. Where such a group name is designated on the application as a pseudonym, the Copyright Office will not question whether the name identifies all members of the group nor question whether each member contributed copyrightable authorship to the work. If, however, there is any indication that each and every member of the group did not contribute copyrightable authorship, the Office will request the names of individual authors who did contribute copyrightable authorship. Where the name of the author designates an organization for which the work was made for hire, the pseudonymous status is not applicable. Instead, the work-made-for-hire question on the application should be answered: "Yes." See sections 615.01 above and 615.05 below.

615 Name of author. (cont'd)

615.02 Name of author: performing group designated by a single fictitious name. (cont'd)

Example:

An application Form SR is submitted to register a claim in "performance." The author is named as "The Mighty Five" on the application and the phonorecords. The pseudonymous question is answered: "Yes." The Copyright Office will consider the application acceptable. However, a different result occurs where an application Form VA is received for a logo consisting of substantial pictorial authorship, and the name given as author on the application and on the copy is: "National Telephone and Telegraph Company." Although the name does not appear to be that of a performing group, the pseudonymous question is answered: "Yes," and the "work for hire" statement is blank. In this case, the application will be questioned.

615.03 Name of author: identity of the author. Where a work is made for hire, the employer or other person for whom the work was prepared is considered the "author." In all other cases, the individual who actually contributes the copyrightable material is the author. Thus, for registration purposes, these two categories constitute the entire range of authors.

615.04 Name of author: works made for hire. If the work is made for hire, the application should contain a statement to that effect. See 17 U.S.C. 409(4). A work is made for hire if it is: (1) prepared by an employee within the scope of his or her employment, or (2) specially ordered or commissioned as specified in the statute, but only if there is a written agreement to consider it a "work

615 Name of author. (cont'd)

615.04 Name of author: works made for hire. (cont'd)

made for hire." See 17 U.S.C. 101 and section 615.05(c) below. The applicant, not the Copyright Office, determines whether a work is made for hire. Where the facts presented do not appear to be consistent with the statutory definition, however, the Office will communicate with the applicant.

615.04(a) Works made for hire: employer-employee relationships. The Copyright Office will not require confirmation that a standard employer-employee relationship exists. In general, the Office will not question an application where it appears that an unpaid volunteer contributed to a work made for hire.

Examples:

1) An application naming Faith Church as an author of "sound recording performance" states that the work was made for hire. In an accompanying letter, the applicant states that the sound recording performance was by unpaid choir members. The application is acceptable.

2) An application Form SE for a scholarly journal names the journal as author of editing. The Copyright Office is informed that the editor contributed authorship on behalf of the journal on a volunteer basis. The Office will register the claim as submitted.

615 Name of author. (cont'd)

615.04 Name of author: works made for hire. (cont'd)

615.04(b) Works made for hire: within the scope of duties. Questions may arise whether the employee performed the work within the scope of his or her duties. In such cases, the Copyright Office will ordinarily accept the applicant's assertion. Where the applicant seeks advice from the Office, it will suggest that factors to be considered include the intended agreement between the employer and employee, and the custom and usage in the particular trade involved.

615.04(c) Works made for hire: specially ordered or commissioned works. The statute designates nine categories of specially ordered or commissioned works that can be considered works made for hire:

1) A contribution to a collective work;

2) A part of a motion picture or other audiovisual work;

3) A translation;

4) A compilation;

5) An instructional text defined as a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities;

6) A test;

7) Answer material for a test;

8) An atlas;

615 Name of author. (cont'd)

615.04 Name of author: works made for hire. (cont'd)

615.04(c) Works made for hire: specially ordered or commissioned works. (cont'd)

9) A supplementary work, 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 works, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes.

615.04(c)(1) Specially ordered or commissioned works: not within designated categories. Where the Office has knowledge that a work was specially ordered or commissioned but the work does not appear to be within the nine categories of works listed above, the application will be questioned.

615.04(c)(2) Specially ordered or commissioned works: written agreement. For a specially ordered or commissioned work to be considered a work made for hire, the statute requires an agreement signed by both parties stating that the work is to be considered a work made for hire. In general, however, the Copyright Office will not ask the applicant to specify whether a particular work was commissioned or was created by an

615 Name of author. (cont'd)

615.04 Name of author: works made for hire. (cont'd)

615.04(c) Works made for hire: specially ordered or commissioned works. (cont'd)

615.04(c)(2) Specially ordered or commissioned works: written agreement. (cont'd)

employee, nor will it, when it is clear that the work is specially ordered or commissioned, ask the applicant to verify the existence of a written agreement.

615.04(d) Works made for hire: general practices. The following are general practices relating to the work-made-for-hire question on the application.

615.04(d)(1) General practices: organization named as author. Works authored by an organization are necessarily created by employees or commissioned parties; therefore, whenever an organization is the author, the applicant should answer "Yes" to the "for-hire" question. If the application indicates that such a work is not made for hire, the Copyright Office will communicate with the applicant.

Examples:

1) The application names the author as "XYZ Corporation," and the work-made-for-hire question is answered: "No." The application is not acceptable.

2) The application names "XYZ Corporation" as the author. The work-made-for-hire question is

615 Name of author. (cont'd)

615.04 Name of author: works made for hire. (cont'd)

615.04(d) Works made for hire: general practices. (cont'd)

615.04(d)(1) General practices: organization named as author. (cont'd)

Examples: (cont'd)

2) (cont'd)

not answered. The application will be accepted as submitted on the assumption that the work is made for hire. NOTE: This practice pertains only to corporations. Applications for noncorporate organizations will be questioned to clarify whether the name of the author is correct.

615.04(d)(2) General practices: individual named as author. Where an applicant names an individual as author and does not answer the work-made-for-hire question, the application will be accepted on the assumption that the named individual created the work in his or her own right. Where the applicant answers "Yes" to the "for-hire" question and the named author appears to be a natural person (rather than an organization), the Copyright Office will communicate with the applicant only if such a relationship seems unlikely according to the information presented by the registration materials.

615 Name of author. (cont'd)

615.04 Name of author: works made for hire. (cont'd)

615.04(d) Works made for hire: general practices. (cont'd)

615.04(d)(2) General practices: individual named as author. (cont'd)

Examples:

1) Individual is named as producer of motion picture, and the work-made-for-hire question is answered: "Yes." The Copyright Office will accept the assertion without question.

2) An application for a drama names Sue Smith as author of a work for hire. The Copyright Office may ask the applicant whether Ms. Smith created the work in her own right or was the employer or other person for whom the work was made for hire. If, after such inquiry, the applicant indicates that she is the employee, the Office will request a new application naming the correct author.

615.04(d)(3) General practices: individual and unincorporated business organization named as authors. The application should name only one entity in any particular authorship block. However, where an individual and an apparently unincorporated business association are named in the same block and it seems likely that the organization is merely a trade name

615 Name of author. (cont'd)

615.04 Name of author: works made for hire. (cont'd)

615.04(d) Works made for hire: general practices. (cont'd)

615.04(d)(3) General practices: individual and unincorporated business organization named as authors. (cont'd)

or other assumed name of the individual, the application will be accepted. The Copyright Office will consider the individual and the non-corporate organization as the same legal entity where the relationship is stated in the registration materials, or where the individual and organization are related by name. Where any organization, however, corporate or not, as distinguished from a person using an assumed name, is clearly the author, but the applicant answers: "No" to the work-for-hire statement, the application will be questioned.

Examples:

1) The application names as author "Pamela Bethel, doing business as Patti Bell Music." No answer is given to the work-made-for-hire question. The application will be accepted.

2) The application names as author "Jane Smith, trading as Acme Company." The work-made-for-hire question is answered: "No." The application will be accepted on the assumption that Jane Smith is an individual author in her own right.

615 Name of author. (cont'd)

615.04 Name of author: works made for hire. (cont'd)

615.04(d) Works made for hire: general practices. (cont'd)

615.04(d)(3) General practices: individual and unincorporated business organization named as author. (cont'd)

Examples: (cont'd)

3) An application names as author "Associated Advertisers (Virginia McDonald)" on the same line in the authorship space. The work-for-hire question is not answered. The application will be questioned.

615.04(d)(4) General practices: individuals and incorporated organizations named as authors. Where an application names as author an individual in combination with an incorporated organization, the Copyright Office will not consider the organization to be an assumed or trade name of the individual. Instead, it will consider the individual and the organization as separate entities. Therefore, if the application does not make clear the identity of the author or whether or not the work is made for hire, the Office will communicate with the applicant. On the other hand, where it is clear that the organization is the author and that the relationship between the individual and the organization is merely descriptive, the application will not be questioned.

615 Name of author. (cont'd)

615.04 Name of author: works made for hire. (cont'd)

615.04(d) Works made for hire: general practices. (cont'd)

615.04(d)(4) General practices: individuals and incorporated organizations named as authors. (cont'd)

Example:

An application names as author "Richard Smith, doing business as Smith Publishing Company, Inc." Regardless of how the work-for-hire question is answered, for registration purposes, the Copyright Office does not consider these two names to represent a single entity. The Office will communicate with the applicant to clarify both whether the work was made for hire and whether the author is Mr. Smith or the Smith Publishing Company, Inc.

615.04(e) General practices: song service organizations. The following practices relating to works made for hire apply to works by song service organizations.

615.04(e)(1) Song service organizations: defined. Although song service organizations may offer a variety of music related services -- "vanity publishing," "ghost writing," composing music and lyrics -- the primary business of these organizations appears to be providing music for song lyrics

615 Name of author. (cont'd)

615.04 Name of author: works made for hire. (cont'd)

615.04(e) General practices: song service organizations. (cont'd)

615.04(e)(1) Song service organizations: defined. (cont'd)

written by individuals. The lyricists pay a fee for the service. They may be offered a choice of musical settings, but usually there is no collaboration between the lyricist and the organization's staff composer.

615.04(e)(2) Song service organizations: practices. Because these organizations usually maintain that the music provided by their staff is made for hire on behalf of the lyricist and not on behalf of the organization itself, the Copyright Office will not question statements on the application naming the individual as the author for whom music or both words and music were prepared for hire. See sections 623 and 619.08 below.

Examples:

1) The application names "Jane Doe" as individual author of "words." The work-made-for-hire question in this block is not answered. In a separate block, "Jane Doe" is named as author of "music," and the "work-made-for-hire question in this block is checked: "Yes." The application will be accepted.

615 Name of author. (cont'd)

615.04 Name of author: works made for hire. (cont'd)

615.04(e) General practices: song service organizations. (cont'd)

615.04(e)(2) Song service organizations: practices. (cont'd)

Examples: (cont'd)

2) The application names Jane Doe as author of "words and music." The work-made-for-hire question is checked: "Yes." The application will be accepted.

615.05 Name of author: separate or independent works. Individual contributions embodied in one unit may constitute separate and independent works. In such cases, an application is acceptable even if it accounts for only one separate contribution. See section 609.02 above.

Examples:

1) A published reproduction of a work of art is deposited with an application. The name of the author of the reproduction is given, but the author of the original painting is not named. The application will be accepted.

2) An application Form TX claiming in "poems" is received for a book of poems containing substantial artwork; the illustrator is not named on the application. The Copyright Office will accept the application as submitted on the assumption that the contributions of the poet and the illustrator are separate and independent works.

615 Name of author. (cont'd)

615.06 Name of author: collective work authorship. 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. See 17 U.S.C. 101. Where a collective work is being registered, the application should name the author of the collective work. The names of the individual authors of separate contributions being registered as part of the claim need not be given on the application. The registration may cover (a) the collective work authorship, (b) any contribution created by the employee or other party commissioned by the author of a work made for hire, and (c) any other contributions that the claimant of the collective work obtained by transfer.

615.07 Name of the author: form of name. If the work is not anonymous or pseudonymous, the author's full legal name should be given; the Copyright Office will not communicate with the applicant, however, if the author's full name is not given. If a fuller form of the author's name is given on the deposit material, the Office may add that information to the application by annotation. Where the work is made for hire, the name of the employer or other person for whom the work was prepared must be given as author. Stating the name of the employee or commissioned party on the application is optional, but where it is included, his or her status should be clearly indicated, for example: "Freemont Enterprises, Inc., employer of L.B. Jeffries."

615.07(a) Name of author: when required. Generally, an application for a work that is not anonymous or pseudonymous should give the name of the author. See section

615 Name of author. (cont'd)

615.07 Name of author: form of name. (cont'd)

615.07(a) Name of author: when required. (cont'd)

615.02 above. Where a derivative work is being registered, the name of the author of the derivative material should be given. The name of the author of the material on which the derivative work is based is not required.

615.07(b) Name of author: omissions. Where the application does not indicate that the work is anonymous and omits the author's name, and the name is not evident anywhere in the registration materials, the application will be questioned.

615.07(b)(1) Work by one author. Where an application for a work by one author omits the name of the author, but the author's name appears elsewhere in the registration materials, the application will be annotated. It should be noted that this practice does not apply to anonymous or pseudonymous works or to works made for hire. See sections 615.01 and 615.02 above.

615.07(b)(2) Work by two or more authors. Where an application for a work by more than one author omits an author's name, the application will ordinarily be questioned, even though the authors are named in other registration materials, unless the nature of each author's contribution (included in the claim) is evident.

615.07(b)(3) Work by a large number of authors. If the work being registered was created by a large number of authors, the application will be considered

615 Name of author. (cont'd)

615.07 Name of the author: form of name. (cont'd)

615.07(b) Name of author: omissions. (cont'd)

615.07(b)(3) Work by a large number of authors. (cont'd)

acceptable if it names at least three of those authors, followed by a statement such as "and [number] others." The Office prefers, however, that the application name all authors, using as many continuation sheets as necessary.

See sections 619.03 and 619.04 below.

Examples:

1) An application for a novel gives as the nature of authorship "Text." The name of the author is not given and there is no indication that the work is anonymous or pseudonymous. The copies of the work name Raymond Cudloe as author. The Copyright Office will annotate the application and register the claim.

2) An application for a musical work names "Samuel Smith" in the first block as author of the words. In the second block, the application names no author, but gives the author's contribution as "Music." The copies of the music state "By Samuel Smith and John Franklin." The application will be annotated.

615 Name of author. (cont'd)

615.07 Name of the author: form of name. (cont'd)

615.07(b) Name of author: omissions. (cont'd)

615.07(b)(3) Work by a large number of authors. (cont'd)

Examples: (cont'd)

3) An application Form VA is submitted naming two authors but giving "sculptural bas-relief" as a nature-of-authorship statement for only one. The nature-of-authorship statement for the second author is blank. The deposit consists of identifying material for a drinking glass containing sculptural authorship separate and apart from the shape of the glass. Because it is not clear that the second author contributed copyrightable authorship, the Copyright Office will communicate with the applicant to ascertain that author's contribution.

4) A choreographic work is submitted with an application naming as authors three of 17 choreographers named as authors in the credits of the motion picture deposited to register the choreographic work. After the third author's name, the application states: "and 14 others." The application is acceptable.

615.07(c) Name of author: variances between application and other registration material. Generally, authorship information on the

615 Name of author. (cont'd)

615.07 Name of the author: form of name. (cont'd)

615.07(c) Name of author: variances between application and other registration material. (cont'd)

application and the deposit material should be consistent, although strict agreement is not required. Ordinarily, the Copyright Office will communicate with the applicant about variances only where variances between the authorship statement on the application and other deposit material are substantially inconsistent.

Examples:

1) Author on application: Joe Graziella; author on copy: Joltin' Joe. The application is acceptable.

2) Authors on application: Francis Keyes and Sandra Booze; author on copy of two-part manuscript of a textbook: Part I by Francis Keyes. The application is acceptable; the statement on the copy does not purport to account for the entire work.

3) Names of authors on application: Fig Arrow and Cozy Phantuti. Audiovisual work consists of booklet and filmstrip; script states "written by Cozy Phantuti;" filmstrip names no author; The Barber Company is named in the notice of copyright on the filmstrip. The application is acceptable, since the law does not require that the author be named on the copies or phonorecords of the work. See also section 626 below.

615 Name of author. (cont'd)

615.07 Name of the author: form of name. (cont'd)

615.07(c) Name of author: variances between application and other registration material. (cont'd)

Examples: (cont'd)

4) An application names Edward Jackson as author. The copy of the published novel names Edward Jackson and Joan Jackson as authors, further describing Joan Jackson as the creator of the layout of the book. Since the creator of uncopyrightable material should not be named, the application is acceptable as submitted.

5) A phonorecord states: "Words by Sue Smith and music by Mack Jones." The application states: "Words and music by Mack Jones." There is no indication that the work is a derivative work or that any part of the work was made for hire. The Copyright Office will communicate with the applicant.

615.07(d) Name of author: authorship not part of claim. If an author's name is omitted from an application, and it is not clear that the material contributed by that author is included in the claim, the application, if otherwise acceptable, will not be questioned.

Examples:

1) An application names the author of a novel. The novel names another individual as illustrator. The Copyright Office will not ask the applicant to include the name of the illustrator on the application.

615 Name of author. (cont'd)

615.07 Name of the author: form of name. (cont'd)

615.07(d) Name of author: authorship not part of claim. (cont'd)

Examples: (cont'd)

2) A unit of publication contains three one-act plays by different authors. From the title and the claimant spaces on the application, it is clear that the claim extends to only one of the plays. The application naming the author of that play is acceptable.

3) An application is submitted for a contribution to a collective work, naming only the author of the contribution. The application is acceptable.

615.07(e) Name of author: authorship is insubstantial. Where an author's name is omitted from an application and it appears likely that the material contributed by that author would constitute an insubstantial part of the claim, the application, if otherwise acceptable, will not be questioned.

Examples:

1) An application names "Arthur Aye, author of words and music;" the lead sheet states: "words and music by Arthur Aye, arrangement by Grady Bea." The arrangement consists of registrable chord symbols. The Copyright Office will not communicate with the applicant for the name of the arranger.

615 Name of author. (cont'd)

615.07 Name of the author: form of name. (cont'd)

615.07(e) Name of author: authorship is insubstantial. (cont'd)

Examples: (cont'd)

2) An application names "Arthur Aye" as author of "music;" the folio states: "Music by Arthur Aye, arrangement by Grady Bea." The arrangement is a substantial jazz band arrangement. The Copyright Office may communicate with the applicant for the name of the arranger.

3) A sound recording is submitted with an application Form SR naming only some of the performers. The claim is in "performance." The application will be accepted if the principal performers appear to be named.

4) A sound recording is submitted with an application Form SR naming only one sound engineer. The claim is "sound recording." Other engineers are named on the phonorecord. The application will be accepted as submitted.

5) An unpublished collection of twelve musical selections, meeting the common authorship requirements, names four authors, one of whom co-authored one song. The application omits that author's name, although it names the other authors and their contributions. The application will be accepted.

615 Name of author. (cont'd)

615.08 Name of author: when authorship is determined. For registration purposes, the author is determined when the work is created. This practice has particular implications for works made for hire.

Example:

> An application is submitted by a company naming itself as the author and claimant. An accompanying letter explains that this company acquired the interest of a predecessor company. The Copyright Office will request that the author be named as the organization for which the work was created, even if that organization no longer exists at the time the application is submitted.

NOTE: Whether a "for-hire" relationship exists is determined by the relevant facts at the time of creation of the work. Ordinarily, any written agreement establishing the "for-hire" relationship must be executed on or before the date of creation.

616 Dates of birth and death. The spaces on the application designated for dates of birth and death should be completed only if the contribution to the work is not made for hire. However, if such information is given on the application for a work made for hire, ordinarily the application will not be questioned.

616.01 Date of birth. In cases where the author is a natural person, a birth date may be useful information as a form of identification, but it is not required on the application. Ordinarily, the Copyright Office will not communicate with the applicant about a birth date.

616 Dates of birth and death. (cont'd)

616.02 Date of death. If one or more of the authors is dead, the application should include the date or dates of death. See 17 U.S.C. 409(2). Where the Copyright Office has information that the author is deceased and the year of the author's death is omitted from the application, the application will be questioned if this information may determine the term of copyright. If the exact year of death cannot be determined, the Office will accept the applicant's best estimate, qualified by "on or about," "approximately," or the like.

617 Government works. The following are the principles relating to the registrability of government works.

617.01 United States Government works. Except for the works dealt with in section 617.01(a) below, an application will be questioned if it names as author of a work the United States Government, any of its agencies, officers, or employees, in their official capacity. Since works prepared by officers or employees of the U.S. Government as part of their official duties are not protected under the U.S. copyright law, the Copyright Office will refuse to make registration for such material. See also section 206.02 of Chapter 200: COPYRIGHTABLE MATTER - IN GENERAL.

Examples:

1) Where the subject of the work is military defense and the author is identified as a Department of Defense employee, the claim will be questioned even if the claimant is a private publisher and the work was privately printed.

617 Government works. (cont'd)

617.01 United States Government works. (cont'd)

Examples: (cont'd)

2) Registration will not be refused for a motion picture created by the employees of a motion picture company even though the film was financed by a U.S. Government agency and the copyright transferred to the agency.

3) Registration will not be refused for a work written by a U.S. Government official in his or her private capacity.

4) Registration will not be refused for a work prepared by officers or employees of the U.S. Postal Service since that organization, as presently constituted, is not considered to be a U.S. Government agency. See section 106.02(b) of Chapter 200: COPYRIGHTABLE MATTER - IN GENERAL.

5) Registration will not be refused for a work prepared by an officer or employee of the Smithsonian Institution, if such person was paid from the Smithsonian trust fund.

617.01(a) United States Government works: Standard Reference Data Act. The Copyright Office can make registration under the Standard Reference Data Act, 15 U.S.C. 290e, where the Secretary of Commerce is named as author or proprietor of any standard reference data that the Secretary prepares or makes available under that Act.

617 Government works. (cont'd)

617.01 United States Government works. (cont'd)

617.01(a) United States Government works: Standard Reference Data Act. (cont'd)

Example:

An application received for a work of standard reference data names the author as "The Secretary of Commerce," and is accompanied by a letter indicating that the material is submitted for registration under the Standard Reference Data Act. The Copyright Office will annotate the application, "Claim authorized by Standard Reference Data Act," key the annotation to the authorship space, and register the claim.

617.02 Government works: edicts of government. An application will be questioned if the claim appears to extend to any edict of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar legal documents, whether Federal, State, local, or foreign, since such materials are not copyrightable for reasons of public policy. See also section 206.01 of Chapter 200: COPYRIGHTABLE MATTER - IN GENERAL.

Example:

Application is submitted for registration of a work consisting entirely of a State statute. Registration will be refused.

617.03 Government works: copyrightable government works. Government works other than those specified above as uncopyrightable are subject to registration if they are otherwise

617 Government works. (cont'd)

617.03 Government works: copyrightable government works. (cont'd)

copyrightable. See also section 206.03 of Chapter 200: COPYRIGHTABLE MATTER - IN GENERAL.

Examples:

1) Registration can be made for a magazine for tourists published by the State of Arizona and written by State employees.

2) A map of a U.S. city created by the employees of the transportation department of the city government is registrable.

3) A publication of a foreign government written by its employees which consists of descriptions of the wines of the country is registrable.

617.04 Government works: copyrightable elements combined with uncopyrightable government works. Registration can be made for works in which copyrightable elements are combined with uncopyrightable government material, but the claim cannot extend to the uncopyrightable material. The application should give an appropriate disclaimer or limitation of claim.

Examples:

1) Registration can be made for an annotated compilation of the statutes of a State done by a private publishing firm, but the claim cannot extend to the statutes themselves.

617 Government works. (cont'd)

617.04 Government works: copyrightable elements combined with uncopyrightable government works. (cont'd)

Examples: (cont'd)

2) Registration may be made for a translation into English of the statutes of a foreign country that are in a language other than English, but the claim cannot extend to the statutes themselves as written in the original language.

618 Author's nationality or domicile. The application should include the nationality or domicile of the author regardless of whether the work is anonymous or pseudonymous, by a natural person or by some other legal entity. See 17 U.S.C. 409(2) and (3). Where a work is created by more than one author, the application should give the nationality or domicile for at least one author. However, where the nationality or domicile of the author of an unpublished work is not given on the application, the application will not be questioned. See 17 U.S.C. 104(a). Where a published work is being registered, and the author's nationality or domicile is not given, the application will be questioned if, by reason of national origin, the work does not appear to be eligible for registration. See 17 U.S.C. 104(b). See also Chapter 1100: ELIGIBILITY.

618.01 Author's nationality or domicile: corporations. Where the author is a corporation, the country under the laws of which it was created may be given as its "nationality." Such an organization may give the country of its principal place of business as its domicile. See Chapter 1100: ELIGIBILITY, and Chapter 200: COPYRIGHTABLE MATTER - IN GENERAL, sections 205 and 206.

618 Author's nationality or domicile. (cont'd)

618.02 Author's nationality or domicile: works published under 1909 Copyright Act. With respect to eligibility for registration, works published before 1978 are governed by the law in effect at the time of first publication. Both citizenship and domicile may be required to determine the eligibility of such works. See the complete discussion of this topic in Compendium I.

619 Nature-of-authorship statement. In general, the nature of authorship defines the scope of the registration; therefore, it represents an important copyright fact.

619.01 Nature-of-authorship statement: location on application. The nature-of-authorship statement on an application should be given at the block designated "Author of," or "Nature of Authorship." In cases where the nature of an author's contribution is indicated elsewhere on the application, the application will be accepted if the extent of the claim is clear. See section 626.03(a) below.

619.02 Nature of authorship: appropriate description. The nature-of-authorship statement is a brief general statement of the nature of the author's contribution to the work. In general, the author's contribution may be described in terms of the categories specified in the copyright law, including: nondramatic literary work, musical work, musical work with words, dramatic work, dramatic work with music, pantomime, choreographic work, pictorial, graphic, and sculptural work, audiovisual work (including a motion picture), or a sound recording. Other acceptable descriptive terms are: computer program, book, periodical, lecture, sermon, map, work of art, reproduction of a work of

619 Nature-of-authorship statement. (cont'd)

619.02 Nature of authorship: appropriate description. (cont'd)

art, technical drawing, print, and label for advertising. Where the Copyright Office can ascertain the nature of authorship from a physical description of the material object in which the work is embodied, such descriptions will be acceptable, e.g., newspaper, cartoon, model, globe, chart, film, puppet, hologram. See Chapter 500: COPYRIGHTABLE MATTER - PICTORIAL, GRAPHIC, AND SCULPTURAL WORKS, Chapter 300: COPYRIGHTABLE MATTER - NONDRAMATIC LITERARY WORKS, and Chapter 400: COPYRIGHTABLE MATTER - WORKS OF THE PERFORMING ARTS AND SOUND RECORDINGS. Other appropriate descriptions include --

Class VA:

artwork
cartographic work
drawing
fabric design
greeting card artwork
illustration
jewelry design
lithography
oil painting
photograph
reproduction of work of art
sculpture
soft sculpture
technical drawing

Class TX:

collective work
compilation
data base
instructions
magazine article
novel
poetry
text

619 Nature-of-authorship statement. (cont'd)

619.02 Nature of authorship: appropriate description. (cont'd)

Class PA (In general):	Class PA (Multimedia kits):
dance	filmstrip
drama	illustrations
instrumental music	printed text
music and lyrics	recorded text
play	sounds
sermon	workbook
song lyrics	

Class PA (Motion pictures and motion picture components):

cinematic work
cinematography
entire work
music
narration
screenplay
script
sound track

Class SR (In general):	Class SR (Multimedia kits without a visual element):
performance	performance
sound recording	sound recording
sound recording engineering	text
	workbook

619.03 Nature of authorship: nonspecific description. In general, an application giving a nonspecific description, such as "entire work," is adequate to define the nature of authorship in a new work. Where more than one work is present in one deposit,

619 Nature-of-authorship statement. (cont'd)

619.03 Nature of authorship: nonspecific description. (cont'd)

a nonspecific authorship statement may be acceptable if there is no evidence that the claim does not extend to all elements. For Form SR, the Copyright Office will consider the claim to cover the underlying work, the sound recording, and any other authorship in the deposit. The application will be annotated to indicate the content of the deposit. No annotation will be made, however, if the material-recorded statement at space 1 specifically lists all elements in the deposit, or space 1 correctly indicates that the work recorded is wholly literary. (A sound recording cannot be considered part of the claim registered in any class other than Class SR.)

Examples:

1) Form SR is submitted stating "Everything" as the nature of the author's contribution. The nature of the material recorded is stated as "musical." The phonorecord contains recorded words and music. The Copyright Office will register the claim with an annotation on the application as follows: "Deposit contains words, music, and sound recording."

2) Work deposited is an educational film. The nature-of-authorship statement for each of its four authors is "Entire work." In the absence of a conflict with the film credits, the statement is acceptable.

3) The work deposited is a pamphlet containing text and illustrations and the nature-of-authorship statement is given

619 Nature-of-authorship statement. (cont'd)

619.03 Nature of authorship: nonspecific description. (cont'd)

Examples: (cont'd)

3) (cont'd)

as: "Pamphlet." In the absence of a conflict with any statements on the deposit, the authorship statement is acceptable.

619.03(a) Nonspecific description: derivative works. The nature-of-authorship statement for a derivative work or compilation should describe more specifically the kind of authorship on which the claim being registered is based. (See sections 615.06 above and 625 and 626 below.) For derivative works other than motion pictures or sound recordings, a description which is limited to the statement "entire work" is ordinarily not acceptable unless the derivative-work space adequately defines the claim. See section 619.10(b) below.

619.03(b) Nonspecific description: author's contribution given at nature-of-work space. In general, if the description at the nature-of-authorship space is insufficient to describe the claim, but statements at the nature-of-work space describe the authorship in the deposit, the application will be accepted.

Example:

A copy of a choreographic work is submitted with an application Form PA. One author is named on the

619 Nature-of-authorship statement. (cont'd)

619.03 Nature of authorship: nonspecific description. (cont'd)

619.03(b) Nonspecific description: author's contribution given at nature-of-work space. (cont'd)

Example: (cont'd)

application, but the "Author of" space gives only the title of the work. The statement given in the nature-of-work space is "Choreography." The application will be accepted.

619.04 Nature-of-authorship statement: omitted. Where the nature of an author's contribution is omitted from the application, but the author's name is given, whether or not the application will be accepted will depend upon whether the extent of the claim is reasonably clear, and whether the nature of authorship is clearly identifiable from the deposit. Where the application contains no information about the nature of the authorship but the author's contribution is identifiable from the deposit, the Copyright Office will accept the application, annotating where appropriate.

Examples: (assume that the works are entirely new.)

1) A Form VA application is submitted for a two-dimensional original watercolor. The application names the author, but no nature-of-authorship statement is given. The nature-of-work statement is "Painting." The application will be accepted without annotation.

619 Nature-of-authorship statement. (cont'd)

619.04 Nature-of-authorship statement: omitted. (cont'd)

Examples: (cont'd)

2) A Form PA is received with a radio broadcast script. Neither a nature-of-authorship statement nor a nature-of-work statement is given. The deposit contains the statement: "Script by John Doe." The application will be annotated.

3) An application Form TX is submitted with a game board, a map, and a computer program. The application contains no indication of the extent of the claim, but Compuzese Company is named as author of a work made for hire. The application is acceptable on the assumption that the company's employees contributed the entire copyrightable content.

4) An application Form SR is submitted, naming Jill Maddox as author, but giving no description of her authorship. In the nature-of-material-recorded space, "Musical" is checked. The phonorecord contains a musical composition consisting of words and music. The Copyright Office will communicate with the applicant to determine whether the claim is in the musical composition, the sound recording, or both.

619.04(a) Nature-of-authorship statement omitted: multiple authors. The application should give a specific nature-of-authorship statement for each author contributing copyrightable material to the work being

619 Nature-of-authorship statement. (cont'd)

619.04 Nature-of-authorship statement: omitted. (cont'd)

619.04(a) Nature-of-authorship statement omitted: multiple authors. (cont'd)

registered. But where the nature-of-authorship statement is not given, the application will be acceptable if copyrightable authorship on the part of all authors is evident, even though specific authorship information is not given in other registration materials. See section 615.08 above.

Examples:

1) A TX application naming A and B as authors gives A's contribution as "poems." No nature-of-authorship statement is given for B; and there is no indication that the work is not entirely new. The copy of the book states: "Poems by A & B." The application is acceptable without annotation.

2) A book of children's stories is submitted with an application Form TX. The title is "Nippy, and Other Children's Stories by Mary and Martha Hill." There is no indication that the work is not entirely new. The application names the authors but gives no nature-of-authorship statements. The application will be accepted as submitted.

3) A cassette of children's stories is submitted on Form SR. The title is "Nippy and Other Children's Stories." Mary and Martha Hill are named as

619 Nature-of-authorship statement. (cont'd)

619.04 Nature-of-authorship statement: omitted. (cont'd)

619.04(a) Nature-of-authorship statement omitted: multiple authors. (cont'd)

Examples: (cont'd)

3) (cont'd)

authors, but no nature-of-authorship statements are given. The application will be questioned.

4) An application Form TX names A and B as authors. No nature-of-authorship statements are given. The copy, a book of poetry, states: "By A & B." The application is acceptable without annotation.

5) A Form PA is submitted for a motion picture treatment. The copy states: "Treatment by A, Concept by B." The application names A and B without indicating the nature of the authorship. The application will be questioned.

619.05 Nature of authorship: percentage. Where a description of the nature of authorship is accompanied by statements apportioning contributions between coauthors, an application will generally be accepted.

Example:

The application states the authors' contributions: "Words and music by Joe Goldie (50 percent); words and music by Pepe Greenwald (50 percent)." The application will be accepted. However, see section 622.14 below.

619 Nature-of-authorship statement. (cont'd)

619.06 Nature of authorship: claim in unregistrable material. The nature-of-authorship statement on the application should describe only the registrable matter. Where the author's contribution is described solely in terms of uncopyrightable matter, and the claim appears to be limited to that material, the Copyright Office will refuse to register the claim.

Examples:

1) The application names a single author of "typeface, format, and book design." The Copyright Office will refuse to register the claim. See 37 C.F.R. 202.1(a).

2) The application names two individuals as authors of a work designated as "shape of trousers." The deposit is a photograph of the trousers. Because the work sought to be registered is a utilitarian object having no separable pictorial, graphic, or sculptural authorship, the Copyright Office will refuse to register the claim. See the definition of "Pictorial, graphic, and sculptural works" in 17 U.S.C. 101.

619.06(a) Claim in unregistrable material: deposit contains registrable matter. Where the author's contribution, as described, is uncopyrightable, but it appears that the author may have contributed copyrightable material, the Copyright Office will request a new application that appropriately describes the author's contribution.

Examples:

1) An application Form TX describes the author's contribution as "Story idea." The deposit is a novel. The

619 Nature-of-authorship statement. (cont'd)

619.06 Nature of authorship: claim in unregistrable material. (cont'd)

619.06(a) Claim in unregistrable material: deposit contains registrable matter. (cont'd)

Examples: (cont'd)

1) (cont'd)

Copyright Office will communicate with the applicant, stating that a claim cannot be registered in a "story idea" and suggesting that if the author contributed literary material, a new application should be submitted describing the author's contribution in those terms. See Chapter 300: COPYRIGHTABLE MATTER - NONDRAMATIC LITERARY WORKS.

2) An application Form PA gives an author's contribution as "New process for suturing." The deposit is a videotape which depicts a doctor performing surgery with voice-over commentary. The Copyright Office will communicate with the applicant, explain that processes are not copyrightable under 17 U.S.C. 102(b), and suggest that the applicant submit a new application to register the narration, the cinematography, or both. If the applicant is not entitled to, or does not wish to register the copyrightable material, no claim will be registered.

619.06(b) Claim in unregistrable material: combined with claim in registrable matter. Where an author's contribution, as described, consists of copyrightable material as

619 Nature-of-authorship statement. (cont'd)

619.06 Nature of authorship: claim in unregistrable material. (cont'd)

619.06(b) Claim in unregistrable material: combined with claim in registrable matter. (cont'd)

well as material that the statute or regulations specifically state is not within the subject matter of copyright, the Copyright Office will register the claim and refer by annotation to the applicable statute or regulation.

Examples:

1) The nature-of-authorship statement, describing a single author's contribution, reads "Idea and drawing." The deposit is pen and ink drawing. The application will be annotated: "Ideas not copyrightable. 17 U.S.C. 102(b)."

2) The nature-of-authorship statement describes a single author's contribution as "Sound recording and name of performing group." The Copyright Office will annotate the application stating "Names not copyrightable. 37 C.F.R. 202.1."

619.06(c) Claim in unregistrable matter: author's sole contribution. In cases where an author's sole contribution is unregistrable matter, an application naming that person as author of the unregistrable contribution will not be accepted, even if another author has contributed copyrightable matter.

619 Nature-of-authorship statement. (cont'd)

619.06 Nature of authorship: claim in unregistrable material. (cont'd)

619.06(c) Claim in unregistrable matter: author's sole contribution. (cont'd)

Example:

An application names Susan Oakes as author of a "Novel" and John Oakes as contributor of "Title of novel." The Copyright Office will request a new application omitting reference to John Oakes, if the title is his sole contribution.

619.06(d) Claim in unregistrable matter: de minimis material. Where the Copyright Office determines that the author's contribution is de minimis, it will refuse to register the claim.

Example:

An application names the author of song lyrics; the deposit consists of three words: "I love you." The Copyright Office will refuse to register the claim.

619.06(e) Unregistrable matter: claim covers both de minimis and registrable matter. The following practices relate to claims intended to cover both de minimis and registrable material.

619.06(e)(1) De minimis and registrable matter: general practice. Where the nature-of-authorship statement on an application describes both de minimis and registrable material, the Copyright Office will request a new application that omits reference to the de minimis material.

619 Nature-of-authorship statement. (cont'd)

619.06 Nature of authorship: claim in unregistrable material. (cont'd)

619.06(e) Unregistrable matter: claim covers both de minimis and registrable matter. (cont'd)

619.06(e)(2) De minimis and registrable material. Where a work contains de minimis material in one category of authorship but registrable material in another category, the Copyright Office will refuse to register a claim specifically in the de minimis element. Generally, the Office will request a new application describing only the registrable material.

Example:

> The nature-of-authorship statement names A as author of "words and music." The only words contained in the deposit are "I Love You," repeated several times. The Copyright Office will request a new application omitting reference to "words."

619.06(e)(3) De minimis and registrable material: unitary work. Where the nature-of-authorship statement gives: "Entire work," and the copy contains both de minimis text and copyrightable material by one author, the application will be accepted on the basis of the copyrightable content of the work.

619 Nature-of-authorship statement. (cont'd)

619.06 Nature of authorship: claim in unregistrable material. (cont'd)

619.06(e) Unregistrable matter: claim covers both de minimis and registrable matter. (cont'd)

619.06(e)(3) De minimis and registrable material: unitary work. (cont'd)

Example:

An application names Shirley Wonder as author of "Entire work." The deposit is a greeting card depicting a Panda and containing the words "FONZ helps UNESCO. Won't You?" The Copyright Office will accept the application as submitted.

619.07 Nature-of-authorship statement at variance with statement on deposit. In general, where there is an unexplained variance between the nature-of-authorship statement and statements made on the deposit material, the Copyright Office will generally communicate with the applicant.

Examples:

1) The application for a musical composition names Alfred Archway as author of words and Bob Barter as author of "music." The copy states: "Words by Bob Barter and music by Alfred Archway." The Copyright Office will communicate with the applicant.

2) The application names Alfred Archway as author of music in a work made for hire, and also author of the words, not made

619 Nature-of-authorship statement. (cont'd)

619.07 Nature-of-authorship statement at variance with statement on deposit. (cont'd)

Examples: (cont'd)

2) (cont'd)

for hire. The phonorecord states: "By Alfred Archway and Bob Barter." The Copyright Office will accept the application on the assumption that Bob Barter is the employee for hire of Alfred Archway.

619.08 Nature-of-authorship statement at variance with deposit. In general, where the application describes the author's contribution as including material not present in the deposit, the Copyright Office will communicate with the applicant.

Examples:

1) The application gives the nature of authorship as literary material and artwork. The deposit consists only of text. The Copyright Office will ask the applicant to submit the missing material or to amend the application.

2) The application gives the nature-of-authorship statement as audiovisual work; the deposit is a literary work explaining how to make filmstrips. The Copyright Office will communicate with the applicant, unless the registration materials indicate that the material in the deposit is all that the applicant intends to register. In that case, the Copyright Office will annotate the application.

619 Nature-of-authorship statement. (cont'd)

619.08 Nature-of-authorship statement at variance with deposit. (cont'd)

Examples: (cont'd)

3) The application gives the nature of the authorship as a motion picture; the applicant explains in an accompanying letter that he plans a motion picture for the future, but that only a short synopsis is completed. The synopsis is deposited. The Copyright Office will annotate the application.

619.08(a) Variances with deposit material: more material present than claimed. Where the deposit material contains more authorship than is claimed on the application, the Copyright Office will ordinarily register the claim as submitted, without annotation. If, however, the work is by one author and the deposit contains a specific statement crediting that author with all elements, the application will be annotated to reflect the authorship statement on the deposit. Where the application names only one person as author of one element and the deposit names another person as both co-author of that element and as sole author of a second element, the Office will communicate with the applicant to determine the extent of the claim.

Examples:

1) A musical composition consisting of words and music is deposited with an application naming only the author of the music. The words are not otherwise accounted for on the application. The Copyright Office will accept the application as submitted.

619 Nature-of-authorship statement. (cont'd)

619.08 Nature-of-authorship statement at variance with deposit. (cont'd)

619.08(a) Variances with deposit material: more material present than claimed. (cont'd)

Examples: (cont'd)

2) An application names John Doe as author of "music." The deposit contains words and music and states "Words and Music by John Doe." The Copyright Office will register the claim with an annotation on the application reflecting the authorship statement given on the deposit.

3) A musical composition consisting of words and music is deposited with an application naming only John Doe as author of "words." The deposit names John Doe and Mary Smith as co-authors of words and Mary Smith as author of music. The Copyright Office will communicate with the applicant to determine the extent of the claim.

4) An application for a literary work is submitted claiming only "Text." The deposit also contains a few pictorial illustrations. The Copyright Office will register the claim as submitted.

619.09 Nature-of-authorship statement: unclear. Where the nature-of-authorship statement does not describe the registrable material in the deposit, the Copyright Office will communicate with the applicant.

619 Nature-of-authorship statement. (cont'd)

619.09 Nature-of-authorship statement: unclear. (cont'd)

Examples:

1) An application for an historical novel gives the nature-of-authorship statement as "Facts." The Copyright Office will communicate with the applicant for clarification of the author's contribution.

2) A Form VA describes the author's contribution as "Structure." The deposit is an architectural blueprint. The Copyright Office will ask the applicant to clarify the description by stating "Technical drawing," or the like, if applicable.

3) An applicant describes the author's contribution as "Game" in a work consisting of audiovisual pictorial images and sounds. The Copyright Office will request that the applicant describe the author's contribution as "Audiovisual work."

619.09(a) Nature-of-authorship statements: clarified by reference to deposit. Where the nature-of-authorship statement is unclear but can be determined by reference to the deposit or other registration materials, the Copyright Office may annotate the application, or it may register the claim without annotation.

Examples:

1) A nature-of-authorship statement on Form SR describes a claim in "Production." The deposit is a phonorecord. The Copyright Office will

619 Nature-of-authorship statement. (cont'd)

619.09 Nature-of-authorship statement: unclear. (cont'd)

619.09(b) Nature-of-authorship statements: not clarified by reference to deposit. (cont'd)

Examples: (cont'd)

1) (cont'd)

register the claim, if the author appears to have produced the sound recording.

2) A nature-of-authorship statement describes the author's contribution as "Conceived play." The deposit is a drama. The Copyright Office will register the claim, if the author named apparently wrote the play.

619.09(b) Nature-of-authorship statements: not clarified by reference to deposit. Where the nature of authorship is unclear when compared with the deposit material, the Copyright Office will communicate with the applicant. If the scope of the claim, however, is reasonably clear, the application will be accepted as submitted.

Examples:

1) A Form TX is submitted with a phonorecord. The nature-of-authorship statement is given as "Literary work." The Copyright Office will accept the application if the phonorecord contains literary material, and will not ask the applicant whether a claim in sound recording is intended.

619 Nature-of-authorship statement. (cont'd)

619.10 Nature-of-authorship statement: derivative works. (cont'd)

Examples: (cont'd)

2) Form TX is submitted for a book jacket containing copyrightable text and de minimis artwork. The author's contribution is stated as "Design." The Copyright Office will request from the applicant a clear statement of authorship.

3) An application Form VA is submitted with a photograph of a flower. The nature-of-authorship statement is stated as "Photosynthesis." The Copyright Office will communicate with the applicant.

619.10 Nature-of-authorship statements: derivative works. Where the work being registered incorporates material that has been previously registered, previously published, or is in the public domain, the nature-of-authorship statement on the application should describe the new copyrightable material in which copyright is claimed. Where the nature-of-authorship statement describes only the preexisting material, the Copyright Office will communicate with the applicant.

Example:

The application names an author and states "Original oil painting" in the nature-of-authorship space. At the material-added space, "Art reproduction" is given. The deposit is a lithographic reproduction. The Copyright Office will

619 Nature-of-authorship statement. (cont'd)

619.10 Nature-of-authorship statement: derivative works. (cont'd)

Example: (cont'd)

ask the applicant to describe the authorship in the lithographic reproduction at the "Author of" space and to name the author if different from the author of the oil painting. See sections 615.01 and 615.09 above.

619.10(a) Nature-of-authorship statement: appropriate description of derivative works. Because the registration will cover only part of the material contained in a derivative work, the nature of the author's contribution for such works must be made clear. In general, it is not sufficient to give the author's contribution simply as "derivative work" unless the statement in the nature-of-the-work space or the material-added space clearly and comprehensively describes the new material.

Example:

An application states at the nature-of-authorship space "Derivative material," and at the material-added space "Musical arrangement." The deposit is apparently a new arrangement of an old folk song. The application is acceptable.

619.10(b) Nature-of-authorship statement: same author of preexisting and derivative material. Where the author of the preexisting material and the derivative work appears to be the same, and the nature-of-authorship statement on the

619 Nature-of-authorship statement. (cont'd)

619.10 Nature-of-authorship statement: derivative works. (cont'd)

619.10(b) Nature-of-authorship statement: same author of preexisting and derivative material. (cont'd)

application is broad enough to encompass both the preexisting and new material, the Copyright Office will register the claim.

Examples:

1) The nature-of-authorship statement on an application for a musical composition consisting of words, music, and arrangement names a single author whose contribution is "Entire work;" the material-added statement notes "New arrangement." The Copyright Office will register the claim.

2) An application Form VA describes the authorship as "advertisement." The material-added statement is: "Additional artwork." The application will be accepted.

3) An application Form TX is submitted giving no nature-of-authorship statement. The material-added statement is: "Revisions throughout." In the absence of a contradictory statement of authorship on the deposit, the application is acceptable.

619.11 Nature-of-authorship statements: compilations. Generally, where the claim consists principally or solely of compilation authorship, the nature-of-authorship statement should include "Compilation," or a comparable

619 Nature-of-authorship statement. (cont'd)

619.11 Nature-of-authorship statements: compilations. (cont'd)

statement, such as "Selection," or "Arrangement." Where the application does not clearly describe the authorship as "compilation" or an acceptable alternative, and no other basis of claim is apparent, the Copyright Office will communicate with the applicant.

Examples:

1) The applicant submits a series of public domain charts with answer sheets. The application does not describe the nature of authorship. The Copyright Office will communicate with the applicant.

2) An application Form TX describes the authorship as "Entire work." The deposit is a data base. The Copyright Office will communicate with the applicant to determine the basis of the claim.

619.11(a) Nature-of-authorship statements: collective works. Where a collective work is being registered, the compilation and other authorship included in the claim need not be stated with particularity; a statement that the work is a collective work is sufficient to cover the work as a whole, including elements of compilation, revision, editing, arrangement, and any other material prepared by employees of the author as contributions to the collective work. See also section 626 below.

619 Nature-of-authorship statement. (cont'd)

619.11 Nature-of-authorship statements: compilations. (cont'd)

619.11(a) Nature-of-authorship statements: collective works. (cont'd)

Example:

> Application for a magazine is submitted on Form SE with the "collective work" box checked. The application will be accepted.

620 Date of creation. The application shall include the year in which the work was created. See 17 U.S.C. 409(7). A work is considered "created" when it is fixed by or under the authority of the author for the first time. Where a work has been prepared over a period of time, the part of the work existing in fixed form on a particular date constitutes the created work on that date. See 37 C.F.R. 202.3(b)(3)(ii). Where the year of creation is omitted, the Copyright Office will communicate with the applicant for the missing information. Where the applicant cannot determine the exact year of creation, qualifying language is permitted, such as "approximately," "on or about," or "on or before."

620.01 Date of creation: creation over a period of time. Where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time. See 17 U.S.C. 101. Where a single version is being registered, the application should give as the year of creation the latest year when copyrightable material was added to the version being registered. If multiple dates are listed, however, the Copyright Office will register the claim as submitted.

620 Date of creation. (cont'd)

620.02 Date of creation: multiple versions of a work. Where a work has been prepared in different versions, each version constitutes a separate work. See 17 U.S.C. 101. Where different versions of a work are being registered separately, each application should give the year of creation for the particular version being registered. Where it appears that the application does not give the year of creation for that version, the Copyright Office will communicate with the applicant. See section 610 above.

Example:

> The application for a derivative work gives 1972 as the year of creation and the year of previous registration. The publication date is January 1, 1978, and there are two notices on the copies: "© 1972 Miller Music," followed by "Musical Arrangement © 1978 by John Dee Music." The derivative claim is based on a new arrangement. The Copyright Office will ask the applicant whether the year of creation refers to the new arrangement.

620.02(a) Date of creation: multiple dates, with single registration of multiple versions of a work. In cases where several versions of a work are being registered together, the applicant should give the date of creation of the latest version. However, if the applicant gives the date of creation of each version, the application will be accepted. See also section 610 above.

620.03 Date of creation: apparently incorrect. Where the date of creation is inconsistent with other dates appearing on the application or the deposit, the Copyright Office will communicate with the applicant.

620 Date of creation. (cont'd)

620.03 Date of creation: apparently incorrect. (cont'd)

Examples:

1) An application states that the author died in 1980, but gives the year of creation as 1982. The Copyright Office will ask the applicant if this information is correct, and if so, to explain the circumstances.

2) An application gives the date of publication as 1979. The year of creation is given as 1982. The Copyright Office will ask the applicant to review the information and correct the publication or creation date.

621 Publication. The application for copyright registration shall include, in the case of published works, the date and nation of first publication. See 17 U.S.C. 409(8). For the definition of publication under the current law, see 17 U.S.C. 101. For practices concerning publication under the current Act, see Chapter 900: PUBLICATION. For practices regarding publication under the 1909 Copyright Act, as amended, see Compendium I.

621.01 No publication information given. Usually, where an application gives no date or place of publication, the Copyright Office will register the claim as unpublished without question. Where, however, the deposit or registration materials suggest that publication information was omitted from the application by mistake or misunderstanding, the Office will communicate with the applicant before registering the claim. To correct the registration records for a work

621 Publication. (cont'd)

621.01 No publication information given. (cont'd)

erroneously registered as unpublished, a supplementary registration generally cannot be made. Instead, the applicant must make a new basic registration and submit the appropriate deposit. See section 621 above, and Chapter 1500: CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT OFFICE RECORDS; SUPPLEMENTARY REGISTRATIONS. Although an application may give no date of publication, the Copyright Office may question whether publication has occurred in cases such as the following. If the applicant satisfactorily explains the statement causing the question to arise, the Office will register the claim as submitted, except in Examples 5, 6, and 7 below.

Examples:

1) A periodical issue is deposited, giving a date that has passed.

2) A photograph is deposited along with an advertising catalog in which the photograph is offered for sale.

3) A musical score is deposited bearing the stamped legend: "For rental only."

4) Two copies of commercially produced sheet music are deposited by a publishing company.

5) Motion pictures are deposited for episodes of a television series known to be in syndication.

6) A 45-rpm disc phonorecord states: "From the album . . .," and the Copyright Office is aware that the album has been advertised in trade magazines.

621 Publication. (cont'd)

621.01 No publication information given. (cont'd)

Examples: (cont'd)

7) A novel is known to be listed in trade publications on a Best Seller list.

621.01(a) No publication information given: possible eligibility problem if published. Where the Copyright Office questions whether publication has occurred, its letter will point out the possible consequences of publication if the Office is aware that the work may be unregistrable when published.

Examples:

1) An application submitted in 1984 contains no date of publication and gives the date of creation as 1978. Two copies of a commercially produced book are deposited by a publishing company bearing a 1978 imprint. The copies contain no notice of copyright. The Copyright Office will point out that the work may not be registrable if it was published in 1978.

2) The application names citizens of Iran as authors. The deposit copy states "Prepared in Iran and published under the auspices of the Iranian Government." The application was submitted in 1983. The Copyright Office, in questioning publication, will point out that a work by an Iranian citizen might not be eligible for registration if first published in Iran.

621 Publication. (cont'd)

621.01 No publication information given. (cont'd)

621.01(b) No publication information given: statement by applicant. Where the application contains a statement that work is unpublished, (such as, "Unpublished," "N/A," or "No" in the publication block), the Copyright Office will consider it less likely that the applicant overlooked the question of publication. Applicants making registrations of commercially prepared material in unpublished form may send a letter to this effect to the Copyright Office. In these cases, the Office will generally not inquire whether publication has occurred.

621.01(c) No publication information given: restrictive legends. Where the application contains no date of publication and the deposit contains a restrictive legend, such as "Use of the material is strictly controlled," or where the applicant asserts that the deposit contains trade secret material, the Copyright Office will not ordinarily question whether publication has occurred.

621.02 Publication information given. In general, the Copyright Office will not question an assertion of publication unless statements on the application or other deposit materials clearly suggest that the work has not been published. Although the publication block on the application contains a date and place of publication, the Office may question whether publication has in fact occurred in cases such as the following:

1) Where the application states: "performed" or "broadcast."

621 Publication. (cont'd)

621.02 Publication information given. (cont'd)

2) Where one homemade cassette is submitted for a work for which the appropriate deposit is two phonorecords.

3) Where handwritten copies are deposited.

4) Where letter accompanying the deposit states that the date given is the date the material was printed, and that the applicant is waiting to get his certificate before distributing copies.

5) Where an application for an original painting states in the publication block: "Public exhibition date: April 1, 1981."

621.03 Publication: extraneous statements on application. The date of publication should be given on an application without any qualifying statements. However, the Copyright Office will accept the application without correspondence if the information given is not inconsistent with other information on the application or other registration materials.

Examples:

1) An application states: "Televised," in the publication block and gives no date or place of publication. The application is acceptable for registration in unpublished form.

2) An application form for a motion picture states in the publication space: "Released December 3, 1982." The application is acceptable.

621 Publication. (cont'd)

621.04 Publication: place of publication given without date. Where the application gives a place of publication without a date, the entire application, deposit, and correspondence will be considered in deciding whether to communicate with the applicant to ascertain whether publication has occurred.

621.05 Publication: complete date of publication. The application should give the exact month, day, and year when publication first occurred. Where one of these elements is omitted, the Copyright Office will communicate with the applicant.

Example:

An application gives the date of publication as "January, 1980." The Copyright Office will ask the applicant to provide the precise date of publication.

621.05(a) Complete date of publication: exact date unknown. In cases where the applicant cannot determine the exact date of first publication, the date may be qualified by "approximately," "not later than," "not before," or the like; in any case, it is preferable that the applicant give one specific date of publication without qualifying language.

621.06 Publication: more than one date given. In general, the applicant should give only one date of publication -- the date publication first occurred. Where more than one date of publication is given, the Copyright Office will communicate with the applicant to ascertain the date of first publication for the work being registered.

621 Publication. (cont'd)

621.07 Publication: errors and inconsistencies in date of publication. Occasionally, the application may give a date of publication that does not exist or that is impossible in light of other registration information. In such cases, the Copyright Office will communicate with the applicant.

Examples:

1) The date of publication given on the application is February 30, 1982.

2) The date of publication is earlier than the date of the author's birth.

621.08 Publication: nation of first publication omitted. Where a work has been published, the application should give the nation of first publication. However, if the nation of first publication is omitted and only the place of first publication will provide a basis for the claim's eligibility for registration, and the place of publication is not given elsewhere in the registration materials, the Copyright Office will communicate with the applicant. Where the registration materials state a basis for eligibility other than the nation of first publication, an application giving no nation of publication will be accepted.

Examples:

1) An application, giving no place of publication, states that the author is domiciled in the United States. The date of publication is given as September 1, 1983. Two copies are deposited. The application is acceptable.

621 Publication. (cont'd)

621.08 Publication: nation of first publication omitted. (cont'd)

Examples: (cont'd)

2) An application giving no nation of publication states that the author is a citizen and domiciliary of Nepal. Two copies are deposited. The Copyright Office will communicate with the applicant.

621.09 Publication: identification of nation of first publication. The name of the nation of first publication should generally be given and must be given if the work is eligible only on the basis of the nation of first publication. Where the nation of first publication is identified on the application in terms other than its formal name, but the country is clearly identified by that name, the Copyright Office will consider that name acceptable to identify that country. See Chapter 1100: ELIGIBILITY.

Example:

An application gives a date of first publication and states that the work was published in Wales. The application is acceptable, even though the preferable name would be the United Kingdom.

621.10 Publication: first published in different countries on the same day. If first publication took place in the United States and one or more other countries on the same day, the applicant should state "USA" as the place of first publication. See Chapter 900: PUBLICATION. Although it is preferable for the application to give only one country, an application for an eligible work giving two or more countries will be accepted.

622 Claimant: defined. For purposes of registration, a copyright claimant is either (1) the author of a work; or (2) a person or organization that has obtained ownership of all United States rights which initially belonged to the author under the United States copyright law. This latter category includes a person or organization that has obtained, from the author or from an entity that has obtained ownership of all rights under the copyright, the contractual right to claim legal title to the copyright in an application for copyright registration. See 37 C.F.R. 202.3(a)(3). With respect to unpublished works and works first published on or after January 1, 1978, the application should name the claimant or claimants as of the time the application is filed. NOTE: For works first published before 1978, see Compendium I, Chapter 4, Section 4.2.3.

622.01 Name of claimant: required, with address. The application for registration shall include the name and address of the copyright claimant. See 17 U.S.C. 409(1). Where the claimant's name is not given, the Copyright Office will communicate with the applicant. Generally, where the claimant's address is not given, the return or correspondence address will suffice. In any case where neither the claimant's address nor a satisfactory substitute is given in the registration materials, the Office will attempt to communicate with the applicant by telephone. If the applicant cannot be reached, but the application is otherwise acceptable, registration will be completed even though the certificate may not be mailed.

622.02 Claimant: variance between claimant on application and name in notice of copyright. With respect to works first published on or after January 1, 1978, the name of the claimant given on the application should be either the name of the owner of all United States rights

622 Claimant: defined. (cont'd)

622.02 Claimant: variance between claimant on application and name in notice of copyright. (cont'd)

on the date the application is filed, or the author. Ordinarily, the Copyright Office will not communciate with the applicant because the name given in the notice of copyright for a work published on or after January 1, 1978, differs from the name of the claimant on the application. The Office will communicate about such a variance, however, if such work was published before 1978.

Examples:

1) An application for an unpublished work names Patrick Mink as author and claimant. The copy contains a notice of copyright stating: "© 1983 Mark Music Company." The application is acceptable.

2) An application for registration of a published work is submitted. The copies contain a notice of copyright stating: "© 1983 Excelsior Music Company." The application names "Frank Music Company" as claimant. The application is acceptable.

622.03 Claimant: abbreviated names at the claimant space. The application should give the claimant's full legal name. However, an application will be accepted with an abbreviated version of the claimant's name if there is no doubt whether that name could identify the claimant to the public. On the other hand, an application designating the claimant solely by his or her surname ordinarily will be questioned. In any case,

622 Claimant: defined. (cont'd)

622.03 Claimant: abbreviated names at the claimant space. (cont'd)

where the name designating the claimant on the application does not sufficiently identify the claimant but other registration materials clarify his or her identity, the Copyright Office will add this information to the application.

Examples:

1) An application names "Sonny" Bell and "Scooter" McCall as co-claimants. The application is acceptable.

2) An application names "Mr. Bell and Mrs. McCall," as claimants. The registration materials do not contain any information concerning the given name of the claimant. The application will be questioned.

3) An application gives "Mr. T" as the name of the claimant. An accompanying letter states that the claimant's full name is Terry Thompson Tipley. The Copyright Office will annotate the application to give the claimant's full name.

622.03(a) Abbreviated names: initials at the claimant space. If the identity of the claimant is known to the public by certain initials, an application will be acceptable giving those initials as the name of the claimant. Where the initials do not so identify the claimant, the Copyright Office will request a new application giving the claimant's legal name.

622 Claimant: defined. (cont'd)

622.03 Claimant: abbreviated names at the claimant space. (cont'd)

622.03(a) Abbreviated names: initials at the claimant space. (cont'd)

Examples:

1) An application submitted by General Motors gives the claimant's name as "GM." The application is acceptable.

2) An application naming the claimant as "FIG" is accompanied by a transmittal letter stating that the initials designate the name "Fruit Is Good Company," and that the initials are a proposed name change for a company now doing business under the name "Fantastic Fruit Company." The Copyright Office will ask the applicant whether "FIG" currently identifies the claimant to the public.

622.04 Claimant: pseudonym at claimant space. The application should give the claimant's full legal name. Where a pseudonym is given, however, the Copyright Office will not question the applicant in the absence of information that the claimant's pseudonym does not identify him or her to the public.

622.05 Claimant: alternative claimants at the claimant space. The claimant should be identified clearly. Therefore, where alternative claimants are given disjunctively, the Copyright Office will communicate with the applicant.

Examples (unacceptable):

1) "John or Mary Doe"

2) "John Doe and/or Mary Doe"

622 Claimant: defined. (cont'd)

622.05 Claimant: alternative claimants at the claimant space. (cont'd)

Examples (acceptable):

1) "John Doe - Mary Doe"

2) "Foster Music/Dear Music"

3) "Stiller/Hyson Graphics"

622.06 Claimant: future and contingent interests. Persons or organizations with a future interest in the copyright or those who may obtain ownership of the copyright upon a contingency should not be named as claimants. The following are examples of unacceptable statements at the claimant space.

1) "John Doe, or, upon his death, Mary Doe"

2) "John Doe, and after ten years, Sam Doe"

3) "John Doe, or if she survives, Mary Doe"

4) "John Doe Company or, should its corporate headquarters move to Iowa, Howard Doe Company."

622.07 Claimant: corporation sole at claimant space. Where an individual is a copyright claimant in his or her capacity as a corporation sole, and that legal status is indicated on the application, the application will be accepted. Even where successors are mentioned, a corporation sole is considered to designate one entity.

NOTE: A corporation sole is defined as a corporation consisting of one person only, and his or her successors in some particular office incorporated by law in order to give

622 Claimant: defined. (cont'd)

622.07 Claimant: corporation sole at claimant space. (cont'd)

each of them in succession some legal capacity and advantages, particularly that of perpetuity, which as natural persons they could not have.

Examples:

1) The claimant space states: "John Doe, a corporation sole."

2) The claimant space states: "John Doe and his successors, a corporation sole."

622.08 Claimant: legal and equitable owners at claimant space. Where a trustee holds copyright property, the name of the trustee, as the legal owner, should be given at the claimant space. However, an application giving either the names of only the equitable owners of the copyright, or the names of equitable and legal owners together will be accepted.

Example:

> Riggins National Bank holds in trust the copyright in a motion picture screenplay whose equitable owners are investors in a motion picture venture. The application for the screenplay names "Riggins National Bank, Trustee" as sole claimant. The application is acceptable.

622.09 Claimant: incorporation of claimant's name by reference. As a rule, the claimant should be identified on the face of the application without reference to other records. Where the claimant can be identified only by reference to a source outside the registration materials, the Copyright Office will communicate with the applicant.

622 Claimant: defined. (cont'd)

622.09 Claimant: incorporation of claimant's name by reference. (cont'd)

Example:

An application names the claimant as "Owners of Plat B, Square 464 on page 844 of Record Book 501, Office of the Recorder of Deeds, Mexia, Texas." The Copyright Office will request a new application giving the names of the claimants.

622.10 Claimant: designation of groups at claimant space. The claimant named on the application should be an entity capable of holding copyright. In general, where the claimant's name designates a group of persons, the application will be accepted without question, if it can be assumed that the membership of the group was determined before or at the time the application was submitted. An application is not acceptable, however, where the identity of the claimant is vague or ambiguous.

Examples:

1) An application names "Greencastle Combo" as claimant. The application is acceptable.

2) An application gives as claimant, "The 1982 Graduating Class of Summer Glen Elementary School." The application is acceptable on the assumption that class membership was fixed when the application was filed.

3) "The James Martin Family" is named as claimant on the application. Since the designation "family" is an open class whose membership was not determined, the application is unacceptable.

622 Claimant: defined. (cont'd)

622.10 Claimant: designation of groups at claimant space. (cont'd)

Examples: (cont'd)

4) An application names as claimant: "All Right Thinking People." Since the claimants are not identified, the application is unacceptable.

622.11 Claimant: owner for limited term. An application that names as claimant an owner of all rights to the copyright for a limited term of years may be registered. However, where there is an indication that the application is submitted outside the period of ownership, the application will be questioned.

Examples:

1) An application names John Doe as claimant; the transfer space notes: "By written contract for a period of three years." No other contract information is given. The application is acceptable.

2) An application is submitted naming John Doe as claimant and giving the transfer statement, "By written contract for three years." The application is received on April 22, 1983, together with a document attached as a rider. The examiner notes that the three-year period began on January 1, 1979. The application will be questioned.

3) An application is submitted naming "John Doe Recording Company" as the claimant and giving as the transfer statement, "By written contract obtained all United States rights for a period of ten years."

622 Claimant: defined. (cont'd)

622.11 Claimant: owner for limited term. (cont'd)

Examples: (cont'd)

3) (cont'd)

The document of transfer, simultaneously submitted by the applicant, indicates that the ten-year period has not expired. The application is acceptable.

622.12 Claimant: deceased person named at claimant space. An application that names a deceased person as claimant is not acceptable. When the Copyright Office has knowledge that a claimant died before the date of receipt of the application, the Office will request a new application naming the current owner of all rights to the copyright. It may name as the copyright claimant an heir of the decedent, the estate, or the executor, administrator, or personal representative of the decedent.

622.13 Claimant: clarity of number of claimants. The application should make clear the number of copyright claimants. Where the number of claimants is unclear, the Copyright Office will communicate with the applicant.

622.13(a) Clarity of number of claimants: individual and related unincorporated company named at claimant space. Where the applicant wishes to indicate that an individual and his unincorporated company are the same legal entity, the application should show the relationship between the two, for example by stating "doing business as," "solely owned by," or the like. Otherwise, the number of claimants may be unclear. In such cases, the Copyright Office will communicate with the

622 Claimant: defined. (cont'd)

622.13 Claimant: clarity of number of claimants. (cont'd)

622.13(a) Clarity of number of claimants: individual and related unincorporated company named at claimant space. (cont'd)

applicant. In general, for registration purposes, the Office will presume that an individual and a name-related, unincorporated organization are the same entity, and an application naming an individual and such an organization at the claimant space will be accepted without question. On the other hand, in some cases the registration materials may indicate that the two related names designate two separate entities. In such cases, the application will be examined accordingly. See section 623.02 below.

Examples:

1) An application names as employer in a work made for hire "John Doe Publishing Company." The claimant space on the application gives "John Doe dba [doing business as] Doe Publishing Company." The application is acceptable.

2) An application names as author "John Doe." The claimant space gives "John Doe Publishing, solely owned by John Doe" with a separate address for each. The transfer statement is "by contract." The application is acceptable.

3) An application names Bill Jones as author and Jones Company as the claimant. No transfer statement is

622 Claimant: defined. (cont'd)

622.13 Claimant: clarity of number of claimants. (cont'd)

622.13(a) Clarity of number of claimants: individual and related unincorporated company named at claimant space. (cont'd)

Examples: (cont'd)

3) (cont'd)

given. The Copyright Office will register the claim on the assumption that the author and claimant are the same legal entity. NOTE: This result would not obtain if the Jones Company had been designated as a corporate entity.

4) An application names John Doe as author and notes "John Doe, Smith Publishing Company" at the claimant space. There is no indication of the relationship between these two names, or a transfer statement showing how Smith Publishing Company obtained rights to the copyright. The Copyright Office will communicate with the applicant.

622.13(b) Clarity of number of claimants: unrelated names at the claimant space. Where two or more unrelated names are given at the claimant space on the application, the Copyright Office will assume that the names represent separate claimants unless one name represents part of the address or it is otherwise clearly indicated that the names are not intended to designate separate claimants.

622 Claimant: defined. (cont'd)

622.13 Claimant: clarity of number of claimants. (cont'd)

622.13(b) Clarity of number of claimants: unrelated names at the claimant space. (cont'd)

Example:

An application names Joan Doe, author. At the claimant space, the following information appears:

"Joan Doe
c/o Smith Publishing Company
468 Enterprise Avenue
Waukegan, Illinois 12345."

The application is acceptable. In the example above, the company name would be considered part of the address even if the "c/o" were not present.

622.14 Claimant: number of claims. Only one claim can be registered on a single application. Where more than one claim is being registered, each claim should be submitted on a separate application with a separate fee. Because statements describing the nature of authorship or royalty agreements may be interpreted as statements asserting separate claims, the applicant should not give such statements in the claimant space. In general, however, the Copyright Office will not question such statements if it seems clear that the applicant does not intend to assert more than one claim on an application.

Examples of statements given in the claimant space:

1) John Doe -- wrote words
Mary Doe -- wrote music

The application is acceptable.

622 Claimant: defined. (cont'd)

622.14 Claimant: number of claims. (cont'd)

Examples (cont'd)

2) John Doe -- one-half share
Mary Doe -- one-half share

The application is acceptable.

3) John Doe -- owner of words
Mary Doe -- owner of music

The Copyright Office will ask the applicant(s) to submit two separate applications.

623 Transfers of copyright. For works published on or after January 1, 1978, if the copyright claimant is not the author, the application should contain a brief statement of how the claimant obtained ownership of the copyright. See 17 U.S.C. 409(5) and section 622 above. The applications for basic registration provide a space for transfer statements. Preferably, these statements should clearly reflect acts of transfer. However, an application will be accepted where there is a transfer statement from which a transfer in writing may be inferred. See section 623.03(b) below.

Example:

In 1984, an application for a work created in 1966, but not published until 1975, is registered by the claimant who is not the author. The transfer statement is "By oral agreement." The application is acceptable because the author could have transferred the copyright without a written instrument.

623 Transfers of copyright. (cont'd)

623.01 Transfers of copyright: transfer statements on the application distinguished from documents. A statement of transfer is to be distinguished from an instrument conveying the copyright. Generally, the instrument of conveyance, or document, need not be submitted in support of the transfer statement. Moreover, a document alone is not an acceptable substitute for a transfer statement. Generally, an application cannot incorporate by reference other documents, but, where an application also indicates the means of transfer, the application will be accepted despite references to "attached document." In such cases, the application will be annotated to show that the document was removed and did not form part of the registration record.

Examples:

1) An application and document pertaining to the same work are submitted together. The application names different persons as claimant and author, but contains no transfer statement. The document is a contract purporting to convey the copyright interest in the work. Since the application itself does not contain a transfer statement, the application is not acceptable. When communicating with the applicant, the Copyright Office will suggest "by written contract" as an appropriate transfer statement.

2) An application and a document pertaining to the copyright in the same work are submitted together. The application contains an appropriate transfer statement. The applicant submits a single fee. The Copyright Office will register the claim and return the unrecorded document, informing the applicant of the procedure and fee for recordation.

623 Transfers of copyright. (cont'd)

623.01 Transfers of copyright: transfer statements on the application distinguished from documents. (cont'd)

623.01(a) Transfer statements: application and document contradictory. As a rule, the Copyright Office does not interpret documents. Examiners are not required as a matter of course to analyze documents. However, all materials submitted in connection with registration may be read. When documents submitted with the applications appear to contradict the transfer described, the Office may communicate with the applicant before making registration.

Example:

An application and a document pertaining to the copyright in the same work are submitted together. The transfer statement on the application is, "By written agreement." The document grants the individual named as claimant permission to publish under restricted conditions. The Copyright Office will communicate with the applicant stating the difference between the grant described in the application and the grant in the document. If the applicant's explanation is satisfactory, the Office will register the claim.

623.02 Transfer statements: non-author as claimant. Where a claimant (or co-claimant) is not the author or the same legal entity as the author, the matter of whether a transfer statement is required depends upon whether the author, an authorized agent, or someone

623 Transfers of copyright. (cont'd)

623.02 Transfer statements: non-author as claimant. (cont'd)

else signed the application. If the application names both an author and a non-author as co-claimants and if the application is signed by the author or an authorized agent thereof, the claim may be registered without a transfer statement. However, if the application is signed by a non-author, or such person's authorized agent, or someone else, the application must contain a transfer statement.

623.02(a) General requirements: transfers from one co-author of a joint work or a work consisting of only one element. Where the work being registered is a joint work or consists of only one element, and has more than one author, a transfer statement need show only how the claimant obtained copyright ownership from one co-author.

Examples:

1) A musical composition consisting of words and music is submitted. The application names A as author of words and B as author of music. C is named as claimant. The transfer statement reads: "By written agreement from A." The application will be accepted.

2) A Form TX is submitted for an essay co-authored by A and B. The copyright claimant is C. The transfer statement reads: "Copyright assignment from B." The application is acceptable.

623 Transfers of copyright. (cont'd)

623.02 Transfer statements: non-author as claimant. (cont'd)

623.02(b) General requirements: transfers from one co-author of a work that is not a joint work but consists of more than one element. Where a unit embodies more than one work, the transfer statement given on the application should relate to each work covered by the claim being registered.

Examples:

1) An application for a published work names A as author of original oil painting and B as author of "reproduction of a work of art." C is named as the claimant. The transfer statement reads: "By contract from A." The Copyright Office will question whether C has obtained ownership of the reproduction. If so, the Office will request an additional transfer statement. If not, the Office will ask the applicant to limit the scope of the claim.

2) The application names A as author of a diary, and B as author of a commentary on the diary. B is named as the claimant and no transfer statement is given. The Copyright Office will ask the applicant to clarify the extent of B's ownership. If B is not claiming copyright in the diary, the claimant space may be limited by a statement such as "Copyright claimed on commentary only."

623 Transfers of copyright. (cont'd)

623.02 Transfer statements: non-author as claimant. (cont'd)

623.02(b) General requirements: transfers from one co-author of a work that is not a joint work but consists of more than one element. (cont'd)

Examples: (cont'd)

3) An application Form SR names A, an individual, as author of words and music, and B, a record company, as author of the sound recording. A and B are named as co-claimants. The Copyright Office will ask the applicant whether A and B are joint owners of the musical work and the sound recording.

4) An application Form PA names C as author of an unpublished choreographic work and D as author of commentary and other material that was added after the choreographer died. C and D are named as co-claimants. The Copyright Office will communicate with the applicant.

5) An application Form VA names E as author of an original oil painting and F as author of a lithographic reproduction of the oil painting. E and F are named as co-claimants. The Copyright Office will communicate with the applicant.

623.02(c) General requirements: co-authors named as claimants. Where an application for a work having more than one author names a single author as the sole claimant, the

623 Transfers of copyright. (cont'd)

623.02 Transfer statements: non-author as claimant. (cont'd)

623.02(c) General requirements: co-authors named as claimants. (cont'd)

application will be accepted without a transfer statement unless the claim appears to cover two separate works.

623.02(d) General requirements: individuals and business organizations. In general, an application is acceptable without a transfer statement where the claimant space names an author in conjunction with a name under which the author is doing business. However, where the individual author and the business organization are separate legal entities, a transfer statement is required.

Examples:

1) An application names "Joan Doe" as author and gives "Joan Doe (Smith's Haute Couture)" as claimant. The transfer statement is: "Author is sole owner of Smith's Haute Couture." The application is acceptable.

2) An application names "Joan Doe" as author and "Joan Doe (Doe Publishing Company, Inc.)" as claimant. The transfer statement reads: "Author is sole owner of Doe Publishing." Since a corporate organization and an individual are separate legal entities, the application will be questioned.

623.02(e) General requirements: derivative works and compilations. A transfer statement is required where the claimant is not the author of the compilation or the new

623 Transfers of copyright. (cont'd)

623.02 Transfer statements: non-author as claimant. (cont'd)

623.02(e) General requirements: derivative works and compilations. (cont'd)

material in a derivative work. Therefore, where the author of the preexisting material and the author of the new material are different persons, and the author of the preexisting material is the claimant of the new work, the application should indicate how he or she obtained ownership of copyright in the new material. However, if the derivative work is a "joint work," registration may be made without a transfer statement.

623.02(f) General requirements: collective works registered with individual contributions. A collective work may be registered together with individual contributions to the collective work on a single application with a single fee where the claimant of the collective work and the individual contributions is the same. In such cases, the application must give a transfer statement relating to the ownership of the individual contributions, where they have been authored by persons other than the author of the collective work.

623.03 Transfer statements: acceptable. The following transfer statements are acceptable to indicate how the claimant obtained ownership of the copyright. In most cases, variant forms of these terms are also acceptable.

623 Transfers of copyright. (cont'd)

623.03 Transfer statements: acceptable. (cont'd)

623.03(a) Conveyance of copyright: acceptable. An application is acceptable where it suggests that a conveyance of the copyright was made to the claimant by a written instrument. Examples include the following as transfer statements:

1) "By written agreement."

2) "Assignment."

3) "By contract."

4) "By transfer of title."

5) "By transfer of all rights."

6) "By author's grant of contractual right to claim legal title in an application for copyright registration."

7) "By agreement with publisher."

8) "By gift agreement."

9) "By assignment to the United States Government."

10) "By assignment from the United States Government."

11) "By trust instrument."

12) "By assurance" (ancient legal term, meaning writing under seal).

13) "By bill of sale."

623 Transfers of copyright. (cont'd)

623.03 Transfer statements: acceptable. (cont'd)

623.03(a) Conveyance of copyright: acceptable. (cont'd)

Examples: (cont'd)

14) "Memorandum of oral agreement." See section 623.04(a) below.

15) "By written contract."

16) "By will."

17) "By exclusive songwriter's agreement."

18) "By transfer of all U. S. rights."

623.03(b) Conveyance of copyright: written transfer inferred. An application is acceptable if a written transfer can be inferred from the transfer statement. The following examples of transfer statements are acceptable unless there is information to the contrary:

Examples:

1) "By transfer."

2) "By purchase."

3) "By gift" (acceptable where an organization is the giver or receiver, or both; not acceptable as a transfer between two individuals).

4) "By agreement."

5) "By conveyance."

623 Transfers of copyright. (cont'd)

623.03 Transfer statements: acceptable. (cont'd)

623.03(b) Conveyance of copyright: written transfer inferred. (cont'd)

Examples: (cont'd)

6) "By empowerment" (written grant of authority).

623.03(c) Transfer statements: transfer by operation of law. Whenever the application indicates that the copyright has been transferred by operation of law, the requirement for a transfer statement will be considered fulfilled. Examples include the following:

1) "By inheritance."

2) "By intestate succession."

3) "Heir under state law."

4) "By operation of state community property law."

5) "Partnership agreement."

623.03(d) Transfer statements: transfer by operation of law not specifically stated. Where a transfer by operation of law can be inferred, or where the author and claimant can be considered the same entity, no formal transfer statement is necessary.

Examples:

1) Author's spouse is included on the application as co-claimant. The address is in one of the following

623 Transfers of copyright. (cont'd)

623.03 Transfer statements: acceptable. (cont'd)

623.03(d) Transfer statements: transfer by operation of law not specifically stated. (cont'd)

Examples: (cont'd)

1) cont'd

community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, or Washington.

2) The application names William Smith and Edward Brown as authors; the claimant space states: Smith-Brown Company, a partnership.

3) Application states author is deceased; the claimant space gives the name of the claimant and states "Heir."

623.03(e) Transfer statements: written instruments by third parties. On occasion, a transfer statement referring to a written instrument made by a third party is acceptable.

Examples:

1) "Deed from trustee in bankruptcy."

2) "Bylaws of a school board indicate employment of instructors is conditioned upon ownership of copyright in works created by the instructors during duty hours."

3) "By mortgage foreclosure."

623 Transfers of copyright. (cont'd)

623.03 Transfer statements: acceptable. (cont'd)

623.03(e) Transfer statements: written instruments by third parties. (cont'd)

Examples: (cont'd)

4) "From mortgagee after foreclosure."

5) "By court order."

623.03(f) Transfer statement: chain of title. In general, a transfer statement is acceptable where it gives only the last act of transfer to the claimant, unless there is some doubt about the validity of that transfer. However, where a claim is submitted in the work of a long-deceased or well-known deceased author, and there is no indication that the claimant is related to that author, the Copyright Office may request that the applicant submit a supplementary statement describing the chain of title from author to claimant. Where such a statement is provided, the application will be accepted reflecting only the last act of transfer. The supplementary statement will be maintained in the correspondence file relating to registration of that work.

Example:

A newly discovered musical composition by a well-known composer who died in 1918 published with introductory text is submitted for registration. The application names a music publisher as copyright claimant. The transfer statement reads:

623 Transfers of copyright. (cont'd)

623.03 Transfer statements: acceptable. (cont'd)

623.03(f) Transfer statements: chain of title. (cont'd)

Example: (cont'd)

"By assignment." The Copyright Office will request that the applicant submit a letter indicating the chain of title from the composer (or his successors in interest) to the current claimant.

623.04 Transfer statements: unacceptable. An application is not acceptable in the first instance if it (1) indicates that the transfer took place solely by means of an oral agreement (but see section 623 above), (2) describes the claimant's relationship to the author in terms that do not operate to transfer the copyright, or (3) shows that less than all rights were transferred.

623.04(a) Unacceptable transfer statements: oral agreement. Generally, an oral agreement without a written note or memorandum is not sufficient to transfer copyright in works statutorily copyrighted on or after January 1, 1978. See 17 U.S.C. 204(a). Where an application for such a work states that the copyright has been transferred by an oral contract, the Copyright Office will ask the applicant whether the transfer was confirmed in writing and, if such transfer is so confirmed, the Office will annotate the transfer statement accordingly. If the transfer was not confirmed in this manner, the applicant may seek registration after obtaining a written confirmation.

623 Transfers of copyright. (cont'd)

623.04(b) Unacceptable transfer statements: transfer of material object. A transfer of the material object in which a work is embodied does not of itself convey any copyright interest in the work. See 17 U.S.C. 202. Therefore, statements that refer only to the transfer of the material object will be questioned.

Examples:

1) "John Doe gave me this copy."

2) "I bought the painting."

623.04(c) Unacceptable transfer statements: possession of material object. A transfer statement suggesting that the person named as claimant on the application obtained mere possession of the material object is not acceptable.

Examples:

1) "Found in attic trunk."

2) "Discovered in a warehouse."

3) "The author sent these love letters to me when we were young."

4) "Author asked me to keep it for him."

623.04(d) Unacceptable transfer statements: status or special relationship. In general, a statement that the claimant enjoyed a certain status or special relationship to the author is not sufficient as a transfer statement.

623 Transfers of copyright. (cont'd)

623.04 Transfer statements: unacceptable. (cont'd)

623.04(d) Unacceptable transfer statements: status or special relationship. (cont'd)

Examples of unacceptable statements:

1) "Author is president of claimant corporation." The transfer statement is not acceptable.

2) "Claimant is daughter of the deceased author." The Copyright Office will communicate with the applicant and will suggest, where appropriate, a new transfer statement, such as, "Heir under state law" or "By will."

3) "Author owns 100 percent of the corporation's stock."

4) "Claimant is author's agent."

5) "Claimant produces all of author's artistic works."

6) "Claimant is author's publisher."

7) "Rules of contest."

623.04(e) Unacceptable transfer statements: less than all rights. For registration purposes, a conveyance of less than all rights to the copyright claimant, such as non-exclusive rights or a single exclusive right, is not a sufficient conveyance to create the status of "claimant." Therefore, where the transfer space on the application reflects a transfer of less than all rights of ownership under the U.S. copyright law, the Copyright

623 Transfers of copyright. (cont'd)

623.04 Transfer statements: unacceptable. (cont'd)

623.04(e) Unacceptable transfer statements: less than all rights. (cont'd)

Office will communicate with the applicant. Examples of such unacceptable transfer statements include:

1) "By designation."

2) "By license."

3) "By permission."

4) "By request."

5) "By transfer of right of first publication."

6) "By purchase of option."

7) "Broadcast rights."

8) "Agreement to prepare derivative work."

9) "By lease."

10) "Transfer of world rights except for copyright in the U.S.A."

11) "By consignment."

12) "Transfer of all rights except the exclusive right of performance."

13) "Obtained all motion picture rights."

14) "Transfer of serial rights."

623 Transfers of copyright. (cont'd)

623.04 Transfer statements: unacceptable. (cont'd)

623.04(e) Unacceptable transfer statements: less than all rights. (cont'd)

Examples: (cont'd)

15) "Dedicated to."

16) "By consent."

17) "By release."

623.04(f) Unacceptable transfer statements: reserved rights related to copyright. Where a transfer statement reflects a reservation of rights that could relate to exclusive rights in the copyright, the statement will be questioned. After satisfactory explanation, however, the claim will be registered with an annotation.

Example:

> In an application for registration of a claim in an audiovisual work, Sonsui Concepts, Ltd. is named as the author of a work made for hire. The claimant is noted as "Great American Games." The transfer statement reads: "Transfer of all United States rights except to create hand-held version." The Copyright Office will communicate with the applicant.

623.05 Transfer statement: extraneous information. Gratuitous information given regarding a transfer of copyright will generally be disregarded, unless it either contradicts or explains the apparent means of transfer.

623 Transfers of copyright. (cont'd)

623.05 Transfer statement: extraneous information. (cont'd)

Examples:

1) The employer in the case of a work made for hire is named as claimant. The transfer space states: "By contract." Since the statement could refer to a "for-hire" agreement, the Copyright Office will not regard the transfer statement as contradictory.

2) A corporation is named as claimant and an individual is named as author. The transfer space states: "Author is president of the corporation, owns all stock, and has voluntarily transferred all rights." The Copyright Office will regard the statement as acceptable.

624 Previous registration space on the application. The application form poses the question: "Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?" If the work or part of the work for which registration is sought was registered previously in the United States Copyright Office, the applicant should check "Yes." In such cases, the applicant should check also the appropriate box relating to the basis for new registration. However, where the boxes are not checked, but the material-added statement (or a statement elsewhere on the application) makes the claim clear, the application is acceptable. Where the question regarding previous registration is not answered, the application will be accepted if the work being registered appears to be a new work.

624 Previous registration space on the application. (cont'd)

624.01 Previous registration question answered "Yes:" practices. If the question, "Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?" is checked "Yes," the following practices apply.

624.01(a) Previous registration practices: answers to questions clearly erroneous. Where the previous registration question is checked "Yes," but the answer clearly is in error or does not relate to registration in the United States Copyright Office, the Office will annotate the application and register the claim without correspondence.

Examples:

1) The previous registration question is checked "Yes." Because of an error on a prior application, the applicant was asked to submit a new one. When resubmitting, the applicant refers to a previous application as a "Previous registration." The Copyright Office will annotate the application and register the claim.

2) The previous registration question is checked "Yes" and "in Canada" is added. With the registration materials, the applicant includes a copy of a Canadian copyright certificate. The Copyright Office will annotate the application and register the claim.

3) The previous registration question is checked "Yes." In a letter of transmittal, the applicant explains that

624 Previous registration space on the application. (cont'd)

624.01 Previous registration question answered "Yes:" practices. (cont'd)

624.01(a) Previous registration practices: answers to questions clearly erroneous. (cont'd)

Examples: (cont'd)

3) (cont'd)

she registered the screenplay previously with the Screenwriters' Guild. The Copyright Office will annotate the application and register the claim.

624.01(b) Previous registration practices: first published edition. Where the previous registration question is answered "Yes" and the basis for new registration is the first published edition of a work previously registered as unpublished, the applicant should check the appropriate block in the "Previous Registration" space and should give complete information in the "Publication" space. Where it appears that this basis for registration is not appropriate, the Copyright Office will communicate with the applicant.

Example:

The previous registration question on an application is checked "Yes," and the basis for new registration is given as "First published edition." The book jacket, deposited with each copy of the book, states that the work had been previously published in the United Kingdom but this is the first edition of the work published

624 Previous registration space on the application. (cont'd)

624.01 Previous registration question answered "Yes:" practices. (cont'd)

624.01(b) Previous registration practices: first published edition. (cont'd)

Example: (cont'd)

in the United States. The Copyright Office will communicate with the applicant.

624.01(c) Previous registration practices: basic registration by author as copyright claimant. Where the previous registration question is answered "Yes" and the basis for new registration is the author's first application as copyright claimant for the work in question, the application is acceptable if: (1) it shows that the author or co-author and claimant are the same, and (2) previous registration was made on or after January 1, 1978. An author of a work registered before 1978 in the name of another claimant cannot make a second basic registration for that work. Moreover, if the work was published before 1978, an author whose name was not in the notice of copyright for that work cannot register it in his or her own name.

Example:

The previous registration question is answered "Yes," and the basis for new registration is given as "The first application submitted by this author as copyright claimant." The previous registration number and year are "EU75312" and "1977," respectively.

624 Previous registration space on the application. (cont'd)

624.01 Previous registration question answered "Yes:" practices. (cont'd)

624.01(c) Previous registration practices: basic registration by author as copyright claimant. (cont'd)

Example: (cont'd)

The Copyright Office will communicate with the applicant. If the facts stated on the application are correct, the Office will refuse to register the claim.

624.01(d) Previous registration practices: revised version. Where the previous registration question is answered "Yes" and the basis for new registration is that the previously registered work has been revised to the extent that the new version constitutes an "original work of authorship," the derivative-work block on the application should be completed.

624.01(e) Previous registration practices: adverse claims. Where an applicant states that an earlier registration for the same work was unauthorized and is legally invalid, the previous registration question should not be checked "Yes." However, where the question is answered "Yes" and the basis for new registration is given, the application will be accepted. An appropriate statement on the application might be: "This application is for a work, the earlier registration of which was unauthorized." If such a statement is not given and the previous registration question is answered "Yes," but the basis for registration is clear, the Copyright

624 Previous registration space on the application. (cont'd)

624.01 Previous registration question answered "Yes." practices. (cont'd)

624.01(e) Previous registration practices: adverse claims. (cont'd)

Office may annotate the application without correspondence. See 37 C.F.R. 202.3 (6)(iii).

624.01(f) Previous registration practices: new registration to correct certain errors. Where an applicant has previously registered a claim and the registration contains certain errors that the Copyright Office could not have recognized, the errors are ordinarily corrected by making a supplementary registration. Certain errors may be corrected by a new basic registration. Errors that may be corrected by a new basic registration include registrations for published works erroneously registered as unpublished. See Chapter 1500: CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT OFFICE RECORDS; SUPPLEMENTARY REGISTRATIONS; see also sections 631 and 632 below.

Example:

Applicant submits letter requesting form for correcting an error in the previous registration. Sheet music was registered as unpublished but was in fact published when originally submitted. One copy was submitted with the original registration materials. The Copyright Office will suggest a new basic registration on Form PA, with the previous registration question checked "Yes." In the

624 Previous registration space on the application. (cont'd)

624.01 Previous registration question answered "Yes:" practices. (cont'd)

624.01(f) Previous registration practices: new registration to correct certain errors. (cont'd)

Example: (cont'd)

same space, the applicant should give a statement, such as, "To amend the registration records for a published work erroneously registered as unpublished." (If such a statement is not provided, the Office will annotate the application.)

624.01(g) Previous registration practices: no previous registration number or year given. Where previous registration is indicated, along with a basis for new registration, the application should give the registration number and year of the most recent previous registration. If this information is not provided, however, the application may ordinarily be accepted without communicating with the applicant.

624.02 Previous registration: question answered "No." The Copyright Office will question a negative answer to the previous registration question where the answer is clearly contradictory or otherwise implausible.

Example:

Applicant has answered the previous registration question "No" and has indicated "This is the first published edition of a work previously registered in unpublished form." The application will be questioned.

625 Compilations. The subject matter of copyright includes compilations that as a whole constitute original works of authorship. The copyright in a compilation is independent of any copyright protection in the preexisting material. See 17 U.S.C. 101, 102, and 103.

625.01 Compilations: appropriate application form. Registration of a claim in a compilation should be made on the application form most appropriate to the preexisting material. However, the Copyright Office may accept a compilation claim on another one of the application forms for basic registration, provided that the form has some relationship to the category of material compiled.

625.02 Compilations: registrable. A compilation is registrable if its organization, arrangement, or selection as a whole constitute an original work of authorship.

Examples:

1) Two Forms PA, each claiming in "Compilation" are received with a folio and a phonorecord containing the same 15 musical selections. The order of the selections, however, is substantially different. The applications will be accepted.

2) Form SR claiming on "Compilation" is submitted for a recording of a new album entitled "Johnny Mash: Live at Billy Jack's." The Copyright Office will question whether the work contains an original compilation of previously recorded sounds since a live performance indicates that the sounds were recorded in a single continuous session.

625 Compilations. (cont'd)

625.03 Compilations: unregistrable. Where it appears that the compilation does not constitute an original work of authorship or that it is not subject to copyright protection for any other reason, the Copyright Office will refuse to register the claim.

Examples:

1) A compilation of two songs on a 45-rpm disc is submitted for registration. The Copyright Office will refuse to register the claim in a compilation.

2) A previously registered compilation is resubmitted as a new compilation. The authorship statement reads: "Last three selections deleted." The Copyright Office will refuse to register the claim.

3) A claim in compilation is submitted for a feature writer's weekly contribution to "The Times" over a period of six months. The compilation is arranged in chronological order. The Copyright Office will refuse to register the claim in a compilation.

4) Form TX is submitted with the complete published collection of Arthur Conan Doyle's Sherlock Holmes stories arranged chronologically. The Copyright Office will refuse to register the claim in a compilation.

625.03(a) Unregistrable compilations: unlawful employment of preexisting copyrighted material. Protection for a compilation employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully. See 17 U.S.C.

625 Compilations. (cont'd)

625.03 Compilations: unregistrable. (cont'd)

625.03(a) Unregistrable compilations: unlawful employment of preexisting copyrighted material. (cont'd)

103(a). This applies to compilations which are made up entirely of preexisting copyrighted material, the use of which is unauthorized. Where it appears that such a compilation is submitted for registration, the application may be questioned.

625.04 Compilation statements. The following practices apply to information given on the application regarding compilations.

625.04(a) Compilation statements: nature and location of statement on the application. The application for a compilation should contain a statement describing both the material that has been compiled and the compilation itself. However, if the claim is clear from the registration materials, the application may be accepted as submitted, or in appropriate cases, annotated. Annotation is appropriate where the claim is clear from registration materials other than the application.

Example:

Compilation of certain 1917 speeches by Woodrow Wilson.

625.04(b) Compilation statements: registering a claim in compilation and derivative work. In the case where the applicant wishes to claim on both compilation and derivative work authorship, the compilation authorship should be included on the application at the "Material Added" space.

625 Compilations. (cont'd)

625.04 Compilation statements. (cont'd)

625.04(b) Compilation statements: registering a claim in compilation and derivative work. (cont'd)

If, however, the "Material Added" space is blank, but the nature of the new material is included elsewhere on the application, the application is acceptable.

625.05 Compilation statements: acceptable. The following are examples of statements that are acceptable to describe registrable compilation authorship.

1) "Compilation of poems by William Henry Harrison."

2) "A compilation of 1930 recordings by Chicago Big Bands."

3) "Compilation of authentic songs of the American Revolution."

4) "Collection of 19th Century political cartoons."

5) "Selection and coordinating of numerical data."

6) "Ordering and reorganization of all of Mozart's Symphonies."

7) "Compilation of previously published film footage."

8) "Anthology of previously published short stories."

626 Derivative works: definition. A "derivative work" is a work based upon one or more pre-existing 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." See 17 U.S.C. 101.

626.01 Derivative works: general practices. The following practices relate to the spaces on the application form designated "Preexisting Material" and "Material Added to This Work" under the general heading of "Derivative Work or Compilation."

626.01(a) Derivative works: when statement not required. No statement will be required unless a substantial amount of the material incorporated in the derivative work is in the public domain or has been registered or published previously.

626.01(b) Derivative works: statement of claim elsewhere. Where an application for a derivative work contains no statement at the derivative-work space, but the material excluded from the claim and the new material are clearly indicated elsewhere on the application, the application will be accepted. Where other registration materials make clear the extent of the claim, the application will be annotated and the claim will be registered. Otherwise, the Copyright Office will communicate with the applicant.

626 Derivative works: definition. (cont'd)

626.01 Derivative works: general practices. (cont'd)

626.01(b) Derivative works: statement of claim elsewhere. (cont'd)

Examples:

1) The title-of-work space states: "Marva Thompson's New Band Arrangements of J.S. Bach Fugues." The authorship space names "Marva Thompson." No nature of authorship or derivative work statement is given. The Copyright Office will register the claim.

2) The nature-of-authorship space states: "New Foreword to Latville's College Algebra." The derivative-work space has been left blank. The Copyright Office will register the claim in the new literary material.

626.01(c) Derivative works: statement incomplete. Where the statement appearing in the derivative-work space on the application does not appear to describe all the copyrightable authorship on which the claim is based, the Copyright Office will not ordinarily communicate with the applicant, if a clear basis of claim is stated.

626.02 Preexisting material: when statement is required. An application for a work that incorporates substantial amounts of previously registered, previously published, or public domain material should contain a statement identifying such material in the derivative-work space marked "Preexisting Material."

626 Derivative works: definition. (cont'd)

626.02 Preexisting material: when statement is required. (cont'd)

However, the Copyright Office will not question an application where insubstantial amounts of such material are not accounted for in the derivative-work space.

626.02(a) Preexisting material: previously published material. Where a work contains material that was published before the date the work being registered was submitted for registration, the application should contain a statement identifying the previously published material. Such a statement should be given regardless of whether the material for which registration is being sought was created before or after the date of creation of the previously published work.

Examples:

1) Form TX with a date of publication is submitted with two copies of a textbook. The copies state: "Second edition." The application gives no derivative-work statement. The application will be questioned.

2) Form PA is submitted for the original version of an English play. In a telephone communication, the applicant has explained to the Copyright Office that a French translation of the work was made from the English version and that the French version had been previously published in France. The Copyright Office will ask the applicant to add to the application a statement identifying the previously published material.

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626 Derivative works: definition. (cont'd)

626.02 Preexisting material: when statement is required. (cont'd)

626.02(a) Preexisting material: previously published material. (cont'd)

Examples: (cont'd)

3) Form PA is submitted for the screenplay of a previously published motion picture. The application states that the screenplay is unpublished, and the derivative-work space is blank. The Copyright Office will request that the applicant limit the claim to portions of the screenplay that were not published in the motion picture.

4) Form TX is submitted for a literary work. No derivative-work statement appears on the application. The applicant explains that the work being registered is an original unpublished draft of a work that was substantially revised and then published. The Copyright Office will ask the applicant to describe the previously published material at the derivative-work space and identify the additional (previously unpublished) material.

5) In 1978, John Smith publishes the first version of a textbook consisting of three chapters. In 1979, he published a revised version consisting of older chapters two and three and a new chapter four. In 1984, he submits an application for the 1978 version with an explanation. The application does not include a

626 Derivative works: definition. (cont'd)

626.02 Preexisting material: when statement is required. (cont'd)

626.02(a) Preexisting material: previously published material. (cont'd)

Examples: (cont'd)

5) (cont'd)

new matter statement. The application is correct because, as of 1978, chapters two and three had not been "previously published."

626.02(b) Preexisting material: previously registered material. Where a work contains material that has been previously registered, the application should contain a statement identifying the previously registered material.

Example:

An application Form PA claiming in words and music is submitted for registration of eight musical selections. The application contains no derivative-work statement, but the space designated "Previous Registration" indicates that two selections were registered previously. The Copyright Office will communicate with the applicant.

626.02(c) Preexisting material: public domain material. An application of a claim to copyright in a work incorporating a substantial amount of public domain material requires a derivative-work statement.

626 Derivative works: definition. (cont'd)

626.02 Preexisting material: when statement is required. (cont'd)

626.02(c) Preexisting material: public domain material. (cont'd)

Examples:

1) An applicant submits a songbook containing songs from the 18th through 20th Century. Many of these songs are in the public domain, but several are entirely new. The application contains no derivative-work statement. The Copyright Office will request that the applicant add a statement to the derivative-work space describing the new material.

2) A deposit consists of a set of township maps including a substantial number of public domain maps. No derivative-work statement is given. The Copyright Office will communicate with the applicant.

626.03 Derivative-work statement given in either "Preexisting Material" or "Material Added to This Work" space. Where a statement, describing both the material added and the preexisting material, is given in either part of the derivative-work space, the application will be accepted. The following statements appearing at either part of the derivative-work space are acceptable.

Examples:

1) "New lyrics added to previously published words and music."

2) "Revised chapter 4 and entirely new chapter 5 of previously registered manuscript."

626 Derivative works: definition. (cont'd)

626.04 Derivative works: material-added statement. In addition to describing substantial material that has been previously registered, previously published, or in the public domain, the application for a derivative work should describe the material added to that work in which copyright is claimed. If the application does not describe such material at the derivative-work space, the Copyright Office may communicate with the applicant. See section 626.01(b) above. The "Material Added to This Work" statement should describe all of the material in the particular version being registered that satisfies the following criteria:

1) The material must be owned by the copyright claimant.

2) The material must contain sufficient original authorship to be copyrightable.

3) The material must not be in the public domain in the United States.

4) The material must not have been previously published in the United States or elsewhere.

5) The material must not have been previously registered for United States copyright in unpublished form.

626.04(a) Material-added statement: not clearly defined. Where an application for registration of a derivative work does not clearly describe the new material and the previously registered, published, or public domain material, the Copyright Office will communicate with the applicant.

626 Derivative works: definition. (cont'd)

626.04 Derivative works: material-added statement. (cont'd)

626.04(a) Material-added statement: not clearly defined. (cont'd)

Example:

> A hymnal containing several public domain hymns is submitted with Form PA, naming several authors of new hymns. No statement of preexisting material is given, but the "Material Added to This Work" statement notes "new hymn book." The Copyright Office will ask the applicant to add a statement of preexisting material and to give a clear description of the new material.

626.04(b) Material-added statement: extent of claim. All new authorship to be included in the claim should be described at the "Material Added to This Work" space. In cases where the material-added statement describes substantially all the material that might be covered by the claim, the Copyright Office will register the claim as submitted. In addition, where material referred to in the registration materials or contained in the deposit has not been described at the space on the application marked "Material Added to This Work" and is clearly not within the scope of the claim, the application will be accepted. Where, however, the material-added statement omits reference to substantial elements described elsewhere in the registration materials that might appropriately be part of the claim, the Office may communicate with the applicant before making registration.

626 Derivative works: definition. (cont'd)

626.04 Derivative works: new-material statement. (cont'd)

626.04(b) Material-added statement: extent of claim. (cont'd)

Examples:

1) The nature of authorship is given as "Words, music and arrangement." The material-added space states "New words." The deposit copy of the derivative work consists of words and music. The Office will register the claim as submitted.

2) An application gives the nature of the work as "Reproduction of an original work of art." The nature-of-authorship statement gives only the name and contribution of the author of the reproduction. The material-added space is not completed. The Copyright Office will register the claim as submitted.

3) A collection of seven songs is submitted. The preexisting-material space shows that one song has been previously registered. The material-added statement shows that the lyrics of that previously registered song are new, but no reference is made to the other six songs. The Copyright Office will ask the applicant whether the additional six songs were intended to be included in the claim. If they are not, they should be disclaimed either at the preexisting-material space -- if previously registered, previously published, or in the public domain -- or

626 Derivative works: definition. (cont'd)

626.04 Derivative works: material-added statement. (cont'd)

626.04(b) Material-added statement: extent of claim. (cont'd)

Examples: (cont'd)

3) (cont'd)

at the claimant space, if previously unregistered but not part of the claim. In the latter case, the application should contain a limitation such as "Copyright claimed on . . .," or "No copyright claimed on . . ."

4) The application describes the nature of the work as "A brochure." The nature-of-authorship space describes the author's contribution as "Photography, text, and artwork;" the pre-existing material is given as "Some text was previously registered," and the material added is "Additional and revised text." The Copyright Office will ask the applicant to account for the photography and artwork.

626.04(c) Material-added statement: more than one element of authorship in a single work. Where more than one element of authorship is being registered in a single work, the "Material Added to This Work" statement for a derivative work should describe each element covered by the claim. Where a major element is not referred to in the derivative-work statement, but it appears that the applicant intended it to be part of the claim, the Copyright Office may question the application.

626 Derivative works: definition. (cont'd)

626.04 Derivative works: material-added statement. (cont'd)

626.04(c) Material-added statement: more than one element of authorship in a single work. (cont'd)

Examples:

1) A Form PA submitted for a motion picture contains several choreographic works with substantial commentary. The nature-of-authorship statement names the motion picture producer as author of "Entire work;" the "Preexisting Material" statement is: "Some previously registered film footage," and the "Material Added to This Work" statement is: "Cinematography." The Copyright Office will register the claim on the assumption that the underlying choreography is not part of the claim.

2) A phonorecord is submitted with a Form SR. The nature-of-authorship statement on the application reads: "Words, music, and sound recording." The "Preexisting Material" statement reads: "Previously registered songs." The material-added space describes the new music. The Copyright Office will ask the applicant whether the sound recording is part of the material covered by the claim.

626.05 Material-added statement: unregistrable material. In general, the "Material Added to This Work" statement should only describe material that, taken as a whole, is registrable. Where the material-added

626 Derivative works: definition. (cont'd)

626.05 Material-added statement: unregistrable material. (cont'd)

statement describes only unregistrable material, the Copyright Office will refuse to register the claim as submitted. If a derivative work contains no new registrable material, the Office will refuse to make registration.

626.05(a) Material-added statement: claim indicates unregistrable material. In cases where a claim refers to a category of unregistrable material enumerated in 17 U.S.C. 102(b) or 37 C.F.R. 202.1(a), and such material is included in a claim with other clearly registrable material, the Copyright Office will register the claim and annotate the application citing the statute or the regulation. Where the claim includes material that is otherwise unregistrable, the Copyright Office will request that the applicant omit reference to those elements.

Examples:

1) The material-added statement reads: "Idea and four new chapters." The Copyright Office will annotate the application with a statement, such as, "Ideas not copyrightable. See 17 U.S.C. 102(b)," and register the claim.

2) The material-added space states: "New literary character, revised novel." The Copyright Office will ask the applicant to amend the application by deleting the reference to "literary character."

626 Derivative works: definition. (cont'd)

626.05 Material-added statement: unregistrable material. (cont'd)

626.05(a) Material-added statement: claim indicates unregistrable material. (cont'd)

Examples: (cont'd)

3) The material-added space states: "Book design on cover and editorial revisions throughout." The book cover consists of an arrangement of letters in standard typeface. The Copyright Office will ask the applicant to delete the reference to "book design."

626.06 Material-added statement: description of minimal elements. The material-added statement should describe only the material in which copyright is claimed. The statement may include descriptions of revisions, deletions, or additions that individually may be insufficient to support a claim to copyright but that as a whole are registrable.

Example:

A textbook by a single author is submitted with an application describing the authorship as "Editorial revisions." The material-added space states: "Revised foreword, typographical errors deleted, new chapter heading, and new compilation of four maps." While it is clear that some of these changes are not registrable alone, the Copyright Office will accept the application based on its consideration of the revision as a whole.

[Number 627 is reserved.]

628 Reproduction for use of blind or physically-handicapped indivíduals. The space marked "Reproduction for use of blind and physically-handicapped individuals" on the Form TX relates only to nondramatic literary works, and concerns a voluntary nonexclusive license to the Library of Congress for use by the blind and physically handicapped. See 17 U.S.C. 710 and 37 C.F.R.201.15. Provisions for such voluntary licenses have been made for the sole purpose of facilitating the procedures for the National Library Service for the Blind and Physically Handicapped, a department of the Library of Congress. Because this procedure is not related to the registration process of the Copyright Office, in no case will the Office correspond with the applicant in regard to license information given in or omitted from this space.

629 Certification by applicant. By signing the application, the applicant certifies that the statements made are true to the best of his or her knowledge.

629.01 Certification by applicant: authority to submit application. To be acceptable, an application must be certified by the author, another copyright claimant, an owner of one or more exclusive rights, or a duly authorized agent of such applicant. The certification space should designate the authority by which the applicant is signing the application. The application will be accepted without a statement of the applicant's authority where nothing indicates that the authority should be questioned.

629 Certification by applicant. (cont'd)

629.01 Certification by applicant: authority to submit application. (cont'd)

Examples:

1) The person certifying the application is neither author nor claimant, but is identifiable in a cover letter as an employee of the claimant organization. The Copyright Office will accept the application without annotating or corresponding.

2) The application names both the author of the new material and the author of the preexisting material upon which the derivative work is based. The application is signed by the author of the preexisting material. No certification boxes are checked on the application. The Copyright Office will accept the application as submitted.

3) The space designated "Authorized agent of" is completed at the certification space indicating that the person signing the application is an agent of the named organization. The organization's name appears nowhere else in the registration materials. The application is acceptable as submitted on the basis that the named organization may be the owner of one or more exclusive right(s).

629.02 Certification by applicant: owner of exclusive rights. For registration purposes, an owner of exclusive rights is distinguished from the copyright claimant by his or her ownership of one or more but not all of the exclusive rights which belonged originally to the author. For these purposes, an owner of exclusive rights is authorized by regulation to submit an application for registration but may not be named as the claimant. See 37 C.F.R. 202.3(c). See also section 622 above.

629 Certification by applicant. (cont'd)

629.03 Certification by applicant: form of signature. The certification space must bear the original handwritten signature of a person authorized to submit the application. In general, a photocopied signature or a stamp is not an acceptable substitute for the required signature.

629.04 Certification by applicant: date of certification. The application should bear a date of certification. However, the Copyright Office will not correspond with the applicant if the date of certification is omitted. Nevertheless, an application is unacceptable if it gives a date of certification that is earlier than the date of publication or creation.

630 Effective date of registration. An application, deposit, and fee must be submitted before registration can be made. When the work is passed for registration, the Copyright Office assigns to the application an effective date of registration. The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Office. See 17 U.S.C. 410(d).

Examples:

1) An acceptable application and fee are received on January 4, 1982, with instructions to hold for deposit sent under separate cover; the motion picture deposit is not received until March 1, 1982. The effective date of registration will be March 1, 1982.

630 Effective date of registration. (cont'd)

Examples: (cont'd)

2) An application and fee are received on January 4, 1982 without a deposit. They are returned to the sender with instructions on how to apply for registration. The application and fee are returned with copies of the work on May 3, 1982. If the three elements are acceptable, the effective date of registration will be May 3, 1982. See sections 630.01 through 630.04 below.

630.01 Effective date of registration: acceptable application. For purposes of establishing the effective date of registration, the application or other registration material must contain the elements listed below. If these registration materials do not contain this information, the Copyright Office will communicate with the applicant. In such cases, the effective date of registration will not be established until the date the Office receives the information listed below. Any basic registration form prescribed by the Copyright Office is sufficient to establish the effective date for basic registration. But see Chapter 1300: RENEWAL OF COPYRIGHT; and Chapter 1500: CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT OFFICE RECORDS; SUPPLEMENTARY REGISTRATIONS. The required information is as follows:

1) A title by which the work can be identified; the work may also be identified by a title given in the deposit material.

2) A basis for eligibility; for example, an indication that the work is unpublished, or, if published, the nationality or domicile of the author or the place of first publication.

630 Effective date of registration. (cont'd)

630.01 Effective date of registration: acceptable application. (cont'd)

3) The name of at least one claimant; this includes the name of the author, if it is later determined that the author was the claimant in the particular registration being made. NOTE: For purposes of assigning an effective date to works published before 1978, the name of the claimant may be established from the name in the copyright notice on copies or phonorecords of sound recordings deposited for registration.

630.01(a) Effective date of registration: information received by telephone. Where the registration material does not give the elements necessary for establishing the effective date, but the Examining Division receives such information by telephone, the effective date of registration will be the date of the telephone conversation. In such cases, the application will be annotated to reflect the date of the telephone conversation and the authority of the person providing the information. Where the claimant is the author, see section 630.01 above.

630.02 Effective date of registration: acceptable deposits. For purposes of establishing an effective date of registration, a deposit is acceptable if it contains all the copyrightable content of the work to be registered.

Examples:

1) On February 7, 1983, an acceptable application and fee are submitted with one copy of a work published in the United States. The appropriate deposit

630 Effective date of registration. (cont'd)

630.02 Effective date of registration: acceptable deposits. (cont'd)

Examples: (cont'd)

1) (cont'd)

for the work is two copies. The Copyright Office calls the applicant for a second copy. An additional copy is received March 3, 1983. The Office will register the claim giving February 7, 1983 as the effective date of registration.

2) On April 7, 1983, the Copyright Office receives an acceptable application and fee with a phonorecord of a musical composition. The application gives the nature of the author's contribution as, "Words and music." The phonorecord contains only music. The Copyright Office will inform the applicant of the discrepancy. If a new phonorecord is submitted containing words and music, the effective date will be the date the Office receives the new phonorecord. If the description of the authorship should have been limited to music, and the applicant submits a new application, the effective date of registration will be April 7, 1983.

3) On July 15, 1983, an acceptable fee and application Form TX for registration of a claim to copyright in a computer program are submitted with a printout of the first and last five pages of the program as the deposit. No request for special relief is submitted. The Copyright Office requests the additional pages of the appropriate deposit as defined in the

630 Effective date of registration. (cont'd)

630.02 Effective date of registration: acceptable deposits. (cont'd)

Examples: (cont'd)

3) (cont'd)

regulation regarding machine-readable works. See 37 C.F.R.202.20(c)(2)(vii) and (d). The additional material is submitted on August 3, 1983. The Office will register the claim giving August 3, 1983 as the effective date.

4) On May 2, 1983, an acceptable application and fee are submitted with a deposit copy of a work published in France in 1960. Four pages are missing from the deposit copy. The applicant also submits a letter requesting special relief, stating that no other copies are available. If the request for special relief is granted, the effective date of registration will be May 2, 1983.

630.03 Effective date of registration: acceptable fee. The effective date is not established until the full filing fee is received. The Special Handling fee is not part of the filing fee. Therefore, if the Special Handling fee is submitted after the filing fee is received, the effective date of registration will be the earlier date. See Chapter 700: APPLICATIONS AND FEES.

630.03(a) Effective date of registration: deposit accounts, fees acceptable. The Copyright Office will determine whether a deposit account has sufficient funds to register a claim when the application is submitted. If sufficient funds for registration are not available in the account, the claim will not be forwarded to the

630 Effective date of registration. (cont'd)

630.03 Effective date of registration: acceptable fee. (cont'd)

630.03(a) Effective date of registration: deposit accounts, fees acceptable. (cont'd)

Examining Division but will be held by the Accounting Unit, which will notify the Deposit Account holder. If the funds arrive within two weeks, the date of receipt of the funds (assuming prior receipt of the application and deposit) will be the effective date of registration. If funds do not arrive within that time, the Copyright Office will follow its procedure for handling incomplete claims; see section 754, Chapter 700: APPLICATIONS AND FEES.

630.03(b) Effective date of registration: insufficient funds for multiple claims. Where an applicant submits a fee that is sufficient to register one or more but not all of the works submitted for registration, the Copyright Office will not communicate with the applicant about which claims to register first.

630.03(c) Effective date of registration: unacceptable remittance. An unacceptable remittance will prevent establishment of the effective date of registration. Such remittances include postage stamps, unsigned checks, postdated checks, mutilated checks, and illegible checks. In addition, a registration fee made payable in foreign currency is not acceptable. In all such cases, the fee will be returned to the sender. The effective date of registration will not be established until an acceptable fee is received. See section 753.02, Chapter 700: APPLICATIONS AND FEES.

630 Effective date of registration. (cont'd)

630.04 Effective date of registration: effect of receiving necessary minimal elements. The minimal information necessary to establish the effective date of registration does not of itself satisfy all of the requirements for registration. The actual registration will not be made and the certificate will not be issued until all legal and formal requirements have been met.

Example:

> On May 3, 1982, an application giving the minimal elements is submitted, accompanied by the proper deposit and fee. However, the publication date is given on the application as June 1, 1982. When the issue of publication has been resolved, the claim will be registered giving May 3, 1982, as the effective date, even though a new application is ultimately necessary.

631 Referrals. If, after a work has been registered, the Copyright Office discovers an informality, it will correspond with the applicant and attempt to correct the informality by means of a new or amended application. If the applicant does not reply, the Copyright Office will leave the claim on record unless the circumstances require cancellation. See section 632 below. In certain cases, the Office will make the correction and issue a new certificate without requesting a new application.

632 Cancellation. Cancellation is an action taken by the Copyright Office to invalidate a registration applying to a particular registration number. A new registration may be made under a different class and number, or the registration may remain invalidated. See 37 C.F.R. Sec. 201.7.

632 Cancellation. (cont'd)

632.01 General policy. The Copyright Office will cancel a completed registration only in those cases where: (1) It is clear that no registration should have been made because the work does not constitute copyrightable subject matter or fails to satisfy the other legal and formal requirements for obtaining copyright; (2) Registration may be authorized but the application, deposit material, or fee does not meet the requirements of the law and Copyright Office regulations, and the Office is unable to get the defect corrected; or (3) An existing registration in the wrong class is to be replaced by a new registration in the correct class.

632.02 Circumstances under which a registration will be cancelled. The Copyright Office will cancel registrations in four different instances.

632.02(a) Authorship not subject to copyright. Where the Copyright Office becomes aware after registration that a work is not copyrightable, either because the authorship is de minimis or the work does not contain authorship subject to copyright, the registration will be cancelled. The copyright claimant will be notified by correspondence of the proposed cancellation giving the reasons for such cancellation. The claimant has 30 days from the date the Copyright Office letter is mailed to show cause in writing why the cancellation should not be made. If the claimant fails to respond within the 30 day period, or if the Office after considering the response, determines that the registration was made in error and not in accordance with the Copyright Act, the registration will be cancelled.

632 Cancellation. (cont'd)

632.02 Circumstances under which a registration will be cancelled. (cont'd)

632.02(b) Uncollectible checks. When a check received in payment of a registration fee is returned to the Copyright Office marked "insufficient funds" or is otherwise uncollectible, the Copyright Office will immediately cancel any registration(s) for which the dishonored check was submitted. The Office will notify the remitter that the registration has been cancelled because the check was returned as uncollectible.

632.02(c) Cancellation to make a new registration. Where registration is made in the wrong class, the Copyright Office will cancel the first registration, replace it with a new registration in the correct class, and issue a corrected certificate.

Example:

> A sound recording is registered in Class PA. The Office discovers that the work includes a claim on sounds and should have been registered in Class SR. The Class PA registration will be cancelled and a new registration made in Class SR.

632.02(d) Apparent substantive defects. Where registration is made for a work which appears to be copyrightable but after registration the Copyright Office becomes aware that on the administrative record before the Office, the statutory requirements have apparently not been satisfied, or that information essential to registration has been omitted entirely from

632 Cancellation. (cont'd)

632.02 Circumstances under which a registration will be cancelled. (cont'd)

632.02(d) Apparent substantive defects. (cont'd)

the application or is questionable, or correct deposit material has not been deposited, the Office will correspond with the copyright claimant in an attempt to secure the required information or deposit material, or to clarify the information previously given on the application.

632.02(d)(1) Major substantive defects. Where the registration contains substantive defects such as those listed below, the copyright claimant has 30 days after the date the letter is mailed to respond appropriately. If no response is received within that time, or if the response does not resolve the substantive defect, the registration will be cancelled. The Office correspondence notifying the claimant of the problem will include the reason(s) for the cancellation. The following are instances where a completed registration will be cancelled unless the substantive defect in the registration can be cured:

(1) Eligibility for registration has not been established;

(2) A work was registered more than 5 years after the date of first publication and the deposit copy or phonorecord does not contain a statutory copyright notice;

632 Cancellation. (cont'd)

632.02 Circumstances under which a registration will be cancelled. (cont'd)

632.02(d) Apparent substantive defects. (cont'd)

632.02(d)(1) Major substantive defects. (cont'd)

(3) The deposit copies or phonorecords of a work published before January 1, 1978, do not contain a copyright notice or the notice is defective;

(4) A renewal claim was registered after the statutory time limits for registration had apparently expired;

(5) The application and copy(copies) or phonorecord(s) do not match each other and the Office cannot locate a copy or phonorecord as described in the application elsewhere in the Copyright Office or the Library of Congress;

(6) The application for registration does not identify a copyright claimant or it appears from the transfer statement on the application or elsewhere that the "claimant" named in the application does not have the right to claim copyright;

(7) A claim to copyright is based on material added to a preexisting work and a reading of the application in its totality indicates that there is no copyrightable new material on which to base a claim;

632 Cancellation. (cont'd)

632.02 Circumstances under which a registration will be cancelled. (cont'd)

632.02(d) Apparent substantive defects. (cont'd)

632.02(d)(1) Major substantive defects. (cont'd)

(8) A work subject to the manufacturing provisions of the Act of 1909 was apparently published in violation of those provisions;

(9) For a work published after January 1, 1978, the only claimant given on the application was deceased on the date the application was certified;

(10) A work is not anonymous or pseudonymous and statements on the application and/or copy vary so much that the author cannot be identified; and

(11) Statements on the application conflict or are so unclear that the claimant cannot be adequately identified.

632.02(d)(2) No cancellation required for minor errors. Where a registration includes minor substantive errors or omissions which would generally have been rectified before registration, the Office will attempt to rectify the error through correspondence with the remitter. Except in those cases enumerated in section 632.02(a), (b), (c), and (d)(1), if the Office is unable for any reason to obtain the correct information or deposit copy,

632 Cancellation. (cont'd)

632.02 Circumstances under which a registration will be cancelled. (cont'd)

632.02(d) Apparent substantive defects. (cont'd)

632.02(d)(2) No cancellation required for minor errors. (cont'd)

the registration record will be annotated to state the nature of the formality and show that the Office attempted to correct the registration.

632.03 Cancellation of renewal claim. Where a renewal claim has been registered and it is subsequently discovered that the claim was not registrable, the Copyright Office will cancel the registration.

Example:

Music Company A submits a renewal application on behalf of B as author, within the appropriate time limits. The claim is registered. Later, but within the renewal period, Music Company D submits a renewal claim for the same work on behalf of C as author. At that time, the Copyright Office discovers that the original registration named only C as author. Since the Office should have checked the original registration records and discovered that B had no basis in the registration records upon which to claim the renewal, the previous renewal registration was in error. The Office will cancel the renewal claim for B, but will register the renewal claim on behalf of C as author.

[END OF CHAPTER 600]

Chapter 700

APPLICATIONS AND FEES

Outline of Topics

701 Application forms.

701.01 Statutory authorization.
701.02 Statutory requirements.

702 Basic application forms.

702.01 Class TX, Form TX: Nondramatic Literary Works Other Than Serials.
702.02 Class TX, Form SE: Serials.
702.03 Class PA, Form PA: Works of the Performing Arts.
702.04 Class VA, Form VA: Works of the Visual Arts.
702.05 Class SR, Form SR: Sound Recordings.

703 Renewal application: Form RE.

704 Registration forms for special cases.

704.01 Form CA: Supplementary Registration.
704.02 Form GR/CP: Group Registration for Contributions to Periodicals.

705 Import Statement.

705.01 Form IS: Request for Issuance of an Import Statement.

706 Submission of material.

707 Quality and legibility of application forms.

707.01 Only application forms issued by the Copyright Office may be used.
707.02 Information given on the application forms should be typewritten or legibly printed in black ink.

708 Selection of most appropriate application form.

708.01 Nature of authorship determinative.
708.02 Two forms seem appropriate: song lyrics, speeches, and other works prepared for oral delivery.

708 Selection of most appropriate application form. (cont'd)

708.03 Contributions to collective works.
708.04 Derivative works.
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709 Classification for administrative purposes only.

[Numbers 710 through 749 are reserved.]

750 Fees.

750.01 Applicability of fees to U.S. Government.
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751 Effective date of fee schedule under the current Act.

752 Submission of registration fees.

753 Form of payment.

753.01 Currency.
753.02 Fees remitted from outside the United States or made payable in foreign currency.

754 Deposit Accounts.

754.01 Minimum requirements for Deposit Accounts.

755 Cancellation of registration in cases of dishonored checks.

756 Fees not specified in section 708 of the current Act.

Chapter 700

APPLICATIONS AND FEES

701 Application forms. The following are the statutory provisions relating to the application forms.

701.01 Statutory authorization. The Register of Copyrights is authorized to specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration. This administrative classification of works has no significance with respect to the subject matter of copyright or the exclusive rights provided by the copyright law. See 17 U.S.C. 408(c)(1).

701.02 Statutory requirements. Section 409 of the copyright law specifies that the application for copyright registration shall be made on a form prescribed by the Register of Copyrights and that it shall include:

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 nation of 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 nation of domicile of the author or authors;

4) in the case of a work made for hire, a statement to the effect that it is such a work;

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.

701 Application forms. (cont'd)

701.02 Statutory requirements. (cont'd)

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;

10) in the case of a published work containing material of which copies are required by section 601 of the current Act to be manufactured in the United States, the names of the persons or organizations who performed the processes specified by subsection (c) of section 601 with respect to that material, and the places where those processes were performed; and

11) any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright.

702 Basic application forms. Pursuant to the statutory authority given to the Register of Copyrights, the Copyright Office has established basic classes for original registrations with corresponding application forms. These classes are as follows:

702.01 Class TX, Form TX: Nondramatic Literary Works Other Than Serials. This category includes published and unpublished nondramatic literary works. Examples include fiction, nonfiction, poetry, textbooks, reference works, directories, catalogs, advertising copy, computer programs, and compilations of information, including data bases.

702 Basic application forms. (cont'd)

702.02 Class TX, Form SE: Serials. 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, such as periodicals, newspapers, annuals, journals, and proceedings of societies.

NOTE: A contribution to a serial is not registered on Form SE. See section 708.01 below.

702.03 Class PA, Form PA: Works of the Performing Arts. This category includes published and unpublished works prepared for the purpose of being performed directly before an audience or indirectly by means of a device or process. Examples are musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; and motion pictures and other audiovisual works, including accompanying sounds, if any.

702.04 Class VA, Form VA: Works of the Visual Arts. This category includes published and unpublished pictorial, graphic, and sculptural works. Examples are two-dimensional and three-dimensional works of fine, graphic, and applied arts, photographs, prints and art reproductions, maps, globes, and charts, technical drawings, diagrams, and models, as well as pictorial or graphic labels and advertisements.

702.05 Class SR, Form SR: Sound Recordings. This category includes all published and unpublished sound recordings fixed on or after February 15, 1972. In addition, claims to copyright in literary, dramatic, and musical works embodied in a phonorecord may be registered in Class SR if the claimant for both the sound recording and the underlying work is the same and the application covers both the sound recording and the underlying material. "Sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds. The audio portions of audiovisual works, such as a motion picture soundtrack or an audio cassette accompanying a filmstrip, are considered an integral part of the audiovisual work and are registrable in Class PA rather than Class SR.

703 Renewal application: Form RE. The current Act provides for renewal of copyright in works already in their first term of copyright on January 1, 1978. See 17 U.S.C. 304. Form RE is appropriate for all renewal registrations, regardless of the class in which the original registration was made.

704 Registration forms for special cases. In addition to the forms listed above, the Copyright Office has established two registration forms for use in special cases.

704.01 Form CA: Supplementary Registration. This form is used to apply for supplementary registration under section 408(d) of the current Act, in order to correct an error in a copyright registration or to amplify the information given in a registration. See Chapter 1500: CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT OFFICE RECORDS; SUPPLEMENTARY REGISTRATIONS.

704.02 Form GR/CP: Group Registration for Contributions to Periodicals. This form is used as a adjunct to a basic application on Form TX, Form PA, or Form VA where the applicant is making a single registration under section 408(c)(2) of the current Act for a group of contributions to periodicals.

705 Import Statement. Section 601(b)(2) of the current Act permits the importation of 2000 copies of a foreign manufactured edition of a work consisting preponderantly of nondramatic literary material that is in the English language and is protected under the current Act, upon presentation to the United States Customs Service of an Import Statement. See Chapter 1200: MANUFACTURING PROVISIONS.

705.01 Form IS: Request for Issuance of an Import Statement. This form implements the statutory provisions prescribing an Import Statement. Copyright owners of works that are subject to the manufacturing restrictions must use this form to secure issuance of an Import Statement.

706 Submission of material. In order to consider registration of a claim to copyright, the Copyright Office should receive a completed application form together with the required fee and deposit. The application should contain the required information and be duly certified. Incomplete, inaccurate, or illegible applications may delay the registration process.

707 Quality and legibility of application forms. Application forms accepted for registration become permanent parts of the official records of the Copyright Office and must meet archival standards and be legible.

707.01 Only application forms issued by the Copyright Office may be used. Copyright Office forms meet strict archival standards; therefore, only forms issued by the Office may be used to make registration. Photocopies or other reproductions of Copyright Office forms cannot be accepted for registration.

707.02 Information given on the application form should be typewritten or legibly printed in black ink. Information required by the forms must be legible and should be typewritten or printed in black ink. Applicants who anticipate filing a large number of applications may place certain repetitive information on the application forms they submit by using a printing process. Carbons of applications or applications completed in pencil are generally not acceptable.

708 Selection of most appropriate application form. The appropriate form is generally determined by the nature of the authorship in which copyright is claimed. For most works, one form will clearly be the most appropriate.

708.01 Nature of authorship determinative. The nature of the authorship determines which application form should be used for registration rather than the material object in which the work is embodied.

Example:

A filmstrip or set of slides containing only text should be registered on Form TX, not on Form PA.

708 Selection of most appropriate application form. (cont'd)

708.02 Two forms seem appropriate: song lyrics, speeches, and other works prepared for oral delivery. For song lyrics, speeches, and other works prepared for oral delivery, two forms appear to be appropriate because the nature of authorship is literary and because the work was prepared for the purpose of performance. Although the Copyright Office will accept either Form PA or TX, Form PA is more appropriate.

708.03 Contributions to collective works. In the case of contributions to collective works, applications should be submitted in the class representing the copyrightable authorship in the contribution.

Examples:

1) A pictorial cartoon published in a weekly magazine should be registered on Form VA.

2) A short story published in a monthly magazine should be registered on Form TX.

708.04 Derivative works. In the case of derivative works, applications should be submitted in the class most appropriately representing the copyrightable authorship involved in recasting, transforming, adapting, or otherwise modifying the preexisting work.

Example:

A motion picture version of a previously published novel should be registered on Form PA.

708.05 Works in which the claim includes two or more categories of authorship. For works in which the claim includes copyrightable material in two or more classes, the type of such material that predominates generally determines the class for registration.

708 Selection of most appropriate application form. (cont'd)

708.05 Works in which the claim includes two or more categories of authorship. (cont'd)

Example:

A game contains pictorial material on a game board, sculptural authorship in game pieces, and textual authorship in the game instructions. If the pictorial and sculptural authorship predominates, Form VA should be used. If the textual material predominates, Form TX should be used.

NOTE: As an exception, where the claim includes sound recording authorship, Form SR must be used regardless of the nature of the other material or which type of authorship predominates. See section 702.05 above.

Examples:

1) A kit consisting of a booklet and a cassette tape with a claim in text and sound recording must be registered on Form SR.

2) A phonorecord with a claim in words, music, and sound recording must be registered on Form SR.

709 Classification for administrative purposes only. The current Act specifies that the classification system adopted by the Copyright Office is solely for administrative purposes and has no significance with respect to the subject matter of copyright or the exclusive rights under the current Act. See 17 U.S.C. 408(c)(1). However, the Copyright Office may request submission of a new application in the correct class where registration was originally sought on an inappropriate form.

[Numbers 710 through 749 are reserved].

750 Fees. The fees for registration, recordation, and certain other services are prescribed or authorized by the current Act. See 17 U.S.C. 708(a).

750 Fees. (cont'd)

750.01 Applicability of fees to U.S. Government. The fees prescribed or authorized by the current Act are also applicable to the United States Government and any of its agencies, employees, or officers; however, the law specifies that the Register of Copyrights has discretion to waive this requirement in occasional or isolated cases involving relatively small amounts. See 17 U.S.C. 708(b).

750.02 Refunds. Money remitted to the Copyright Office for original, basic, supplementary, or renewal registration will not be refunded if the claim is rejected because the material deposited does not constitute copyrightable subject matter or because the claim is invalid for any other reason. Payments made by mistake or in excess of the statutory fee will be refunded, but amounts of $5 or less will not be refunded unless specifically requested, and refunds of less than $1 may be made in postage stamps. 37 C.F.R. 201.6(c).

751 Effective date of fee schedule under the current Act. Applications for copyright registration and requests for other fee services of the Copyright Office received on or after January 1, 1978, are governed by the fee schedule of the current Act. In cases where an application, deposit, and fee were received before January 1, 1978, but processing was not completed until after January 1, 1978, the fees established in accordance with title 17 as it existed on December 31, 1977, shall apply. See section 109, Transitional and Supplementary Provisions of the current Act.

752 Submission of registration fees. Registration fees should be submitted in the same envelope or package with the application and deposit. With regard to fees submitted to establish or replenish Deposit Accounts, see section 754 below.

753 Form of payment. The Copyright Office urges that all remittances mailed to it be in the form of a check, money order, or bank draft, payable to REGISTER OF COPYRIGHTS.

753 Form of payment. (cont'd)

753.01 Currency. The Copyright Office will accept currency but does not assume any responsibility for monies sent in payment of fees which are lost before receipt in the Copyright Office.

753.02 Fees remitted from outside the United States or made payable in foreign currency. The Copyright Office does not accept checks drawn on foreign banks or made payable in foreign currencies. Foreign remittances must be in the form of an International Money Order or Bank Draft payable in United States dollars.

754 Deposit Accounts. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use the services of the Office. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into the Account. Charges for registration, recordation, or other fee services will be deducted from the outstanding balances in such Accounts.

754.01 Minimum requirements for Deposit Accounts. The following are the minimum requirements for establishing and maintaining a Deposit Account in the Copyright Office:

1) When the Account is opened, the initial deposit must amount to at least $250.

2) All later deposits into the Account must also be $250 or more.

3) There must be at least 12 transactions a year.

4) If fees are to be charged against a Deposit Account, the exact name and number of the Account should be given on all applications for registration or other requests for fee services.

5) The Deposit Account holder must maintain a sufficient balance to cover all charges against the Account.

755 Cancellation of registration in cases of dishonored checks. When a check received in payment of the registration fee is returned to the Copyright Office marked "insufficient funds" or is otherwise marked uncollectible, the Copyright Office will cancel any registration for which the dishonored check was submitted; the Office will notify the applicant in writing that the check was returned to the Copyright Office as uncollectible, that the registration has been cancelled, and that the certificate of registration should be returned to the Copyright Office. When a registration is cancelled, appropriate notations are placed in the original record to show that the registration has been cancelled.

756 Fees not specified in section 708 of the current Act. Certain fees for Copyright Office services under the Freedom of Information Act and the Privacy Act are not established in title 17, U.S.C. See 37 C.F.R. 203.6 and 204.6.

[END OF CHAPTER 700]

Chapter 800

DEPOSIT FOR REGISTRATION

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Chapter 800

DEPOSIT FOR REGISTRATION

801 Applicability of this chapter. The provisions of this chapter are applicable to works for which an application for copyright registration is made on or after January 1, 1978.

802 Statutory provisions. At any time during the subsistence of copyright in any published or unpublished work, the owner of copyright or of any exclusive right in the work may apply for registration of the copyright claim by delivering to the Copyright Office the application and fee specified by sections 409 and 708 of the copyright law (see Chapter 700: APPLICATIONS AND FEES), along with the deposit specified in section 408 of the copyright law and explained in this chapter. See 17 U.S.C. 408(a). Except as modified by the Copyright Office Regulations adopted pursuant to the provisions of 17 U.S.C. 408(c), the deposit for registration shall consist of:

1) For an unpublished work, one complete copy or phonorecord;

2) For a work first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published;

3) For a work first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition;

4) For a work first published outside the United States, one complete copy or phonorecord as so published;

5) For a contribution to a collective work, one complete copy or phonorecord of the best edition of the collective work.

See 17 U.S.C. 408(b).

802 Statutory provisions. (cont'd)

NOTE: The Register of Copyrights is authorized by the law to specify by regulation 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. The regulations may require or permit the deposit of identifying material instead of copies or phonorecords, the deposit of only one copy or phonorecord where two would normally be required, or a single registration and an attendant deposit for a group of related works. See 17 U.S.C. 408(c)(1). The Register is directed by the law to establish regulations specifically permitting, under certain conditions, a single registration for a group of contributions to periodicals by the same author published within a twelve-month period. See 17 U.S.C. 408(c)(2).

803 Quantity and content of material deposited: in general. The statute authorizes the Register of Copyrights to specify by regulation the quantity and content of the material to be deposited. The regulations lessen the requirements in many cases by reducing the necessary deposit for published works from two copies or phonorecords to one, by permitting the deposit of identifying material instead of a copy or phonorecord, and by providing for specially tailored relief from the deposit requirements in cases of unnecessary hardship or in unusual circumstances, through the mechanism of "special relief." These regulations also require, in some cases, the deposit of identifying material instead of the copy or phonorecord otherwise required. Exceptions to the basic deposit requirements are explained in detail in sections 804 through 806 below.

804 Unpublished works. The statute requires for unpublished works that one copy or phonorecord be deposited, and that the single copy or phonorecord be "complete." See 17 U.S.C. 408(b)(1).

804.01 Unpublished works: the meaning of "complete." Generally, the requirement that an unpublished copy or phonorecord be "complete" means that

804 Unpublished works. (cont'd)

804.01 Unpublished works: the meaning of "complete." (cont'd)

it must embody the entire copyrightable content of the work for which registration is sought. See 37 C.F.R. 202.20(b)(2)(i). For unpublished motion pictures, the deposit regulations give the term "complete" a special meaning as set forth in section 806.13(a) below.

804.02 Unpublished works: nature of copy. The general rule that only one complete copy is required is modified for certain types of works. For some works, identifying material may or must be substituted for the actual copy required. In other cases, additional material must accompany the single copy deposited. The special requirements for each specific type of work are explained later in this chapter, at the sections cited below.

804.02(a) Identifying material. If the following are unpublished, identifying material may or must be submitted:

1) Certain pictorial and graphic works (see sections 806.04 and 806.05 below);

2) Machine-readable works such as computer programs and data bases (see section 806.12 below);

3) Works on sheetlike materials (see sections 806.09 and 806.10 below);

4) Three-dimensional works (see section 806.01 below);

5) Works as embodied in a motion picture soundtrack (see section 806.11 below);

6) Oversize copies of any type (see section 806.02 below);

7) Motion pictures (see sections 804.02(b) and 806.13(a) below).

804 Unpublished works. (cont'd)

804.02 Unpublished works: nature of copy. (cont'd)

804.02(b) Additional material. The following are unpublished works for which the deposit of a single copy must be accompanied by additional material of some kind:

1) Motion pictures (see section 806.13 below);

2) Holograms (see section 806.03 below).

805 Published works. Three general requirements apply to the deposit of works first published in the United States: (1) two copies or phonorecords must be deposited; (2) the copies or phonorecords must be "complete"; and (3) the copies or phonorecords must be the "best edition" of the work, as defined by the statute. See 17 U.S.C. 408(b)(2).

805.01 Published works: number of copies or phonorecords. Although two copies or phonorecords are generally required for registration of published works, the statute empowers the Register of Copyrights to specify that the deposit shall be one copy or phonorecord for particular types of works. See 17 U.S.C. 408(c)(1). The deposit regulations (37 C.F.R. 202.20(c)(2)(i)) state that the deposit of only one copy or phonorecord will suffice in lieu of two copies or phonorecords for certain works:

1) Published three-dimensional cartographic representations of area, such as globes and relief models;

2) Published diagrams illustrating scientific or technical works or formulating scientific or technical information in linear or other two-dimensional form, such as an architectural or engineering blueprint, or a mechanical drawing;

3) Published greeting cards, picture postcards, and stationery;

805 Published works. (cont'd)

805.01 Published works: number of copies or phonorecords. (cont'd)

4) Lectures, sermons, speeches, and addresses published individually, and not as a collection of the works of one or more authors;

5) Published contributions to a collective work;

6) Musical compositions published in copies only or in both copies and phonorecords, if the only publication of copies took place by rental, lease, or lending;

7) Published multimedia kits which are prepared for use in systematic instructional activities and which include literary works, audiovisual works, sound recordings, or any combination of such works;

8) Works consisting of multiple parts that are packaged and published in a flat-sided box or similar container, of no more than 12 by 24 by 6 inches, and that include among the copyrightable elements of the work, in addition to any copyrightable element on the box or other container, three or more three-dimensional, physically separable parts. See 37 C.F.R. 202.20(c)(2)(i)(H), 37 C.F.R. 202.20 (c)(2)(ix)(B)(5), and section 806.01(a)(4) below; and

9) Motion pictures.

805.02 Published works: the meaning of "complete". In general, the requirement that published copies or phonorecords be "complete" means that they should be physically undamaged and include all elements of 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).

805 Published works. (cont'd)

805.02 Published works: the meaning of "complete". (cont'd)

805.02(a) Complete copies: missing parts. Where certain physically separable elements are missing from the deposit, a copy or phonorecord will still be accepted as a complete copy, if:

1) All the parts of the work for which registration is sought are present; and

2) The removal of the missing elements did not physically damage the copy or phonorecord or garble its contents; and

3) The work is exempt from mandatory deposit under section 407 of the copyright law (see 17 U.S.C. 407, and 37 C.F.R. 202.19 (c)) or the copy deposited consists entirely of a container, wrapper, or holder which is exempt from the identifying material requirements because it can be stored flat. See section 806.01 (a) below.

805.02(b) Complete copies: special situations. In particular situations, the deposit regulations give a special definition of the word "complete" when it applies to certain published works.

805.02(b)(1) Contributions to collective works. A complete copy or phonorecord of a published contribution to a collective work is either the entire collective work, including the contribution or, if the collective work is a newspaper, the entire section of the paper which includes the contribution. See 37 C.F.R. 202.20(b)(2)(iii).

805 Published works. (cont'd)

805.02 Published works: the meaning of "complete." (cont'd)

805.02(b) Complete copies: special situations. (cont'd)

805.02(b)(2) Published sound recordings. In the case of a published sound recording, a complete phonorecord includes the phonorecord and any visually perceptible material which is published with it, such as text or pictorial matter on album covers on record sleeves, or leaflets or booklets included in an album. See 37 C.F.R. 202.20(b)(2)(iv).

Example:

A phonorecord is published with an album cover, a sleeve with text, and a poster picturing the performing artist. The complete deposit of the sound recording is the phonorecord plus all the additional material described above as the unit of publication.

805.02(b)(3) Music published only by rental, lease, or lending. In the case of a musical composition published in copies only, or in both copies and phonorecords, if the only publication of copies took place by the rental, lease, or lending of a full score and parts, a full score is a complete copy; and if the only publication of copies took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a complete copy. See 37 C.F.R. 202.20(b)(2)(v).

805.02(b)(4) Motion pictures. A special definition of "complete" applies to published motion pictures. A copy of a motion picture is complete if:

805 Published works. (cont'd)

805.02 Published works: the meaning of "complete." (cont'd)

805.02(b) Complete copies: special situations. (cont'd)

805.02(b)(4) Motion pictures. (cont'd)

-- the reproduction of all of the visual and aural elements constituting the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and

-- 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. See section 806.13 below.

805.03 The meaning of "best edition." The copyright law generally requires that a deposit of a published work be the "best edition" of the work. See 17 U.S.C. 408(b)(2). The "best edition" of a published work is "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." See 17 U.S.C. 101.

805.03(a) Library of Congress statement of policy. The Library of Congress has published a policy statement entitled "Best Edition of Published Copyrighted Works for the Collections of the Library of Congress" (referred to hereinafter as the "Best Edition Statement" or the "Statement"). This policy statement is not a part of the copyright statute, nor is it a Copyright Office regulation. It expresses, by listing the criteria for choosing among several editions of a work, part of the current acquisitions policies of the Library of Congress with respect to certain works.

805 Published works. (cont'd)

805.03 The meaning of "best edition." (cont'd)

805.03(a) Library of Congress statement of policy. (cont'd)

Examples:

1) In 1978, a copyright owner publishes a novel in both paperback and hardback editions. There was no difference in the content of the book between the paperback and the hardback. The Best Edition Statement was used to choose between the two. According to the criteria listed in the Best Edition Statement, the hardback was determined to be the best edition.

2) In 1980, a copyright owner published an architectural treatise on ordinary paper and on archival quality paper. According to the criteria specified in the Best Edition Statement, the archival quality paper was chosen as the best edition.

NOTE: The text of the "Best Edition of Published Copyrighted Works for the Collections of the Library of Congress" may be found in the Appendix to this chapter.

805.03(b) If no specific criteria in Best Edition Statement. Where no specific criteria for selection of the best edition are included in the Best Edition Statement for a given work, and where the Copyright Office is aware that two or more editions of a work have been published, the Office will consult with appropriate officials in the Library of Congress.

Example:

Where an audiovisual work was published in two editions, one on a filmstrip and the other as a set of slides, the Office will consult with appropriate officials in the Library of Congress, since this situation is not covered in the Best Edition Statement.

805 Published works. (cont'd)

805.03 The meaning of "best edition." (cont'd)

805.03(c) Difference in copyrightable content. Where there is a difference in copyrightable content between two or more editions of a work, each edition which contains new copyrightable authorship is subject to separate deposit and registration. Consequently, the Best Edition Statement, based on such differences, does not apply.

Example:

In 1978, a copyright owner published a novel in hardback without annotations, and later published the novel in hardback with extensive annotations. In this case, new copyrightable matter was added to the second book. Thus, the second book is considered a separate work for purposes of deposit and registration, and therefore the Best Edition Statement, based on such differences, does not apply.

805.03(d) Exceptions to the requirement of the best edition. There are two important exceptions to the general requirements of the best edition explained above. These exceptions are for works first published before January 1, 1978, but submitted for registration after that date, and works first published outside the United States, whenever published.

805.03(d)(1) A work first published in the United States before January 1, 1978. Generally the required deposit for any work which was first published in the United States before January 1, 1978, is two complete copies or phonorecords of the work as first published. See 37 C.F.R. 202.20 (c)(1)(ii).

805 Published works. (cont'd)

805.03 The meaning of "best edition." (cont'd)

805.03(d) Exceptions to the requirement of the best edition. (cont'd)

805.03(d)(2) A work first published outside the United States at any time. Generally, the required deposit for works first published outside the United States, whenever published, is one complete copy or phonorecord of the work as first published. See 37 C.F.R. 202.20(c)(1)(iv).

805.03(d)(3) Works first published simultaneously within and outside the United States. If a work was first published simultaneously within and outside the United States, it is considered, for the purposes of this section, to have been first published in the United States. See 37 C.F.R. 202.20 (c)(1)(iv).

NOTE: "First published simultaneously," for this purpose, means first published on the same date.

806 Quantity and content of material deposited: special situations. The following are special situations with respect to the quantity and content of material deposited for registration.

806.01 Works reproduced in or on three-dimensional objects. In the case of works reproduced in or on three-dimensional objects, identifying material is required as a deposit.

806.01(a) Works reproduced in or on three-dimensional objects: when this modification applies. Identifying material must be submitted instead of a copy or copies when the deposit would ordinarily be a three-dimensional sculptural work. Examples are statues, carvings, ceramics, and models. This requirement applies to both unpublished and published works. Subject to the exceptions

806 Quantity and content of material deposited: special situations. (cont'd)

806.01 Works reproduced in or on three-dimensional objects. (cont'd)

806.01(a) Works reproduced in or on three-dimensional objects: when this modification applies. (cont'd)

below, the requirement also applies to any two-dimensional or three-dimensional work which has been fixed (if unpublished) or published only in the form of jewelry, toys, dolls, games, or any three-dimensional useful articles. See 37 C.F.R. 202.20(c)(2)(ix)(A).

NOTE: The following are exceptions to the general requirements of submitting identifying material instead of an actual copy or copies:

1) Works that are reproduced by intaglio or relief printing methods on two-dimensional materials such as paper or fabrics.

2) Three-dimensional cartographic representations of area, such as globes and relief models. In the case of a globe, one actual copy of the three-dimensional globe, and the stand or any material published with it, is the complete deposit.

3) Works that have been fixed or published in or on a useful article which is one of the elements of the unit of publication of a multimedia kit (an educational or instructional kit which also includes a literary or audiovisual work, a sound recording, or any combination of such works). See 37 C.F.R. 202.20(c)(ix)(B)(3).

4) Works consisting of multiple parts that are packaged and published in a flat-sided box or similar container, of no more than 12 by 24 by 6 inches, and that

806 Quantity and content of material deposited: special situations. (cont'd)

806.01 Works reproduced in or on three-dimensional objects. (cont'd)

806.01(a) Works reproduced in or on three-dimensional objects: when this modification applies. (cont'd)

NOTE: (cont'd)

4) (cont'd)

include among the copyrightable elements of the work, in addition to any copyrightable element on the box or other container, three or more three-dimensional, physically separable parts.

5) Works reproduced on three-dimensional containers which are capable of flat storage and which, when opened, slit, or folded, do not exceed 96 inches in any dimension. The container must be capable of being flattened in such a way that the copyrightable material on the container is not damaged.

806.01(b) Works reproduced in or on three-dimensional objects: what must be deposited. When identifying material is required, it must comply with the specifications below. See 37 C.F.R. 202.21.

806.01(b)(1) Type of material. Identifying material consists of a two-dimensional reproduction or rendering of the work in some form which is visually perceivable without the aid of a machine or device. The identifying material may consist of photographic prints, transparencies, photocopies, drawings, or a similar rendering of the work.

806 Quantity and content of material deposited: special situations. (cont'd)

806.01 Works reproduced in or on three-dimensional objects. (cont'd)

806.01(b) Works reproduced in or on three-dimensional objects: what must be deposited. (cont'd)

806.01(b)(2) Number of pieces. One set, of as many pieces as are necessary to show clearly the entire copyrightable content of the work for which registration is sought, is required.

806.01(b)(3) Content of pieces.

* Copyrightable content. The identifying material must clearly show the entire copyrightable content of the work for which registration is sought.

* Copyright notice. In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Such piece shall show the exact appearance and content of the notice, and its specific position on the work. Where necessary because of the size or position of the notice, a separate drawing or similar reproduction shall be submitted.

* Title and dimensions. At least one piece of identifying material must indicate, on its front, back, or mount, the title of the work, and an exact measurement of one or more dimensions of the work.

* Image size. Generally, except in the case of photographic transparencies, the image of the work must be lifesize or larger. However, if less than lifesize, the image must be large enough to show clearly the entire copyrightable content of the work.

806 Quantity and content of material deposited: special situations. (cont'd)

806.01 Works reproduced in or on three-dimensional objects. (cont'd)

806.01(b) Works reproduced in or on three-dimensional objects: what must be deposited. (cont'd)

806.01(b)(3) Content of pieces. (cont'd)

* Color. Generally, the identifying material may be in black and white or may consist of a reproduction of the actual colors of the work. However, if the work reproduced in or on the three-dimensional object is pictorial or graphic, the identifying material must reproduce the actual colors employed in the work.

806.01(b)(4) Size of pieces.

* Uniform size. All pieces, except separate drawings or similar reproductions of the copyright notice, must be of uniform size.

* Photographic transparencies. Photographic transparencies must be at least 35mm in size, and if 3 by 3 inches or less, they must be mounted in cardboard, plastic, or similar mounts to facilitate identification, handling, and storage. If the transparencies are larger than 3 by 3 inches, the Copyright Office prefers that they be mounted for easy handling, and may require such mounting in particular cases.

* All pieces except photographic transparencies. The preferred size for all pieces except photographic transparencies is 8 by 10 inches, but in no case may a piece be smaller than 3 by 3 inches or larger than 9 by 12 inches.

806 Quantity and content of material deposited: special situations. (cont'd)

806.02 Oversize copies. In the case of any copy which is oversize, identifying material is required as a deposit.

806.02(a) Oversize copies: when this requirement applies. Identifying material must be submitted in lieu of an actual copy or copies whenever any single dimension of a deposit otherwise required under the regulations is larger than 96 inches. See 37 C.F.R. 202.20(c)(2)(ix).

806.02(b) Oversize copies: what must be deposited. When identifying material is required, it must comply with the specifications below. See 37 C.F.R. 202.21.

806.02(b)(1) Type of material. Identifying material consists of a two-dimensional reproduction or rendering of the work in some form which is visually perceived without the aid of a machine or device. The identifying material may consist of photographic prints, transparencies, photocopies, drawings, or a similar rendering of the work.

806.02(b)(2) Number of pieces. One set, of as many pieces as are necessary to show clearly the entire copyrightable content of the work for which registration is sought, is required.

806.02(b)(3) Content of pieces.

* Copyrightable content. The identifying material must clearly show the entire copyrightable content of the work for which registration is sought.

* Copyright notice. In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Such piece

806 Quantity and content of material deposited: special situations. (cont'd)

806.02 Oversize copies. (cont'd)

806.02(b) Oversize copies: what must be deposited. (cont'd)

806.02(b)(3) Content of pieces. (cont'd)

* Copyright notice. (cont'd)

shall show the exact appearance and content of the notice, and its specific position on the work. Where necessary because of the size or position of the notice, a separate drawing or similar reproduction shall be submitted.

* Title and dimension. At least one piece of identifying material must indicate, on its front, back, or mount, the title of the work, and an exact measurement of one or more dimensions of the work.

* Image size. Generally, except in the case of photographic transparencies, the image of the work must be lifesize or larger. However, if less than lifesize, the image must be large enough to show clearly the entire copyrightable content of the work.

* Color. Generally, the identifying material may be in black and white or may consist of a reproduction of the actual colors of the work. However, if the work reproduced in or on the three-dimensional object is pictorial or graphic, the identifying material must reproduce the actual colors employed in the work.

806 Quantity and content of material deposited: special situations. (cont'd)

806.02 Oversize copies.

806.02(b) Oversize copies: what must be deposited. (cont'd)

806.02(b)(4) Size of pieces.

* Uniform size. All pieces, except separate drawings or similar reproductions of the copyright notice, must be of uniform size.

* Photographic transparencies. Photographic transparencies must be at least 35mm in size. If the transparencies are 3 by 3 inches or less, they must be mounted in a way that makes them easy to handle and preserve; and the Copyright Office may require such mounting in particular cases.

* All pieces except photographic transparencies. The preferred size for all pieces except photographic transparencies is 8 by 10 inches, but in no case may a piece be smaller than 3 by 3 inches or larger than 9 by 12 inches.

806.03 Holograms. In the case of any work deposited in the form of a hologram, identifying material which complies with the specifications below must be submitted with the required copy or copies of the hologram. See 37 C.F.R. 202.20(c)(2)(iii).

806.03(a) Holograms: when this modification applies. This requirement applies to both unpublished and published holograms.

806 Quantity and content of material deposited: special situations. (cont'd)

806.03 Holograms. (cont'd)

806.03(b) Holograms: what must be deposited. In addition to the copy or copies required to be deposited for registration, there shall also be deposited for each such copy one set of additional items. The sets shall consist of the following: (1) precise instructions for displaying the image fixed in the hologram; and (2) identifying material which clearly shows the displayed image and complies with the requirements set forth below.

806.03(b)(1) Type of material. Identifying material consists of a two-dimensional reproduction or rendering of the work in some form which is visually perceivable without the aid of a machine or device. The identifying material may consist of photographic prints, transparencies, photocopies, drawings, or a similar rendering of the work.

806.03(b)(2) Number of pieces. As many pieces as are necessary to show clearly the displayed image are required.

806.03(b)(3) Content of pieces.

* Copyrightable content. The identifying material must clearly show the displayed image.

* Copyright notice. In the case of holograms published with notice of copyright, the notice and its position on the hologram must be clearly shown on at least one piece of identifying material. Such piece shall show the exact appearance and content of the notice on the hologram, and its specific position on the hologram.

806 Quantity and content of material deposited: special situations. (cont'd)

806.03 Holograms. (cont'd)

806.03(b) Holograms: what must be deposited. (cont'd)

806.03(b)(3) Content of pieces. (cont'd)

* Copyright notice. (cont'd)

  Where necessary because of the size or position of the notice, a separate drawing or similar reproduction shall be submitted.

* Title. At least one piece of identifying material must indicate, on its front, back, or mount, the title of the work.

* Image size. The identifying material must be large enough to show clearly the displayed image.

806.03(b)(4) Size of pieces.

* Uniform size. All pieces must be of uniform size.

* Photographic transparencies. Photographic transparencies must be at least 35mm in size. If the transparencies are 3 by 3 inches or less, they must be mounted in a way that makes them easy to handle and preserve; and the Copyright Office may require such mounting in particular cases.

* All pieces except photographic transparencies. The preferred size for all pieces except photographic transparencies is 8 by 10 inches, but in no case may a piece be smaller than 3 by 3 inches or larger than 9 by 12 inches.

806 Quantity and content of material deposited: special situations. (cont'd)

806.04 Unpublished pictorial or graphic works. Identifying material may be deposited instead of an actual copy for all unpublished pictorial or graphic works.

806.04(a) Unpublished pictorial or graphic works: when this modification applies. This provision applies to all unpublished pictorial or graphic works.

806.04(b) Unpublished pictorial or graphic works: what must be deposited. Identifying material for unpublished works is material which complies with the specifications given below.

806.04(b)(1) Type of material. Identifying material consists of a two-dimensional reproduction or rendering of the work in some form which is visually perceivable without the aid of a machine or device. The identifying material may consist of photographic prints, transparencies, photocopies, drawings, or a similar rendering of the work.

806.04(b)(2) Number of pieces. One set, of as many pieces as are necessary to show clearly the entire copyrightable content of the work for which registration is sought, is required.

806.04(b)(3) Content of pieces.

* Copyrightable content. The identifying material must clearly show the entire copyrightable content of the work for which registration is sought.

* Title and dimensions. At least one piece of identifying material must indicate, on its front, back, or mount, the title of the work, and an exact measurement of one or more dimensions of the work.

806 Quantity and content of material deposited: special situations. (cont'd)

806.04 Unpublished pictorial or graphic works. (cont'd)

806.04(b) Unpublished pictorial or graphic works: what must be deposited. (cont'd)

806.04(b)(3) Content of pieces. (cont'd)

* Image size. Generally, except in the case of photographic transparencies, the image of the work must be lifesize or larger. However, if less than lifesize, the image must be large enough to show clearly the entire copyrightable content of the work.

* Color. The identifying material must reproduce the actual colors employed in the work.

806.04(b)(4) Size of pieces.

* Uniform size. All pieces except separate drawings or similar reproductions of the copyright notice, if any, must be of uniform size.

* Photographic transparencies. Photographic transparencies must be at least 35mm in size. If the transparencies are 3 by 3 inches or less, they must be mounted in a way that makes them easy to handle and preserve; and the Copyright Office may require such mounting in particular cases.

* All pieces except photographic transparencies. The preferred size for all pieces except photographic transparencies is 8 by 10 inches, but in no case may a piece be smaller than 3 by 3 inches or larger than 9 by 12 inches.

806 Quantity and content of material deposited; special situations. (cont'd)

806.05 Pictorial or graphic works published in certain limited editions. The deposit of either one complete copy of the work or identifying material complying with the specifications given below may be made in the case of pictorial or graphic works published in certain limited editions. See 37 C.F.R. 202.20(c)(2)(iv).

806.05(a) Pictorial or graphic works published in certain limited editions: when this modification applies. This modification applies to published pictorial or graphic works only if the individual author is the owner of copyright in the work, and either: (1) less than five copies of the work have been published, or (2) the work has been published and sold or offered for sale in a limited edition consisting of no more than 300 numbered copies.

806.05(b) Pictorial or graphic works published in certain limited editions: what must be deposited. The applicant may deposit either one complete copy of the work or identifying material which complies with the specifications given below. NOTE: It is not necessary that the copy deposited be one of the numbered copies of the limited edition.

806.05(b)(1) Type of material. Identifying material consists of a two-dimensional reproduction or rendering of the work in some form which is visually perceivable without the aid of a machine or device. The identifying material may consist of photographic prints, transparencies, photocopies, drawings, or a similar rendering of the work.

806.05(b)(2) Number of pieces. One set, of as many pieces as are necessary to show clearly the entire copyrightable content of the work for which registration is sought, is required.

806 Quantity and content of material deposited: special situations. (cont'd)

806.05 Pictorial or graphic works published in certain limited editions. (cont'd)

806.05(b) Pictorial or graphic works published in certain limited editions: what must be deposited. (cont'd)

806.05(b)(3) Content of pieces.

* Copyrightable content. The identifying material must clearly show the entire copyrightable content of the work for which registration is sought.

* Copyright notice. In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Such piece shall show the exact appearance and content of the notice, and its specific position on the work. Where necessary because of the size or position of the notice, a separate drawing or similar reproduction shall be submitted.

* Title and dimension. At least one piece of identifying material must indicate, on its front, back, or mount, the title of the work, and an exact measurement of one or more dimensions of the work.

* Image size. Generally, except in the case of photographic transparencies, the image of the work must be lifesize or larger. However, if less than lifesize, the image must be large enough to show clearly the entire copyrightable content of the work.

* Color. The identifying material must reproduce the actual colors employed in the work.

806 Quantity and content of material deposited: special situations. (cont'd)

806.05 Pictorial or graphic works published in certain limited editions. (cont'd)

806.05(b) Pictorial or graphic works published in certain limited editions: what must be deposited. (cont'd)

806.05(b)(4) Size of pieces.

* Uniform size. All pieces except separate drawings or similar reproductions of the copyright notice must be of uniform size.

* Photographic transparencies. Photographic transparencies must be at least 35mm in size. If the transparencies are 3 by 3 inches or less, they must be mounted in a way that makes them easy to handle and preserve; and the Copyright Office may require such mounting in particular cases.

* All pieces except photographic transparencies. The preferred size for all pieces except photographic transparencies is 8 by 10 inches, but in no case may a piece be smaller than 3 by 3 inches or larger than 9 by 12 inches.

806.06 Published commercial prints or labels. Generally, in the case of prints, labels, and other advertising matter published in connection with the rental, lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services, the deposit of one complete copy of the work will suffice. There are two exceptions to this general rule set forth below. See 37 C.F.R. 202.20(c)(2)(v).

806.06(a) Commercial prints or labels published in a larger work. In the case of a print or label published in a larger work, such as a newspaper or other periodical, one copy of the entire page or pages upon which it appears may be submitted in lieu of the entire larger work.

806 Quantity and content of material deposited: special situations. (cont'd)

806.06 Published commercial prints or labels. (cont'd)

806.06(a) Commercial prints or labels published in a larger work. (cont'd)

Example:

A soap company has published a half-page advertisement in a newspaper, and submits an application, fee, and the entire page on which the advertisement appears, taken from the newspaper. The deposit is acceptable.

806.06(b) Commercial print or labels that are physically inseparable from a three-dimensional object. In the case of a print or label which is physically inseparable from a three-dimensional object, identifying material which complies with the following specifications must be submitted rather than an actual copy unless the work is reproduced on three-dimensional containers which are capable of flat storage, and when opened, slit, or folded, do not exceed 96 inches in any dimension. In a case of this kind, the container must be capable of being flattened in such a way that the copyrightable matter on the container is not damaged. See 37 C.F.R. 202.20(c)(ix)(B)(6).

806.06(b)(1) Type of material. Identifying material consists of a two-dimensional reproduction or rendering of the work in some form which is visually perceivable without the aid of a machine or device. The identifying material may consist of photographic prints, transparencies, photocopies, drawings, or a similar rendering of the work.

806.06(b)(2) Number of pieces. One set, of as many pieces as are necessary to show clearly the entire copyrightable content of the work for which registration is sought, is required.

806 Quantity and content of material deposited; special situation. (cont'd)

806.06 Published commercial prints or labels. (cont'd)

806.06(b) Commercial prints or labels that are physically inseparable from a three-dimensional object. (cont'd)

806.06(b)(3) Content of pieces.

* Copyrightable content. The identifying material must clearly show the entire copyrightable content of the work for which registration is sought.

* Copyright notice. In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Such piece shall show the exact appearance and content of the notice, and its specific position on the work. Where necessary because of the size or position of the notice, a separate drawing or similar reproduction shall be submitted.

* Title and dimension. At least one piece of identifying material must indicate, on its front, back, or mount, the title of the work, and an exact measurement of one or more dimensions of the work.

* Image size. Generally, except in the case of photographic transparencies, the image of the work must be lifesize or larger. However, if less than lifesize, the image must be large enough to show clearly the entire copyrightable content of the work.

* Color. Generally, the identifying material may be in black and white or may consist of a reproduction of the actual colors of the work. However,

806 Quantity and content of material deposited: special situations. (cont'd)

806.06 Published commercial prints or labels. (cont'd)

806.06(b) Commercial prints or labels that are physically inseparable from a three-dimensional object. (cont'd)

806.06(b)(3) Content of pieces. (cont'd)

* Color. (cont'd)

if the work reproduced in or on the three-dimensional object contains any pictorial or graphic matter, the identifying material must reproduce the actual colors employed in the work.

806.06(b)(4) Size of pieces.

* Uniform size. All pieces except separate drawings or similar reproductions of the copyright notice must be of uniform size.

* Photographic transparencies. Photographic transparencies must be at least 35mm in size. If the transparencies are 3 by 3 inches or less, they must be mounted in a way that makes them easy to handle and preserve; and the Copyright Office may require such mounting in particular cases.

* All pieces except photographic transparencies. The preferred size for all pieces except photographic transparencies is 8 by 10 inches, but in no case may a piece be smaller than 3 by 3 or larger than 9 by 12.

806.07 Published tests and answer material. In the case of tests and answer material for tests which have been published separately from other literary works, one complete copy may be deposited in lieu of two copies. See 37 C.F.R. 202.20(c)(2)(vi).

806 Quantity and content of material deposited: special situations. (cont'd)

806.08 Secure tests. A special deposit procedure is available for "secure tests." See 37 C.F.R. 202.20(c)(2)(vi).

806.08(a) Secure tests: when this modification applies. This procedure applies to "secure tests." A secure test is defined as a nonmarketed test administered under supervision at specified centers on specified dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. For this purpose a test is considered as "not marketed" if copies are not sold but it is distributed and used in such a manner that ownership and control of copies remain with the test sponsor or publisher. See 37 C.F.R. 202.20(b)(4).

806.08(b) Secure tests: what must be deposited. One complete copy of the test must be deposited with identifying material which constitutes a sufficient archival record of the deposit. The sufficiency of the identifying material is determined by the Copyright Office Examining Division. The actual copy is returned to the applicant after examination; the identifying material is retained as the archival record of the deposit.

806.08(c) Secure tests: special procedure. When a secure test is to be registered under this special procedure, the Head of the Literary Section, Examining Division, must be notified in advance by the applicant or authorized representative. The Section Head will then arrange for examination of the material in a nonpublic place with the applicant or authorized representative present. The receipt date will be stamped on the appropriate material by the examiner receiving the claim. After examination, the actual copies of the test will be returned to the applicant or authorized representative. The application and the identifying material will then proceed through the registration process in the usual manner.

806 Quantity and content of material deposited: special situations. (cont'd)

806.09 Pictorial or graphic works reproduced in or on sheetlike materials. In the case of any unpublished work that is fixed, or any published work that is published only in the form of a two-dimensional reproduction on sheetlike materials such as textile and other fabrics, the deposit shall consist of one 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, appearing on the work. If the work consists of a repeated pictorial or graphic design, the complete design and at least part of one repetition must be shown. Examples of such works include lace, embroidery, wallpaper, wrapping paper, carpeting, linoleum, and other floor coverings. See 37 C.F.R. 202.20(c)(2)(viii).

806.10 Pictorial or graphic works reproduced on sheetlike materials published only in or on three-dimensional objects. Where a work is reproduced on sheetlike materials which have been published only in or on three-dimensional articles, the deposit must generally consist of identifying materials which meet the following specifications.

806.10(a) Type of material. Identifying material consists of a two-dimensional reproduction or rendering of the work in some form which is visually perceivable without the aid of a machine or device. The identifying material may consist of photographic prints, transparencies, photocopies, drawings, or a similar rendering of the work.

806.10(b) Number of pieces. One set, of as many pieces as are necessary to show clearly the entire copyrightable content of the work for which registration is sought, is required.

806.10(c) Content of pieces.

* Copyrightable content. The identifying material must clearly show the entire copyrightable content of the work for which registration is sought.

806 Quantity and content of material deposited: special situations. (cont'd)

806.10 Pictorial or graphic works reproduced on sheet-like materials published only in or on three-dimensional objects. (cont'd)

806.10(c) Content of pieces. (cont'd)

* Copyright notice. In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Such piece shall show the exact appearance and content of the notice, and its specific position on the work. Where necessary because of the size or position of the notice, a separate drawing or similar reproduction shall be submitted.

* Title and dimensions. At least one piece of identifying material must indicate, on its front, back, or mount, the title of the work, and an exact measurement of one or more dimensions of the work.

* Image size. Generally, except in the case of photographic transparencies, the image of the work must be lifesize or larger. However, if less than lifesize, the image must be large enough to show clearly the entire copyrightable content of the work.

* Color. The identifying material must reproduce the actual colors employed in the work.

806.10(d) Size of pieces.

* Uniform size. All pieces except separate drawings or similar reproductions of the copyright notice must be of uniform size.

* Photographic transparencies. Photographic transparencies must be at least 35mm in size. If the transparencies are 3 by 3 inches or less, they must be mounted in a

806 Quantity and content of material deposited; special situations. (cont'd)

806.10 Pictorial or graphic works reproduced on sheet-like materials published only in or on three-dimensional objects. (cont'd)

806.10(d) Size of pieces. (cont'd)

* Photographic transparencies. (cont'd)

way that makes them easy to handle and preserve; and the Copyright Office may require such mounting in particular cases.

* All pieces except photographic transparencies. The preferred size for all pieces except photographic transparencies is 8 by 10 inches, but in no case may a piece be smaller than 3 by 3 inches or larger than 9 by 12 inches.

NOTE: In certain cases where the two-dimensional pictorial and graphic material is embodied in an article of wearing apparel or the like, the Copyright Office will accept as a deposit the actual garment, provided that its seams have been split and the deposit includes all the panels utilized in the construction of the garment.

806.11 Separate registration for work embodied only in a motion picture soundtrack. For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, identifying material will suffice in lieu of an actual copy or copies of the motion picture. Such identifying material shall consist of:

1) A transcription of the entire work, or a reproduction of the entire work on a phonorecord; and

2) Photographs or other reproductions from the motion picture showing the title of the

806 Quantity and content of material deposited: special situations. (cont'd)

806.11 Separate registration for work embodied only in a motion picture soundtrack. (cont'd)

2) (cont'd)

motion picture, the soundtrack credits, and the copyright notice, if any, for the soundtrack.

See 37 C.F.R. 202.21(f).

806.12 Machine-readable works. Where an unpublished literary work is fixed, or a published literary work is published only in the form of machine-readable copies (such as magnetic tapes or disks, punch cards, or the like) from which the work cannot ordinarily be perceived except with the aid of a machine or device, special deposit requirements apply. See 37 C.F.R. 202.20(c)(2)(vii).

806.12(a) Machine-readable works: what must be deposited. The form of deposit varies depending on the type of machine-readable work submitted for registration, but generally consists of some type of "identifying portions" of the work. Deposit of the entire work is acceptable in limited instances. In all cases, however, the deposit must be in a form visually perceptible without the aid of a machine or device. NOTE: Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform), and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category. See 37 C.F.R. 202.20(c)(2)(vii)(A-B).

806.12(a)(1) Published and unpublished computer programs. For both published and unpublished computer programs, either one paper or one microform copy of the first and last 25 pages, or equivalent units

806 Quantity and content of material deposited: special situations. (cont'd)

806.12 Machine-readable works. (cont'd)

806.12(a) Machine-readable works: what must be deposited. (cont'd)

806.12(a)(1) Published and unpublished computer programs. (cont'd)

of the program, must be deposited. In cases where the work is under 50 pages or equivalent units in total length, the entire work should be deposited. If the work is published with a copyright notice, the applicant must also submit the page or equivalent unit which contains the copyright notice. The source code rather than the object code is the best representation of the authorship, and therefore should generally be deposited. See 37 C.F.R. 202.20(c)(2)(vii)(A).

806.12(a)(2) Published and unpublished automated data bases. Generally, the deposit for published and unpublished automated data bases is a paper or microform copy of the first and last 25 pages of the work. The deposit for automated data bases which are made up of separate and distinct data files, however, is either 50 complete data records from each file, or the entire file, whichever is less. "Data file" and "file" mean a group of data records pertaining to a common subject matter, regardless of the physical size of the records or the number of data items included in them. In the case of revised versions of such data bases, the portions deposited must contain representative data records which have been added or modified. When 50 complete data records from each separate file are submitted, however, a typed or printed descriptive statement must be submitted as well. That statement must include:

806 Quantity and content of material deposited: special situations. (cont'd)

806.12 Machine-readable works. (cont'd)

806.12(a) Machine-readable works: what must be deposited. (cont'd)

806.12(a)(2) Published and unpublished automated data bases. (cont'd)

1) The title of the data base;

2) The claimant's name and address;

3) The name and subject matter content of each separate file within the data base, origin of the data, and approximate number of individual records in the file; and

4) A description of the exact contents of any machine-readable copyright notice employed in or with the work and the manner and frequency with which it is displayed (e.g., at user's terminal only at sign-on, or continuously on terminal display, or on printouts, etc.). If a visually perceptible copyright notice is placed on any copies of the work (such as magnetic tape reels or their container), a sample of such notice must also accompany the statement.

See 37 C.F.R. 202.20(c)(2)(vii)(B).

806.13 Motion pictures. The following requirements apply to unpublished and published motion pictures.

806.13(a) Unpublished motion pictures. The applicant may, for registration, deposit one complete copy or identifying material. In either case, a description is also required. See 37 C.F.R. 202.20(c)(2)(ii) and 202.21(g).

806 Quantity and content of material deposited: special situations. (cont'd)

806.13 Motion pictures. (cont'd)

806.13(a) Unpublished motion pictures. (cont'd)

806.13(a)(1) Deposit of complete copy. If the applicant chooses to deposit an actual copy of the work, the copy must be complete. A copy is complete if the reproduction of the visual and sound elements is clean, undamaged, undeteriorated, and free of splices, and if the copy and physical housing have no defects which would interfere with performance of the motion picture or cause mechanical, visual, or audible defects or distortions. See 37 C.F.R. 202.20(b)(2)(vi). The copy must be accompanied by a separate description of its contents, which may be a continuity, a pressbook, or a synopsis. See 37 C.F.R. 202.20(c)(2)(ii). However, when the Copyright Office is asked, it will encourage the deposit of a shooting script as the description.

806.13(a)(2) Deposit of identifying material. If the applicant chooses to deposit identifying material instead of an actual copy, two things must be deposited:

1) A description which may be a continuity, a pressbook, or a synopsis but which must include the title or continuing title of the work and the episode title, if any; the nature and general content of the program; the date of first fixation and whether it took place simultaneously with first transmission; the date of first transmission, if any; running time; and credits, if any, appearing on the work; and

2) Either an audio cassette or other phonorecord reproducing the entire soundtrack or other sound portion of

806 Quantity and content of material deposited: special situations. (cont'd)

806.13 Motion pictures. (cont'd)

806.13(a) Unpublished motion pictures. (cont'd)

806.13(a)(2) Deposit of identifying material. (cont'd)

2) (cont'd)

the motion picture, or a set consisting of one frame enlargement or similar visual reproduction from each 10-minute segment of the motion picture. Frames clipped from the film are not acceptable.

806.13(b) Published motion pictures. The deposit requirements for published motion pictures consist of one complete copy of the best edition of the motion picture and a description.

806.13(b)(1) Deposit of the best edition. The best edition of a motion picture is determined by referring to the criteria listed in the Best Edition Statement. See Appendix to this chapter.

806.13(b)(2) Deposit of a complete copy. The copy must be complete, meaning that the reproduction of the visual and sound elements comprising the copyrightable subject matter in the work must be clean, undamaged, undeteriorated, and free of splices, and that the copy itself and its physical housing must be free of any defects which would interfere with performance of the motion picture, or cause mechanical, visual, or audible defects or distortions. See 37 C.F.R. 202.20(b)(2)(vi).

806.13(b)(3) Deposit of description. The copy must be accompanied by a separate description of its contents which may be a continuity, a pressbook, or a synopsis. See 37 C.F.R. 202.20(c)(2)(ii). However, when the

806 Quantity and content of material deposited: special situations. (cont'd)

806.13 Motion pictures. (cont'd)

806.13(b) Published motion pictures. (cont'd)

806.13(b)(3) Deposit of description. (cont'd)

Copyright Office is asked, it will encourage the deposit of a shooting script as the description.

806.13(b)(4) Separately registrable works of authorship fixed in film, videotape, or the like. A film, videotape, or the like can constitute the form of embodiment in which a copyrightable work other than a motion picture is fixed. Generally, in such cases the deposit requirements for the particular work of authorship being registered govern the form of the deposit, rather than the deposit requirements for motion pictures. Examples include the following:

1) Pantomime fixed in a one-half-inch videocassette.

2) Choreography fixed in a hologram.

3) Resume spoken and fixed in a three-quarter-inch videocassette.

4) Graphic illustrations fixed in Super 8 film.

NOTE: For deposit requirements in the case of an unpublished work that is fixed or a published work that is published only as embodied in a soundtrack that is an integral part of a motion picture, see section 806.11 above.

807 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 depositor under certain conditions and establishing certain rights and obligations with respect to such copies on the part of both the depositor and the Library of Congress. The Deposits and Acquisitions Section of the Acquisitions and Processing Division of the Copyright Office administers the Motion Picture Agreement. See 37 C.F.R. 202.20(c)(2)(ii).

The Motion Picture Agreement provides that after copyright registration has been completed the deposit copy will be returned to the depositor at the depositor's expense. However, a copy for addition to the Library's permanent collections is subject to recall by the Library of Congress at any time within a period of two years. In signing the Motion Picture Agreement, the depositor agrees, if the film is recalled, to provide the Library with a copy which meets the archival quality standards set forth in the Agreement.

807.01 Who may enter into the Agreement. The Agreement is available upon request to owners of copyright in published motion pictures or owners of the exclusive right of publication (including the exclusive right of distribution in the United States) who are depositing a copy of the motion picture in the Copyright Office and to foreign depositors whose works, although initially published outside the United States, have been published in the United States before the date of deposit. NOTE: Foreign depositors whose motion pictures are published only outside the United States before the date of deposit may enter into the Motion Picture Agreement by executing the basic Agreement, together with a Standard Modification of the Agreement, provided that the depositor has an established business office in the United States, or has designated a United States agent with express authority to receive service in the event the Agreement is breached.

807.02 Who may sign the Agreement. An individual depositor or a legal representative may sign the Agreement. A business entity depositor may sign

807 Motion Picture Agreement. (cont'd)

807.02 Who may sign the Agreement. (cont'd)

the Agreement through a legal representative empowered to bind the business entity, as for example, the officer of a corporation, an attorney-in-fact for the depositor, or another agent of a depositor satisfactory to the Library of Congress. In certain cases, the Standard Modification must be completed; see NOTE in section 807.01 above. Also, in certain cases, a bond signed by the attorney-in-fact for the depositor, which subjects such attorney-in-fact to certain liability under the Agreement, is required in addition to the Agreement.

807.03 Return of deposit copy under the Agreement. The Copyright Office will return the motion picture to the depositor under the Agreement if it receives a specific written request for return of that particular motion picture. In general, the following conditions apply for the return of motion pictures:

1) If a motion picture is to be returned by a private carrier designated by the depositor, shipment instructions must be included with the request for return. The instructions must name the carrier to be contacted, give an account number (if available), indicate that the motion picture is to be returned at the depositor's expense, include a declaration of value, and state the amount of insurance required.

2) If the depositor so requests, the motion picture will be shipped collect by means of a private carrier chosen by the Library of Congress, with insurance coverage at the depositor's expense, to the amount of the declared value; if no value has been declared, the amount of this insurance will be based on the estimated replacement cost for a copy of identical physical characteristics produced by a commercial laboratory.

807 Motion Picture Agreement. (cont'd)

807.03 Return of deposit copy under the Agreement. (cont'd)

3) Unless the Copyright Office is otherwise directed in writing at the time of deposit, motion pictures will be returned to the depositor by Special Fourth Class Mail. In these 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 Copyright Office will ordinarily attempt to contact depositors of 35mm feature films, oversize deposits, and copies of special value for instructions for return by private carrier at the depositor's expense.

807.04 Recall of the deposit copy under the Agreement. At any time within a period of two years, 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. Upon receipt of that request one complete copy of the film, meeting the standards set forth in Appendix A of the Agreement, must be sent to:

Motion Picture Section
Motion Picture Broadcasting and
Recorded Sound Division
The Library of Congress
Washington, D. C. 20540

807.05 Quality of copy deposited under the Agreement. If a depositor has signed the Motion Picture Agreement and deposits a copy, but does not request the return of the copy, it is considered a "non-agreement" film and is treated as though there is no Agreement on file. The standards that govern the quality of such a copy are those explained in section 806.13 above, and the special "archival quality" standards which are set forth in the language of the Agreement, and Appendix A thereto, do not apply. However, 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.

807 Motion Picture Agreement. (cont'd)

807.06 Supplemental Property Agreement. Where a depositor who has entered into a Motion Picture Agreement has deposited for registration a copy of a motion picture which does not represent the form of copy which the Library of Congress wishes to retain for its collections, such copy may be accepted for registration if the depositor specifically agrees in accordance with a Supplementary Property Agreement that a copy of archival quality will be delivered on demand under the Motion Picture Agreement.

807.07 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 of breach of the Agreement. If an Agreement is terminated by the Library, 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 already deposited or returned under the Agreement. If the Agreement is terminated by the Library, it is not subject to reinstatement unless the Library believes that reinstatement, or entering into a new Agreement, would be in its best interests. See 37 C.F.R. 202.20(c)(2)(ii).

808 Special relief from the deposit requirements for registration. Special relief is a procedure which allows the Register of Copyrights to grant the requestor the option of depositing less than or other than that which is required under the general deposit provisions. See 37 C.F.R. 202.20(d); see also 17 U.S.C. 407(c) and 408(c).

808.01 Special relief: in general. Special relief was devised because it is impossible to establish exemptions or alternatives to cover all cases where the general deposit provisions of the statute might cause unnecessary hardship. Special relief is intended to respond to the legislative directive that deposit provisions be kept flexible "so that there will be no obligation to make deposit where it serves no purpose, so that only one copy or phonorecord may be

808 Special relief from the deposit requirements for registration. (cont'd)

808.01 Special relief: in general. (cont'd)

deposited where two are not needed, and so that reasonable adjustments can be made to meet practical needs in special cases." See H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. at 151 (1976), and S. Rep. No. 94-473, 94th Cong., 1st Sess. at 134 (1975).

808.02 Special relief: criteria. The decision whether to grant special relief is based on the acquisition policies of the Library of Congress in force at the time the request is made and the examining and archival requirements of the Copyright Office.

808.03 Special relief: procedures. The procedures for special relief are the following.

808.03(a) Required elements of request. Requests for special relief must be made in writing to the Chief, Examining Division, Copyright Office. The request must be signed by or on behalf of the person signing the application for registration. The request must set forth the specific reasons that it should be granted. Examples include unavailability of the required deposit, financial burden, confidentiality, rarity, fragility, and weight. The request should also state the form of relief desired, e.g., permission to deposit one copy or phonorecord rather than two, permission to deposit alternative identifying material rather than one or two copies or phonorecords, permission to deposit incomplete copies or phonorecords rather than those normally constituting the best edition, or (for works first published before 1978) permission to deposit a later printing or edition rather than the work as first published.

808.03(b) Responsibility for decision. The decision to grant or deny special relief is made by the Chief of the Examining Division after consultation with the Chief of the Acquisitions and Processing Division of the Copyright Office.

808 Special relief from the deposit requirements for registration. (cont'd)

808.03 Special relief: procedures. (cont'd)

808.03(c) Special relief granted. When special relief is granted, the application will be annotated as follows: "Special relief granted under 37 C.F.R. 202.20(d)." This annotation is keyed with an asterisk to the "DEPOSIT RECEIVED" space on the application for registration.

NOTE: Where the work was first published before 1978, the annotation should also reflect the nature of the material deposited and refer to the remitter's letter; for example:

1) "Photocopies accepted under a grant of special relief in accordance with 37 C.F.R. 202.20(d). See correspondence file."

2) "Second printing accepted under a grant of special relief in accordance with 37 C.F.R. 202.20)(d). Re: notice of copyright on copies as first published, see applicant's letter of _____."

808.03(d) Special relief denied. Where the special relief is denied, the applicant will be notified in writing, and the letter to the applicant will set forth the reasons for the denial.

808.04 Special relief: continuous or ongoing grants. In some cases a grant of continuous or ongoing special relief is possible. The procedures and criteria for such relief are the same as for one-time special relief. In such cases, however, the applicant is asked to include with each submission a covering letter or memorandum referring to such grant and the date thereof. Any continuous grant may be terminated by the Chief of the Examining Division after consultation with the Chief of the Acquisitions and Processing Division of the Copyright Office. Notice of

808 Special relief from the deposit requirements for registration. (cont'd)

808.04 Special relief: continuous or ongoing grants. (cont'd)

termination will be in writing and will set forth the specific date of termination which must be at least 30 days later than the date the notice is mailed. This notice is sent to the individual or organization to whom the grant of special relief had been given at the last address shown in the records of the Copyright Office.

809 Relationship of deposit for registration to mandatory deposit under 17 U.S.C. 407. The deposit for a published work that is acceptable under section 408 of the current Act, which deals with copyright registration, also satisfies the deposit requirements of section 407 of that Act, which deals with deposit for the use or disposition of the Library of Congress.

810 Appendix. The text of the "'Best Edition' of Published Copyrighted Works for the Collections of the Library of Congress," mentioned in this chapter, appears as an APPENDIX which follows this page.

APPENDIX

"Best Edition" of Published Copyrighted Works for the Collections of the Library of Congress*

The Copyright Law (Title 17, United States Code) requires that copies or phonorecords deposited in the Copyright Office be of the "best edition" of the work. The law states that "The 'best edition' of a work is 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."

When two or more editions of the same version of a work have been published, the one of the highest quality is generally considered to be the best edition. In judging quality, the Library of Congress will adhere to the criteria set forth below in all but exceptional circumstances.

Where differences between editions represent variations in copyrightable content, each edition is a separate version and "best edition" standards based on such differences do not apply. Each such version is a separate work for the purposes of the Copyright Law.

Appearing below are lists of criteria to be applied in determining the best edition of each of several types of material. The criteria are listed in descending order of importance. In deciding between two editions, a criterion-by-criterion comparison should be made. The edition which first fails to satisfy a criterion is to be considered of inferior quality and will not be an acceptable deposit. For example, if a comparison is made between two hardbound editions of a book, one a trade edition printed on acid-free paper and the other a specially bound edition printed on average paper, the former will be the best edition because the type of paper is a more important criterion than the binding.

Under regulations of the Copyright Office, potential depositors may request authorization to deposit copies or phonorecords of other than the best edition of a specific work (e.g., a microform rather than a printed edition of a serial).

* This excerpt is taken from Volume 43, No. 2 of the Federal Register for Wednesday, January 4, 1978 (p. 766).

I. PRINTED TEXTUAL MATTER

A. Paper, Binding, and Packaging:

1. Archival-quality rather than less-permanent paper.
2. Hard cover rather than soft cover.
3. Library binding rather than commercial binding.
4. Trade edition rather than book club edition.
5. Sewn rather than glue-only binding.
6. Sewn or glued rather than stapled or spiral-bound.
7. Stapled rather than spiral-bound or plastic-bound.
8. Bound rather than looseleaf, except when future looseleaf insertions are to be issued.
9. Slipcased rather than nonslipcased.
10. With protective folders rather than without (for broadsides).
11. Rolled rather than folded (for broadsides).
12. With protective coatings rather than without (except broadsides, which should not be coated).

B. Rarity:

1. Special limited edition having the greatest number of special features.
2. Other limited edition rather than trade edition.
3. Special binding rather than trade binding.

C. Illustrations:

1. Illustrated rather than unillustrated.
2. Illustrations in color rather than black and white.

D. Special Features:

1. With thumb notches or index tabs rather than without.
2. With aids to use such as overlays and magnifiers rather than without.

E. Size:

1. Larger rather than smaller sizes. (Except that large-type editions for the partially-sighted are not required in place of editions employing type of more conventional size.)

II. PHOTOGRAPHS

A. Size and finish, in descending order of preference:

1. The most widely distributed edition.
2. 8 × 10-inch glossy print.
3. Other size or finish.

B. Unmounted rather than mounted.

C. Archival-quality rather than less-permanent paper stock or printing process.

III. MOTION PICTURES

A. Film rather than another medium. Film editions are listed below in descending order of preference.
1. Preprint material, by special arrangement.
2. Film gauge in which most widely distributed.
3. 35 mm rather than 16 mm.
4. 16 mm rather than 8 mm.
5. Special formats (e.g., 65 mm) only in exceptional cases.
6. Open reel rather than cartridge or cassette.

B. Videotape rather than videodisc. Videotape editions are listed below in descending order of preference.
1. Tape gauge in which most widely distributed.
2. Two-inch tape.
3. One-inch tape.
4. Three-quarter-inch tape cassette.
5. One-half-inch tape cassette.

IV. OTHER GRAPHIC MATTER

A. Paper and Printing:
1. Archival quality rather than less-permanent paper.
2. Color rather than black and white.

B. Size and Content:
1. Larger rather than smaller size.
2. In the case of cartographic works, editions with the greatest amount of information rather than those with less detail.

C. Rarity:
1. The most widely distributed edition rather than one of limited distribution.
2. In the case of a work published only in a limited, numbered edition, one copy outside the numbered series but otherwise identical.
3. A photographic reproduction of the original, by special arrangement only.

D. Text and Other Materials:
1. Works with annotations, accompanying tabular or textual matter, or other interpretative aids rather than those without them.

E. Binding and Packaging:
1. Bound rather than unbound.
2. If editions have different binding, apply the criteria in I.A.2–I.A.7, above.
4. Rolled rather than folded.
5. With protective coatings rather than without.

V. PHONORECORDS

A. Disc rather than tape.

B. With special enclosures rather than without.

C. Open-reel rather than cartridge.

D. Cartridge rather than cassette.

E. Quadraphonic rather than stereophonic.

F. True stereophonic rather than monaural.

G. Monaural rather than electronically rechanneled stereo.

VI. MUSICAL COMPOSITIONS

A. Fullness of Score:

1. Vocal music:

a. With orchestral accompaniment—

i. Full score and parts, if any, rather than conductor's score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to full score only.)

ii. Conductor's score and parts, if any, rather than condensed score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to conductor's score only.)

b. Unaccompanied: Open score (each part on separate staff) rather than closed score (all parts condensed to two staves).

2. Instrumental music:

a. Full score and parts, if any, rather than conductor's score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to full score only.)

b. Conductor's score and parts, if any, rather than condensed score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to conductor's score only.)

B. Printing and Paper:

1. Archival-quality rather than less-permanent paper.

C. Binding and Packaging:

1. Special limited editions rather than trade editions.
2. Bound rather than unbound.
3. If editions have different binding, apply the criteria in I.A.2–I.A.12, above.
4. With protective folders rather than without.

VII. MICROFORMS

A. Related Materials:
1. With indexes, study guides, or other printed matter rather than without.

B. Permanence and Appearance:
1. Silver halide rather than any other emulsion.
2. Positive rather than negative.
3. Color rather than black and white.

C. Format (newspapers and newspaper-formatted serials):
1. Reel microfilm rather than any other microform.

D. Format (all other materials):
1. Microfiche rather than reel microfilm.
2. Reel microfilm rather than microform cassettes.
3. Microfilm cassettes rather than micro-opaque prints.

E. Size:
1. 35 mm rather than 16 mm.

VIII. WORKS EXISTING IN MORE THAN ONE MEDIUM

Editions are listed below in descending order of preference.

A. Newspapers, dissertations and theses, newspaper-formatted serials:
1. Microform.
2. Printed matter.

B. All other materials:
1. Printed matter.
2. Microform.
3. Phonorecord.

(Effective: January 1, 1978.)

[END OF CHAPTER 800]

Chapter 900

PUBLICATION

Outline of Topics

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902 Statutory provision.

903 Authorization by the copyright owner.

904 General policy concerning publication.

905 Distribution as publication.

- 905.01 Multiple copies or phonorecords.
- 905.02 To the public.
- 905.03 Deposit in a public library.
- 905.04 Deposit for registration in the Copyright Office.
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906 Offering to distribute as publication.

- 906.01 No existing copies or phonorecords.
- 906.02 To a group of persons.
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907 Alternative forms of publication.

908 Public performance or display not a publication.

- 908.01 To perform.
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- 908.03 Public or private.

909 Publication of recorded material first distributed before January 1, 1978.

910 Date and nation of first publication.

- 910.01 General policy concerning date and nation of first publication.
- 910.02 Choice of a date of first publication.
- 910.03 Release date.
- 910.04 Embodiment of previously unpublished material in another work.
- 910.05 Publication of part of a work.
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911 Problems relating to date of publication.

- 911.01 No date of publication.
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912 Indicia of publication.

- 912.01 Appearance of deposited material.

Chapter 900

PUBLICATION

901 Applicability of this chapter. The provisions of this chapter are applicable only to acts which occurred on or after January 1, 1978. Copyright Office practices concerning publication before January 1, 1978, are stated in Compendium I and generally still apply.

902 Statutory provisions. Publication 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. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication. 17 U.S.C. 101.

903 Authorization by the copyright owner. Not included in the statutory definition of "publication" but implicit in the meaning of the term as applied to copyright registration and related activities is the requirement that acts constituting publication must be by the copyright owner or under his or her authority. The unauthorized acts of others do not result in such publication. Section 106 of the current Act explicitly provides that the owner of copyright has the sole power to authorize distribution of "copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending." See 17 U.S.C. 106(3).

904 General policy concerning publication. The following points represent the general policy of the Copyright Office concerning publication:

1) The Office will ordinarily not attempt to decide whether or not publication has occurred but will generally leave this decision to the applicant.

2) The Office will not attempt to make factual investigations to determine whether or not publication has occurred.

3) When asked for advice, the Office will ordinarily refrain from taking a definite position, but will quote the statutory definition and discuss the meaning of publication in general terms.

904 General policy concerning publication. (cont'd)

4) Where the applicant provides the Office with a statement of facts on the basis of which the applicant concludes that publication has occurred, registration will be made as a published work, unless the facts as stated by the applicant clearly show that publication, as defined by the copyright law, has not taken place.

5) Where the applicant seeks registration as an unpublished work and provides the Office with a statement of facts which clearly show that publication has occurred, the Office will not register a claim to copyright in the work as unpublished.

6) Where the Office has information which is at variance with a statement concerning publication provided by the applicant, or where the appearance of the copy or phonorecord deposited seems clearly inconsistent with such statement, the Office will correspond with the applicant.

905 Distribution as publication. Works are published when copies or phonorecords are distributed by the copyright owner or under his or her authority to the public by sale or other transfer of ownership, or by rental, lease, or lending.

905.01 Multiple copies or phonorecords. The statutory definition refers to the distribution of "copies or phonorecords." A work which exists in only one copy or phonorecord is generally not regarded as published when the single existing copy or phonorecord is transferred by sale or otherwise, or when it is rented, leased, or lent. However, where multiple copies are available for distribution, the transfer, rental, lease, or lending of a single copy or phonorecord will be sufficient for registration to be made as a published work.

Examples:

1) If an original oil painting is sold to a private collector, that sale does not constitute publication.

905 Distribution as publication. (cont'd)

905.01 Multiple copies or phonorecords. (cont'd)

Examples: (cont'd)

2) Where a manufacturer of pottery places copies of its work on sale at a roadside stand next to the factory and sells a single copy, publication does take place.

905.02 To the public. In order for publication to occur by the distribution of copies or phonorecords, such distribution must be "to the public" rather than a more limited distribution. Generally, members of the public are persons who are under no implied or express restriction with respect to disclosure of the work's contents. See H.R. Rep. 94-1476, 94th Cong., 2d Sess. 138 (1976).

Examples:

1) The distribution of copies on a busy street corner is publication.

2) The unrestricted gift of copies constitutes publication.

3) Leaving copies in a public place for anyone to take is publication.

4) Distributing texts at a seminar for use only by the recipients is ordinarily not publication.

NOTE: The fact that the copies bear a statement indicating that their distribution has been restricted or limited in some way will generally not constitute a sufficient basis for questioning whether or not publication occurred.

Examples:

1) "Confidential -- these specifications are for subscribers' use only."

2) "Not for general distribution."

3) "For professional use only."

905 Distribution as publication. (cont'd)

905.03 Deposit in a public library. Where a copy or phonorecord of a work is deposited in a public library for unrestricted access by the public, the Copyright Office will not refuse registration as a published work. In such a case, the Office will assume that access to the deposit was unrestricted unless it has information to the contrary.

905.04 Deposit for registration in the Copyright Office. Deposit for registration in the Copyright Office will not be considered to constitute publication.

905.05 By sale or other transfer of ownership, or by rental, lease, or lending. Publication occurs by the sale or other transfer of ownership of copies or phonorecords or by their rental, lease, or lending.

906 Offering to distribute as publication. The offering by the copyright owner, or under his or her authority, to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. See 17 U.S.C. 101. The statutory definition implies that the offering to distribute must be of existing multiple copies or phonorecords.

Examples:

1) The offering of a new line of greeting cards that are in existence to retail outlets is publication.

2) The offering by a film exchange to distribute prints of an existing motion picture for performance in theatres is publication.

3) Offering a work, such as a cartoon or column, to a number of syndicators for purposes of further distribution would normally constitute publication.

906 Offering to distribute as publication. (cont'd)

906.01 No existing copies or phonorecords. The offering to distribute copies or phonorecords before any are available in a form ready for distribution does not constitute publication.

Examples:

1) The offering to distribute a motion picture that is still in production does not constitute publication.

2) The offering to distribute a sound recording which has not been fixed in its final form is not publication.

906.02 To a group of persons. The offering to distribute copies or phonorecords must be to a group of persons.

Example:

The offering to distribute musical scores to a group of band directors for purposes of public performance is publication.

906.03 For purposes of further distribution, public performance, or public display. The purpose of the offering must be further distribution, public performance, or public display. Hence an offering to distribute to a group of persons for their private use, private performance, or private display is not a publication.

Example:

The offering to distribute classical phonorecords to various radio stations for broadcast constitutes publication.

907 Alternative forms of publication. Since the statutory definition of publication is in two parts, one relating to direct distribution to the public and the other relating to the offering to a group for certain purposes, publication occurs if the facts fit either alternative.

907 Alternative forms of publication. (cont'd)

Examples:

1) The actual distribution of 350 copies of a print to the public is publication, regardless of whether or not the prints were distributed for purposes of private or public display.

2) The offering to distribute fine art prints to a group of persons for public display constitutes publication, whereas the offering to distribute such material for private display is not a publication.

908 Public performance or display not a publication. A public performance or public display of a work does not of itself constitute publication. See 17 U.S.C. 101. Therefore, publication will be questioned where words such as "performed," "televised," "broadcast," "posted," "exhibited," etc., have been added to the publication space of the application.

908.01 To perform. To "perform" a work means to recite, render, play, dance, or act it, 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.

908.02 To display. To "display" a work means to show a copy of it, 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.

908.03 Public or private. Since the copyright law provides that the "public" performance or display of a work is not publication, it seems clear that performances and displays which are not public do not constitute publication. Thus, in effect, no private performance or display can amount to publication.

Examples:

1) Where a pictorial, graphic, or sculptural work was created in 1978 and placed on public display without any restrictions against copying, it is considered unpublished under the current Act.

908 Public performance or display not a publication. (cont'd)

908.03 Public or private. (cont'd)

Examples: (cont'd)

2) A jazz band performing an original song as part of its act on a network television show is not publication.

3) It is not publication for a composer to perform his work in his home or in public.

909 Publication of recorded material first distributed before January 1, 1978. Where a musical, dramatic, or literary work was distributed only in the form of phonorecords before January 1, 1978, such musical, dramatic, or literary work was not registerable as a published work under the Act of 1909, as amended. Under the present law, the public distribution of phonorecords on or after January 1, 1978, publishes the musical, dramatic, or literary works recorded thereon. Therefore, if publication of a pre-1978 phonorecord continued on January 1, 1978, that date is considered to be the date of first publication of the underlying work for purposes of copyright registration.

910 Date and nation of first publication. A statement of the date of first publication is required on applications for registration of claims to copyright in published works. The nation of first publication should also be given.

910.01 General policy concerning date and nation of first publication. The Copyright Office will generally accept without question the date of first publication given by the applicant. Although the Office may offer general guidelines concerning the selection of a date, the final choice is ordinarily left to the applicant. The Office will generally decline to accept the date given only if a statement made by the applicant clearly shows that first publication did not occur on that date. The Office will correspond with the applicant if it has information inconsistent with the statement used by the applicant as the basis for the date given.

910 Date and nation of first publication. (cont'd)

910.01 General policy concerning date and nation of first publication. (cont'd)

Similarly, the Copyright Office will generally accept the statement of the applicant on nation of first publication, unless it appears to be clearly inconsistent with the facts stated by the applicant or the information which the Office has with respect to the place of first publication.

910.02 Choice of a date of first publication. When the applicant is uncertain as to the date to be given in the application, the Copyright Office may outline the following factors to be considered:

1) Where the applicant is uncertain as to which of several possible dates to choose, it is generally advisable to choose the earliest date, to avoid implication of an attempt to lengthen the copyright term, or any other period prescribed by the statute.

2) When the exact date is not known, the best approximate date may be chosen. In such cases, qualifying language such as "approximately," "on or about," "circa," "no later than," and "no earlier than," will generally not be questioned.

NOTE: The date given on the application as the date of first publication is important. It may determine the three-month grace period of 17 U.S.C. 412(2) and the five-year period provided in 17 U.S.C. 405(a)(2) for works published without a notice of copyright. It may also determine the copyright term for works made for hire and for anonymous and pseudonymous works.

910.03 Release date. If copies or phonorecords are put into the "stream of commerce" on one date, for release by distribution "over the counter" to the public on a later date, the Copyright Office will accept either date as first publication.

910 Date and nation of first publication. (cont'd)

910.04 Embodiment of previously unpublished material in another work. The inclusion of an unpublished work in another work that is later published results in the publication of the first work to the extent that it is disclosed in the published work.

Examples:

1) Where a preexisting unpublished screenplay is embodied in a motion picture, those elements of the screenplay disclosed in the motion picture are considered to be published at the same time the motion picture is published.

2) The publication of copies of a lithograph that reproduce a previously unpublished original oil painting, publishes the oil painting to the extent that it is disclosed in the lithograph.

3) Where an unpublished sculptural work is embodied in a published motion picture, an application for registration of the sculpture may assert that the work is unpublished; in such a case, space 6 on the application form need not be completed. NOTE: It is the view of the Copyright Office that ordinarily the publication of a motion picture would not result in sufficient disclosure of a sculptural work embodied in the motion picture to effect a publication of such work in the copyright sense.

910.05 Publication of part of a work. Publication of a portion of a work does not necessarily mean that the work as a whole has been published.

Examples:

1) Publication of a detailed plot summary of a play does not constitute publication of the play as a whole.

2) Publication of a movie version of an unpublished story publishes only those elements of the story embodied in the motion picture.

910 Date and nation of first publication. (cont'd)

910.06 Publication in serial form. Where a work first appears in serial form and later comes out as a book, its appearance in serial form is considered first publication. Registration of a claim to copyright in the book would depend upon the existence of new copyrightable material appearing for the first time in the book.

910.07 Publication of separate parts or installments. Where various parts or installments of a work are first published separately, each part or installment is regarded as a separate work, and if registered, must be registered separately. However, where a work is first published as a unit, the fact that parts of the work are also distributed separately will not preclude a single registration for the work.

910.08 Previous registration and new versions. Where the work in question is the first published edition of a work previously registered in unpublished form, the application should give the date of first publication. This is true even if the published edition contains no new matter and the copyright term is not computed from the date of publication. If the work is a new version of a previously published work, the application should give the date of publication of the new version, rather than that of the previously published edition.

910.09 Works first published outside the United States. An application covering a work first published outside the United States should state the date of first publication there, and should be accompanied by a copy or phonorecord of the foreign edition as first published. As a rule, registration for a later published U.S. edition of such work depends upon whether or not new copyrightable material has been added.

911 Problems relating to date of publication. The following are problems relating to the date of publication.

911.01 No date of publication. An application in which no date of publication is given will ordinarily not be questioned, even though the copies appear to be in published form. In such cases, registration may be made without correspondence unless it seems clear that the applicant fails to understand the registration requirements and actually wishes registration of the work as published.

911.02 Incomplete date. An application lacking one or more of the three necessary elements of the date of publication (month, day, and year) will not be accepted. Where the element is missing from the appropriate space on the application, the Copyright Office may either request the information and add it to the application, or request a new application. Similarly, an application containing a date extending over a period of time will not be accepted.

Examples of unacceptable statements:

1) "January, 1981."

2) "July 20-26, 1981."

3) "Last week of December, 1980."

911.03 Impossible or improbable date. A date of publication that is impossible, such as "February 30, 1981," is not acceptable. If a date is given on the application which, if correct, would signify that the work is in the public domain in the United States, as for example, "March 3, 1867," such application will be questioned.

911.04 Other calendrical systems. When a date of publication is given which appears to be in terms of a calendrical system other than the current Gregorian calendar, the Copyright Office will ask that the date be stated by the applicant in accordance with the current Gregorian calendar.

911 Problems relating to date of publication. (cont'd)

911.05 Separate parts or installments. An application giving more than one date of publication for the same work is not acceptable. See section 910.07 above.

911.06 Previous edition or version. An application giving only the date of publication of a previous edition or version is not acceptable. See section 910.08 above.

912 Indicia of publication. In general, the presence of a date of publication in the application will be accepted as indicating that publication has taken place, unless information furnished by the applicant, other information known to the Copyright Office, or the deposited material raises questions as to whether publication actually has taken place. In such cases, the Office will communicate with the applicant.

912.01 Appearance of deposited material. Material submitted as published will not generally be questioned on the single ground that such material is handmade or in preliminary form, e.g., photocopies, mimeographed copies, etc., if publication in that form appears normal in the light of the nature of the work. However, such material may be questioned when the copies contain deletions or insertions, or when the copies appear to be incomplete.

Examples:

1) Artist's handmade drawing of a commercial label will be questioned.

2) Mimeographed copies of a play would normally not be questioned.

[END OF CHAPTER 900]

Chapter 1000

NOTICE OF COPYRIGHT

Outline of Topics

1001 Applicability of this chapter.

1002 Unpublished works.

1003 Published works.

- 1003.01 Visually perceptible copies.
- 1003.02 Phonorecords.
- 1003.03 Contributions to collective works.

1004 Form of the copyright notice.

- 1004.01 Visually perceptible copies.
- 1004.02 Phonorecords of sound recordings.
- 1004.03 Special provision concerning U.S. Government works.
- 1004.04 Limitations in juxtaposition to the copyright notice.
- 1004.05 Restricted notice.

1005 Variants of word, symbol, or abbreviation.

- 1005.01 Visually perceptible copies.
- 1005.02 Phonorecords of sound recordings.

1006 Year date in the copyright notice.

- 1006.01 Form of year date.
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- 1006.03 Earlier than year of publication (antedated).
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1007 Name in copyright notice.

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- 1007.02 Sound recordings: presumption as to producer's name in notice.
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1007.06 Deceased person named in notice at time of publication.
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1007.09 Separated name.

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1008.01 Registration.

1009 Error in name.

1010 Error in date.

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1013.06 Musical works.
1013.07 Single-leaf works.
1013.08 Contributions to collective works.
1013.09 Works reproduced in machine-readable copies.
1013.10 Motion pictures and other audiovisual works.
1013.11 Pictorial, graphic, and sculptural works.
1013.12 Separable parts published in permanent container.
1013.13 Dust jackets on books.
1013.14 Sound recordings.
1013.15 Multi-part works.

1014 Handwritten, typewritten, or rubber-stamped copyright notice on published copies or phonorecords.

1015 Legibility of copyright notice.

1016 Microscopic copyright notice.

1017 Concealed copyright notice.

1017.01 Notice visible upon ordinary use.

1018 Copyright notice: reverses.

1019 Notice of renewal copyright.

1020 Notices extraneous to the claim being registered.

Chapter 1000

NOTICE OF COPYRIGHT

1001 Applicability of this chapter. The provisions of this chapter are applicable only to works first published on or after January 1, 1978. The Copyright Office practices concerning the copyright notice as it relates to works first published before that date are found in Compendium I, which is still in effect for such works.

1002 Unpublished works. No notice of copyright is required on unpublished works. An unpublished work which does not bear a notice of copyright will be accepted for registration. Registration will be made without correspondence by the Copyright Office for an unpublished work which bears a notice of copyright, even though the notice may be defective if used on the work when published.

1003 Published works. As a general rule whenever works protected under the copyright law are published in the United States or elsewhere by authority of the copyright owner, the notice of copyright prescribed by the law should appear on all publicly distributed copies from which the work can be visually perceived and on all publicly distributed phonorecords of sound recordings. See 17 U.S.C. 401(a) and 402(a). If a work is published without notice or with a fatally deficient notice by authority of the copyright owner, and if more than five years have elapsed since such publication, registration is not possible. See section 1008.01 below.

1003.01 Visually perceptible copies. A visually perceptible copy is one in which a work is fixed and from which such work can be visually perceived, either directly or with the aid of a machine or device. Examples of visually perceptible copies include books, sheet music, and photographs. Examples of works not embodied in visually perceptible form include literary, dramatic, or musical matter fixed in the recorded sounds accompanying a motion picture or other audiovisual work or in phonorecords. When such works are published in phonorecords, no copyright notice is required for the literary, dramatic, or musical material embodied in the phonorecords.

1003 Published works. (cont'd)

1003.02 Phonorecords. A phonorecord is a material object in which sounds, other than those accompanying a motion picture or other audio-visual work, are fixed and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Examples include disks, open reels, cassettes, and cartridges. If the sound recording is protected by copyright, the appropriate notice for a sound recording should be used. See 17 U.S.C. 101, for the definition of sound recordings; see also section 1004.02 of this chapter.

1003.03 Contributions to collective works. A separate contribution to a collective work may bear its own notice of copyright, or a single notice applicable to the collective work as a whole may be sufficient for the separate contributions it contains but not including advertisements inserted on behalf of persons other than the owner of copyright in the collective work. See 17 U.S.C. 404(a). A collective work is one in which a number of separate and independent works are assembled into a collective whole, such as a periodical issue, anthology, or encyclopedia.

1004 Form of the copyright notice. The form of the notice is prescribed by the copyright law.

1004.01 Visually perceptible copies. For visually perceptible copies the notice of copyright shall consist of: 1) the symbol © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr.," 2) the year of first publication of the work, and 3) 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. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying text matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful articles. See 17 U.S.C. 401(b).

1004 Form of the copyright notice.

1004.02 Phonorecords of sound recordings. For phonorecords of sound recordings the notice shall consist of: 1) the symbol ℗ (the letter P in a circle), 2) the year date of first publication of the sound recording, and 3) the name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner; if the producer of the sound recording is named on the phonorecord labels or containers, and if no other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice. See 17 U.S.C. 402(b).

1004.03 Special provision concerning U. S. Government works. In the case of a work published in copies or phonorecords and consisting preponderently of one or more works of the United States Government, the notice of copyright shall also include a statement identifying, either affirmatively or negatively, those portions of the copies or phonorecords embodying any work or works protected under title 17. 17 U.S.C. 403. If such a limitation is not reflected on the application for registration, the Copyright Office may request the applicant to amend the application. The absence of the statement on the copies or phonorecords, when required, will be considered an omission of notice. See section 1008 of this chapter; see also the definition of a "work of the United States Government" in 17 U.S.C. 101.

1004.04 Limitations in juxtaposition to the copyright notice. Even though a claim to copyright, as shown in the application, is limited to a portion of the work (such as new matter), the notice need not specify such a limitation. Where the copyright claim covers less than the entire work, a general notice, e.g., "© 1981 John Doe," is sufficient. Where a statement in juxtaposition to the notice limits the claim to portions or features of the work that are copyrightable, the notice

1004 Form of the copyright notice. (cont'd)

1004.04 Limitations in juxtaposition to the copyright notice. (cont'd)

is sufficient, e.g., "Introduction and Illustrations Copyright 1981 by Popular Publishing Co.," or "Arrangement Copyright 1981 by Newstyle Music Co.". If such limitations are not reflected on the application for registration, the Copyright Office will correspond to establish the extent of the claim and to have the application amended, if necessary. If the limitation is incorrect, the Copyright Office will annotate the application as follows: "On copyright deposit: [quote statement on deposit]. Application correct; see correspondence file."

1004.05 Restricted notice. Even though a statement in juxtaposition to the notice refers only to noncopyrightable matter, the claim will be registered if the application clearly shows that the claim is based on copyrightable subject matter. The same is true where the position of the copyright notice itself indicates restriction of the claim to a noncopyrightable element. In such cases the Copyright Office will send a cautionary letter. If the application does not clearly refer to copyrightable subject matter, the Copyright Office may either refuse registration or, in appropriate cases, correspond to determine the basis of the claim. For works published before January 1, 1978, however, see topic 4.4.4.II.b of Compendium I.

1005 Variants of word, symbol, or abbreviation. Unacceptable variants of the symbol © or the word "Copyright," or of the abbreviation "Copr.," will be treated as an omission of notice. See section 1008 of this chapter. An acceptable variant will be treated as if the correct symbol, word, or abbreviation appeared as a part of the notice.

NOTE: In the case of an acceptable variant of the symbols © or ®, where registration is sought more than five years after first publication, the claim will be registered under the rule of doubt.

1005 Variants of word, symbol, or abbreviation. (cont'd)

1005.01 Visually perceptible copies. The notice on visually perceptible copies should include the symbol © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr." 17 U.S.C. 401(b)(1).

1005.01(a) A misspelled or variant form of "Copyright" or "Copr." may be accepted if it is clear that copyright is meant. Examples of variants which are acceptable:

1) Copyrighted
2) Copywrite
3) Copywritten
4) Copyright Pending
5) Copyright Applied For
6) Copyright and Registered
7) Registered U. S. Copyright Office
8) Copy.
9) Copyr.

1005.01(b) The term "All Rights Reserved," or the like, is not acceptable as an element of the copyright notice prescribed by U. S. law. The same is true for such statements in other languages, e.g., the Spanish "Todos los Derechos Reservados." However, the use of such terms in juxtaposition to an acceptable copyright notice will not invalidate the notice.

1005.01(c) A variant of the symbol © is accepted only where it resembles the © closely enough to indicate clearly that the copyright symbol is meant.

Acceptable variants include:

1) (c
2) c)
3) (c)
4) ©
5) (c)

1005 Variants of word, symbol, or abbreviation. (cont'd)

1005.01 Visually perceptible copies. (cont'd)

1005.01(c) (cont'd)

Unacceptable variants include:

1) CO
2) C
3) C/O
4) ⓐ
5) C
6) [c]
7) [c]

1005.02 Phonorecords of sound recordings. The notice on phonorecords of sound recordings should include the symbol ℗ (the letter P in a circle). A variant of the symbol ℗ is acceptable only where it resembles the ℗ closely enough to indicate clearly that the sound recording copyright symbol is meant.

Acceptable variants include:

1) P
2) P
3) (P
4) P)
5) Ⓟ
6) (P)

Unacceptable variants include:

1) P
2) [P]
3) [P]
4) ©, or any variant form of the standard copyright symbol
5) "Copyright," "Copr.," or any variant thereof
6) Audible notices

1006 Year date in the copyright notice. As a general rule the copyright notice both for copies (17 U.S.C. 401(b)(2)) and for phonorecords of sound recordings (17 U.S.C. 402(b)(2)) must include the year of first publication of the work. The notice on copies of a compilation or derivative work incorporating

1006 Year date in the copyright notice. (cont'd)

previously published material requires only the year date of first publication of the compilation or derivative work. 17 U.S.C. 401(b)(2). The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying text, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful articles. 17 U.S.C. 101 and 401(b)(2). NOTE: A label is not considered a useful article, from which the year date may be omitted. Those textiles and fabrics which are useful articles do not require a year date; however, where a copyright notice applicable to a textile or a fabric which is a useful article is contained on a label affixed to the textile or fabric, and the year date is omitted from the notice, such notice shall be acceptable insofar as it applies to the textile or fabric. See section 1013.11(4)(iii) below.

1006.01 Form of year date. A year date is acceptable in any of the following forms: 1) Arabic numerals, e.g., 1981; 2) abbreviations of Arabic numerals, e.g., '81; 3) Roman numerals e.g., MCMLXXXI; 4) spelled out in words instead of numerals, e.g., Nineteen Hundred Eighty-One.

1006.02 Omitted where required. Where copies or phonorecords publicly distributed by authority of the copyright owner contain no date that could reasonably be regarded as a part of the notice, the work is considered to have been published without any notice. 17 U.S.C. 405; see also section 1008 of this chapter.

1006.03 Earlier than year of publication (antedated). Where the year date in the notice on copies or phonorecords is earlier than the year in which publication first occurred (see section 1010 of this chapter), it is considered to be an error in date governed by 17 U.S.C. 406(b). The application will be annotated to indicate the date in the notice. A warning letter may be sent to the applicant pointing out the error in date and the consequences it may

1006 Year date in the copyright notice. (cont'd)

1006.03 Earlier than year of publication (antedated. (cont'd)

have. These rules apply equally to those works which do not require a year date in the notice but which contain a year date earlier than the year in which first publication occurred.

1006.04 Later than year of publication (postdated). Where the year date in the notice on copies or phonorecords is no more than one year later that the year in which publication first occurred, the claim will be registered without annotation or correspondence. Where the year is more than one year later than the year in which publication first occurred, the work is considered to have been published without any notice under 17 U.S.C. 406(c) and is governed by 17 U.S.C. 405. See section 1008 of this chapter. Thus, if the application is submitted within five years of first publication, the claim will be registered without annotation; however, a warning letter will be sent. If registration is requested after five years measured from the date of first publication, registration will be refused. These rules apply equally to those works which do not require a year date in the notice, but which contain a year date which is later than the year in which first publication occurred. 17 U.S.C. 401(b)(2); see also section 1010 of this chapter.

1006.05 Dispersed notice; year date. The elements of notice, including the year date when required, should preferably appear together as a single continuous statement, e.g., © 1981 ABC Corporation. However, a year date that is present but separated from the rest of the notice is acceptable if it is an appropriate date and is reasonably identifiable as part of the notice. Such a year date is clearly acceptable if it is the

1006 Year date in the copyright notice. (cont'd)

1006.05 Dispersed notice: year date. (cont'd)

only one appearing on the same page as the other elements. Also, an appropriate year date prominently displayed elsewhere than on the same page as the other elements is acceptable, if it can reasonably be considered part of the notice. Examples of acceptable year dates include the year date in the Library of Congress Catalog Card Number and the year in the issue date on a periodical. The presence of intervening matter need not necessarily preclude considering a year date a part of the notice. In those cases where a year date is required and no year date can be reasonably identified as part of the notice, the work will be considered to have been published without notice and will be governed by 17 U.S.C. 405. See section 1008 of this chapter; see also section 1011.01 concerning separated names.

1006.06 More than one year date in notice. A notice may sometimes contain, in addition to the year date of first publication of the version being registered, earlier year dates indicating an earlier unpublished registration, or the presence of previously published matter in the work; or they might signify nothing. Where there is more than one year date in the notice and none of them is the year date of first publication, the Copyright Office will disregard, for purposes of determining the adequacy of the notice, all but the most recent date.

1007 Name in copyright notice. As a general rule the copyright notice for both copies and phonorecords of sound recordings must include 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) and 402(b)(3). Ordinarily, the Copyright Office will not question a name appearing as part of the notice, if it appears sufficient to identify the owner of copyright.

1007 Name in copyright notice. (cont'd)

1007.01 Name as claimant on application. The copyright "claimant" for registration purposes is the author of the work for which registration is sought, or a person or organization that has obtained ownership of all rights under the copyright initially belonging to the author. See 37 C.F.R. 202.3(a)(3). The names given in the notice as owner of copyright and in the application as claimant may be completely different and yet both may be correct. The Copyright Office will ordinarily not question an application unless information from the copies or phonorecords, from the application, or from other sources indicates that the name given as claimant on the application may not be the owner of copyright or the author.

1007.02 Sound recordings: presumption as to producer's name in notice. If the producer of a sound recording is named on the phonorecord labels or containers, 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). The producer need not be identified as producer on the labels or containers.

Example:

On left side of the label on a 45 rpm disk:

℗ 1981

On the right side of the label:

Doe Recording Company
Produced and arranged by Jay Jones

Along the bottom of the label:

Mfg. by Doe Recording Co.

Application names Doe Recording Co. as author by virtue of being the employer in a work made for hire.

1007 Name in copyright notice. (cont'd)

1007.02 Sound recordings: presumption as to producer's name in notice. (cont'd)

Example: (cont'd)

There is no name that could reasonably be considered a part of the notice; therefore, the producer presumption applies. Since Doe Recording Co. is an employer in a work made for hire, it would be considered the producer and its name would be considered as a part of the notice.

1007.03 Abbreviation or alternative designation. The statute permits the use of an abbreviation by which the copyright owner can be recognized or a generally known alternative designation. 17 U.S.C. 401(b)(3) and 402(b)(3). In such a case, the application should give the legal name of the claimant, and preferably should specify the relationship between the name and what appears in the notice. A generally known alternative designation may be either part of the full name, e.g., "Atlantic" for Atlantic Recording Corporation, or a completely different name, e.g., "Melodium" for Genius Recording Co., or well known initials, e.g., "NBC" for National Broadcasting Company. An abbreviation by which the name of the copyright owner can be recognized should generally include an abbreviated part of each significant word in the full name, e.g., "Merc. Rec." for Mercury Records Corporation. If what is in the notice reasonably appears to identify the copyright owner to those likely to come in contact with distributed copies or phonorecords, the notice will be considered acceptable. If this is not the case, the same action is taken as where there is no name in the notice. See section 1011 of this chapter.

1007.04 Unacceptable variants of name, abbreviation, or alternative designation. Where the name, abbreviation of the name, or an alternative designation of the owner in the notice is so

1007 Name in copyright notice. (cont'd)

1007.04 Unacceptable variants of name, abbreviation, or alternative designation. (cont'd)

vague, truncated, or ambiguous that it could not be considered to identify any person or entity as an owner of the copyright, the same action is taken as when no name appears in the notice. See 17 U.S.C. 406(c); see also section 1011 of this chapter.

1007.05 Pseudonym in notice. A pseudonym is a fictitious or assumed name. Where the name appearing in the copyright notice is known to be a pseudonym, the Copyright Office will inquire as to whether or not the individual is generally known by that name. Where the individual is generally known by the pseudonym appearing in the notice, the copyright notice will be considered acceptable. Where, however, the individual is not generally known by the name in the notice, the work will be treated as being published with no name in the notice. See section 1011 below.

1007.06 Deceased person named in notice at time of publication. Where the Copyright Office has knowledge that the person named in the notice died before publication of the work, the same action is taken as when there is an error in the name in the notice. 17 U.S.C. 406(a); see section 1009 of this chapter.

1007.07 Identity by reference. See section 1011 of this chapter.

1007.08 Additional names in notice. Ordinarily, where two or more names appear in the notice, but only one is given as claimant in the application, the claim will be accepted for registration without correspondence.

1007.09 Separated name. See section 1011 of this chapter.

1008 Omission of copyright notice. Where the notice is omitted from more than a relatively small number of copies or phonorecords distributed by authority of the copyright owner, and registration is being made within five years of the date of publication without notice, the Copyright Office may warn that the law requires, in addition to registration, that a reasonable effort must be made to add the notice to all copies or phonorecords that are distributed to the public in the United States after the omission has been discovered. See 17 U.S.C. 405(a).

1008.01 Registration. Registration is not possible for works published without notice or with a fatally deficient notice by authority of the copyright owner, if more than five years have elapsed since such publication. There are, however two exceptions to this general rule: 1) where the notice has been omitted from no more than a relatively small number of copies or phonorecords distributed to the public; or 2) where the notice has been omitted 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 contain the prescribed copyright notice. In these two instances, there is no need for registration to correct the omission. Registration in these cases may be made at any time during the subsistence of the copyright. See 17 U.S.C. 405(a).

1009 Error in name. Where the person named in the copyright notice on copies or phonorecords publicly distributed by authority of the copyright owner is not the owner of copyright, the validity and ownership of the copyright are not affected. See 17 U.S.C. 406(a). In such cases, therefore, registration can be made for the work at any time during the subsistence of the copyright, naming as claimant the owner of copyright at the time of registration. See 37 C.F.R. 202.03(a)(ii), and section 1007.01 of this chapter.

1010 Error in date. Where the year date is required, the notice of copyright should contain the year of first publication of the work. See 17 U.S.C. 401(b)(2) and 402(b)(2). The notice provisions of these sections apply to all copies or phonorecords publicly distributed on or after January 1, 1978. See section 108 of the Transitional and Supplementary Provisions of the current Act. For works which were registered as unpublished before January 1, 1978, and first published after that date, the copyright notice should contain the year date in which copyright was secured by registration in unpublished form. See also Chapter 900: PUBLICATION.

1010.01 Earlier date. Generally, the use in the notice of a year date that is earlier than the year in which publication first occurred does not affect the validity of the copyright. See 17 U.S.C. 406(b). However, the use of an earlier date does affect the duration of copyright for anonymous works, pseudonymous works, and works made for hire, whose copyright term is computed under 17 U.S.C. 302(c). In such cases, the term is computed from the year date appearing in the notice rather than from the actual year of first publication. See section 1006.03 of this chapter for the Copyright Office practice regarding an earlier year date in the notice.

1010.02 Later date. The use in the notice of a year date that is later than the year in which publication first occurred does not result in the immediate loss of copyright. See 17 U.S.C. 406(b). However, where the year date is more than one year later than the year in which publication first occurred, the work is considered to have been published without any notice. See 17 U.S.C. 405; see also section 1006.04 of this chapter for the Copyright Office practice regarding a later year date in the notice.

1011 Omission of name or date. When copies or phonorecords publicly distributed by authority of the copyright owner contain no name or no date (when required) that could reasonably be considered a part of the notice, the work is considered to have been published without any notice of copyright and is governed by 17 U.S.C. 405. See sections 1004.01 and 1008 of this chapter.

1011.01 Separated name. When copies or phonorecords contain a name, abbreviation by which the name can be recognized, or a generally known alternative designation of the copyright owner, that is separated from the other elements of the notice, but that could reasonably be considered part of the notice, the notice is acceptable. Where 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 is sufficient if any of the names, abbreviations, or alternative designations is capable of identifying any person or entity as an owner of copyright. If none of the names, abbreviations, or alternative designations is identifiable with the rest of the notice, the same action is taken as where there is an omission of the copyright notice. 17 U.S.C. 406(c). See section 1008 of this chapter.

1011.02 Separated date. See section 1006.05 of this chapter.

1011.03 Identity by reference. A notice that identifies the copyright owner by reference, such as, for example, "Copyright by author," or "Copyright by the publisher," is considered acceptable by the Copyright Office, if the copies or phonorecords contain a name, abbreviation, or a generally known designation which is identified by the reference as the author, publisher, or other referenced person or legal entity. If no such name, abbreviation, or generally known designation can be identified on the copies or phonorecords, the same action is taken as where there is an omission of the copyright notice. 17 U.S.C. 406(c) and 405. See section 1008 of this chapter.

1012 Publication incorporating United States Government works. Whenever a work is published in copies or phonorecords consisting preponderantly of one or more works of the United States Government, the notice of copyright shall also include a statement identifying, either affirmatively or negatively, those portions of the copies or phonorecords embodying any work or works protected under title 17, United States Code. See 17 U.S.C. 403. The absence of the required statement is treated as an omission of notice. See 17 U.S.C. 405 and section 1008 of this chapter.

1013 Affixation and position of the copyright notice. The law states that the notice shall be affixed on publicly distributed copies and phonorecords in such manner and location as to give reasonable notice of the claim to copyright. 17 U.S.C. 401(c) and 402(c). The law directs the Register of Copyrights to prescribe by regulation, as examples, specific methods of affixation and positions of the notice on various types of works that will satisfy this requirement as to copies. These specifications are not to be considered exhaustive. 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.

1013.01 Copies. Where, in a particular case, a notice appears in a place on the work other than one of the precise locations prescribed by regulation for copies, but the Copyright Office considers that a person looking in one of those precise locations would be reasonably certain to find the notice, that notice will be acceptable.

1013.02 Phonorecords. For phonorecords of sound recordings, the law states that the notice must be placed on the surface of the phonorecord, or on the phonorecord label or container, in such manner and location as to give reasonable notice of the claim to copyright. See 17 U.S.C. 402(c).

1013 Affixation and position of the copyright notice. (cont'd)

1013.03 Notice not properly affixed. A notice not affixed to copies or phonorecords in such manner and location as to give reasonable notice of the claim to copyright is treated as an omission of notice. 17 U.S.C. 405. See section 1008 of this chapter.

1013.04 Works published in book form. In the case of works published in book form, a notice reproduced on the copies in any of the following positions is acceptable.

1) The title page, if any;

2) The page immediately following the title page, if any;

3) Either side of the front cover, if any; or, if there is no front cover, either side of the front leaf of the copies;

4) Either side of the back cover, if any; or, if there is no back cover, either side of the back leaf of the copies;

5) The first page of the main body of the work;

6) The last page of the main body of the work;

7) 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;

8) Any page between the last page of the main body of the work and back page, if: (i) there are no more than ten pages between the last page of the main body of the work

1013 Affixation and position of the copyright notice (cont'd)

1013.04 Works published in book form. (cont'd)

8) (cont'd)

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.

As used in connection with the position of the notice, the term "leaf" means a sheet of paper or the like, which 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.

1013.05 Periodicals or other serials. In the case of a work published as an issue of a periodical or other serial, in addition to any of the locations acceptable for works published in book form (see section 1013.04 of this chapter), a notice is acceptable if it is located 1) as part of, or adjacent to, the masthead, or on the page containing the masthead; or 2) 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.

1013.06 Musical works. In the case of a musical work published in visually perceptible copies, in addition to any of the locations acceptable for works published in book form or as a periodical or other serial (see sections 1013.04 and 1013.05 of this chapter), a notice is acceptable if it is located on the first page of music.

1013.07 Single-leaf works. In the case of single-leaf works, a notice reproduced on the copies anywhere on the front or back of the leaf is acceptable.

1013 Affixation and position of the copyright notice. (cont'd)

1013.08 Contributions to collective works. For a separate contribution to a collective work to be considered to "bear its own notice of copyright," as provided by 17 U.S.C. 404, a notice reproduced on the copies in any of the following positions is acceptable:

1) Where the separate 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;

2) Where the separate 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, if: i) the contribution is reproduced on no more than 20 pages of the collective work; ii) the notice is reproduced prominently and is set apart from other matter on the page where it appears; and iii) through format, wording, or both, the application of the notice to the particular contribution is made clear.

1013.08(a) Musical work. Where the separate contribution is a musical work, in addition to any of the locations listed above in paragraphs 1 and 2, a notice is acceptable if it is located on the first page of music of the contribution.

1013 Affixation and position of the copyright notice. (cont'd)

1013.08 Contributions to collective works. (cont'd)

1013.08(b) Alternative position. As an alternative to placing the notice on one of the pages where a separate contribution itself appears, the contribution is considered to "bear its own notice" if the notice appears clearly in juxtaposition with a separate listing of the contribution by full title and author, and is located either: i) on the page bearing the copyright notice for the collective work as a whole, if any; or ii) in a clearly identified and readily accessible table of contents or listing of acknowledgments appearing near the front or back of the collective work as a whole.

1013.09 Works reproduced in machine-readable copies. For works reproduced in machine-readable copies, such as magnetic tapes or disks, punched cards, or the like, from which the work cannot ordinarily be visually perceived except with the aid of a machine or device, each of the following constitute examples of acceptable methods of affixation and position of the notice:

1) A notice embodied in the copies in machine-readable form in such manner that on visually perceptible printouts it appears either with or near the title, or at the end of the work;

2) A notice that is displayed at the user's terminal at sign-on;

3) A notice that is continuously on terminal display; or

4) A legible notice 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.

1013 Affixation and position of the copyright notice. (cont'd)

1013.09 Works reproduced in machine-readable copies. (cont'd)

Works published in a form requiring the use of a machine or device for purposes of optical enlargement, such as film, filmstrips, slide films, and works published in any variety of microform, and works published in any visually perceptible form but used in connection with optical scanning devices, are not within this category. See also section 1017 below.

1013.10 Motion pictures and other audiovisual works. The following constitute examples of acceptable methods of affixation and positions of the copyright notice on motion pictures and other audiovisual works:

1) 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: (i) with or near the title; (ii) with the cast, credits, and similar information; (iii) at or immediately following the beginning of the work; or (iv) at or immediately preceding the end of the work.

2) In the case of an untitled motion picture or other audiovisual work whose duration is sixty seconds or less, in addition to any of the locations listed in paragraph (1) above, a notice that 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 is acceptable if it is located on the leader of the film or tape immediately preceding the beginning of the work.

1013 Affixation and position of the copyright notice. (cont'd)

1013.10 Motion pictures and other audiovisual works. (cont'd)

3) 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 addition to the locations specified in paragraph (1) above, on the housing or container, if it is a permanent receptacle for the work.

See 37 C.F.R. 201.20(h).

1013.11 Pictorial, graphic, and sculptural works. The following constitute examples of acceptable methods of affixation and positions of the copyright notice on various forms of pictorial, graphic, and sculptural works:

1) Where a work is reproduced in two-dimensional copies, a notice 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, is acceptable.

2) Where a work is reproduced in three-dimensional copies, a notice 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, is acceptable.

1013 Affixation and position of the copyright notice. (cont'd)

1013.11 Pictorial, graphic, and sculptural works. (cont'd)

3) Where, because of the size or physical characteristics of the material in which the work is reproduced in copies, it is impossible or extremely impractical to affix a notice to the copies directly or by means of a durable label, a notice is acceptable if it appears on a tag that is of durable material, so as to withstand normal use, and that 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.

4) 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: (i) to the reproduction itself; (ii) to the margin, selvage, or reverse side of the material at frequent and regular intervals; or (iii) 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.

See 37 C.F.R. 201.20(i)(1-4).

1013.12 Separable parts published in permanent container. If the work is permanently housed in a container such as a game or puzzle box, a notice reproduced on the permanent container is acceptable.

37 C.F.R. 201.20(i)(5).

1013 Affixation and position of the copyright notice. (cont'd)

1013.13 Dust jackets on books. A notice of copyright on the dust jacket of a book is not acceptable as notice for the book, since the dust jacket is not permanently attached to the book. Also, a notice of copyright appearing in a book, even though referring to a dust jacket or material appearing on a dust jacket, is not acceptable as notice for the dust jacket or any material appearing on that dust jacket. These cases will be treated as omissions of notice. See 17 U.S.C. 405, and section 1008 of this chapter.

1013.14 Sound recordings. In general, in the case of sound recordings the notice should be placed on the surface of the phonorecord, or on the phonorecord label or container. 17 U.S.C. 402(c). As a rule, a notice anywhere on the surface of the phonorecord, the label, or a container will be acceptable. A container includes the jacket housing a disk or the box housing a reel-to-reel tape, a cartridge, or a cassette, but does not include an outer mailing or packaging box, envelope, or other wrapper intended for disposal once the phonorecord is put into use.

1013.15 Multi-part works. One notice per unit of publication is adequate for both copies or phonorecords, provided that a proper notice is used and that it is affixed in a manner and location that gives reasonable notice of the claim to copyright in the entire unit of publication. For example: for a phonorecord a notice on the first disk of a 12-disk collection is acceptable, but a notice only on the middle disk of a 12-disk collection is not acceptable; for music a notice properly positioned on the score of a unit consisting of a score and parts is acceptable for the entire unit, but a notice only on one or more of the parts is not acceptable for the unit; for a multimedia kit, a notice on the permanent container or box in which it is housed is acceptable.

1014 Handwritten, typewritten, or rubber-stamped copyright notice on published copies or phonorecords. Where such notice appears on deposited copies or phonorecords, the Copyright Office will not question the notice, if registration is sought within five years of first publication. However, where registration of a claim to copyright is sought more than five years after the date of first publication, the Copyright Office will correspond to determine whether such notice appeared on the copies or phonorecords as published earlier.

1015 Legibility of copyright notice. A blurred notice will be acceptable if it is legible. But a notice so badly blurred as to be illegible will be treated as an omission of notice. See 17 U.S.C. 405 and section 1008 of this chapter.

1016 Microscopic copyright notice. In general, a notice so small that it cannot be read without a magnifying glass is considered unacceptable, and the claim will be treated as if publication of the work had occurred without notice. See 17 U.S.C. 405 and section 1008 of this chapter. Where, however, the work itself requires magnification for its ordinary use, e.g., a microfilm, microcard, or motion picture film, a notice that is readable when so magnified is acceptable.

1017 Concealed copyright notice. A notice which is permanently covered up so that it cannot be seen without tearing the work apart is considered unacceptable, and the claim will be treated as if publication of the work had occurred without notice. See 17 U.S.C. 405 and section 1008 of this chapter.

Examples:

1) A notice which the Copyright Office is told is on the margin or back of a painting but which is concealed under a permanent frame or mat.

2) A notice which the Copyright Office is told is on the bottom of a figurine cemented on a base that conceals the notice.

1017 Concealed copyright notice. (cont'd)

Examples: (cont'd)

3) A notice on a print used for a calendar, with the calendar pad securely pasted down over the notice.

NOTE: The acceptability of a notice depends upon its being permanently legible to an ordinary user of the work under normal conditions of use, and affixed to the copies in such manner and position that, when affixed, it is not concealed from view upon reasonable examination.

1017.01 Notice visible upon ordinary use. A notice which, though not visible on casual inspection of the work, becomes visible upon ordinary use of the work is acceptable.

Examples:

1) A revolving set of disks on which the notice (as well as some or all of the copyright matter) is concealed when the disks are in starting position, but is revealed upon their manipulation as directed.

2) A print used for a calendar, with a calendar pad suspended over the notice which is seen when the pad is lifted.

1018 Copyright notice: reverses. Where the deposited work, such as a mold or decal, is the reverse of the product that is intended to result from its use, the notice is acceptable even though printed in reverse.

1019 Notice of renewal copyright. The copyright law does not provide for a special or additional copyright notice for published works that are in their renewal term. Thus, the continued use of the original form of notice on the publicly distributed copies of published works in their renewal term is considered sufficient to maintain the validity of

1019 Notice of renewal copyright. (cont'd)

the copyright in such works. However, a notice which also refers to the fact of renewal may be used. Such a notice might read as follows:

Copyright 1953 by John Doe
Copyright renewed by Mrs. Mary Doe

1020 Notices extraneous to the claim being registered. The Copyright Office will generally disregard and refrain from commenting upon copyright notices having no relationship to the claim for which registration is being made.

[END OF CHAPTER 1000]

Chapter 1100

ELIGIBILITY

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Chapter 1100

ELIGIBILITY

1101 Applicability of this chapter. This chapter concerns the registrability of works under the provisions of the copyright law relating to national origin. This chapter is applicable to unpublished works, whenever created, and to works published on or after January 1, 1978. Compendium I should be consulted for an explanation of practices concerning eligibility for works, other than sound recordings, published before January 1, 1978.

1101.01 Sound recordings. In general, this chapter applies to sound recordings as well as to other works. However, sound recordings whose eligibility for U.S. copyright protection depends solely upon the provisions of the Universal Copyright Convention (UCC) are not registrable. Regarding the UCC, see sections 1102.09 and 1104.03 below.

1102 Definitions. The following are definitions of terms used in this chapter.

1102.01 Author. The "author" is the person who prepared the material covered by the copyright claim except that in the case of a work made for hire, the employer or other person for whom the work was prepared, is considered to be the author. Thus, where a work is 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 may serve as a basis for determining eligibility for registration.

1102.02 Domicile. "Domicile" is the place where a person has a fixed and permanent residence with an intention to continue that residence for an unlimited time and to which such person, whenever absent, has the intention of returning. Mere residence is not the equivalent of "domicile," and therefore cannot serve as a basis for determining eligibility.

1102 Definitions. (cont'd)

1102.03 First publication. The date of "first publication" is the earliest date on which, by authority of the copyright owner, (a) copies or phonorecords of a work are distributed to the public by sale or other transfer of ownership, or by rental, lease, or lending, or (b) an offer is made to distribute copies or phonorecords to a group of persons for further distribution, public performance, or public display. If a work is first published on the same date in more than one country, ordinarily the application for registration may give the name of any such country as the nation of first publication of the work. However, if one of the countries is the United States, the application should give "United States" as the nation of first publication. The Copyright Office will generally not question a statement in an application giving, as the nation of first publication, a country which is one of those where first publication provides a basis for eligibility, even though the Office is informed that the work was also first published on the same date in one or more other countries where first publication would not offer a basis for eligibility.

1102.04 National. In general, the term "national" means (a) a citizen of a nation, or (b) a person who, although not a citizen, nevertheless owes permanent allegiance to a nation. Citizens of the United States are those persons who are citizens in accordance with the U.S. Constitution or Federal statutes, including persons born in Guam, the U.S. Virgin Islands, and Puerto Rico; certain persons are by Federal statute nationals but not citizens of the United States, including persons born in the outlying possessions of the United States; in addition, all U.S. citizens are also nationals of the United States. See 8 U.S.C. 1101.

1102 Definitions. (cont'd)

1102.05 Producer of phonograms. The "producer of a phonogram" is the person who, or the legal entity which, first fixes the sounds of a performance or other sounds. Article 1(b), Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 25 U.S.T. 309, 325, T.I.A.S. No. 7808 (Done at Geneva Oct. 29, 1971; entered into force in the United States Mar. 10, 1974).

1102.06 Sovereign authority of a foreign nation. A "sovereign authority of a foreign nation" is a governmental agency or subdivision of a foreign nation, e.g., a ministry of the government of Norway, or a province of Canada.

1102.07 Stateless. 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 any nation.

1102.08 United States. The "United States," when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government. 17 U.S.C. 101.

1102.08(a) Organized territories. The "organized territories under the jurisdiction of the United States Government" are those for which the Congress has provided organic acts which serve the same purpose as do the constitutions of the States. The organized territories include Guam and the U.S. Virgin Islands.

1102 Definitions. (cont'd)

1102.08 United States. (cont'd)

1102.08(b) Other territorial areas. Other territorial areas under the jurisdiction of the U.S. Government include: (a) the unorganized territories such as American Samoa, (b) trust territories such as the Trust Territory of the Pacific Islands, and (c) other possessions such as numerous small islands. Since the status of a number of the territorial areas which at present are not among the organized territories is in the process of being changed (such as the status of the Northern Mariana Islands), consultation with other U.S. Government agencies or further study by the Copyright Office may be necessary when registration of a work depends upon the status of such an area.

1102.09 Universal Copyright Convention. The Universal Copyright Convention (UCC) is a multilateral treaty on copyright to which the United States and a considerable number of other nations have adhered. The original version of the Convention, done at Geneva, entered into force September 16, 1955. The revised version, done at Paris, entered into force July 10, 1974. Since the United States is a party to both versions, adherence by a foreign nation to either version may serve as the basis of eligibility for protection under the provisions of the U.S. copyright law relating to national origin. See also section 1104.03 below. Concerning sound recordings, see section 1101.01 above.

1103 Statutory provisions. The following are the statutory provisions which establish eligibility. If a work is eligible under any of these provisions, the fact that it fails to meet any or all of the others will not prevent registration.

1103 Statutory provisions. (cont'd)

1103.01 Unpublished works. The work of any author, while unpublished, is eligible for registration as an unpublished work without regard to such author's nationality or domicile. See 17 U.S.C. 104(a).

1103.02 Published works. The work of any author published on or after January 1, 1978, is eligible for registration as a published work only if it meets at least one of the following conditions.

1103.02(a) U.S. national or domiciliary. On the date of first publication, one or more of the authors is a national or domiciliary of the United States. 17 U.S.C. 104(b)(1).

1103.02(b) Foreign national or domiciliary. On the date of first publication, one or more authors is a national, domiciliary, or sovereign authority of a foreign nation which is a party to a copyright treaty to which the United States is also a party. 17 U.S.C. 104(b)(1). See section 1104 below.

1103.02(c) Stateless person. On the date of first publication, one or more of the authors is a stateless person, wherever that person may be domiciled. 17 U.S.C. 104(b)(1).

1103.02(d) First publication in the United States. The work is first published in the United States. 17 U.S.C. 101 and 104(b)(2).

1103.02(e) First publication in a UCC country. The work is first published in a foreign nation that, on the date of first publication, is a party to either the Geneva or Paris text of the Universal Copyright Convention (UCC). 17 U.S.C. 104(2). See section 1104.03 below.

1103 Statutory provisions. (cont'd)

1103.02 Published works. (cont'd)

1103.02(f) United Nations or the Organization of American States. The work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States. 17 U.S.C. 104(b)(3). NOTE: There is no requirement, as a basis for eligibility, that one of these organizations be the author, copyright claimant, or copyright owner, but only that the work be first published by one such organization.

1103.02(g) Presidential proclamation. The work comes within the scope of a Presidential proclamation. 17 U.S.C. 104(b)(4). See section 1105 below.

1103.03 Copyright law extended to certain territories. The U.S. copyright law has been extended by specific statutory enactments to Guam, 48 U.S.C. 1421n; the U.S. Virgin Islands, 48 U.S.C. 1405q; and the Northern Mariana Islands, 48 U.S.C. 1681, together with the Act of Mar. 24, 1976, Pub. L. 94-241, 90 Stat. 263, and Presidential Proclamation No. 4534, 42 Fed. Reg. 56593 (1977).

1104 Multilateral copyright treaties to which the United States is a party. The following are multilateral copyright treaties to which the United States is a party.

1104.01 Mexico City Convention of 1902. This treaty was superseded by the Buenos Aires Convention of 1910 with regard to all members except El Salvador. The copyright law extends eligibility to works by nationals or domiciliaries of El Salvador through this treaty. NOTE: In addition to being a party to the Mexico City Convention, effective June 30, 1908, El Salvador

1104 Multilaterial copyright treaties to which the United States is a party. (cont'd)

1104.01 Mexico City Convention of 1902. (cont'd)

also became a party to both the Geneva and the Paris texts of the Universal Copyright Convention, effective March 29, 1979, and to the Phonogram Convention, effective February 9, 1979. See sections 1104.03 and 1104.04 of this chapter.

1104.02 Buenos Aires Convention of 1910. The copyright law extends eligibility to works by nationals or domiciliaries of nations which are parties to this treaty. Such works must satisfy all of the legal and formal requirements of title 17, U.S.C.

1104.03 Universal Copyright Convention. The copyright law extends eligibility to works by nationals or domiciliaries of nations that are parties to this Convention, and to works first published in such nations. Member nations may be parties to the Geneva text only, or to both the Geneva and Paris texts. See section 1102.09 above. Concerning sound recording, see section 1101.01 above.

1104.04 Phonogram Convention. The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms provides, in Article 2 thereof, that each "Contracting State shall protect producers of phonograms who are nationals of other Contracting States . . . ." 25 U.S.T. 309, 325; T.I.A.S. No. 7808. Where the producer who is an author of a sound recording is a national of a nation that is a member of this Convention, the copyright law extends eligibility to that work. See also section 1102.05 above.

1105 Presidential proclamations. Presidential proclamations are governed by the following provisions:

1105.01 Proclamations issued under the current Act. The President of the United States may by proclamation extend U.S. 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 a foreign nation as to which such proclamation has been issued, or to works which were first published in such a nation. See 17 U.S.C. 104(b)(4); see also section 104, Transitional and Supplementary Provisions of the current Act.

1105.02 Continuance of earlier proclamations. The current law provides that all proclamations issued by the President under section 1(e) or 9(b) of title 17 as it existed on December 31, 1977, or under previous copyright statutes of the United States, shall continue in force until terminated, suspended, or revised by the President. See section 104, Transitional and Supplementary Provisions of the current Act.

1105.03 Coverage of earlier proclamation. Presidential proclamations issued before January 1, 1978, extend eligibility only to the works of authors who were a "citizen or subject" of a proclaimed nation. Such proclamations confer no eligibility on the basis of domicile or publication in a proclaimed nation. See 17 U.S.C. 1(e) and 9(b), as it existed on December 31, 1977; see also section 13 of the Act of March 3, 1891, 26 Stat. 1106.

1106 Existence of copyright relations unclear. In some instances the status of copyright relations between the United States and a particular nation is unclear. Registration will be refused in any case where eligibility depends upon the existence of copyright relations with that nation. See also section 1109 below.

1107 Copyright Office policy. In general, the nationality, domicile, or nation of first publication given by the applicant will be accepted at face value unless it is clearly inconsistent with facts stated by the applicant or with information of which the Copyright Office has knowledge. The Copyright Office generally does not attempt to settle questions of nationality or domicile.

Examples:

1) An application stating that the author is a U.S. national will be questioned where the accompanying letter indicates that he or she has applied for citizenship, but has not yet been naturalized.

2) An application stating that a currently prominent European statesman is domiciled in the United States will be questioned.

1108 Authors: particular situations. For published works, the nationality or domicile of the author may determine eligibility for registration. Special situations include the following:

1108.01 More than one author. The "author" whose nationality or domicile is determinative in a particular case may be the author who prepared only a portion of the material covered by the copyright claim, and this may suffice to extend eligibility to all the material covered by the claim regardless of the nationality or domicile of the other authors.

1108.02 More than one nationality. If the author of the work covered by the copyright claim has more than one nationality and if any such nationality confers eligibility, registration can be made.

1108.03 Work 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 may serve as a basis for determining eligibility for registration. See section 1102.01 above.

1108 Authors: particular situations. (cont'd)

1108.04 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 such an organization, for copyright registration purposes, is usually considered to be that of the nation under the laws of which it was created. Thus, the nationality and domicile of a corporation should generally 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 which have the power to create corporations.

1108.04(a) 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, so that the nationality or domicile of such organization may be different from that of such members or shareholders.

1108.04(b) Doing business. A corporation may do business in a particular nation without being a national or domiciliary of that nation.

1108.05 Compilations and derivative works. The nationality or domicile of the author of the compilation or derivative work rather than the nationality or domicile of the author(s) of the preexisting material used in the work determines eligibility for registration.

1108 Authors: particular situations. (cont'd)

1108.06 Stateless. A work of a stateless author is eligible regardless of the author's former or prospective nationality or domicile, and regardless of the place of first publication of the work. See section 1102.07 above.

1108.07 United States. A work of a U.S. national is eligible regardless of his or her domicile or the place of first publication. Where an author of a work is domiciled in the United States or the work is first published in the United States, it is eligible for registration regardless of the author's nationality. See sections 1102.03, 1102.04, and 1102.08 above.

1108.08 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. See section 1102.08 above. However, works by domiciliaries of, or first published in, these areas may be eligible on the basis of the nationality of the author; and since U.S. nationals include persons born in the outlying possessions of the United States, eligibility in such cases may be conferred on this basis. See section 1102.04 above.

1108.09 Anonymous and pseudonymous works. Where eligibility depends on the nationality or domicile of the author, that information must still be given on the application for registration even though the work is anonymous or pseudonymous. However, the identity of the author does not have to be stated in such cases.

1108 Authors: particular situations. (cont'd)

1108.10 First publication after death of author. Where a work is first published after the author's death, the Copyright Office will make registration if, at the time of death, the author's nationality or domicile would have conferred eligibility. In no case where a work is first published after the authors death can the nationality or domicile of the copyright claimant serve as the basis for eligibility.

1109 Time when eligibility is determined. Where eligibility must be based on the nationality or domicile of the author, it is the author's nationality or domicile and the status of the author's country on the date of first publication that are determinative. See section 1108.08, above, for an exception in the case of works first published after the death of the author.

1109.01 Registered as unpublished: ineligible when published. 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.

Example:

> The author is a national and domiciliary of Iraq, a nation with which the United States has no copyright relations. The work is registered in unpublished form. If that work is later published in a non-UCC country, and the author's citizenship and domicile remain unchanged, registration of the claim in the published version should be refused.

1109.02 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 are not determinative for this purpose.

1109 Time when eligibility is determined. (cont'd)

1109.03 Works distributed only in the form of phonorecords before 1978. Where musical, dramatic or literary works were publicly distributed before January 1, 1978, only in the form of phonorecords, registration cannot be made for these works as published works. However, if distribution of the phonorecords continued on January 1, 1978, registration for the underlying works can be made under the current law as published works. In such cases the date of first publication is considered to be January 1, 1978, and it is the nationality or domicile of the author on that date which determines eligibility. Eligibility may also be conferred by the nation of publication on that date.

1110 Acceptable statements of nationality, domicile, and nation of first publication. Generally, the application for registration should designate the name of the nation of which the author is a national, domiciliary, and in the case of a published work the name of the nation of first publication of the work. An application listing a territory or other political subdivision, rather than the name of the nation itself, is generally not acceptable as a basis for determining registrability. However, where it is obvious, from the statement given, what the name of the nation is, the application will be accepted without correspondence.

Examples of acceptable statements:

England	Swiss
Great Britain	French
Wales	

Examples of unacceptable statements:

British Protected Person
Commonwealth Citizen

1111 Some general examples illustrating basic principles. The following general examples reflect some of the principles of eligibility.

1) A magazine article by an author who is a national and domiciliary of a nation with which the United States does not have copyright relations either bilaterally or through an international convention, first published in the United States or in a foreign nation which is on that date a party to the Universal Copyright Convention, is eligible for registration by virtue of the place of first publication. See sections 1102.09, 1103.02(d), and 1109 above.

2) A book by an author who, on the date of first publication, is a national of a nation with which the United States has copyright relations, but is domiciled in a nation that has no copyright relations with the United States is eligible for registration by virtue of the author's nationality, even if the book is first published in a nation that does not have copyright relations with the United States. See sections 1102.04, 1103.02, and 1104.

3) A musical composition by an author who is a national of a nation with which the United States has no copyright relations, but is domiciled in a foreign nation which, on the date of first publication, has copyright relations with the United States by virtue of the Universal Copyright Convention or the Buenos Aires Convention of 1910, is eligible for registration no matter where the work is first published. See sections 1103.02(b) and 1104.03.

4) A musical composition is jointly authored by a lyricist who is a national and domiciliary of a nation with which the United States has no copyright relations and a composer who is domiciled in a nation

1111 Some general examples illustrating basic principles. (cont'd)

4) (cont'd)

that, on the date of first publication, is a member of the Universal Copyright Convention or the Buenos Aires Convention of 1910. By virtue of the domicile of the composer, the work is eligible for a registration extending to all the material covered by the claim, regardless of place of first publication. See sections 1103.02(b), 1104.03, and 1108.01.

[END OF CHAPTER 1100]

Chapter 1200

MANUFACTURING PROVISIONS

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Chapter 1200

MANUFACTURING PROVISIONS

1201 Background information. The provisions of this chapter deal with the requirement, as a condition of full copyright protection, that certain works be manufactured in the United States or Canada.

1201.01 Works published before January 1, 1978. In the case of works published before January 1, 1978, and subject to the manufacturing clause of title 17, U.S.C., as it existed on December 31, 1977, compliance with that provision constitutes a condition of copyright in the United States. Works first published before January 1, 1978, in violation of such requirements are in the public domain in the United States and cannot be registered under the current Act. However, any work in which ad interim copyright under that law subsisted, or was capable of being secured, on December 31, 1977, is accorded copyright protection for the term or terms provided by section 304 of the current Act, and registration may be made under section 408 of that Act. Where applicable, and upon request, an Import Statement will be issued for such works, permitting importation of up to 2,000 copies. See section 107 of the Transitional and Supplementary Provisions of the current Act. For fuller explanation of the practices governing ad interim copyright as well as the general practices under the manufacturing clause of the Act of 1909, as amended, see Compendium I.

1201.02 Works published after December 31, 1977. In the case of works first published after December 31, 1977, the manufacturing requirements of section 601 of the current Act are applicable. Failure to comply with the manufacturing requirements may affect enjoyment of the exclusive rights of reproduction and distribution of copies, but such failure has no effect on any other exclusive rights.

1201 Background information. (cont'd)

1201.03 Extension of ad interim copyright to full term. The Act of 1909, as amended, provided for the extension of ad interim copyrights to full term if both of the following two conditions were met:

1) a U.S. edition was produced in compliance with the manufacturing requirements and published with the required statutory copyright notice in the United States within a five-year period computed from the date of first publication abroad, and

2) the claim in the U.S. edition was registered in the Copyright Office.

If registration of the U.S. edition was sought after expiration of the five-year period, the Copyright Office would register the claim under the rule of doubt, if that U.S. edition had been manufactured and published within the five-year ad interim term. See Compendium I, Chapter 8, topic 8.4.6.II.b.

1201.04 Registration of U.S. edition optional in certain cases. For works manufactured and first published outside the United States after December 31, 1972, where ad interim registration was made and a U.S. edition, substantially identical with that first published abroad, was manufactured and published with notice within the five-year term, a new registration is not required to extend the copyright to the full term. See section 107 of the Transitional and Supplementary Provisions of the current Act. If, however, the applicant desires to place on record the facts concerning the U.S. manufactured edition, the Copyright Office will not refuse regitration.

1201.05 Manufacture of U.S. edition not required in certain cases. Manufacture of a U.S. edition is not required for works in which ad interim copyright was subsisting or was capable of

1201 Background information. (cont'd)

1201.05 Manufacture of U.S. edition not required in certain cases. (cont'd)

being secured on December 31, 1977. See section 107, Transitional and Supplementary Provisions of the current Act. However, where a U.S. edition, substantially identical with that first published outside of the United States, was manufactured and published within the five-year term, the Copyright Office will not refuse registration.

1201.06 Ad interim registration made but no U.S. edition. With respect to works manufactured and first published abroad before December 31, 1972, for which ad interim registration was made but no U.S. edition was manufactured and published within the five-year ad interim term, no new registration is possible.

1201.07 No ad interim registration made. Any English-language book or periodical published before July 1, 1977, which was subject to the manufacturing requirements of the Act of 1909, as amended, for which ad interim registration was not made, cannot now be registered.

1202 Basic requirements under current Act. Copies of certain works consisting preponderantly of non-dramatic literary material in the English language must be manufactured in the United States or Canada in order to satisfy the manufacturing requirements of the current Act. See 17 U.S.C. 601.

1202.01 Two-thousand copy limit. If such a work has been manufactured outside the United States or Canada, importation into the United States is limited to no more than 2,000 such copies upon issuance of an Import Statement by the Copyright Office.

1203 Works covered by the manufacturing requirements. The manufacturing requirements apply to copies of certain nondramatic literary works in the English language. Literary works are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia. See 17 U.S.C. 101. A nondramatic literary work is any literary work other than a drama. A drama is a work that tells a story by means of dialog or action and represents or gives directions for representing all or a substantial portion of a story as actually occurring rather than merely being narrated or described. See also section 431 of Chapter 400: WORKS OF THE PERFORMING ARTS AND SOUND RECORDINGS.

1204 Works not covered by the manufacturing requirements. Dramatic, musical, pictorial, and graphic works, as well as works in languages other than English and works in the public domain in the United States, are among the works not included within the manufacturing requirements. Such works may thus be imported in unlimited quantities.

Examples:

1) The acting version of a play, although in book form, is a dramatic work, and not subject to the manufacturing requirements.

2) A painting reproduced by lithographic, mezzotint, or other process, is not a nondramatic literary work, and is thus not subject to the manufacturing requirements of the current Act.

1205 Meaning of the word "preponderantly." The manufacturing requirements apply only to works which consist "preponderantly" of nondramatic literary materials in the English language. According to H.R. Report No. 94-1476, 94th Cong., 2d Sess. 167, a work consists "preponderantly" of nondramatic literary material, if such material exceeds the exempted material

1205 Meaning of the word "preponderantly." (cont'd)

in "importance." If a work consists preponderantly of exempted material, e.g., pictures, photographs, plays, or music, the manufacturing requirements do not apply and copies may be imported in unlimited quantities. However, in Stonehill Communications, Inc. v. Martuge, 512 F. Supp. 349 (S.D.N.Y. 1981), the Court found the "importance" test and the instructions in the legislative history vague and difficult to apply. "In the absence of congressional or duly authorized guidelines," stated the Court, "the answer is an objective test -- in this instance, a 'mechanical' one." The Court held that in the absence of any other standards, "a book 'consists of pre-ponderantly nondram[a]tic literary material . . . in the English language' when more than half of its surface area, exclusive of margins, consists of English-language text."

1205.01 Literary material of secondary importance. Where the literary material in a work consists merely of a foreword or preface, and captions, headings, or brief descriptions or explanations of pictorial, graphic, or other nonliterary material, the manufacturing requirements do not apply, and the Copyright Office will not issue an Import Statement.

1205.02 Literary material predominant. Where the pictorial, graphic, or other nonliterary material clearly forms less than one-half of a work in which nondramatic literary material predominates, the manufacturing requirements apply to the textual portion of the work, and an Import Statement will be issued on request.

1205.03 Pictorial and literary material approximately equal. If the pictorial material and nondramatic literary material are approximately equal in importance or quantity, it is unclear whether the import restrictions apply, and an Import Statement will be issued on request.

1206 Meaning of the word "substantial." If, on the date importation is sought or public distribution in the United States is made, the author of any substantial part of such material is neither a national nor a domiciliary of the United States, the manufacturing requirements do not apply. 17 U.S.C. 601(b)(1). In this context, "substantial" has a meaning that suggests real worth and importance and would connote less than "preponderently" (as used in section 601(a) of the current Act) but more than incidental or minimal.

Examples:

1) A two-page preface to a 100-page work presumably would not be considered to be a "substantial" portion of the work.

2) A 25-page portion of a 90-page article would be considered "substantial."

1207 Copies. The manufacturing requirements of the law extend only to copies of a work. "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. 17 U.S.C. 101. Thus, phonorecords are outside the scope of the manufacturing requirements of the Act.

1208 Manufacture in the United States. The United States, when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government. 17 U.S.C. 101. The organized territories include Guam and the U.S. Virgin Islands. Manufacture in a territorial area under the jurisdiction of the United States which is not considered an "organized territory" is not regarded as manufacture in the United States. See section 1102.08 of Chapter 1100: ELIGIBILITY.

1209 Situations where the manufacturing requirements are not applicable. The manufacturing requirements are not applicable in the following situations:

1209.01 Author not U.S. national or domiciliary. If, on the date when importation is sought or public distribution in the United States is made, the author of any substantial part of the nondramatic literary material in the English language is neither a national nor a domiciliary of the United States, the manufacturing provisions do not apply. Where a work was previously registered naming as author a person who was at that time neither a national nor a domiciliary of the United States, a request for an Import Statement for such work will not ordinarily be questioned, since the nationality or domicile of the author may have changed between the time registration was made and the time importation is sought.

1209.02 Author domiciled outside the United States for one year. If the author is a national of the United States but he or she has been domiciled outside the United States for a continuous period of at least one year immediately preceding the date when importation is sought or public distribution in the United States is made, the manufacturing requirements are not applicable.

Examples:

1) If the author of an English-language book is a U.S. citizen who has been domiciled in France for three years before requesting importation of a book manufactured in the Netherlands, unlimited importation is allowed.

2) If, with regard to the work mentioned in the above example, the importation of a reprint edition is later requested after the author has changed his domicile to the United States, an Import Statement would be required.

1209 Situations where the manufacturing requirements are not applicable. (cont'd)

1209.03 Employment for hire. If a substantial part of the nonexempt text of a work made for hire was prepared for an employer or other person who is not a national or domiciliary of the United States or a domestic corporation or enterprise, the manufacturing requirements do not apply.

Example:

> If a U.S. citizen prepares an English-language book as an employee for hire of a French citizen or French corporation, unlimited importation would be allowed.

1209.04 Manufacture in Canada. If a copyrighted nondramatic literary work in the English language was printed or reprinted in Canada, copies could be imported into the United States in unlimited numbers on or after January 1, 1978, since Canadian manufacture satisfies the manufacturing requirements of the current Act.

1210 Manufacturing processes covered. Copies produced by one or more of the processes mentioned below are subject to the requirement of manufacture in the United States or Canada.

1210.01 Copies printed from type. If copies are printed directly from type that has been set, or directly from plates made from such type, the setting of the type and the making of the plates must be performed in the United States or Canada.

1210.02 Lithographic or photoengraving process. If the making of plates by a lithographic or photoengraving process is a final or intermediate step preceding the printing of the copies, the plates must be made in the United States or Canada. The law permits the making of reproduction proofs ("repro proofs") abroad, provided that the plates from which the copies are printed are made in the United States or Canada and are not themselves imported. Similarly, the importation of computer tapes from which plates can be prepared is permitted.

1210 Manufacturing processes covered. (cont'd)

1210.03 Printing and binding. If there is a final process of producing multiple copies and any binding of the copies, this must be performed in the United States or Canada.

1211 Manufacturing processes not covered. Photocopying is not considered a "printing process." Thus, if copies have been produced by photocopying, such reproduction is exempt from the manufacturing requirements. Copies produced in multiples by typewriter, by mimeograph, or by hand are also not covered by the manufacturing requirements. Copies reproduced in raised characters for the use of the blind are exempt from the manufacturing requirements. See 17 U.S.C. 601(b)(5).

1212 Entry under an Import Statement. In any case where issuance of an Import Statement is appropriate, importation of 2,000 copies is permitted, irrespective of the time the work may have been published, and irrespective of whether registration was made under the current Act or under the Act of 1909, as amended. Where the copyright owner of a work in which ad interim copyright was subsisting on December 31, 1977, has already imported the 1,500 copies allowed under the Act of 1909, a new Import Statement will be issued upon request, permitting importation of an additional 500 copies.

Examples:

1) For a work by a U.S. author, published and registered in 1970 as ad interim, where no U.S. edition was manufactured within five years as required by the Act of 1909, as amended, no new Import Statement can be issued because ad interim copyright was not subsisting on December 31, 1977.

2) For a work manufactured in the United States and registered in Class A in 1975 for which no Import Statement has been issued, an Import Statement could be issued on request, permitting importation of 2,000 copies, if the work were reprinted outside of the United States or Canada.

1212 Entry under an Import Statement. (cont'd)

1212.01 Basic registration required. There must be a basic registration in the Copyright Office for the work before an Import Statement will be issued. However, the application for registration of a claim to copyright may be submitted simultaneously with the Form IS, which is the form for requesting issuance of an Import Statement.

1212.02 Import Statement may be issued for published or unpublished work. The Copyright Office will issue an Import Statement for an unpublished work on request. Where it appears that the work to be imported will be substantially different from the unpublished version in which a claim was or is being registered, the Copyright Office may point out that the Import Statement applies only to the particular work that is registered. See also section 1215 below.

1212.03 Import Statement not required. If an Import Statement is requested, but is clearly not required (e.g., where the nontextual matter predominates, or the work is in a language other than English, or the work is in the public domain in the United States), the Copyright Office will not issue the Import Statement. 37 C.F.R. 201.8(a)(4). The Copyright Office will promptly so notify the requester since copies may be in transit or at a port of entry. However, in the case of a dispute between the U.S. Customs Service and the copyright owner concerning whether unlimited importation of copies is permissible under 17 U.S.C. 601, the Copyright Office will, in proper cases and upon request, issue the Import Statement. See 37 C.F.R. 201.8(a)(5).

1213 Who may request an Import Statement. An Import Statement may be requested by the copyright owner or by the duly authorized agent of such owner. The copyright owner for this purpose may be:

1213 Who may request an Import Statement. (cont'd)

1) The author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared), or

2) A copyright claimant, other than the author, identified in the registration for the work, or

3) A person or organization that has obtained ownership of one or more exclusive rights, initially owned by the author, including the exclusive right to import copies of the work into the United States.

See 37 C.F.R. 201.8(b)(2); see also section 1214.04 below.

1213.01 Limit of one basic Import Statement for each work. As a general rule, only one basic Import Statement will be issued for the same work. Exceptional cases will be dealt with on their particular merits.

1214 Completion of Form IS. There are a number of spaces on the Form IS to be completed by the requester. If registration has already been made for the work, the information provided should agree with the information in the certificate of registration; if registration is being made simultaneously with the request for an Import Statement, the information given should agree with the information in the application for registration. The spaces to be completed are as follows.

1214.01 Identification of work. The title of the work, name(s) of author(s), and name(s) of copyright claimant(s) should be given.

1214.02 Person designated to receive Import Statement. The full name and complete mailing address of the person or organization to whom the Copyright Office will issue the Import Statement should be given, even if the same name and address appear elsewhere on the form. The law provides that the Import Statement shall be issued to the copyright owner or to a person designated by such owner. See 17 U.S.C. 601(b)(2).

1214 Completion of Form IS. (cont'd)

1214.03 Fee and contact. If the requester maintains a Deposit Account in the Copyright Office, the Account should be identified. Otherwise, the required fee should be enclosed with the request. The name, address, and telephone number of a person to contact about the request should also be provided on the form.

1214.04 Certification. The Form IS must include the handwritten signature of a person who certifies that he or she is either the copyright owner as shown in the records of the Copyright Office, or the duly authorized agent of the copyright owner, and that he or she authorizes the issuance of an Import Statement to the designated person.

1214.05 Registration number. If the work has already been registered, the applicant should give the registration number in the appropriate space on the Form IS. If registration is being applied for simultaneously with the request for an Import Statement, the Copyright Office will add the registration number to the Form IS.

1215 New versions. If the version to be imported is substantially different from the version in which a claim to copyright was registered, a claim to copyright in the version to be imported must also be registered before an Import Statement covering that version can be issued.

Examples:

1) Where an Import Statement is requested for the fifth revised edition of a textbook, and the registration number given on the Form IS is found to be that for the second revised edition, the Copyright Office will inform the requester that no Import Statement can be issued unless registration is made for the fifth revised edition.

1215 New versions. (cont'd)

Examples: (cont'd)

2) If a novel originally manufactured, published, and registered in the United States before 1978 is reprinted outside the United States or Canada with a new pictorial cover, no new registration is required for an Import Statement to be issued. The test for issuance of the Import Statement is whether there is a subsisting claim in the nondramatic literary material, and whether the claim to copyright in that material has been registered.

3) Where a U.S. author translates into English a Russian-language novel and importation is sought for the translation, a claim to copyright must be registered in the translation in order for an Import Statement to be issued. Registration for the Russian-language work is not a necessary condition for the issuance of the Import Statement, nor is it required that the work in Russian be protectible in the United States.

[END OF CHAPTER 1200]

Chapter 1300

RENEWAL OF COPYRIGHT

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Chapter 1300

RENEWAL OF COPYRIGHT

1301 Background. The copyright law of 1909, as amended, provided for copyright protection for an initial term of 28 years, with the possibility of a renewal term of statutory protection if a claim to renewal copyright was registered in the Copyright Office during the last year of the first term. However, a new copyright statute came into full effect on January 1, 1978; among other things, the new law makes important changes concerning the length of copyright protection; for works that are copyrighted for the first time on or after January 1, 1978, it establishes a single copyright term. Nevertheless, under the new law, works originally copyrighted before January 1, 1978, must still be renewed in order to obtain the fullest period of copyright protection allowed by the law for such works. This chapter is applicable only to those works.

1301.01 Works copyrighted before January 1, 1978. Section 304(a) of the copyright law provides that "any copyright, the first term of which is subsisting on January 1, 1978," endures for 28 years from the date it was originally secured, and that a renewal term of copyright lasting 47 years, can be secured by certain designated claimants if an application for renewal is made to the Copyright Office "within one year prior to the expiration of the original term of copyright." The law specifies that all such terms of copyright run to the end of the calendar year in which they would otherwise expire. See 17 U.S.C. 305. This not only affects the duration of copyright; it also affects the time limits for renewal registration. See section 1302 below.

NOTE: For works that were in their renewal term of copyright on December 31, 1977, the law automatically extended the copyright to last for a total of 75 years (a first term of 28 years plus a renewal term of 47 years) measured from

1301 Background. (cont'd)

1301.01 Works copyrighted before January 1, 1978. (cont'd)

the end of the year in which the copyright was originally secured; no additional renewal is necessary for such works.

1302 Time limits for renewal. A copyright may be renewed for a renewal term of 47 years, provided that an acceptable application and fee are received in the Copyright Office or elsewhere in the Library of Congress during the year immediately preceding the expiration date of the original term of copyright. See 17 U.S.C. 304(a).

* Unless the required application and fee are received during the prescribed period before the first term of copyright expires, the copyright in the work terminates at the expiration of 28 years from the end of the calendar year in which copyright was originally secured.

* The Copyright Office has no discretion to extend the renewal time limits.

See 37 C.F.R. 202.17(c)(1).

1302.01 Informal applications. Whenever a renewal applicant has cause to believe that a formal application for renewal (Form RE) (and in the case of works in which U.S. copyright subsists by virtue of section 9(c) of title 17, U.S.C., in effect on December 31, 1977, an accompanying affidavit and submission relating to the subsistence of first-term copyright), if sent to the Copyright Office by mail, might not be received in the Copyright Office before expiration of the statutory time limits the applicant may apply for renewal registration by telegraphic or similar unsigned written communication. An application made by this method only will be accepted if:

1302 Time limits for renewals. (cont'd)

1302.01 Informal applications. (cont'd)

(1) the message is received in the Copyright Office within the specified time limits;

(2) the applicant adequately identifies the work involved, the date of first publication or original registration, the name and address of the renewal claimant, and the statutory basis of the renewal claim;

(3) the fee for renewal registration, if not already on deposit, is received in the Copyright Office before the time for renewal registration has expired; and

(4) a formal application for renewal (Form RE) (and in the case of works in which U.S. copyright subsists by virtue of section 9(c) of title 17, U.S.C., in effect on December 31, 1977, as provided in 37 C.F.R. 202.17(d)(2), an accompanying affidavit and submission relating to subsistence of the first-term copyright) are also received in the Copyright Office before February 1 of the following year.

See 37 C.F.R. 202.17(c)(3).

1303 Computing term for published works. Copyright for works published before January 1, 1978, generally began on the date of first publication. However, under the current Act the original term does not expire until the end of the last day of the 28th calendar year measured from the year of first publication. See 17 U.S.C. 305.

1303.01 Antedated notice. In cases where the year date in the copyright notice appearing on the copies as first published was earlier than the actual date of publication, the original term of copyright is computed from the last day of the year given in the notice, and not the date of publication. The actual date of publication should be given in the renewal application, and

1303 Computing term for published works. (cont'd)

1303.01 Antedated notice. (cont'd)

the Copyright Office will add the annotation: "YEAR DATE IN COPYRIGHT NOTICE: 19__." Claims to renewal copyright received more than 28 years from the first day in the year given in the copyright notice will be refused registration. See also section 1308 below.

1303.02 Postdated notice. If the year date in the copyright notice appearing on the copies as published was one year later than the actual date of publication, the original term is computed for renewal purposes from the year date of publication. No annotation respecting a postdated notice will be made to the renewal application.

1304 Computing term for unpublished works. For unpublished works registered in the Copyright Office before January 1, 1978, statutory copyright began on the date of such registration and lasts for an original term of 28 years. Under the new law the original term does not expire for such works until the end of the last day of the 28th calendar year after registration. The date of registration of unpublished works currently renewable under the new law is the date when the last element (application, copy, fee) was received in acceptable form in the Copyright Office.

1305 Amendment after deadline. If an application that contains a title by which the work may be identified and a correct statement of either the renewal claimant or basis of the renewal claim is received within the proper time limits, but correspondence is required, the claim may be entered after expiration of the original term. However, the Copyright Office will make a special effort to obtain a fully acceptable application before the original term expires.

1305 Amendment after deadline. (cont'd)

Example:

A renewal application for a work by John Doe received during the 28th year of the first term identifies the renewal claimant as executrix, and the Copyright Office has reason to believe that the claimant is the surviving spouse, e.g., the renewal application gives Mrs. John Doe, or the letter of transmittal indicates that she is the widow of the author. The Copyright Office will write for a new application setting forth the proper basis of claim, even though the statutory renewal period has expired in the interim.

1306 Date of receipt. The date of actual receipt in the Copyright Office determines the acceptability of a renewal application. See 37 C.F.R. 202.17(c).

* Receipt of a renewal application or fee elsewhere in the Library of Congress is regarded as equivalent to receipt in the Copyright Office.

* Mail misdirected or misdelivered to another Government agency, and delivered to the Copyright Office after the deadline will not permit registration.

* The date of deposit in the mails is not determinative for this purpose.

1306.01 Delay in delivery caused by disruption of postal or other services. In any case in which the Register of Copyrights determines, on the basis of such evidence as the Register may by regulation require, that a deposit, application, fee, or any other material to be delivered to the Copyright Office by a particular date, would have been received in the Copyright Office in due time except for a general disruption or suspension of postal or other transportation or communications services, the actual receipt of such material in the Copyright Office within one month after the date on which the Register determines that the disruption or suspension of

1306 Date of receipt. (cont'd)

1306.01 Delay in delivery caused by disruption of postal or other services. (cont'd)

such services has terminated, shall be considered timely. 17 U.S.C. 709. No regulation has yet been issued by the Copyright Office under this provision.

1307 Application received before the renewal year. A renewal application received at any time before the beginning of the renewal year will not be accepted. An entirely new application must be submitted during the proper year.

1308 Application received after the renewal year. If an application or fee is received after the renewal year has expired, the claim will be refused.

* When the applicant filed too late in reasonable reliance on a record created, or original certificate issued, by the Copyright Office, or an official Copyright Office search report, which contained an error, omission, or patent ambiguity with respect to the term, the Copyright Office will register the renewal claim as a doubtful case.

* When the Copyright Office records state a date of publication which has not been questioned or corrected, renewal registration will not be made after the 28th year from that date, even when the renewal applicant asserts that the date was erroneous. Concerning the procedure for correcting a date of publication, see Chapter 1500: CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT RECORDS; SUPPLEMENTARY REGISTRATIONS.

Examples:

1) Where the renewal applicant has relied on a certificate of original registration which lacked an annotation showing that the year date in the copyright notice was antedated, a renewal application will be accepted during the 28th year measured from the date of publication.

1308 Application received after the renewal year. (cont'd)

Examples: (cont'd)

2) Where the applicant has relied on incorrect information appearing in the Catalog of Copyright Entries as a result of a Copyright Office error, renewal registration will be made.

1309 Original registration. Except as provided in section 1309.01 below, copyright in a work will not be registered for a renewal term unless an original registration for the work has been made in the Copyright Office. However, the original and renewal claims may be submitted simultaneously, although the renewal claim will be processed only after a registration number has been assigned to the application for the original term. Generally, in examining such applications for first-term registration, the Copyright Office will apply the practices existing at the time the work was originally published in determining registrability. The current application forms and registration fees will be required.

NOTE: The Copyright Office may register claims to renewal even though it might not under its present policies register the original claim.

1309.01 Exception to requirement for original registration. An original registration in the Copyright Office is not a condition precedent for renewal registration in the case of a work in which U.S. copyright subsists by virtue of section 9(c) of title 17, U.S.C., in effect on December 31, 1977, (which implemented the Universal Copyright Convention), provided, however, that the application for renewal registration is accompanied by:

1) An affidavit identified as "Renewal Affidavit for a U.C.C. Work" and containing the following information:

(A) The date of first publication of the work;

1309 Original registration. (cont'd)

1309.01 Exception to requirement for original registration. (cont'd)

1) (cont'd)

(B) The place of first publication of the work;

(C) The citizenship of the author on the date of first publication of the work;

(D) The domicile of the author on the date of first publication of the work;

(E) An averment that, at the time of first publication, all the copies of the work published under the authority of the author or other copyright proprietor bore the symbol © accompanied by the name of the copyright proprietor and the year of first publication, and that U.S. copyright subsists in the work;

(F) The handwritten signature of the renewal claimant or the duly authorized agent of the renewal claimant. The signature shall (1) be accompanied by the printed or typewritten name of the person signing the affidavit and by the date of the signature; and (2) shall be immediately preceded by the following printed or typewritten statement in accordance with section 1746 of title 28, U.S.C.: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

2) A submission relating to the notice of copyright and copyrightable content which shall be, in descending order of preference, comprised of:

(A) One complete copy of the work as first published; or

1309 Original registration. (cont'd)

1309.01 Exception to requirements for original registration. (cont'd)

2) (cont'd)

(B) (1) A photocopy of the title page of the work as first published, and

(2) A photocopy of the page of the work as first published bearing the copyright notice, and

(3) A specification as to the location, relative to each other, of the title and notice pages of the work as first published, if the pages are different, and

(4) A brief description of the copyrightable content of the work, and

(5) An explanation of the inability to submit one complete copy of the work as first published; or

(C) A statement describing the position and contents of the copyright notice as it appeared on the work as first published, and a brief description of the copyrightable content. The statement shall be made and signed in accordance with paragraph (1)(F) of this section and shall also include an explanation of the inability to submit either one complete copy of the work as first published or photocopies of the title and notice of the work as first published. See 37 C.F.R. 202.17(d)(2).

1310 Contributions to periodicals and composite works. The following practices relate to renewal of claims to copyright in contributions to periodicals and composite works.

1310.01 First publication basis. In order to be acceptable, a renewal claim in an individual contribution which was not registered separately must be based on first publication of the contribution.

1310 Contributions to periodicals and composite works. (cont'd)

1310.01 First publication basis. (cont'd)

Example:

A renewal application covering a short story which appeared in BEST SHORT STORIES, an anthology of previously published materials, will not be registered since the short story was not first published in the anthology.

1310.02 Separate claims. Individual renewal copyright in contributions to periodicals and other composite works may be registered, whether or not they were separately registered for their original term of copyright. Where the individual contribution was not separately registered, a claim to copyright in the periodical or other composite work must have been registered to serve as a basis for renewal registration of the individual contribution.

1310.03 Identification of composite work. A renewal application covering a contribution which was not registered separately must clearly identify the periodical or other composite work in which the contribution appeared. Generally, a composite work is an original publication relating to a variety of subjects to which a number of different authors have contributed distinguishable and separable selections; in this connection, see also section 1317.04(a) below.

1310.03(a) Facts of original registration required. The renewal application must contain the facts of original registration, e.g., title of periodical, volume and issue number, issue date and original registration date, in addition to the publication date for the periodical or other work. Where the work cannot be fully identified from the renewal application and Copyright Office records, correspondence may be necessary. All other statements on the renewal application are taken at face value unless a patent error or ambiguity is presented.

1310 Contributions to periodicals and composite works. (cont'd)

1310.04 Different claimants. A contribution which was published with a separate copyright notice should be separately registered for the original term of copyright before renewal registration is made, if the claimant stated in the notice differs from the claimant given in the notice on the composite work as a whole. The Copyright Office requires original registration as a condition to renewal registration when this fact is known. When the names in the copyright notices appearing on the contribution and the composite work are the same, original registration for the individual contribution is optional.

1310.05 Group registrations. A single renewal registration may be made for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, upon submisson of a single fee and application, when certain conditions are met. The "author" here means an individual person and not an employer in the case of a work made for hire. Also the class in which the original registrations were made is immaterial and is not limited to Class B (Form BB). The above-mentioned conditions, set forth below, must all be met:

1) The renewal claimant or claimants, and the basis of claim or claims under 17 U.S.C. 304(a), is the same for each of the works; and

2) The works were all copyrighted upon their first publication, either through a separate copyright notice and registration, or by virtue of a general copyright notice in the periodical issue as a whole and a claim to copyright has been registered in the periodical issue; and

3) The renewal application and fee are received not more than 28 or less than 27 years after

1310 Contributions to periodicals and composite works. (cont'd)

1310.05 Group registrations. (cont'd)

3) (cont'd)

the 31st day of December of the calendar year in which all of the works were first published; and

4) The renewal application identifies each work separately, including the periodical containing it and its date of first publication.

See 17 U.S.C. 408(c)(3).

1311 Works first published abroad in English. Under the Act of 1909, as amended, ad interim copyright was a short-term copyright available to English-language books and periodicals which were manufactured and first published abroad. It was secured by registration within six months of first publication abroad and lasted for a maximum of five years from the date of publication. Copyright could be extended to the full 28-year term if a U.S. edition was manufactured and published within five years after first publication abroad, and if a claim to copyright in the U.S. edition was also registered.

1311.01 Both editions registered. If ad interim and full-term registrations were both made within the proper time limits, renewal registration may be made to cover both editions.

1311.02 Single renewal application. A single renewal application can be submitted covering both the ad interim and full-term registrations, regardless of whether or not the U.S. edition contained new matter, provided both editions are eligible for renewal during the same calendar year. If both editions are included on a single renewal application, that application must include information taken from both original registrations. For the special problem presented by an antedated notice, see section 1303.01 above.

1311 Works first published abroad in English. (cont'd)

1311.03 Separate applications. Where separate applications are submitted, each application must be filed within the 28th calendar year of the term of copyright in the particular edition it covers. The Copyright Office will annotate each application to refer to the other edition.

1311.03(a) Late application. If the renewal application is received more than 28 years from the end of the year of first publication abroad, registration will be refused because the application was received too late. The applicant may submit a new application covering the U.S. edition alone, if that edition contained new matter, and if the application was submitted during the renewal period applicable to the new matter.

1311.04 Installments. When a work was first published abroad in serial installments and several separate ad interim registrations were made, separate renewal registrations may be made, even though the first U.S. edition was published in a single volume. If the applicant prefers, a single group registration can be made for installments first published as contributions to a periodical, provided the criteria set forth in section 1310.05 have been met.

1311.05 Foreign edition never registered. If the foreign edition of a work was never registered ad interim, but the later U.S. edition was registered, the Copyright Office will accept a renewal application covering the U.S. edition. In the case of an application received during the 28th year measured from the end of the year of foreign publication, a cautionary letter will be sent stating that the registration is of doubtful validity. In the case of an application received more than 28 years from the end of the year of foreign publication, the cautionary letter will explain that renewal registration covers only the new matter, if any, in the U.S. edition. A new matter statement will not be required on the renewal application, unless a new matter statement appeared on the original application.

1311 Works first published abroad in English. (cont'd)

1311.06 No U.S. edition. Where the Copyright Office records fail to reveal that a U.S. edition of a work was ever registered, the Copyright Office will generally refuse registration for a renewal claim based on an ad interim registration, subject to the special provisions in sections 1311.06(a) and 1311.06(b) below. The Copyright Office will, however, correspond in order to determine whether the U.S. edition has been registered, e.g., under a different title.

1311.06(a) Effect of the Universal Copyright Convention (UCC). The UCC came into force with respect to the United States on September 16, 1955. The implementing legislation provides that, upon the coming into force of the Universal Copyright Convention in a foreign state or nation, every book or periodical of a citizen or subject thereof in which ad interim copyright was subsisting on the effective date of said coming into force shall have copyright for 28 years from the date of first publication abroad without the necessity of complying with the further formalities specified. See section 9(c) of the Act of 1909, as amended. Therefore, in such cases the ad interim copyright was extended to the full 28-year term measured from the date of first publication abroad, and such copyrights are renewable in accordance with the general provisions relating to the term for other published works. See section 1303 above. In determining whether renewal registration is possible, the factors to be considered include the following:

1) Citizenship of the author as shown in the Copyright Office records.

2) The effective date of adherence to the UCC by the country of which the author was a citizen.

3) The time between securing ad interim copyright and the effective date of such adherence.

1311 Works first published abroad in English. (cont'd)

1311.06 No U.S. edition. (cont'd)

1311.06(b) Effect of the current Act. In the case of any work in which ad interim copyright is subsisting or is capable of being secured on December 31, 1977, under section 22 of title 17 as it existed on that date, copyright protection was extended to endure for the full term or terms provided by section 304 of title 17 of the new law, pursuant to Sec. 107 of Transitional and Supplementary Provisions of the current Act. Thus, for works covered by this provision, a renewal claim will be registered even though there was no registration for a U.S. edition.

1312 Renewal claimants; authors and their successors. In accordance with the copyright law, it is the author, if living, who is entitled to claim renewal copyright with respect to all works other than those enumerated in section 1317 of this chapter. Moreover, if the author is dead, it is the copyright law, rather than the rules of testamentary or intestate succession, that specifies the successive classes of persons entitled to claim renewal copyright. See 17 U.S.C. 304.

1313 Renewal claimants: authors. The author, if living, may claim renewal, whether the work was published in the author's true name, a pseudonym, or anonymously.

1313.01 Author still living. If the author is still living, the renewal application must be filed in the author's own name, even if the author is insane or incompetent.

1313.02 Author's name not in records of original registration. Where an applicant is claiming renewal as the "author," or as any other person entitled to claim renewal if that author is dead, and where that author's name does not appear in the records of the original registration, renewal registration will generally not be made unless that name is placed in the Copyright Office records. The Copyright Office may suggest

1313 Renewal claimants: authors. (cont'd)

1313.02 Author's name not in records of original registration. (cont'd)

that an application for supplementary registration be submitted in order either to correct or to amplify the information given in the original record. See Chapter 1500: CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT RECORDS; SUPPLEMENTARY REGISTRATIONS. In any case, and particularly when a supplementary registration is not suitable, a document supporting the authorship may be recorded in the Copyright Office. The renewal application is annotated to reflect the volume and page number of recordation. A supplementary registration or document is not necessary when the nature of the work makes the omission of the claimant's name natural, e.g., works of multiple authorship, pictorial reproductions, and obviously anonymous works. See also Adverse claims, section 1318.03 below.

1313.03 Term "author" defined for renewal purposes. The term "author," for renewal purposes, refers to the individual who personally wrote or created "renewable matter" in the work. The term "author" includes editors, compilers, arrangers, translators, illustrators, etc. It does not include employers in the case of works made for hire, publishers, corporations, firms, partnerships, religious orders, fraternal organizations, or any other impersonal entities.

1314 Renewal claimants: widows, widowers, and children. If the author is dead, the author's surviving spouse and children are entitled to claim renewal. 17 U.S.C. 304.

1314.01 Single class. The widow (widower) and children are regarded as a single class of renewal claimants, and applications from any or all will be accepted without question. See DeSylva v. Ballentine, 351 U.S. 570, 30 C.O.Bull. 245 (1956).

1314 Renewal claimants: widows, widowers, and children. (cont'd)

1314.02 Definition of 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.

1) A widow (widower) does not lose his (or her) renewal rights upon remarriage.

2) A common-law spouse may also be regarded as the "widow" or "widower" for renewal purposes, if the author is deceased.

3) A divorced spouse is not an acceptable renewal claimant as widow or widower. However, the Copyright Office will not inquire into the validity of a marriage or a divorce.

4) The terms "wife of the author," "wife of the deceased author," "husband of the author," or "husband of the deceased author" are not acceptable bases of claim. The basis of claim must be stated as either "widow" or "widower" of the author.

5) The Copyright Office will request a new application correcting the basis of claim if a widow or widower is claiming renewal as the author's "next of kin" or "executor."

1314.03 Definition of children. A person's "children" are that person's immediate offspring, whether legitimate or not, and any children legally adopted by that person. 17 U.S.C. 101.

1) The Copyright Office will register a renewal claim in the name of an illegitimate child, whether paternity has been acknowledged or not.

2) Legally adopted children are acceptable renewal claimants.

3) Stepchildren, as such, are not entitled to claim renewal.

1314 Renewal claimants: widows, widowers, and children. (cont'd)

1314.03 Definition of children. (cont'd)

4) Grandchildren and other descendants beyond the first degree cannot claim renewal as "the children of the deceased author."

5) The Copyright Office will request a new application giving the correct basis of claim if a child is claiming renewal as the author's "next of kin" or "executor."

1315 Renewal claimants: executors. If the author dies leaving a will, and if no widow, widower, or children are living at the time the renewal application is filed, the author's executor is entitled to claim renewal in his or her own name.

1315.01 Qualification. In order to be regarded as an "executor," a claimant must have been named in the author's will, and presumably must have been qualified in probate proceedings. However, the Copyright Office will not refuse a renewal claim in the name of the the executor, even if the author's will has not been probated. The Copyright Office will accept as an "executor" a claimant described as an "ancillary executor," "substitute executor," "successor executor," or "literary executor." See also section 1316.02 below.

1315.02 Personal right. The right to claim renewal as "executor" is a personal one, and the renewal application must name the individual executor.

1) The author's legatees, as such, have no right to claim renewal in their own names.

2) Renewal rights are claimed by the executors not for their personal benefit, but as fiduciaries for the benefit of the legatees under the author's will. See Miller Music Corp. v. Charles N. Daniels, Inc., 362 U.S. 373, 32 C.O.Bull. 307 (1960).

1315 Renewal claimants: executors. (cont'd)

1315.02 Personal right. (cont'd)

3) A renewal claim cannot be registered in the name of the "Estate of John Doe," even if executors have not yet been qualified under the author's will.

4) The executor named in the renewal application must be an individual or be a fiduciary organization authorized by law to serve as an executor. A renewal application which does not name as executor an individual or a trust department of a bank will be questioned.

Example:

The renewal application which names a law firm as the renewal claimant in the capacity of executor under the author's will will be questioned because it is unclear whether the law firm is a fiduciary organization authorized by law to serve as executor.

1315.03 Intestate. In no case can the administrator of an intestate author's estate claim renewal.

1316 Renewal claimants: next of kin. If the author is dead and no widow (widower) or children survive the author, and if there is "the absence of a will," the author's next of kin are entitled to claim renewal. 17 U.S.C. 304(a).

1316.01 Definition. The term "next of kin" refers only to blood relatives of the author.

1) It is not clear whether the term "next of kin" refers only to the living relatives of the nearest degree of consanguinity (defined as the quality or state of being descended from the same ancestor) or whether it also includes the descendants of dead relatives claiming on the theory representation. The Copyright Office

1316 Renewal claimants: next of kin. (cont'd)

1316.01 Definition. (cont'd)

1) (cont'd)

will register the claim of any blood relative as "next of kin," regardless of the degree of consanguinity.

Example:

Where an author had two brothers, one of whom died leaving two sons, it is unclear whether the nephews may claim renewal equally with the surviving brother.

2) The statement of the basis of claim on the renewal application must not consist solely of a statement of relationship, e.g. sister, mother, niece, etc. The claim itself should be stated as "next of kin of the deceased author, there being no will," although kinship may be specified parenthetically.

3) Statements such as "heirs" or "representatives of heirs" are not acceptable either as claimants or as bases of claim.

1316.02 Will but no executor. If the author left a will, but no executor exists at the time for renewal, the proper renewal claimant is unclear.

1) However, on the basis of judicial authority, the Copyright Office will accept a claim in the names of the next of kin, except in the situation noted in paragraph 3(c) below.

2) If it is unclear whether executors still exist, registration may be made in the names of both the executors and the next of kin on separate applications and for separate fees.

Example:

The executor himself is unsure whether or not he was actually discharged.

1316 Renewal claimants: next of kin. (cont'd)

1316.02 Will but no executor. (cont'd)

3) If the author leaves a will which names no executor, or if the person named cannot or will not act as executor, the court may appoint an "administrator cum testamento annexo" (administrator with the will annexed; administrator c.t.a) who performs the identical functions of an executor. When the 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 de bonis non with the will annexed; administrator d.b.n.c.t.a.) to deal with the remaining or after-acquired property under the will.

a) The Copyright Office will register renewal claims in the names of administrator c.t.a. or administrator d.b.n.c.t.a. Except as noted in paragraph (c) below, the Copyright Office will also register renewal claims for the same work in the names of both the next of kin and the administrators c.t.a. or administrators d.b.n.c.t.a. on the basis of separate applications and fees.

b) Where the author's will names an executor who cannot or will not act as executor, or when the estate has been settled and the executor discharged, or when the executor is removed before the estate is completely settled, registration will be made in the names of the author's next of kin, even when the administrators c.t.a. or administrators d.b.n.c.t.a. exist.

c) If the author left a will without naming an executor, and an administrator c.t.a. or administrator d.b.n.c.t.a. is in existence at the time of renewal registration, an application in the name of the next of kin will be refused on the

1316 Renewal claimants: next of kin. (cont'd)

1316.02 Will but no executor. (cont'd)

c) (cont'd)

basis of Gibran v. National Committee of Gibran, 255 F.2d 121, 31 C.O.Bull. 249 (2d Cir. 1958); cert. denied, 358 U.S. 828 (1958).

1317 Renewal claimants: proprietors. The copyright act provides that the proprietor of the copyright may claim renewal in certain specified cases.

1317.01 Definition. The term "proprietor" refers to the owner of the copyright on the effective date of the renewal registration.

1317.02 Derivation of title. In order to claim renewal as "proprietor," the claimant must derive his or her title directly or indirectly from the original copyright owner.

1317.03 Posthumous works. If a work is "posthumous" within the meaning of the copyright law, the proprietor is the proper renewal claimant. Generally, the author's widow, widower, children, executor, or next of kin have no right to claim renewal in a "posthumous work."

1317.03(a) Definition. A work is not considered "posthumous" if it is published during the author's lifetime; but a work is commonly considered "posthumous" if it is first published after the author's death. However, for purposes of section 304(a) of the copyright law, the term "posthumous work" means any work as to which no copyright assignment or other contract for exploitation of the work has occurred during the author's lifetime and which is unpublished at the time of the author's death. See Bartok v. Boosey & Hawkes, Inc., 523 F.2d 941, 40 C.O.Bull. 69 (2d Cir. 1975), and H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 139 (1976); see also 37 C.F.R. 202.17(b). Thus, under section 304(a) a work is not "posthumous" if it was merely first published after the author's death.

1317 Renewal claimants: proprietors. (cont'd)

1317.03 Posthumous works. (cont'd)

1317.03(b) Proper claimant. Where the work is "posthumous" within the meaning of section 304(a) of the copyright law, the appropriate claimant is the proprietor.

1) Where the applicant asserts that there was neither a contract for exploitation nor an assignment of copyright during the author's lifetime, and the work was unpublished on the date of the author's death, the Copyright Office will make registration in the name of the proprietor.

2) Where the applicant asserts that during the author's lifetime there was a contract for exploitation but no copyright assignment, it is unclear whether or not the work is "posthumous." See S. Rep. No. 94-473, 94th Cong., 1st Sess. 123 (1975). Therefore, registration will be made in the name of the author's widow, widower, children, executor, or next of kin and also in the name of the proprietor, provided separate applications and fees are submitted.

3) Where the applicant asserts that there was an assignment of the copyright during the author's lifetime, the work is not considered "posthumous," and the Copyright Office will make the renewal registration in the name of the author's widow, widower, children, executor, or next of kin. Registration will not be made in the name of the proprietor.

4) Where the proprietor-applicant asserts that the work is "posthumous" only because the work was first published after the author's death, the Copyright Office will inquire whether during the author's lifetime there was a copyright assignment or other contract for exploitation of the work.

1317 Renewal claimants: proprietors. (cont'd)

1317.03 Posthumous works. (cont'd)

1317.03(b) Proper claimant. (cont'd)

5) Where the work was originally published as a contribution to a periodical and that contribution was not separately registered, there is doubt under the wording of the renewal provisions of the law as to whether the proprietor of such a "posthumous work" may claim the renewal. In such cases, the Copyright Office will accept applications from the proprietor, and also from the author's widow, widower, children, executor, or next of kin, provided separate applications and fees are submitted.

1317.04 Composite works. The proprietor of a periodical, cyclopedic, or other composite work may claim renewal in the work as a whole.

1317.04(a) Definition. Generally, a composite work is an original publication relating to a variety of subjects to which a number of different authors have contributed distinguishable and separable selections. Thus, a work by a single author consisting of a collection of his writings is not a composite work. Similarly, a work which is the product of joint authorship and common design, or which consists of elements which have been indistinguishably merged into a single entity, cannot be regarded as composite, e.g., musical compositions, dramas, dramatico-musical works, and motion pictures.

1317.05 Individual contributions. While the proprietor of a composite work may claim renewal in the work as a whole, the author of an individual contribution, or the author's beneficiaries, may also claim renewal in the contribution.

* It is unclear whether the proprietor's claim in the entire work covers everything in the work that is not separately renewed.

1317 Renewal claimants: proprietors. (cont'd)

1317.05 Individual contributions. (cont'd)

* If a renewal application covering an individual contribution is received too late for registration, the Copyright Office will inform the applicant of the facts of renewal registration for the composite work because the contribution may be protected by the renewal of the general copyright in the composite work in which the contribution was first published.

1317.06 Corporate body. In the case of a "work copyrighted by a corporate body otherwise than an assignee or licensee of the author," the statute gives the proprietor the right to claim renewal.

1317.06(a) Questionable claim. This basis of claim is always questioned unless it has been established by previous correspondence.

1317.06(b) When not acceptable. This basis of claim is not acceptable when:

1) The original copyright claimant was not a corporation.

2) The individual author of an unpublished work transferred his common-law literary property, or his right to secure copyright, to a corporation.

i) The corporation is regarded as the author's assignee.

ii) The fact that the corporation also purchased the author's manuscript does not change its status as assignee.

3) The work is posthumous, composite, or was made for hire.

1317 Renewal claimants: proprietors. (cont'd)

1317.06 Corporate body. (cont'd)

1317.06(c) Corporate body: special circumstances. In cases other than those listed in section 1317.06(b) above, registration on this basis will be strongly discouraged and will be made only when the applicant indicates that there were special circumstances under which the claim might conceivably be said to apply.

Examples:

1) Works to which the stockholders of a corporation have contributed indistinguishable parts.

2) Works written or created by members of a religious order or similar organization, when the individual authors never had a personal property right in the works.

3) Works written by an official or major stockholder in a corporation, when the works were written directly for the corporation and the arrangement did not amount to employment for hire.

4) Motion pictures, when the applicant asserts that the work was produced under special circumstances and was not copyrighted by an employer for whom the work was made for hire.

1317.07 Employer in the case of a work made for hire. The proprietor of the copyright shall be entitled to claim renewal in works originally copyrighted by an employer for whom they were made for hire. See 17 U.S.C. 304.

1317 Renewal claimants: proprietors. (cont'd)

1317.07 Employer in the case of a work made for hire. (cont'd)

1317.07(a) Employer-claimant. Generally, in order for this basis of claim to be acceptable, the original copyright claimant must have secured the copyright by virtue of his employment of the "author," rather than through any transfer of rights after the work was completed.

1317.07(b) Determinations by Copyright Office. The Copyright Office will generally make no effort to determine whether or not a particular agreement constituted employment for hire.

* A renewal claim as "author" will be questioned when the original records of the registration state that the work was made for hire.

* The claim will be registered if the individual was listed as "author" by virtue of being an employer in a work made for hire.

* A renewal claim as "proprietor of copyright in a work made for hire" will be questioned when the original copyright claimant was also the only author listed in the Copyright Office records. The claim will be refused if the person listed as "author" on the original records was not an employee for hire. However, if an explanation is offered indicating that the "author" was employed for hire, and inadvertently or by agreement with the employer, claimed copyright in his or her own name, the proprietor claim will be accepted.

1317 Renewal claimants: proprietor. (cont'd)

1317.07 Employer in the case of a work made for hire. (cont'd)

1317.07(c) Work made for hire. In order for this claim to be applicable, as the Act explicitly states, the work must have been copyrighted by the employer for whom the work was made for hire.

* No provision is made under the literal terms of the Act for the case in which the work was made for hire, but the employer transferred his common-law literary property to a third person before either publication or registration as an unpublished work.

* When this situation is presented, the Copyright Office will register a renewal claim as "proprietor of copyright in a work made for hire," but will point out that the law makes no specific provision for this situation.

1317.07(d) More than one author. When more than one author contributed to a work, the renewal claimant need not specify that all of the authors were employed for hire.

* If only some of the authors were employed, this fact should appear on the renewal application.

* The Copyright Office will accept claims by authors or their beneficiaries and proprietors of copyright in a work made for hire on the same application, provided that no patent inconsistency is presented.

1318 Joint renewal claimants. When the author is dead and there is more than one person in the class of beneficiaries entitled to renew under the statute, registration by one claimant secures renewal for all those who would have been entitled to claim.

1318 Joint renewal claimants. (cont'd)

1318.01 Several claimants, same application. When a number of different persons are entitled to claim renewal in the same work, the Copyright Office will accept their claims on a single application or on separate applications. It is not necessary that all possible claimants join in applying for registration in order to secure a renewal. If an application for a work is received after its renewal period has expired, and a renewal claim has already been registered in the name of another claimant, the Copyright Office will correspond and point out that it is too late for the registration of this renewal claim, but that registration has been made in the name of another claimant.

1318.02 Later application, same work. Once a renewal registration has been made, the Copyright Office will generally not accept a duplicate application for renewal registration on behalf of the same renewal claimant.

1318.03 Adverse claims. When an application is received that conflicts with a renewal claim which has already been registered, the Copyright Office will inform the second applicant of the conflicting statements contained in the registered renewal claim, and will request an explanation. The later claim will be registered without further question, if the applicant reasserts it and the claim is not patently invalid. See also Chapter 100: BASIC POLICIES, section 108.06, concerning adverse claims.

1318.04 Adverse claims: conflicts concerning the author and the author's successors.

1) When an earlier claim was registered in the name of an author's next of kin, and a new application is submitted in the name of the executor, the Copyright Office will request information concerning the existence of a will.

1318 Joint renewal claimants. (cont'd)

1318.04 Adverse claims: conflicts concerning the author and the author's successors. (cont'd)

2) When a renewal claim was registered in the name of the author, and the widow (widower) now claims, the Copyright Office will request the date of the author's death. If the date is earlier than that on which the first application was filed, registration will be made without further correspondence. If the author was living when registration was made in the author's name,the widow's (widower's) claim may also be registered as a doubtful case, despite the principle that renewal rights vest on the date of a valid registration.

1318.05 Adverse claims: conflicts concerning proprietors, authors, and authors' successors.

1) When a renewal claim was registered in the name of an individual author, and a new application is submitted as "proprietor of copyright in a work made for hire," the Copyright Office will request information concerning the circumstances under which the work was written.

2) When a renewal claim was registered in the name of "a proprietor of copyright in a work made for hire," and a new application is submitted in the name of the individual author, the Copyright Office will request information concerning the circumstances under which the work was written.

3) When a renewal claim was registered in the name of one of several authors, and a new renewal application is submitted as "proprietor of copyright in a work made for hire" without restricting the claim to the work of a particular author or authors, the Copyright Office will ask whether the claim covers the material written by the person

1318 Joint renewal claimants. (cont'd)

1318.05 Adverse claims: conflicts concerning proprietors, authors, and authors's successors. (cont'd)

3) (cont'd)

in whose name registration has already been made. If so, registration will be made if the applicant reasserts the claim. If not, a new application should be submitted confining the claim to the material written by employees for hire.

4) Where the original claim named an employer in a work made for hire as the author, and a renewal application names an individual author, the Copyright Office will write to the renewal applicant requesting information concerning the circumstances under which the work was written. If the applicant asserts that the work was not made for hire, the renewal claim will be registered on behalf of the author or the author's statutory heirs.

1319 Unacceptable renewal claims. The following general principles and practices govern the acceptability of renewal claims.

1319.01 Personal right. The right to claim renewal copyright is a personal right.

1319.02 Deceased person. A renewal claim cannot be registered in the name of a deceased person. The Copyright Office does not search to determine whether or not the renewal claimant is alive. If, however, the Copyright Office has information that the claimant died before the receipt in the Copyright Office of the renewal application, the Office will refuse to register the claim as submitted.

1319 Unacceptable renewal claims. (cont'd)

1319.03 Claimant not named, only status given. The renewal right accrues to an individual person or firm, and not to a status. Claims by "the Executor of James Fitzgerald" or "the executors of the author" or by "the next of kin of the author" without specifically naming the claimant are not acceptable.

1319.04 Claimant fails to qualify. The Copyright Office cannot register a renewal claim unless the basis of claim is one that is acceptable under the statute. If none of the claimants listed in the statute exists or can be identified, registration must be refused.

1319.05 Successors or representatives of claimants. The successors or representatives of a person who would have been entitled to claim renewal if still living, are unacceptable renewal claimants. For example, the executor of the author's widow is an unacceptable renewal claimant.

1319.06 Assignment of renewal interests. Registration must be made in the name of the statutory claimant, even though the statutory claimant has assigned all of his or her interests in the renewal term. For example, registration cannot be made in the names of an "assignee," "proprietor," "attorney in fact," or "owner per agreement."

1319.07 Extent of claim. A renewal claim in a published work can cover only the material which was first published in that particular version of the work.

1319.07(a) Later version. The original author of a published work cannot claim renewal in a later version of that work unless that author contributed to the new matter on which copyright in the later version was

1319 Unacceptable renewal claims. (cont'd)

1319.07 Extent of claim. (cont'd)

1319.07(a) Later version. (cont'd)

claimed. For example, where it appears from the record that an author's original composition was published before an arrangement of it by another person, a renewal claim in the arrangement by the author, based on his original composition, is unacceptable.

1319.07(b) Revised published version. Where an author's original unpublished work was first published with an arrangement or other new matter by another person, the author's claim to renewal in the published work may be accepted.

[END OF CHAPTER 1300]

Chapter 1400

GROUP REGISTRATIONS

This chapter is in preparation.

Chapter 1500

CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT OFFICE RECORDS; SUPPLEMENTARY REGISTRATIONS

Outline of Topics

1501 Applicability of this chapter.

1502 Basic registrations.

1503 Means used for correcting and amplifying Copyright Office records.

- 1503.01 Supplementary registrations.
- 1503.02 Recordation of documents.
- 1503.03 Additional basic registrations.

1504 Supplementary registrations: procedures used for correcting and amplifying Copyright Office records.

- 1504.01 Supplementary registrations: corrections.
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- 1504.03 Supplementary registrations: correcting or amplifying information in another supplementary registration.
- 1504.04 Supplementary registrations: when not appropriate.
- 1504.05 Supplementary registrations: basic registration a prerequisite.
- 1504.06 Supplementary registrations: time limits.
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1505 Recordation of documents: procedures used for correcting and amplifying Copyright Office records.

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- 1505.02 Recordation of documents: correction of error in recorded document.
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1506 New basic registration: procedures used for correcting and amplifying Copyright Office records.

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1507.14 Abandonment of copyright or copyright claim.

1508 Completion of Form CA.

1508.01 Completion of Form CA: identification of work.
1508.02 Completion of Form CA: correction space.
1508.03 Completion of Form CA: amplification space.
1508.04 Completion of Form CA: information not contained in appropriate space.
1508.05 Completion of Form CA: single form sufficient for correction and amplification.

1509 Effective date of supplementary registration.

Chapter 1500

CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT OFFICE RECORDS; SUPPLEMENTARY REGISTRATIONS

1501 Applicability of this chapter. This chapter contains the practices to be followed in correcting or amplifying Copyright Office records; these practices are general in nature, and each case should be dealt with on its own merits. Moreover, this chapter does not deal with those errors in the record of a basic registration that the Office itself should have recognized at the time the registration was made; in such cases the Office will take appropriate measures to rectify its error. See 37 C.F.R. 201.5(a)(2). Nor does this chapter deal with adverse contentions incident to registration. See section 108.06 of Chapter 100: BASIC POLICIES; see also sections 1318.04 and 1318.05 of Chapter 1300: RENEWAL OF COPYRIGHT.

1502 Basic registrations. Most such corrections and amplifications involve "basic registrations." A "basic registration" means any of the following: (A) a copyright registration made under section 408 of the copyright law; (B) a renewal registration made under section 304 of the copyright law; (C) a registration of claim to copyright made under the copyright law as it existed before January 1, 1978; or (D) a renewal registration made under the copyright law as it existed before January 1, 1978. See 37 C.F.R. 201.5(a)(1)(i). Once a basic registration has been made in the Copyright Office for a work, that basic registration will ordinarily stand as the fundamental copyright record on which other, later records relating to the particular work can be built.

1503 Means used for correcting and amplifying Copyright Office records. The following means are available for correcting or amplifying Copyright Office records.

1503.01 Supplementary registrations. A supplementary registration to correct certain errors in a copyright registration or to amplify the information given in a copyright registration is a special type of copyright registration provided for in the copyright law. See 17 U.S.C. 408(d). One supplementary registration may correct or amplify information in only one basic registration.

1503.02 Recordation of documents. A document to correct certain errors in a copyright registration or to amplify the information given in a registration may be recorded in the Copyright Office, provided that the requirements for recordation are met. See Chapter 1600: RECORDATION OF TRANSFERS AND OTHER DOCUMENTS PERTAINING TO A COPYRIGHT.

1503.03 Additional basic registrations. Certain kinds of errors may be corrected only by making an additional basic registration. See also sections 1506 and 1507 below.

1504 Supplementary registrations: procedures used for correcting and amplifying Copyright Office records. A supplementary registration may be made either to correct or to amplify information given in a basic registration. The appropriate form prescribed by the Copyright Office for a supplementary registration is Form CA.

1504.01 Supplementary registrations: corrections. A "correction" is appropriate if the information in the basic registration was incorrect at the time that basic registration was made, and the error is not one that the Copyright Office itself should have recognized. See 37 C.F.R. 201.5(b)(2)(i).

1504 Supplementary registrations: procedures used for correcting and amplifying Copyright Office records. (cont'd)

1504.01 Supplementary registrations: corrections. (cont'd)

Examples:

1) A basic registration identified someone incorrectly as the author of the work.

2) A work was registered as published when publication had not actually taken place.

3) The statement of the extent of the claim is inaccurate.

1504.02 Supplementary registrations: amplifications. An "amplification" is appropriate in order to accomplish the following purposes:

1) To reflect additional information that could have been given, but was omitted, at the time basic registration was made (e.g., a co-author's name was omitted); or

2) To reflect changes in facts, other than those relating to transfer, license, or ownership of rights in the work, that have occurred since the basic registration was made (e.g., a change in the title of the work or a change in an author's or claimant's name); or

3) To clarify information given in the basic registration (e.g., the statement of changes or additions in the version being registered was not sufficiently explicit); or

See 37 C.F.R. 201.5(b)(2)(ii).

4) To have individual titles in a collection indexed separately in the Copyright Office catalogs.

1504 Supplementary registrations: procedures used for correcting and amplifying Copyright Office records. (cont'd)

1504.03 Supplementary registrations: correcting or amplifying information in another supplementary registration. Although a supplementary registration may be made to correct or amplify the information in any completed basic registration, a supplementary registration cannot be made to correct or amplify the information contained in another supplementary registration. Where a supplementary registration contains an error, a new supplementary registration should be made to correct or amplify the information contained in the basic registration in question.

1504.04 Supplementary registrations: when not appropriate. Supplementary registration is not appropriate:

1) As an amplification to reflect the ownership, division, allocation, licensing, or transfer of rights in a work, whether at the time the basic registration was made or thereafter (see also section 1507.01(b) below); or

2) To correct errors in statements or notices on the copies or phonorecords of a work; or

3) To reflect changes in the content of a work; or;

4) As a substitute for renewal registration; or

5) To add a renewal claimant; or

6) To change the basis of claim or change the renewal claimant after the renewal period has expired; or

7) As a substitute for recording a transfer or other document pertaining to copyright ownership.

See 37 C.F.R. 201.5(b)(2)(ii), (iii), and (iv).

1504 Supplementary registrations: procedures used for correcting and amplifying Copyright Office records. (cont'd)

1504.05 Supplementary registrations: basic registration a prerequisite. Supplementary registration can be made only if a basic copyright registration for the same work has already been completed. The application for supplementary registration must clearly identify the registration to be corrected or amplified. See 17 U.S.C. 408(d).

1504.06 Supplementary registrations: time limits. The following are time limits for making a supplementary registration.

1504.06(a) To correct or amplify a basic original registration. As a general rule, supplementary registration to correct or amplify an original basic registration may be made at any time. However, for works which were published or registered or both before January 1, 1978, and are still subject to renewal registration, a supplementary registration affecting the original term of copyright can only be made during the first 28-year term.

Example:

A work is published and registered in 1954. An application for supplementary registration is submitted in 1983 to change the year date of publication to 1955. The application for supplementary registration will be refused.

1504.06(b) To correct a renewal registration. Supplementary registration to correct a renewal claimant or basis of claim in a basic renewal registration may be made only if the application for supplementary registration and fee are received in the Copyright Office within the statutory time limits for renewal. If the error or omission in a basic renewal

1504 Supplementary registrations: procedures used for correcting and amplifying Copyright Office records. (cont'd)

1504.06 Supplementary registrations: time limits. (cont'd)

1504.06(b) To correct a renewal registration. (cont'd)

registration is extremely minor, and does not involve the identity of the renewal claimant or the legal basis of claim, supplementary registration may be made at any time. See 37 C.F.R. 201.5(b)(2)(iv).

1504.07 Supplementary registrations: persons entitled to submit application. After a basic copyright registration has been completed, any author or other copyright claimant of the work, or the owner of any exclusive right in the work, or the duly authorized agent of any such author, other claimant, or owner, who wishes to correct or amplify the information given in the basic registration for the work may file an application for supplementary registration. See 37 C.F.R. 201.5(b)(1).

1504.08 Supplementary registrations: their effect. The following are effects of making a supplementary registration.

1504.08(a) New registration number and certificate. The Copyright Office will assign to a supplementary registration a new registration number in the appropriate class, and issue a certificate of supplementary registration under that number. See 37 C.F.R. 201.5(d)(1).

1504.08(b) Augmenting basic registration. The information contained in a supplementary registration augments but does not supersede that contained in the basic registration. The basic registration will not be expunged or cancelled. See 17 U.S.C. 408(d) and 37 C.F.R. 201.5(d)(2).

1504 Supplementary registrations: procedures used for correcting and amplifying Copyright Office records. (cont'd)

1504.08 Supplementary registrations: their effect. (cont'd)

1504.08(c) Cross-referencing. If the person who, or on whose behalf, an application for supplementary registration is submitted is the same as the person identified as the copyright claimant in the basic registration, the Copyright Office will place a note referring to the supplementary registration on its records of the basic registration. See 37 C.F.R. 201.5(b)(1), note 3. The Office will follow the same practice with respect to an application for supplementary registration submitted by the duly authorized agent or successor in interest of the copyright claimant in the basic registration.

NOTE: Successors in interest, for this purpose, are those who derive their title from the claimant, as for example, an assignee.

1505 Recordation of documents: procedures used for correcting and amplifying Copyright Office records. In certain cases a document may be recorded either to correct or to amplify information given in a basic registration. Such a document may be recorded at any time. See also Chapter 1600: RECORDATION OF TRANSFERS AND OTHER DOCUMENTS PERTAINING TO A COPYRIGHT.

1505.01 Recordation of documents: corrections or amplifications of completed registrations. Ordinarily, when a person who is entitled to file an application for supplementary registration wishes to correct or amplify a copyright registration, an application for supplementary registration should be submitted. See section 1504.07 above. However, if an application for supplementary registration is not appropriate, or if the application for supplementary registration is appropriate but the

1505 Recordation of documents: procedures used for correcting and amplifying Copyright Office records. (cont'd)

1505.01 Recordation of documents: corrections or amplifications of completed registrations. (cont'd)

sender insists on the recordation of a document, an affidavit or signed statement outlining the error or amplification may be recorded in the Copyright Office. In some instances, recordation of a document supporting the basis for registration of a claim to renewal copyright is required before registration can be made.

Example:

> Where a renewal claim is submitted by an author whose name neither appears in the records of the original registration nor in a supplementary registration which has been cross-referenced to the original registration and the omission cannot be satisfactorily explained, registration of a renewal claim in that author's name will generally be made only if a document supporting the claim of authorship is recorded.

1505.02 Recordation of documents: correction of error in recorded document. Where errors in a document are discovered following recordation, no changes in the completed record can be made, but the sender may adopt one of three alternatives:

1) Submit the corrected document for recordation.

2) Submit a completely new document for recordation.

3) Record an affidavit or other signed statement describing the error in the previously recorded instrument.

1505 Recordation of documents: procedures used for correcting and amplifying Copyright Office records. (cont'd)

1505.03 Recordation of documents: effect. Generally, where a supplementary registration is preferable, but the sender submits a document for recordation, the Copyright Office will correspond with the sender, pointing out that no annotation will be made on the application for the basic registration. If the sender persists in requesting recordation, the document will be recorded.

1506 New basic registration: procedures used for correcting and amplifying Copyright Office records. Ordinarily, when an applicant wishes to correct or amplify a copyright registration, a supplementary registration is suggested. However, in some instances, a supplementary registration is not appropriate, as explained in section 1507 below, and the Copyright Office will suggest that a new basic registration be made.

1506.01 New basic registration: time limits. A new basic original registration may be made, if otherwise appropriate, at any time within the life of the copyright. A new basic renewal registration must generally be made within one year prior to the expiration of the original term of copyright. See Chapter 1300: RENEWAL OF COPYRIGHT.

1506.02 New basic registration: effect. A basic registration generally stands by itself. Where, however, a new basic registration is made to correct an earlier basic registration, the earlier basic registration will be annotated to reflect the later registration.

1507 Special situations relating to corrections and amplifications of Copyright Office records. The following are examples that present problems relating to corrections and amplifications of Copyright Office records.

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.01 Special situations relating to ownership. As explained in section 1504.01 above, a supplementary registration is generally the appropriate method for either correcting or amplifying the statement of ownership of an earlier registration. However, in some instances, a new basic registration may be acceptable.

Example:

Where someone other than the author is incorrectly identified as copyright claimant in a registration, another basic registration for the same version may be made by the author in his or her own name as copyright claimant.

1507.01(a) Supplementary registration acceptable: additional authors or claimants. Where the basic original registration was made in the name of one author who is also listed as sole claimant, the Copyright Office will accept an application for supplementary registration from additional authors who now want the record to show their authorship and ownership. However, in such cases a new basic registration may be made if the applicant so desires.

1507.01(b) Supplementary registration not appropriate. As explained in section 1504.04 above, a supplementary registration is not appropriate as an amplification to reflect the ownership, division, allocation, licensing, or transfer of rights in a work, whether at the time basic registration was made or thereafter.

Examples:

1) Authors A and B are identified as co-claimants on the basic registration but they wish to reflect an allocation of ownership of 25 percent to A and 75

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.01 Special situations relating to ownership. (cont'd)

1507.01(b) Supplementary registration not appropriate. (cont'd)

Examples: (cont'd)

1) (cont'd)

percent to B. A supplementary registration is not acceptable. An appropriate document may be submitted for recordation.

2) A and B are named as co-authors and co-claimants of the words and music to three songs covered by a single unpublished registration. A wishes the records of the Copyright Office to reflect that he was the sole author and claimant of the words and music to two of the songs and that he and B are co-authors and co-claimants of only the third song. The Office will accept an application for supplementary registration to correct the authorship and ownership of the two songs authored by A, and to show that the claim covers only those two songs in the original collection. Also, a new basic registration should be made for the song which was co-authored by A and B.

1507.01(c) Transfer of ownership. Where an application for supplementary registration is submitted to reflect a transfer of copyright ownership, the Copyright Office will refuse registration but will suggest the recordation of the document of transfer. The Office will not make a supplementary registration as a means of reflecting a transfer of ownership.

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.01 Special situations relating to ownership. (cont'd)

1507.01(d) Supplementary registration requested to correct statement as to rightful claimant. An application for supplementary registration may be accepted to correct a statement as to the rightful claimant in an unpublished registration effective on or after January 1, 1978, or a work first published after that date. See also section 1507.01(a) above.

NOTE: Thus, where a registration was authorized but the wrong name was given as claimant, the Copyright Office will accept an application for supplementary registration.

1507.01(e) Statutory copyright secured before 1978. Where statutory copyright was secured before 1978, and the allegation is that a different claimant owned the copyright at the time of basic registration, the Copyright Office will refuse an application for supplementary registration. A document conveying rights from the original claimant of record may be recorded.

1507.02 Change in name or address of author or claimant. Where an applicant wishes to correct an error or have the records of the Copyright Office reflect a change in the name or address of the author or claimant in a basic registration, the Copyright Office will accept an application for supplementary registration. If the applicant so requests, the Office will record a document reflecting such correction or change.

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.02 Change in name or address of author or claimant. (cont'd)

Example:

The basic registration indicates that Jane Adams is the claimant. An application for supplementary registration is submitted to change the claimant's name to her married name, Jane Adams Morgan. A supplementary application reflecting such a change is appropriate.

1507.02(a) Change or error in name of corporate entity or other organization. When an applicant wishes to have the records of the Copyright Office reflect a change in the name of a corporate entity or other organization, the Copyright Office will accept an application for supplementary registration, and where it is likely that an official document changing the name exists, the Office may suggest that the document be recorded.

1507.03 Change of domicile, citizenship, and place of publication. Where an applicant wishes to correct an error in the basic registration with respect to the domicile or citizenship of an author or the place of publication of a work, the Copyright Office will generally accept an application for supplementary registration. If, however, the correction would affect the eligibility of the work for U.S. copyright protection, the Office will write and point out to the sender the consequences. If the work was not eligible for U.S. copyright protection on the effective date of the basic registration, that registration will be cancelled. The application for supplementary registration will be filed without action.

NOTE: In no case will the acceptance by the Copyright Office of an application for supplementary registration result in the cancellation of a preexisting basic registration, unless the applicant on the supplementary registration is the same as the applicant on the basic registration.

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.04 Problems relating to title of work. Where an applicant wishes to reflect a change or correction of title or the addition of a subtitle in a basic registration, the Copyright Office will accept an application for supplementary registration. The recordation of a document should not be suggested for the purpose of reflecting a change of title. Nevertheless, the Office will record such a document if the sender insists, after the sender has been notified that no annotation will be made on the application or catalog entries of the basic registration.

1507.05 Problems relating to authorship. Problems relating to authorship include the following.

1507.05(a) Problems relating to authorship: name of author omitted. Where the name of an author was omitted from the application for the basic registration, supplementary registration is appropriate. In those cases where a transfer statement would have been required on the application for the basic registration, if that author's name had been included, a transfer statement will be required on the application for supplementary registration. Where the name of the person being added did not appear anywhere on the records of registration, some documentation confirming that the person is an author may be requested.

1507.05(b) Problems relating to authorship: deletion of name. Where applicant states that the application for basic registration erroneously included a name as author which the applicant wishes to delete, the Copyright Office will accept an application for supplementary registration. In certain instances, the Office may request additional supporting statements.

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.05 Problems relating to authorship. (cont'd)

1507.05(c) Problems relating to authorship: employment-for-hire statement omitted, given in error, or stated erroneously. Where an employment-for-hire statement was either omitted, given in error, or stated erroneously, the Copyright Office will accept an application for supplementary registration which should include in appropriate cases a new or corrected transfer statement.

1507.06 Problems relating to nature or extent of authorship. Where an applicant wishes either to correct or to amplify the statement of the nature of authorship on a basic registration, an application for supplementary registration may be submitted. In certain instances, it will be necessary to examine the work either by obtaining the deposited material or by requesting additional material from the applicant or from the collections of the Library of Congress.

Examples:

1) The original registration limited the claim to compilation. An application for supplementary registration is submitted to make "editing" the basis of the claim. If statements on the copy suggest that there is substantial editing, the supplementary claim will be registered.

2) An application for supplementary registration is submitted adding a new author whose only contribution is "cover art." Examination of the copy reveals that the artwork on the cover is not registrable. Supplementary registration will be refused.

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.07 Problems relating to status of work. The following problems relate to the status of a work.

1507.07(a) Published work registered as unpublished. Where a published work was incorrectly registered as unpublished, a supplementary registration is generally inappropriate, since the deposit requirements will not ordinarily have been met. In such cases, a new basic registration should be made. See also section 1507.08(d).

1507.07(b) Unpublished work registered as published. Where an unpublished work was registered as published, the Copyright Office will accept an application for supplementary registration.

1507.07(c) Incorrect date of creation. Generally, the Copyright Office will accept an application for supplementary registration to correct the statement of the date of creation of a work. However, the date of creation given in the supplementary registration must be the same as, or earlier than, the year date of the effective date of the basic registration, or if the work is published, the year date must be the same as, or earlier than, the year of first publication.

1507.07(d) Incorrect date of publication. Generally, the Copyright Office will accept an application for supplementary registration to correct the date of publication of a work. However, in the case of a work published before January 1, 1978, the Office will refuse to accept an application for supplementary registration correcting the date of publication if, according to the records of the basic registration, the original term of copyright has expired.

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.07 Problems relating to status of work. (cont'd)

1507.07(d) Incorrect date of publication. (cont'd)

NOTE: In all cases involving a change in the date of publication, the Examiner must also consider the deposit requirements applicable on the effective date of the basic registration. See section 1507.08 below.

1507.07(d)(1) Applicable notice requirements. If the work was published before 1978, the Examiner must also consider the applicable notice requirements. See the provisions of Chapter 4 of Compendium I, including situations where no notice was required, under the Regulations of the Copyright Office then in effect, for certain works first published outside the United States. In the case of works published before 1978, the following practices apply:

* If the change in the date of publication makes the notice antedated, the application for supplementary registration will be annotated to reflect the date in the notice. The applicant must be notified as to the effect upon the term of copyright.

* If the change in the date of publication makes the notice postdated by more than one year, supplementary registration will be refused, and the original registration will be cancelled.

* If the change in the date of publication makes the notice postdated by one year, supplementary registration will be made and the applicant will be notified of the doubtful validity of the claim.

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.07 Problems relating to status of work. (cont'd)

1507.07(d) Incorrect date of publication. (cont'd)

1507.07(d)(1) Applicable notice requirement. (cont'd)

NOTE: If the work was published before 1978 without the required notice, supplementary registration will be refused and the original registration will be cancelled.

1507.08 Problems relating to deposits. Supplementary registration can be used only to correct errors or amplify facts stated in an earlier application for a registration that has been completed. An application for supplementary registration is not appropriate to correct a defect in the deposit, changes in the content of the work, or errors in statements or notices on the copies or phonorecords of the work in question. Also, where a change in the date of publication results in the applicable deposit requirements not being satisfied, a new basic registration would be in order, since an appropriate deposit should be submitted.

1507.08(a) New versions. If a work has been changed since registration was made, and if the changes are sufficient to be the basis of a registration, the proper procedure would be to make a basic registration for the revised version to reflect the additions or revisions.

1507.08(b) Addenda and errata sheets. Where the applicant voluntarily deposits addenda or errata sheets for published works to be included and/or attached to the deposit copies after registration has been completed, such items should be referred with

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.08 Problems relating to deposits. (cont'd)

1507.08(b) Addenda and errata sheets. (cont'd)

a memorandum of transmittal to the Chief, Acquisitions and Processing Division of the Copyright Office. Where the material to be substituted or added to the deposit copy of an unpublished work contains sufficient copyrightable new matter to support a new registration, the Copyright Office will suggest that a new basic registration be made for the revised version.

1507.08(c) Addition or correction of copyright notice. Neither a supplementary registration nor a new basic registration is appropriate to reflect the addition or correction of a copyright notice on copies or phonorecords deposited to make an earlier registration.

1507.08(d) Applicable deposit requirements not met. Where the applicable deposit requirements were not met, a new basic registration is in order.

Examples:

1) The basic registration indicates that the work was unpublished; the applicant now states that on the effective date of registration the work was actually published. A new application for a basic registration should be submitted with the required deposit and fee.

2) The basic registration states that the work was first published in 1979. The applicant now asserts that the work was actually first published in 1977. Since copies as first published are required for works first published before 1978, an application for a basic registration

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.08 Problems relating to deposits. (cont'd)

1507.08(d) Applicable deposit requirements not met. (cont'd)

Examples: (cont'd)

2) (cont'd)

accompanied by the required deposit should be submitted. If, however, the work was first published without an acceptable copyright notice, the basic registration will be cancelled.

3) A published registration made in 1978 gives the date of publication as December 27, 1977. The applicant now states that the work was actually published on November 5, 1978. If the copies or phonorecords deposited in connection with the earlier registration were not of the best edition as of the effective date of that registration, a new basic registration should be made. If, however, the copies deposited earlier are the best editions as of the date of the first registration, a supplementary registration may be made to correct the date of publication.

1507.09 Problems relating to extent of claim. The Copyright Office will accept an application for supplementary registration in order to add, correct, or amplify a statement relating to the extent of claim which was omitted or given in error on the basic registration. Ordinarily, examination of the original deposit will be necessary.

1507.10 Problems relating to recorded documents. A supplementary registration is not appropriate to change the contents of a document previously recorded in the Copyright Office. See section 1505.02 above.

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.11 Examining Division error. Where it is discovered that the record of a basic registration contains an error that the Copyright Office itself should have recognized at the time registration was made, supplementary registration is not appropriate. The Office will take measures to rectify its error. See 37 C.F.R. 201.05(a)(2).

1507.12 Earlier registration not authorized. If an applicant states that an earlier registration was made without the authorization of a person legally entitled to apply for registration, the Copyright Office will suggest that a complete new registration be made by the applicant. No cross reference will be made on either registration. See section 108.06 of Chapter 100: BASIC POLICIES.

1507.13 Problems relating to minor errors. An application for supplementary registration that has been filed to correct what may seem to be even extremely minor errors or changes will not be refused.

Examples:

1) Title on certificate: SWAN SONG

   Title on deposit: THE SWAN SONG

   Title as corrected on Form CA: THE SWAN SONG

2) Title on certificate: I'LL LOVE YOU

   Title on deposit: I'LL LOVE YOU

   Title as changed on Form CA: I'LL LOVE YOU (FOREVER)

1507 Special situations relating to corrections and amplifications of Copyright Office records. (cont'd)

1507.13 Problems relating to minor errors. (cont'd)

3) Name on certificate: John Munroe

Name on deposit: John D. Munroe

Name as amplified on Form CA: John Drummond Munroe

4) Name on certificate: Jonh Francis Bacon

Name on deposit: John F. Bacon

Name as corrected on Form CA: John Francis Bacon

5) "Material Added" statement on certificate: additional words and music.

New matter as amplified on Form CA: words in chorus added and 16 bars of new music.

1507.14 Abandonment of copyright or copyright claim. There is no provision in the copyright statute for abandoning a copyright or copyright claim or any of the rights therein. However, the Copyright Office will record an affidavit or other statement, signed by all of the copyright owners, purporting to abandon the copyright, without expressing any opinion concerning its legal effect. In such cases, the Copyright Office will request the return of the original certificate of registration.

1508 Completion of Form CA. The information provided on Form CA should agree exactly with the information as it already appears in the basic registration that has been made for the work. Generally, the Form CA should be compared with the basic registration to be corrected or amplified.

1508.01 Completion of Form CA: identification of work. To identify the work, the following information should be given:

1508 Completion of Form CA. (cont'd)

1508.01 Completion of Form CA: identification of work. (cont'd)

1) The title of the work as it appears in the basic registration, including previous or alternative titles, if they appear;

2) The registration number of the basic registration;

3) The year when the basic registration was completed; and

4) The name or names of the author or authors of the work, and the copyright claimant or claimants in the work, as they appear in the basic registration.

See 37 C.F.R. 201.5(c)(1)(i) to (iv).

1508.01(a) Minor error. If certain information given on the Form CA is incorrect, and the error is minor, the Copyright Office may correct the error without correspondence.

1508.01(b) Missing information. If less than all the information requested above in section 1508.01 is given, but sufficient information (more than a title) is given to identify the basic registration with certainty, the Copyright Office will add by annotation the missing information from its records at the appropriate space on the application form. Where the information given on the Form CA is insufficient to identify the basic registration, the Office will communicate with the applicant.

1508.02 Completion of Form CA: correction space. This space should be completed only if the information in the basic registration was incorrect at the time the basic registration was made. The following information should be given:

1508 Completion of Form CA. (cont'd)

1508.02 Completion of Form CA: correction space. (cont'd)

1) The line number and heading or description of the part of the basic registration where the error occurred;

2) A transcription of the erroneous information as it appears in the basic registration;

3) A statement of the correct information as it should have appeared; and

4) If applicant so desires, an explanation of the error or its correction.

See 37 C.F.R. 201.05(c)(1)(v).

1508.03 Completion of Form CA: amplification space. This space should be completed only for the following reasons:

1) To reflect additional information that could have been given, but was omitted at the time basic registration was made; or

2) To reflect changes in facts, other than those relating to transfer, license, or ownership of rights in the work, that have occurred since the basic registration was made; or

3) To clarify information given in the basic registration.

1508.03(a) Amplification space: information required. The following information should also be given:

1) The line number and heading or description of the part of the basic registration where the information to be amplified appears;

1508 Completion of Form CA. (cont'd)

1508.03 Completion of Form CA: amplification space. (cont'd)

1508.03(a) Amplification space: information required. (cont'd)

2) A clear and succinct statement of the information to be added; and

3) If applicant so desires, an explanation of the amplification.

See 37 C.F.R. 201.5(c)(1)(vi).

1508.04 Completion of Form CA: information not contained in appropriate space. Where the corrected or amplified information is not contained in the appropriate space, but appears elsewhere on the application form, the claim will generally be registered without correspondence.

1508.05 Completion of Form CA: single form sufficient for correction and amplification. A single Form CA may be used both to amplify and to correct a particular basic registration.

Example:

A single Form CA may be used to show a change of title and to correct the name of an author.

1509 Effective date of supplementary registration. The effective date of a supplementary registration is the date when the Copyright Office receives the required fee and a request for a correction or amplification which reasonably identifies the work.

[END OF CHAPTER 1500]

RECORDATION OF TRANSFERS AND OTHER DOCUMENTS PERTAINING TO A COPYRIGHT

Outline of Topics

1601 Applicability of this chapter.

1602 Statutory provisions relating to transfers and other documents pertaining to a copyright.

- 1602.01 Execution of transfers of copyright ownership.
- 1602.02 Recordation of transfers and other documents: conditions for recordation.

1603 Copyright Office policy.

- 1603.01 General rule.
- 1603.02 Exceptions.
- 1603.03 Other documents pertaining to a copyright.
- 1603.04 Recordation not required.
- 1603.05 When recordation suggested.

1604 The nature of the document.

- 1604.01 Recordation not a substitute for registration.
- 1604.02 Relationship between document and copyright unclear.
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1605 Formal sufficiency of document.

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- 1605.02 Actual signature.
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- 1605.04 Signature of transferor.
- 1605.05 Apparent inconsistency.
- 1605.06 Authority to sign.
- 1605.07 Signature of individual.
- 1605.08 Signatures required on work-for-hire agreements.

1606 Identification of parties.

- 1606.01 Failure to identify necessary parties.
- 1606.02 Indexing.
- 1606.03 One-party documents.

1607 Identification of subject of document.

1607.01 Failure to identify work.
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1608 Transfer documents: words of conveyance.

1608.01 No clear words of conveyance.
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1609 Completeness of document.

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1610 Incorporation by reference.

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1612 Other formal requirements.

1612.01 Freedom from obvious errors.
1612.02 Date of execution.
1612.03 Certificate of acknowledgment.

1613 Documents to correct or amplify Copyright Office records.

1614 Recordation.

1614.01 Date of recordation.
1614.02 Indexing.
1614.03 Amendments in document submitted for recordation.
1614.04 Recordable document returned.
1614.05 Recording fees.
1614.06 Separate transfers.
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1615 Termination of transfers and licenses granted by the author under the extended renewal term.

1615.01 Statutory provision.
1615.02 Advance notice and service.
1615.03 Time limits.
1615.04 Forms.
1615.05 Contents of notice.
1615.06 Signature.
1615.07 Service.
1615.08 Scope of examination.
1615.09 Recordation.
1615.10 Recordation without prejudice.
1615.11 Date of recordation.

1616 Termination of transfers and licenses granted by the author on or after January 1, 1978.

Chapter 1600

RECORDATION OF TRANSFERS AND OTHER DOCUMENTS PERTAINING TO A COPYRIGHT

1601 Applicability of this chapter. This chapter contains the requirements for the recordation of transfers and other documents pertaining to a copyright under 17 U.S.C. 205, and the termination of transfers and licenses granted by the author covering the extended renewal term under 17 U.S.C. 304(c). The practices concerning the filing or recordation of the following documents are not included either in this chapter or elsewhere in Compendium II, and requirements other than those in this chapter may apply.

1) Notices of Identity and Signal Carriage Complement, and Statement of Account of cable systems. See 17 U.S.C. 111(d) and 37 C.F.R. 201.11 and 201.17.

2) Certain contracts entered into by cable systems located outside of the 48 contiguous States. See 17 U.S.C. 111(e) and 37 C.F.R. 201.12.

3) Original, signed notices of intention to obtain compulsory license to make and distribute phonorecords of nondramatic musical works. See 17 U.S.C. 115(b) and 37 C.F.R. 201.18.

4) License agreements, and terms and rates of royalty payments, voluntarily negotiated between one or more public broadcasting entities and certain owners of copyright. See 17 U.S.C. 118 and 37 C.F.R. 201.9.

5) Notification of filing and determination of actions. See 17 U.S.C. 508 and Federal Register for June 2, 1978, 43 Fed. Reg. 24151 (1978), as modified in Federal Register for June 19, 1980, 45 Fed. Reg. 41548.

6) Statements regarding the identity of authors of anonymous and pseudonymous works, and statements relating to the death of authors. See 17 U.S.C. 302.

1602 Statutory provisions relating to transfers and other documents pertaining to a copyright. The following are the principal statutory provisions relating to transfers and other documents pertaining to a copyright.

1602.01 Execution of transfers of copyright ownership. A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of 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. 17 U.S.C. 204.

1602.02 Recordation of transfers and other documents: conditions for recordation. Any transfer of copyright ownership or other document pertaining to a copyright 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. 17 U.S.C. 205(a).

1603 Copyright Office policy. The Copyright Office will generally not attempt to judge the legal sufficiency or interpret the substantive contents of a purported transfer; recordation will be made if the formal requirements have been met. However, a document will be examined to determine whether the requirements for recordation have been met.

1603.01 General rule. If the document purports to be a transfer of a copyright and is signed by the owner of the rights conveyed, the owner's authorized agent, or one entitled to make the transfer, it will be indexed as a "transfer."

1603.02 Exceptions. In exceptional cases, where it seems clear that the recordation of a document will not accomplish what was intended by the person who submitted it, the Copyright Office will in the first instance communicate with that person. If such person reasserts his or her request for recordation, the Copyright Office will record the document.

1603 Copyright Office policy. (cont'd)

1603.03 Other documents pertaining to a copyright. Any other document, including a self-serving declaration, will be recorded in the Copyright Office, if it pertains to a copyright. A document shall be considered to "pertain to a copyright" if it has a direct or indirect relationship to the existence, scope, duration, or identification of a copyright, or to the ownership, division, allocation, licensing, transfer, or exercise of rights under a copyright. That relationship may be past, present, future, or potential. See 37 C.F.R. 201.4.

1603.04 Recordation not required. In general, the Copyright Office does not require the recordation of documents. However, in certain cases, recordation of an affidavit or other document may be required as a condition of renewal registration or of annotation of completed Copyright Office records.

Example:

Where a renewal claim is submitted by an author whose name appears nowhere in the Copyright Office records in connection with the original registration and the omission of his or her name cannot be satisfactorily explained, registration of a renewal claim in that author's name will be made only if a document supporting the claim of authorship is recorded.

1603.05 When recordation suggested. Even though the Copyright Office does not generally require recordation of documents, it may point out the recordation provisions of the law and suggest the desirability of recording an instrument.

Example:

An application for registration is submitted where a claim in the same work has already been registered in the name of the prior owner of copyright. When the second registration is sought to reflect the change of ownership, the Copyright Office will refuse to make a second registration, but will point out the desirability of reflecting the change in ownership by recording the instrument of transfer.

1604 The nature of the document. The document may be questioned by the Copyright Office, unless it perceives some direct or indirect relationship to a copyright.

Examples:

1) A bill of sale of a business.

2) A birth or death certificate.

3) A blanket power of attorney.

1604.01 Recordation not a substitute for registration. A document may be recorded even if a claim to copyright in the work to which it refers has not been registered for copyright. However, where it is clear that the applicant is seeking to substitute recordation of a document for registration of a claim, or to assert by recordation a claim for which registration would be refused, recordation of the document will be discouraged.

1604.02 Relationship between document and copyright unclear. Where the relationship between the document to be recorded and copyright is unclear or obscure, recordation will be delayed and the sender may be asked his or her purpose in submitting the instrument.

Examples:

1) A document consisting of a collection of newspaper clippings referring to a night-club performer.

2) A bill of lading referring to a shipment of motion picture films.

1604.03 Document apparently submitted in error. Where it seems probable that the document has been submitted to the Copyright Office in error, it may be questioned or, in clear cases, returned without recordation.

Example:

An assignment of rights in a trademark or patent.

1605 Formal sufficiency of document. In order to be regarded as a "transfer," a document must generally meet the following formal requirements:

1) It must be "an instrument in writing."

2) It must be signed by the owner of the rights conveyed or by such owner's duly authorized agent.

3) It must identify the transferor and transferee.

4) It must contain words of conveyance.

5) It must be complete by its own terms.

1605.01 Instrument in writing. To be recordable, the instrument must be in writing. The Copyright Office does not provide, suggest, or require any special form for the transfer of a copyright or other document pertaining to a copyright. Any type of legible document which meets the other formal requirements will be accepted for recordation, if it contains an individual's actual signature.

Examples:

1) Handwritten or typewritten original.

2) Transfer in the form of a letter.

3) Carbon of original.

4) Mimeographed original.

5) Printed original.

1605.02 Actual signature. To be recordable, the document must bear the actual signature or signatures of the person or persons who executed it. Alternatively, the document may be recorded if it is a legible photocopy or other full-size facsimile reproduction of the signed document, accompanied by a sworn certification or an official certification that the reproduction is a true copy of the signed document. Any sworn certification accompanying a reproduction shall be signed by at least one of the persons who

1605 Formal sufficiency of document. (cont'd)

1605.02 Actual signature. (cont'd)

executed the document, or by an authorized representative of that person. See 17 U.S.C. 205 and 37 C.F.R. 201.4(c)(1).

1605.02(a) Sworn certification. A "sworn certification" is an affidavit under the official seal of any officer authorized to administer oaths within the United States, or if the original is located outside of the United States, 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).

1605.02(b) Official certification. An "official certification" is a certification, by the 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. See 37 C.F.R. 201.4(a)(3)(ii).

Examples:

1) Copy of a certificate of corporate merger, bearing the certification of the Secretary of State.

2) Court decree establishing a change of name of a person, certified by the clerk of the court.

1605.03 Illegible document. An illegible document or one which cannot be reproduced legibly on microfilm will not be accepted for recordation. See 37 C.F.R. 201.04(c)(3).

1605.04 Signature of transferor. As a rule, the document to be recorded should contain the actual handwritten signature of the person executing the document or of such owner's duly authorized agent. See 37 C.F.R. 201.4(c)(1).

1605 Formal sufficiency of document. (cont'd)

1605.04 Signature of transferor. (cont'd)

1605.04(a) Unsigned document. An unsigned document will be returned for signature before recordation.

1605.04(b) Two-party instrument. In the case of a two-party instrument which on its face calls for the signature of both parties, the lack of the signature of one of the parties will be questioned.

1605.04(c) Multi-party instrument. If a number of transferors are identified in the body of the document, and spaces have been provided for the signatures of all of them, the document will be questioned if any of the signatures is missing, unless an additional copy of the document containing the missing signatures is submitted for recordation at the same time. Each such instrument of transfer is indexed only under the particular signatures it contains.

1605.04(d) Signature of transferee not required. The signature of the transferee is not a requirement, and the lack of the transferee's signature will not be questioned unless the instrument involves mutual undertakings requiring the transferee's signature for its validity.

1605.05 Apparent inconsistency. When there is an apparent inconsistency between the person named in the body of an instrument as transferor and the person whose signature appears on it, the document is questioned.

1605.05(a) Corporation or other impersonal legal entity as transferor. If the transferor is a corporation or other impersonal legal entity, the capacity of the individual executing the document on behalf of the transferor should be specified. If, however, the capacity is not shown on the document, the Copyright Office will generally not question the omission.

1605 Formal sufficiency of document. (cont'd)

1605.05 Apparent inconsistency. (cont'd)

1605.05(b) Document signed by legal representative or attorney-in-fact. If the document has been signed by a legal representative (e.g., executor, administrator, or trustee) or attorney-in-fact of an individual, the document will be questioned unless the individual's capacity is specifically stated.

1605.05(c) Reconcilable variance between names; indexing. When there is a reconcilable variance between the signature on the document and the name of the transferor appearing in the body of the document, the instrument will generally be indexed under what can be determined to be the fullest form of the legal name. The document will generally not be indexed under the name of an agent or official of a corporation or other impersonal legal entity, although cross-references under his or her name may be appropriate in certain cases. Where the document has been signed by a legal representative or attorney-in-fact, it will be indexed under the name of the person whom the signer represents, and cross-references may be made under the name of the signer.

1605.06 Authority to sign. The Copyright Office does not conduct searches in order to determine whether a document has been signed by the owner of the copyright as shown in its records; nor will it question the authority of a particular person to sign as copyright owner. However, if the capacity indicated in the instrument is not one that would ordinarily entitle the person to bind the organization, the Copyright Office will request clarification before completing the processing of the document.

Examples:

1) A document executed on behalf of a publishing company signed by an attorney purporting to represent the company will not be questioned.

2) A transfer of copyright in a musical work executed by the publisher's bookkeeper will be questioned.

1605 Formal sufficiency of document. (cont'd)

1605.06 Authority to sign. (cont'd)

1605.06(a) Signer is not copyright owner. In certain cases, where it seems clear from correspondence or other material in the file that the person signing the document is not the copyright owner, the Copyright Office will call the discrepancy to the attention of the sender, but will not refuse to record the document if the sender continues to request recordation.

1605.06(b) Contribution to a periodical. No question will ordinarily be raised in the case of a transfer of copyright in a contribution to a periodical signed in the name of the periodical rather than that of its publisher.

Example:

> Transfer of copyright in a magazine article is signed in the name of The Saturday Evening Post rather than its publisher, Curtis Publishing Company.

1605.07 Signature of individual. As a rule, the signature should be the actual handwritten signature of an individual person, and should give the individual's own name rather than that of the person or organization he or she may represent.

Examples:

1) A pencil signature is acceptable.

2) A hand-printed signature is acceptable.

3) A printed, typewritten, rubber-stamped, or facsimile signature will be questioned.

4) A person's mark is acceptable if accompanied by another person's signature attesting to its authenticity.

5) The signature need not be legible or include the full name of the signer, if the name is sufficiently identified elsewhere in the document; but initials or a monogram will generally not be regarded as a signature.

1605 Formal sufficiency of document. (cont'd)

1605.08 Signatures required on work-for-hire agreements. The statute defines a work made for hire as a work prepared by an employee within the scope of his or her employment, or 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. See 17 U.S.C. 101. An employment for hire agreement signed by both parties may be recorded in the Copyright Office under 17 U.S.C. 205 as a "document pertaining to a copyright." However, if the agreement is not signed by both parties, the Copyright Office will call this omission to the attention of the sender, but will not refuse to record the document if the sender continues to request recordation.

1606 Identification of parties. In general, any document purporting to transfer a copyright or rights under a copyright should clearly identify the transferee as well as the transferor.

1606.01 Failure to identify necessary parties. Documents which fail to identify the necessary parties will be questioned, but recordation will not be refused if, following correspondence, the sender continues to request recordation.

Examples:

1) "I, John Doe, do hereby assign all rights, including copyright, in the work entitled HOW TO BURN TOAST." (Transferee not named).

2) ". . . copyright is hereby assigned to Richard Roe, as Executor of the author . . . ." (The author not identified by name.)

1606.02 Indexing. When a document which fails to identify the necessary parties is recorded, it will be indexed only under the names it contains; no indexing will be done under other names furnished in correspondence or elsewhere. See section 1614.02 below.

1606 Identification of parties. (cont'd)

1606.03 One-party documents. A document which necessarily involves only one party (e.g., an affidavit) will be indexed under the single name involved.

1607 Identification of subject of document. Recordation of a document gives all persons constructive notice of the facts stated in the recorded document, but only if both of the following two conditions are met:

1) The document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Copyright Office, it would be revealed by a reasonable search under the title or registration number of the work; and

2) Registration has been made for the work.

See 17 U.S.C. 205(c).

1607.01 Failure to identify work. A document which fails to identify the work will be questioned.

Examples:

1) A document containing the statement "I hereby assign my copyright to the ABC Music Co."

2) ". . . copyright in OPENING CHORUS is hereby assigned . . . ." (Reference being to only a part of the work.)

3) If the title or other identification of a work appears to have been inadvertently omitted.

1607.02 Titles. If the material which is the subject of the document is otherwise adequately identified, the document need not contain the title under which the work was registered.

1607.02(a) Abbreviated title or different title or different descriptive phrase. An abbreviated or entirely different title, or a different descriptive phrase, may be employed.

1607 Identification of subject of document. (cont'd)

1607.02 Titles. (cont'd)

1607.02(a) Abbreviated title or different title or different descriptive phrase. (cont'd)

Examples:

1) "This Year's Sales Manual" instead of "This Year's Fabulous Deals."

2) "Style No. 173B" instead of "Field Flowers."

1607.02(b) Registration number used instead of title. The registration number may be used instead of the title.

1607.02(c) Blanket transfer. A blanket transfer, in which no individual titles are given, will be recorded without question.

Example:

"Copyrights in all the published works of John Doe are hereby assigned . . . ."

1607.03 No titles given. When a document in which no titles are specified is recorded, the catalog entry will contain the notation: "No Titles Given."

1607.04 Outside sources. A document will be indexed solely under the titles or other identifying matter it contains; no information from sources outside the document will be supplied. Thus, for example, the Copyright Office will not index titles given only in a covering letter.

1608 Transfer documents: words of conveyance. A document purporting to be a transfer should contain words to the effect that copyright ownership is being conveyed.

Example:

"I, John Doe, do hereby assign, sell, transfer, grant, and convey copyright in 'I Love You Truly' to the ABC Publishing Co., Inc."

1608 Transfer documents: words of conveyance. (cont'd)

1608.01 No clear words of conveyance. Where a document purports to be a transfer, but lacks clear words of conveyance, the document will generally be recorded without questioning it.

1608.02 Intention manifest. Where the intention to transfer the copyright is manifest from a reading of the document as a whole, the fact that the document is in the form of a letter or inexactly or vaguely worded will not preclude its recordation as a transfer.

1609 Completeness of document. In general, a document will not be recorded unless it is complete by its own terms.

1609.01 Attachments. A document that contains a reference to any schedule, appendix, exhibit, addendum, or other material as being attached to the document or made a part of it shall be recordable only if the attachment is also submitted for recordation with the document or if the reference is deleted by the parties to the document.

1609.01(a) Document returned for amendment. If a document has been submitted for recordation and has been returned by the Copyright Office at the request of the sender for deletion of the reference to an attachment, the document will be recorded only if the deletion is signed or initialed by the persons who executed the document or by their authorized representatives.

1609.01(b) Exceptional cases. In exceptional cases, a document containing a reference to an attachment will be recorded without the attached material and without deletion of the reference if the sender asserts in writing that all three of the following factors exist and specifically requests that the document be recorded as submitted: (1) the attachment is completely unavailable for recordation; and (2) the attachment is not essential to identify the subject matter of the document; and (3) it would be impossible or wholly impractical to have the parties to the document sign or initial a

1609 Completeness of document. (cont'd)

1609.01 Attachments. (cont'd)

1609.01(b) Exceptional cases. (cont'd)

deletion of the reference. In such cases, the Copyright Office record of the document will be annotated to show that recordation was made in response to a specific request.

See 37 C.F.R. 201.4(c)(2).

1610 Incorporation by reference. When the document submitted for recordation merely identifies or incorporates by reference another document, or certain terms of another document, the Copyright Office will raise no question of completeness, and will not require recordation of the other document. 37 C.F.R. 201.4(c)(2)(iii).

Example:

A document reads in part as follows: "In accordance with the terms of mutual undertaking previously entered into between the parties on January 2, 1978, which is incorporated by reference herewith, John Doe hereby transfers . . . ."

1611 Part of a larger document. If a document otherwise recordable indicates on its face that it is a self-contained part of a larger document, e.g., where it is marked "Attachment A" or "Exhibit B," the Copyright Office will raise the question of completeness, but will record the document if the person requesting recordation asserts that the document is sufficiently complete as it stands. See 37 C.F.R. 204(c)(2)(ii).

1612 Other formal requirements. The following are other formal requirements relating to transfers and other documents pertaining to a copyright.

1612.01 Freedom from obvious errors. As a rule no attempt is made to verify the facts stated in the document submitted for recordation; titles, registration numbers, authors, dates, and the like are transcribed without checking their accuracy. However, when an obvious error of a material nature is recognized in the ordinary examination of the document, the document is returned for correction;

1612 Other formal requirements. (cont'd)

1612.01 Freedom from obvious errors. (cont'd)

in such cases, the Copyright Office will suggest the desirability of having any changes in the document initialed by all the persons who executed the document.

Examples:

1) A document submitted for recordation in a particular year gives a later year as the date of execution.

2) The names of the tranferor and transferee are accidentially reversed.

NOTE: Although names and titles will generally be indexed exactly as they appear in the document, where there is a minor typographical error made in the document, the document will be indexed under the correct name or title.

Examples:

1) "Great Russiand Short Stories"

2) "Macame Du Barry"

1612.02 Date of execution. The document to be recorded need not bear a date. However, if it does state a date of execution, this information will be transcribed on the catalog entry. While 17 U.S.C. 205 provides certain consequences for failure to record a transfer within one month after its execution in the United States or within two months after its execution outside the United States, the Copyright Office will record a document at any time after its execution.

1612.03 Certificate of acknowledgment. A certificate of acknowledgment is not required for the validity of a transfer, but is prima facie evidence of the execution of the transfer if:

1) In the case of a transfer executed in the United States, the certificate is issued by a person authorized to administer oaths within the United States; or

1612 Other formal requirements. (cont'd)

1612.03 Certificate of acknowledgment. (cont'd)

2) In the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of the United States, or by a person authorized to administer oaths whose authority is proved by a certificate of such an officer, or by a competent foreign authority pursuant to the provisions of the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (i.e., the apostille procedure).

See 17 U.S.C. 204(b).

1613 Documents to correct or amplify Copyright Office records. In certain circumstances, recordation of a document is the appropriate means of correcting or amplifying a completed Copyright Office record. However, the Office suggests that an application for supplementary registration be submitted in most such cases. Nevertheless, if the sender insists, the Office will in any case accept for recordation a document giving the pertinent information. For detailed practices in this connection, see Chapter 1500: CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT OFFICE RECORDS; SUPPLEMENTARY REGISTRATIONS.

1614 Recordation. In general, the recordation procedure includes initial examination of documents for formal sufficiency, determination of the recording fee, assigning identifying volume and page numbers, microfilming the document, preparing an index entry under the appropriate names and titles, and returning the recorded document with a certificate of record.

1614.01 Date of recordation. The date of recordation is the date upon which the last necessary element (acceptable document and required fee) is received in the Copyright Office. See 37 C.F.R. 201.4.

1614.01(a) Document returned for correction. When a document is returned to the sender for correction, the date on which the corrected document is received in the Copyright Office is generally regarded as the date of recordation.

1614 Recordation. (cont'd)

1614.01 Date of recordation. (cont'd)

1614.01(b) Less than entire fee received. When less than the entire fee is received in the Copyright Office, together with the document in recordable form, the date of recordation is the date on which the amount of the total required fee is received in the Copyright Office.

Example:

If a document containing three titles is received in recordable form, together with only the basic fee for recordation of a document, the date of recordation is the date on which the fee covering the additional titles is received in the Copyright Office.

1614.02 Indexing. A recorded document is indexed under the names of the parties and the titles listed in the document. The catalog entry contains the date of recordation, the inclusive volume and page numbers assigned to the document, and the following information, if given in the document: the date of execution, the names of the authors, and the registration number and year date of registration.

1614.03 Amendments in document submitted for recordation. The Copyright Office will not itself make any changes or corrections in a document submitted for recordation, even when specifically requested or authorized to do so by the sender.

Examples:

1) Sender requests Copyright Office to change the year date of execution from "1968" to "1978."

2) Sender requests Copyright Office to delete reference to an attachment.

1614.04 Recordable document returned. Even though a document is in order for recordation and is accompanied by the appropriate fee, if the process of recordation in the Copyright Office has not been started

1614 Recordation. (cont'd)

1614.04 Recordable document returned. (cont'd)

when a request to return or change the document is received from the sender, the Office may return the document to the sender, suggesting that any change be initialed by the persons who executed it. In such cases, the date the returned document is received in the Copyright Office will be the date of recordation.

Example:

Document received in the Renewals and Documents Section of the Examining Division, but not yet stamped with volume and page number, may be returned to the sender.

1614.05 Recording fees. For a document consisting of six pages or less covering no more than one title, a basic recording fee is charged. An additional fee is charged for each page over six and each title over one. For the specific amounts, see 17 U.S.C. 708; see also 37 C.F.R. 201.4(d).

1614.06 Separate transfers. A fee is required for each separate transfer or other document, even if two or more documents appear on the same page. 37 C.F.R. 201.4(d)(1).

Examples:

1) "A" hereby transfers all right, title, and interest in a musical composition to "B," "C," and "D." This is a single transfer for the purpose of computing the recordation fee.

2) On a single page, but in separate paragraphs: "A" hereby transfers a one-third interest in the copyright in a musical composition to "B." "A" hereby transfers a one-third interest in the copyright in the same musical composition to "C." "A" hereby transfers a one-third interest in the copyright in the same musical composition to "D." The document is signed once. This is a single transfer for the purpose of computing the recordation fee.

1614 Recordation. (cont'd)

1614.06 Separate transfers. (cont'd)

Examples: (cont'd)

3) The same situation as in example 2 above, but the document is dated and signed at each paragraph setting out the separate conveyances. This would be regarded as three transfers for the purpose of computing the recordation fee.

4) On a single page: "A" tranfers the copyright to "B" who transfers a portion of that right to "C." This would be regarded as two transfers for the purpose of computing the recordation fee.

1614.07 Titles. Generally, every title listed in a document is counted, but not designations referring to uncopyrightable matter.

Examples:

1) A trademark consisting of the word "EKSRON."

2) A mechanical patent designated as "Process for the Impacting of Crushed Marble."

1614.07(a) Definition of title. The term "title" for the purpose of computing the fee for recordation generally denotes "appellation" or "denomination," rather than "registration," "work," or "copyright." 37 C.F.R. 201.4(d)(2).

1614.07(b) Same title repeated. Where the same title is repeated more than once in the same document, it is counted as only one title, unless the document is too long or complex to make the finding of repetitions feasible.

1614.07(c) Single and multiple titles distinguished. Titles that are repeated are counted as a single "title" for the purpose of computing the fee, even when different registration numbers or dates are indicated. The same is true in the case of various issues, volumes, chapters, installments, etc., even when listed

1614 Recordation. (cont'd)

1614.07 Titles. (cont'd)

1614.07(c) Single and multiple titles distinguished. (cont'd)

separately under different numbers and dates, but they must be listed consecutively in a series. On the other hand, if the titles are not listed consecutively in a series, they will be considered separate titles and separate fees will be charged.

Examples of one title:

1) "Fan Club News," vol. 1, no. 3 (June 1981)
"Fan Club News," vol. 1, no. 4 (July 1981)
"Fan Club News," vol. 1, no. 5 (Aug. 1981)

2) "Trapped in the Snack Bar," Installment I
"Trapped in the Snack Bar," Installment II

Examples of two titles:

1) "Sports Monthly," vol. 1, no. 1 (Jan. 1981)
"Sports Monthly," vol. 1, no. 2 (Feb. 1981)
"Sports Monthly," vol. 1, no. 4 (Apr. 1981)

2) "The Adventures of Cyril," Installment I
"The Adventures of Cyril," Installment IV

1614.07(d) Same title repeated with different descriptive matter. Where the same title is repeated more than once in the same document, but the repetitions are followed by different descriptive matter, subtitles, names of authors, or the like, separate fees will be charged.

Examples of two titles:

1) "Rondo" (Massenet)
"Rondo" (Respighi)

2) "Architectural Drawing of Union Station-front elevation"
"Architectural Drawing of Union Station-side elevation"

3) "You Are the One" (from Summer Romance)
"You Are the One" (from Sunny Days)

1614 Recordation. (cont'd)

1614.07 Titles. (cont'd)

1614.07(e) Alternative titles. Where a work is clearly listed under alternative titles, or where both old and new titles are clearly indicated, separate fees will be charged. Use of the conjunctive "or" will not generally be treated as denoting alternative titles.

Example of one title:

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

Examples of two titles:

1) "Money Isn't Everything," also known as "Who Wants to Be Rich?"

2) "Cafe Tales," formerly known as "Draw One"

1614.07(f) Descriptive subtitle or translation. Even though a work is listed under a title which contains descriptive matter that could be characterized as a subtitle or translation, only one fee will be charged.

Examples of one title:

1) "On the Water (Auf dem Wasser)"

2) "You Are the One" (Romantic Song)

1614.07(g) Additional fees for title indexing. In cases where, under the practice set forth above, only one fee would normally be charged, the Copyright Office will nevertheless index the title variations separately, upon the specific request of the sender and payment of additional fees.

1614.08 Pages. In determining the number of pages in a document, each side of a leaf bearing textual matter is regarded as a "page." 37 C.F.R. 201.4(d)(3). NOTE: A rider is considered a "page."

1615 Termination of transfers and licenses granted by the author under the extended renewal term. The following are the practices and provisions relating to the termination of transfers and licenses granted by the author under the extended renewal term provided by the current Act.

1615.01 Statutory provision. In the case of any copyright subsisting in either its first or renewal term on January 1, 1978, other than a copyright in a work made for hire, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by the author (or by the successors in interest of the author, as specified by section 304(a) of the current Act), otherwise than by will, is subject to termination under the conditions specified in section 304(c) of the current Act.

1615.02 Advance notice and service. The notice of termination shall be served upon each grantee whose rights are being terminated, or the grantee's successor in title, by personal service, or by first-class mail sent to an address which, after a reasonable investigation, is found to be the last known address of the grantee or successor in title. 37 C.F.R. 201.10(d)(1).

1615.02(a) The service provision. The service provision of section 304(c)(4) of the current Act will be satisfied if, before the notice of termination is served, a reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being terminated, and based on such investigation: (i) 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 (ii) 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 such successor in title. 37 C.F.R. 201.10(d)(2).

1615.03 Time limits. Termination of the grant may be effected at any time during a period of five years beginning at the end of 56 years from the date copyright was originally secured, or beginning on January 1, 1978, whichever is later. See 17 U.S.C. 304(c)(3).

1615 Termination of transfers and licenses granted by the author under the extended renewal term. (cont'd)

1615.04 Forms. The Copyright Office does not provide printed forms for the use of persons serving notices of termination. 37 C.F.R. 201.10(a).

1615.05 Contents of notice. A notice of termination must include a clear identification of each of the elements listed below. The notice itself must contain a complete and unambiguous statement of facts without incorporation by reference of information in other documents or records. See 37 C.F.R. 201.10(b).

1615.05(a) Name of each grantee. The name of each grantee whose rights are being terminated or the grantee's successor in title, and each address at which service of the notice is being made.

1615.05(b) Title and author. The title of each work and the name of at least one author of, and the date copyright was originally secured in, each work to which the notice of termination applies; and if possible and practicable, the original copyright registration number.

1615.05(c) Identification of grant. A brief statement reasonably identifying the grant to which the notice of termination applies.

1615.05(d) Effective date of termination. The notice shall state the effective date of termination which shall fall within the five-year period specified in section 1615.03 above, and the notice shall be served not less than two or more than ten years before that date. See 17 U.S.C. 304(c)(4)(A).

1615.05(e) Person or persons who executed the grant. In the case of a termination of a grant executed by a person or persons other than the author, the notice shall contain a listing of the surviving person or persons who executed the grant. In the case of a termination of a grant executed by one or more of the authors of the work where the termination is exercised by the successors of a deceased author, the notice

1615 Termination of transfers and licenses granted by the author under the extended renewal term. (cont'd)

1615.05 Contents of notice. (cont'd)

1615.05(e) Person or persons who executed the grant. (cont'd)

shall contain a listing of the names and relationships to that deceased author or all of the following, together with specific indication of the person or persons executing the notice who constitute more than one-half of that author's termination interest: That author's surviving widow or widower; and all of that author's surviving children; and, where any of that author's children are dead, all of the surviving children of any such deceased child of that author. However, instead of the information required above in this subsection, the notice may contain both of the following: (A) A statement of as much of such information 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; together with (B) 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(c) of title 17, U.S.C., or by their duly authorized agents. See 37 C.F.R. 201.10(b)(v). NOTE: The Copyright Office will generally not question whether the interest of the person or persons on whose behalf the notice of termination was executed constitute more than one-half of the author's termination interest.

1615.06 Signature. A notice of termination shall contain the actual signature or a reproduction of the actual signature of the person or persons identified in the document as being entitled to exercise the right of termination, or of a duly authorized agent of such person or persons.

1615 Termination of transfers and licenses granted by the author under the extended renewal term. (cont'd)

1615.06 Signature. (cont'd)

1615.06(a) Termination of grant executed by someone other than the author. In the case of a termination of a grant executed by a person or persons other than the author, the notice shall be signed by all of the surviving persons who executed the grant, or by their duly authorized agents. See 37 C.F.R. 201.10(c)(1).

1615.06(b) Termination of grant executed by one or more authors. In the case of a termination of a grant executed by one or more authors of the work, the notice as to any one author's share shall be signed by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under clauses (1) and (2) of section 304(c) of the current Act, or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author. See 37 C.F.R. 201.10(c)(2).

1615.06(c) Termination of grant executed by duly authorized agent. Where a signature is by a duly authorized agent, it shall clearly identify the person or persons on whose behalf the agent is acting. 37 C.F.R. 201.10(c)(3).

1615.06(d) Additional requirements. The handwritten signature of each person effecting the termination shall either be accompanied by a statement of the full name and address of that person, typewritten or printed legibly by hand, or shall clearly correspond to such a statement elsewhere in the notice. 37 C.F.R. 201.10(c)(4).

1615.07 Service. The notice of termination shall be served upon each grantee whose rights are being terminated, or the grantee's successor in title, by personal service, or by first-class mail sent to an address which, after a reasonable investigation, is found to be the last known address of the grantee or successor in title. 37 C.F.R. 201.10(d)(1).

1615 Termination of transfers and licenses granted by the author under the extended renewal term. (cont'd)

1615.08 Scope of examination. As a general rule, the Copyright Office will not attempt to judge or comment on the legal sufficiency of a notice of termination. Recordation as a notice of termination will be made if the following formal requirements have been met:

1615.08(a) Legibility of notice of termination. The notice of termination must be in writing and capable of being reproduced legibly on microfilm.

1615.08(b) Complete by its own terms. The notice of termination must ordinarily be complete by its own terms. The same rules are applicable as those which pertain to missing attachments or exhibits for documents recorded under 17 U.S.C. 205. See section 1609 above.

1615.08(c) Clear identification of elements. The notice of termination must clearly identify each of the elements specified in section 1615.05 above.

1615.08(d) Date and manner of service. The document submitted for recordation should be accompanied by a statement setting forth the date on which the notice was served and the manner of service, unless such information is contained in the notice. Where such information is not contained in the notice, and the document is not accompanied by a statement setting forth the date and/or manner of service, the Copyright Office will request that the sender submit a separate statement containing this information.

1615.08(e) Effective date earlier than date of recordation. A notice of termination should include an effective date of termination that is later than the date of recordation in the Copyright Office. If the document contains either an earlier date or no date of termination, the Copyright Office will suggest that the sender execute and submit for recordation a new document which gives an appropriate date of termination.

1615 Termination of transfers and licenses granted by the author under the extended renewal term. (cont'd)

1615.08 Scope of examination. (cont'd)

1615.08(f) Persons not entitled to terminate. Where the Copyright Office is aware that the signature appearing on the document is not that of a person entitled to exercise the right of termination or of a duly authorized agent of such person, the Office will suggest that a new document signed by the proper person be executed and submitted for recordation.

1615.09 Recordation. The Copyright Office will not refuse to record a document that fails to meet the requirements set forth in section 1615.08 above, but such document will not be indexed by the Copyright Office as a notice of termination.

1615.10 Recordation without prejudice. Recordation of a notice of termination by the Copyright Office is without prejudice to any party claiming that the legal and formal requirements for issuing a valid notice have not been met. 37 C.F.R. 201.10(f)(4).

1615.11 Date of recordation. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect. See 17 U.S.C. 304(c)(4)(A). The date of recordation is the date when all of the elements required for recordation, including the prescribed fee and, if required, the statement setting forth the date on which the notice was served and the manner of service, have been received in the Copyright Office. After recordation, the document, including any accompanying statement, is returned to the sender with a certificate of record. See 37 C.F.R. 201.10 (f)(3).

1616 Termination of transfers and licenses granted by the author on or after January 1, 1978. The practices set forth in section 1615 above are restricted to terminations under the extended renewal term provided in section 304(c) of the current Act. Practices regarding

1616 Termination of transfers and licenses granted by the author on or after January 1, 1978. (cont'd)

the parallel statutory provision governing termination of grants executed by the author on or after January 1, 1978, under section 203 of the current Act have not been established yet because the right of termination thereunder cannot be invoked in an appropriate termination document until the year 2003 or later. A document that purports to terminate a grant executed on or after January 1, 1978, may be recorded, but such document will not be indexed by the Copyright Office as a notice of termination.

[END OF CHAPTER 1600]

CHAPTER 1900

RECORDS, INDEXES, AND DEPOSITS OF THE COPYRIGHT OFFICE; INSPECTION, COPYING, ADDITIONAL CERTIFICATES, AND OTHER CERTIFICATIONS

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1912 Certification of actual deposit copy when required by the court.

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1913.03 Certification fees.

1914 Applicability of fees to other U.S. Government agencies.

CHAPTER 1900

RECORDS, INDEXES, AND DEPOSITS OF THE COPYRIGHT OFFICE; INSPECTION, COPYING, ADDITIONAL CERTIFICATES, AND OTHER CERTIFICATIONS

1901 Records of the Copyright Office; statutory provisions. The copyright law states that the Register of Copyrights shall provide and keep records of all deposits, registrations, recordations, and other actions taken by the Copyright Office and shall prepare indexes of all such records. See 17 U.S.C. 705. The statute also provides the fee schedule for Office services in connection with searches of the records, and the certification of copies of records. See 17 U.S.C. 708.

1902 Inspection of Copyright Office records and deposits in general. Inspection may be made of completed records and indexes relating to a registration or a recorded document and of copies or identifying material deposited in connection with a completed registration. See 17 U.S.C. 705 and 37 C.F.R. 201.2(b)(1). Direct access by certain persons is also afforded to pending applications for registration, the deposit material accompanying them, and pending documents for recordation. See 37 C.F.R. 201.2(b)(4). Also see 1902.02 below.

1902.01 Completed records. All completed records and indexes relating to a registration or to a recorded document and all articles deposited in connection with completed registrations and retained under the control of the Copyright Office, are open to public inspection. See 17 U.S.C. 705. Before being permitted to inspect any deposit, however, the requester must (1) show proper identification, preferably including a photograph and current

1902 Inspection of Copyright Office records and deposits in general. (cont'd)

1902.01 Completed records. (cont'd)

address, and (2) complete and sign a "Request for Inspection of Copyright Deposit" (Form C-8), indicating agreement not to copy or deface the material to be inspected. Requesters needing to make limited notes during the inspection may do so only on the form provided for that purpose by the Certifications and Documents staff which will review all notes before requesters leave the inspection area and retain those notes that constitute prohibited copying.

1902.02 Pending applications, documents, and open correspondence files. Direct access will be afforded as follows to pending applications for registration, the deposit material accompanying them, pending documents for recordation that were submitted within a twelve-month period immediately preceding the request for access and open correspondence files on such materials:

1. In the case of applications for registration, the deposits accompanying them and correspondence files: upon the request of the copyright claimant or authorized representative. In exceptional circumstances, the Register may allow inspection of pending applications and open correspondence files by someone other than the copyright claimant or the claimant's representative upon submission of a written request which is deemed by the Register to show good cause for such access and establishes that the person making the request is properly and directly concerned. The written request for such access should be addressed to the General Counsel, Copyright Office, Department 100, Washington, D.C. 20540.

1902 Inspection of Copyright Office records and deposits in general. (cont'd)

1902.02 Pending applications, documents, and open correspondence files. (cont'd)

2. In the case of documents: upon the request of at least one of the persons who executed the document or by an authorized representative of that person.

1902.03 Official correspondence. Official correspondence, including preliminary applications between copyright claimants or their agents and the Copyright Office, and directly relating to a completed registration, a recorded document, a rejected application for registration, or a document for which recordation was refused, is available for public inspection. NOTE: That portion of official correspondence that is directly related to rejected applications for registration or documents for which recordation was refused and which once represented a closed case will be open for public inspection and copying even though the once-closed case may have been later re-opened by some subsequent action on the part of the copyright claimant, an authorized agent thereof, or by the Copyright Office.

1902.04 Time and place of inspection. All of the materials open for inspection, except pending applications and documents, may be inspected during the operating hours of the Copyright Office, 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, in the Certifications and Documents Section of the Information and Reference Division. Some of these materials are not stored on the immediate premises of the Copyright Office and

1902 Inspection of Copyright Office records and deposits in general. (cont'd)

1902.04 Time and place of inspection. (cont'd)

access to them cannot be assured unless arrangements are made in advance with the Certifications and Documents Section. Inspection of pending applications and documents will be permitted in the Public Information Office.

1902.05 Records not open to public inspection. It is the general policy of the Copyright Office to deny direct public access to in-process files and to any work or other areas where they are kept. This general prohibition also extends to the direct public use of computer terminals intended to provide access to the automated equivalents of these files. However, direct public access to a limited amount of information contained in Copyright Office in-process files may be allowed under conditions specified in section 1902.06(b) below. See 37 C.F.R. 201.2(b)(2). In-process files are those which the Copyright Office prepares for its own immediate internal use in connection with pending applications for registration or the recordation of documents and which are preliminary to the completion of the public record. These files include the Receipt-In-Process Records, Correspondence Management System Records, accounting files, open unfinished business files, and other files of a similar nature. Information contained in Copyright Office in-process files may be obtained by anyone upon request. See section 1902.06 below. In no case, however, will direct public access be permitted to any financial or accounting records.

1902 Inspection of Copyright Office records and deposits in general. (cont'd)

1902.06 Requests by the public for information in the in-process files. Information contained in the Copyright Office in-process files may be obtained by anyone upon request and the payment of applicable fees to the Certifications and Documents Section, Information and Reference Division. The following information will be supplied in response to each such request:

1) the date(s) of receipt of: (i) the application(s) for registration that may have been submitted and is (are) being processed; (ii) the document(s) that may have been submitted for recordation and is (are) being processed; and (iii) the copy (copies) or phonorecord(s) that may have been deposited;

2) the title(s) of the work(s), including (if a serial) the date of issue, volume number, and issue number;

3) the name of the remitter;

4) the description or classification, if an application for registration;

5) the number of copies or phonorecords deposited; and

6) the name of the claimant, if different from the name of the remitter.

1902.06(a) Requests not requiring payment of a fee. A report containing the information specified above will be supplied without payment of a fee upon request made by the copyright claimant or the authorized agent thereof, or in the case of documents, upon the request of at least one

1902 Inspection of Copyright Office records and deposits in general. (cont'd)

1902.06 Requests by the public for information in the in-process files. (cont'd)

1902.06(a) Requests not requiring payment of a fee. (cont'd)

of the persons who executed such document(s) or the authorized agent thereof, provided the request is made no sooner than sixteen (16) weeks or later than fifty-two (52) weeks after the requested material was received in the Copyright Office. Written or telephoned requests should be directed to the Materials Control Section, Receiving and Processing Division; requests made in person by members of the public should be submitted in the Information Section, Information and Reference Division.

1902.06(b) Limited direct access to in-process files. Direct public access to a limited amount of information contained in Copyright in-process files is permitted on a computer terminal designated for that purpose in the Records Maintenance Unit of the Information and Reference Division upon payment of applicable fees. Such access may be obtained between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, with the exception of legal holidays. Only the following information is available from this source:

1) the title of the work(s), including, in the case of serials, volume number, date of issue, and issue number. NOTE: Only the first title listed in each application or document is included in this file;

1902 Inspection of Copyright Office records and deposits in general. (cont'd)

1902.06 Requests by the public for information in the in-process files. (cont'd)

1902.06(b) Limited direct access to in-process files. (cont'd)

2) the date(s) of receipt of the application or document;

3) the classification of an application for registration;

4) the number of deposit copies or phonorecords received;

5) the name of the remitter; and

6) the name of the claimant, if different from the name of the remitter.

1902.07 Materials not open to public inspection. Correspondence, memoranda, reports, opinions, and similar material relating to internal matters of personnel and procedures, office administration, security matters and internal considerations of policy, including the work product of an attorney, are not open to public inspection.

1902.08 Adminstrative staff manuals. Administrative staff manuals referred to as "Compendium of Office Practices I" and "Compendium of Office Practices II," prepared for the general guidance of the Copyright Office staff, in making registration and recording documents, are available for public inspection in the Certifications and Documents Section from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. See 37 C.F.R. 201.2(b)(7).

1903 Copying of Copyright Office records, indexes, correspondence, and deposits in general. Copies may be made of any public records or indexes of the Copyright Office. See 17 U.S.C. 706(a). Copies of applications may be made by the requester or may be furnished by the Copyright Office upon payment of the duplication fees. Copies may be made of official correspondence including preliminary applications between copyright claimants or their agents and the Office, and directly relating to a completed registration, a recorded document, a rejected application for registration, or a document for which recordation was refused. Requests for copies of correspondence should include the information specified in the Copyright Office regulations. See 37 C.F.R. 201.2(c) and (d). See also section 1903.02 below for requirements. Copies or reproductions of materials deposited for registration retained under the control of the Copyright Office will be furnished under the conditions specified in the Office regulations. However, the copyright owner or anyone providing a litigation statement may use a camera or other small copying device to copy a deposit if the copy is made in the Certifications and Documents Section under the supervision of a technician and if no electrical power, special lights, or other equipment is required. See 17 U.S.C. 706(b) and 37 C.F.R. 201.2(d). See also section 1904 below.

1903.01 Making of copies. If the requested copies can be made routinely on the photocopying equipment available in the Certifications and Documents Section, the copies will be prepared by Copyright Office staff. If the amount of material to be reproduced or its complexity makes duplication by the Certifications and Documents staff impracticable, the copies will be made by the Photoduplication Service of the Library of Congress or the Motion Picture, Broadcasting and Recorded Sound Division. In either case the current duplication fees will be charged. See section 1913 below.

1903 Copying of Copyright Office records, indexes, correspondence, and deposits in general. (cont'd)

1903.02 Requests for copies other than additional certificates. Requests for copies of records, indexes, correspondence, and deposits should be made to the Certifications and Documents Section. Fees are charged for the making of copies, any searches required to find the material, and for certification. Failure to provide a registration number and year date, or volume and page number for a recorded document, may result in a search charge to find the material. To minimize search fees and expedite the making of copies the request for copies should include the following information when available:

1) A clear identification of the type of records or deposits to be copied (for example additional certificates of registration, copies of deposits, correspondence, catalog entries, etc.).

2) A specification of whether the copies are to be certified or uncertified.

3) A clear identification of the specific records to be copied, including where possible, the type of work involved (for example a novel, song lyrics, technical drawing), the registration number, if any, the year date or approximate year date of registration or submission to the Office, the complete title of the work, the author(s) including any pseudonym, the claimant(s), and if the requested copy is of an assignment, license, contract, or other recorded document, the volume and page number of the recorded document.

1903 Copying of Copyright Office records, indexes, correspondence, and deposits in general. (cont'd)

1903.02 Requests for copies other than additional certificates. (cont'd)

4) If the copy requested is an additional certificate of registration, the fee should be included.

5) The telephone number and address of the requester.

See 37 C.F.R. 201.2(d).

1903.03 Copies of records. The Copyright Office will furnish a copy of any official record upon request and payment of the duplication fee. Official records include completed records of registration and recorded documents, indexes, and catalog entries relating to a registration or a recorded document.

1903.04 Materials which may generally be copied. The Copyright Office will furnish a copy of official correspondence, including preliminary applications, between copyright claimants or their agents and the Office, and directly relating to a completed registration (however, see section 1903 above), a recorded document, a rejected application for registration, or a document for which recordation was refused. See 37 C.F.R. 201.2(c)(1).

1903.05 Materials which may generally not be copied. The Copyright Office will not make copies available of correspondence, application forms, and any accompanying material (including deposit material) forming part of a pending application. As a general rule and subject to Freedom of Information Act requirements, copies will not be furnished of correspondence, memoranda, reports, opinions,

1903 Copying of Copyright Office records, indexes, correspondence, and deposits in general. (cont'd)

1903.05 Materials which may generally not be copied. (cont'd)

and similar material relating to internal matters of personnel and procedures, office administration, security matters, and internal consideration of policy and decisional matters, including the work product of office attorneys.

1903.06 Administrative staff manuals. Requests for photocopies of the administrative staff manuals referred to as "Compendium of Copyright Office Practices I" and "Compendium of Copyright Office Practices II" should be submitted to the Certifications and Documents Section of the Copyright Office for copying during regular work hours, 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Copies of the manuals are available for purchase from the National Technical Information Service for Compendium I and the Government Printing Office for Compendium II.

1904 Copies of deposits. Requests for copies or phonorecords of deposited articles retained under the continuous control of the Copyright Office should be made to the Certifications and Documents Section. Requests for copies of deposits that have been transferred to the Library of Congress should be made to the Photoduplication Service or to the Motion Picture, Broadcasting and Recorded Sound Division.

1904.01 Authorization to make copies of deposits. Requests for reproductions of the copies, phonorecords, or identifying material deposited in connection with a copyright registration of published or unpublished works and held in the custody of the Copyright Office will be provided only when one of the following three conditions have been met:

1904 Copies of deposits. (cont'd)

1904.01 Authorization to make copies of deposits. (cont'd)

1) The Copyright Office receives written authorization from the copyright claimant of record or his or her designated agent, or from the owner of any of the exclusive rights in the copyright as long as this ownership can be demonstrated by written documentation of the transfer of ownership. If the requester appears in person and alleges to be entitled to a reproduction of the deposit material on one of the foregoing bases, identification is requested as well as written authorization. If the request is made by telephone, the Office will ask for a written request.

2) The Copyright Office receives a written request from an attorney on behalf of either the plaintiff or defendant in connection with litigation, actual or prospective, involving the copyrighted work. The following information must be included in such a request: (i) the names of all the parties involved and the nature of the controversy; and (ii) the name of the court in which the actual case is pending or, in the case of a prospective proceeding, a full statement of the facts of the controversy in which the copyrighted work is involved; and (iii) satisfactory assurance that the requested reproduction will be used in connection with the specified litigation.

3) The Copyright Office receives a court order for a reproduction of the deposit copies, phonorecords, or identifying material of a registered work which is the subject of litigation. The order must be issued by a court having jurisdiction of the case in which the reproduction is to be submitted as evidence.

1904 Copies of deposits. (cont'd)

1904.02 Nature of copies or phonorecords. Upon authorization and receipt of the duplication fee, the Copyright Office will supply a photocopy of copies, phonorecords, or identifying material deposited as part of a copyright registration. When a request is made for a reproduction of a phonorecord, such as an audiotape or cassette, in which either a sound recording or the underlying musical, dramatic, or literary work is embodied, the Copyright Office will provide a proximate reproduction. The Office reserves the right to substitute a monaural reproduction for a stereo, quadraphonic, or any other fixation accepted for deposit. The Office will provide the title, the registration number of the phonorecord, and, for certified copies, a written statement describing the form and location of any visually perceptible notice of copyright. In response to a specific request, the Office will provide reproductions of any printed or other visually perceptible material published with the phonorecord. For other deposit materials, the Office will supply uncertified copies which depict or reproduce the deposit with varying degrees of fidelity depending on the needs of the requester. For example: a photocopy of a photograph can be supplied if such a reproduction is suited to the requester's needs. For the nature of certified copies, see section 1909.10 below.

1905 Certificates of registration. After the Register of Copyrights determines that the material deposited for registration constitutes copyrightable subject matter, and that the other legal and formal requirements of the law have been met, the Register will register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. The certificate

1905 Certificates of registration. (cont'd)

will contain the information given in the application, together with the number and effective date of the registration. See 17 U.S.C. 410(a). A certificate of renewal registration will be issued for works first published or registered before January 1, 1978 upon compliance with the renewal provisions of the Copyright Act. See 17 U.S.C. 304(a). Certificates returned to the Copyright Office as undeliverable will be mailed a second time unless they were undeliverable because the addressee moved and left no forwarding address. Returned certificates are held in file in accordance with the current retention policy and are then disposed of. A record is made of the mailing and return of certificates.

1905.01 Nature of the certificate. The certificate of registration or certificate of renewal is a photocopy of the application made on a form containing the signature of the Register of Copyrights and the seal of the Copyright Office.

1906 Additional certificates of registration. Additional certificates of original or renewal registration will be issued to anyone upon request and payment of the fee. See 17 U.S.C. 706(a). Additional certificates are certified copies of the record of registration and have the same legal effect as the original certificate. The manner in which additional certificates are prepared varies, depending upon the date of the original registration. Additional certificates are prepared by the Certifications and Documents Section of the Information and Reference Division. The Copyright Office will not issue additional certificates of cancelled registrations.

1906 Additional certificates of registration. (cont'd)

It will, however, certify a copy of the cancelled registration in the same manner as it certifies any other public record. See sections 1903.03(a) above and 1909.06 below. The Office will certify copies of applications refused registration in the first instance as part of the correspondence file.

1906.01 Registration made on or after January 1, 1978. Additional certificates for registrations made on or after January 1, 1978 are duplicate facsimilies prepared as photoreproductions of the application which was used to make the original registration. The additional certificate contains the signature of the Register of Copyrights together with the seal of the Copyright Office. Each additional certificate covering a registration made after January 1, 1978 is stamped to identify it as an additional certificate.

1906.02 Registration made on or before December 31, 1977. Additional certificates for registration made on or before December 31, 1977, consist of a photocopy of the application that was used to make the original registration with a pre-printed certification statement attached. The registration number, date of certification, and the signature of the Register of Copyrights are added to the certification statement form, which is issued under the seal of the Copyright Office. In cases where a photocopy of the application cannot be used to produce an additional certificate of registration, an additional certificate may be made by typing the name of the claimant, title, date of publication, date of receipt of copy(s), and the registration number on a pre-printed certification form. The name of the Register of Copyrights is then added to the form together with the seal of the Copyright Office.

1906 Additional certificates of registration. (cont'd)

1906.03 Prints or labels registered in the Patent Office before July 1, 1940. The Patent Office retained carbon copies of each certificate issued by that Office. Copies of the Patent Office records were transferred to the Copyright Office on July 1, 1940. An additional certificate of copyright registration for a print or label registered in the Patent Office before July 1, 1940, consists of a photocopy of the carbon copy of the original certificate of registration together with the Copyright Office's certification of the photocopy.

1907 Certificate of recordation. Upon receipt of any transfer of copyright ownership or other document pertaining to a copyright, which meets the requirements of the law (see 17 U.S.C. 205(a)), the Copyright Office will record the document and return it with a certificate of recordation. See 17 U.S.C. 205(b).

1907.01 Nature of the certificate of recordation. The document submitted for recordation, after it has been microfilmed for inclusion in Copyright Office records, is returned to the sender with an attached certificate of recordation. The certificate consists of a form containing the signature of the Register of Copyrights, the date of recordation, and the volume and page number of the recorded document. The certificate also bears the seal of the Copyright Office.

1908 Certified copy of a recorded document. A certification of recordation may be issued to anyone upon request and payment of the fee(s). See 17 U.S.C. 706(a). The certification consists of a copy of the document, or relevant portions thereof, and an attached certification form.

1908 Certified copy of a recorded document. (cont'd)

1908.01 Microfilm recordation. Some documents originally recorded in the Copyright Office on microfilm (generally before 1982) also include a microfilm copy of the original certificate of recordation. The original certificate of recordation is reproduced along with the document and is included in the certified copy.

1908.02 Preparation of copies of document. Copies of most documents are prepared by the Certifications and Documents Section of the Information and Reference Division. A fee for making the copy may be charged at the rate established by the Photoduplication Service. See section 1913 below. Some copies of documents must be prepared by the Photoduplication Service which charges its current fees for the service.

1908.03 Certification of copies of recorded documents. Copies of recorded documents are certified by the Certifications and Documents Section of the Information and Reference Division. Certified copies of recorded documents are furnished by providing a photocopy of the document printed on paper, including a photocopy of the original certificate of recordation, if it is on record. See sections 1908.01 and 1908.02 above. The photocopy of the document is attached to a certification form on which is included the volume and page number where the document is recorded, the date of certification, and the date of recordation. The signature of the Register of Copyrights and the seal of the Copyright Office are included on the certificate. A fee for making the copy will be charged at the rate established by the Photoduplication Service.

1909 Certification in general. Certification is an official written representation of the Copyright Office attesting to one or more facts and bearing the seal of that Office and issued under the name and title of the Register of Copyrights.

1909.01 Register's name on certification. The name of the currently appointed Register of Copyrights will be used regardless of his/her temporary absence from the Office for reasons such as travel, illness, etc. Only during a change in terms when an Acting Register has been appointed by The Librarian of Congress would the name of an Acting Register be used.

1909.02 Authentication of certified documents issued by the Copyright Office. The Copyright Office has adopted an official seal used to authenticate certified documents it issues. See 17 U.S.C. 701(b). The appearance of the seal has varied during different periods of time; however, the certification remains valid if correctly sealed at the time it was made. Use of the Library of Congress seal or any other non-official Copyright Office seal does not result in a valid certification.

1909.03 Register's name or Copyright Office seal lacking. A document lacking either the Register's name or the Copyright Office seal is not validly certified.

1909.04 Appeal from denial of certification. Denial of a request for certification may be appealed in the following order: (1) Head, Certifications and Documents Section, (2) Chief of the Information and Reference Division, and (3) Register of Copyrights, who may delegate the responsibility to the General Counsel or the Assistant General Counsel.

1909 Certification in general. (cont'd)

1909.05 Undeliverable certifications. Certifications, including additional certificates of registration, returned to the Copyright Office as undeliverable, are generally remailed one time. If returned again, the certification is sent to the Miscellaneous Correspondence files and later disposed of in accordance with retention policies established by the Register of Copyrights for those files.

1909.06 Who may authenticate documents. Documents may be authenticated by the person or persons to whom that authority has been delegated by the Register of Copyrights. Documents will generally be authenticated by the Head of the Certifications and Documents Section or in his/her absence by the Assistant Chief or Chief of the Information and Reference Division. For original certificates of registration or certificates of recordation of documents see sections 1905.01 and 1907.01 above.

1909.07 Kinds of certification forms. Certifications are made in three different formats depending on the nature of the material being certified.

1) Original certificates of registration or recordation of documents. For the form of certifications of original certificates of registration see section 1905.01 above. For the form of certifications for original certificates of recordation of documents see section 1907.01 above.

2) Standard certification form. A standard pre-printed certification form is used when the reproduction of the Copyright Office record or copy is substantially identical in appearance to the original,

1909 Certification in general. (cont'd)

1909.07 Kinds of certification forms. (cont'd)

2) (cont'd)

e.g. a photocopy of a printed page. The standard form contains the signature of the Register of Copyrights, the seal of the Copyright Office and the date of certification.

3) Specially-drawn certification. A specially-drawn certification is required when the reproduction is not exact, e.g. making a cassette tape from a record, making a photograph of a three-dimensional object, making a copy that is reduced in size from the original deposit, or making a copy of only part of a larger work (preface only of a book or five pages of a twenty-page document). A specially-drawn certificate contains the name of the Register of Copyrights, the signature of the person authorized to make the authentication, the seal of the Copyright Office, and the date of certification.

1909.08 Method of requesting certification. Certifications, including additional certificates of registration, are made by the Certifications and Documents Section of the Information and Reference Division and all requests for certification should be addressed to that section. The request should include the following:

1) Specific request for certification. The request should clearly indicate that the copies are to be certified. Where the request is unclear whether the copies are to be certified or not, the Copyright Office will make inquiry for further instructions.

1909 Certification in general. (cont'd)

1909.08 Method of requesting certification. (cont'd)

2) Full identification of material to be certified. The request should fully identify the material to be certified. See section 1903.02 above. Failure to adequately identify the material may necessitate an inquiry by the Office for further information or may result in a search fee to locate the material.

1909.09 Preparation and handling of certifications in general. All Copyright Office certifications must be prepared under the direction and control of the Copyright Office. See section 1903.01 above. When preparing copies for Office certification, the Photoduplication Service or Motion Picture, Broadcasting and Recorded Sound Division acts at the direction of the Copyright Office. When material is submitted to them for copying the Copyright Office will observe the following procedures:

1) Furnish the materials to be copied, identify the exact material to be copied, and specify the copying process to be used; and,

2) Indicate that the material is being prepared for certification and that it should be returned to the Copyright Office for that purpose.

1909.10 Certified copies of official records. Upon payment of the certification and photoduplication fees, certified copies of official records of the Copyright Office may be furnished. Examples of official records include: entries in the registration record books, numbered applications, indexes to registration and recorded transfers and other documents pertaining to a copyright. The certified copies furnished by the Office will be accompanied by the appropriate certification form. See section 1909.07 above.

1909 Certification in general. (cont'd)

1909.11 Certified copies of correspondence. Upon payment of the certification and photoduplication fees, the Copyright Office will certify copies of any correspondence which is permitted to be copied. See section 1903.04 above. Every certification covering correspondence must be specially drawn. See section 1909.07(3) above. If the various pieces of correspondence all relate to the same registration, or group of related registrations, they may all be included in one certification, but each item must be separately identified in the certification.

1909.12 Certified copies of search reports. Search reports prepared by the Copyright Office will be certified on letterhead stationery available for that purpose. The search report is certified under the seal of the Register of Copyrights and is usually signed also by the Head of the Reference and Bibliography Section or in his or her absence it may be signed by the Assistant Chief or Chief of the Information and Reference Division.

1909.13 Certification of copies of information circulars, former circulars, and blank application forms. The Copyright Office will certify copies of information circulars and blank application forms currently or formerly issued as official publications of the Office. Certifications are made by the Certifications and Documents Section, under the seal of the Register of Copyrights and signed by the Head of the Certifications and Documents Section or in his or her absence by the Assistant Chief or Chief of the Information and Reference Division.

1909 Certification in general. (cont'd)

1909.14 Certified copies of material deposited for copyright registration. When the Copyright Office has retained continuous control of deposits (see section 1904 above) and it is authorized to make copies (see section 1904.01 above), certified copies or phonorecords may be furnished of materials deposited for copyright registration, upon recepit of the certification and duplication fees. The Office will not certify copies found in the collections of the Library of Congress. Only the Library of Congress can make such certifications.

NOTE: The practice of the Copyright Office regarding the retention under its control of materials deposited for copyright has varied at different times. Therefore, not all materials deposited for copyright registration are available for copying or certification.

1909.15 Jurisdictional requirement for certifying material deposited for copyright. The Copyright Office will certify a copy of material deposited for copyright only if such material has remained continuously under the control of the Copyright Office. Copies of such materials made part of the Library of Congress' collections will only be certified by the Photoduplication Service or the Motion Picture, Broadcast, and Recorded Sound Division. When such deposit materials are loaned for exhibit purposes to the Library of Congress Exhibits Office, the Copyright Office asks that these items be returned and the Office insists that they not be altered in any way and that they not be made available for public handling. In these cases the material is considered to have remained under the control of the Office and therefore they

1909 Certification in general. (cont'd)

1909.15 Jurisdictional requirement for certifying material deposited for copyright. (cont'd)

can be certified while they are on exhibit and after they are returned to the Office. The Office will not certify any other materials returned to it from the Library of Congress.

The Copyright Office will not certify any material added to a deposit after registration has been completed, except where the additional material is added as an addendum to the original registration.

The Copyright Office will certify only those copies which have been made by it or at its request. It will not certify copies of deposit material made by copyright owners or litigants even if those copies are made under the supervision of the Office. See section 1903 above.

1909.16 Form and content of certified copies of material deposited for copyright (other than phonorecords and Patent Office deposits). The Copyright Office will provide the best possible reproductions of deposited material, depending on the nature of the material and the need of the requester. Photocopies are provided for most flat material. As a general rule, the Office certifies a copy of the entire deposit retained by the Office. The material certified must include a copy of the page or surface bearing the registration number and date of deposit, if any.

1909.16(a) Copies of part or portions of a work. When a request is received to copy and certify only a part or portions of a work, a special certification clearly identifying the material certified must be drawn and typed. In such cases, the

1909 Certification in general. (cont'd)

1909.16 Form and content of certified copies of material deposited for copyright (other than phonorecords and Patent Office deposits). (cont'd)

1909.16(a) Copies of part or portions of a work. (cont'd)

material copied and certified must include the page or surface bearing the registration number and date of deposit, and also the page or surface bearing the notice of copyright, if any.

1909.16(b) Copies of photographs and identifying reproductions deposited for certain three-dimensional works. To certify copies of photographs or reproductions deposited in lieu of three-dimensional or over-size copies, a special certification must be prepared which identifies the "certified copies" as copies of photographs or identifying material deposited in lieu of copies. In such cases all of the photographs or reproductions in a set should be reproduced, unless the request specifies that only certain ones are to be copied. In all cases, however, the material copied and certified should include the page or surface bearing the registration number and date of receipt of the deposit, and also the page or surface showing the notice of copyright, if any. For some pre-1956 registrations where both three-dimensional copies and photographs may be available, the Copyright Office will certify the photographs, unless the applicant specifically requests certification of the three-dimensional copies.

1910 Certified copies of prints or labels deposited in the Patent Office before July 1, 1940. The Copyright Office will provide a photocopy of the print or label, attached to a special printed certification form.

1911 Certified copies of phonorecords. The Copyright Office will certify copies of phonorecords and any labels or other printed material deposited with a phonorecord using a specially prepared certification form. For the nature of the copy of the phonorecord see section 1904.02 above.

1912 Certification of actual deposit copy when required by the court. When required by a court, the Copyright Office will certify the actual copy, phonorecord, or identifying material used to make the registration, provided that the copy, phonorecord, or identifying material has been under the continuous control of the Copyright Office. The actual deposit material will be made available only upon the condition that it will be promptly returned to the custody of the Copyright Office. A specially prepared certificate is drawn to show that the copy, phonorecord, or identifying material is the copy, phonorecord, or identifying material used to make the registration. If the deposit material has been transferred to the Library of Congress collections, the Office will not certify that copy, phonorecord, or identifying material used to make the registration.

1913 Fees in general. Fees are charged for the various services provided by the Copyright Office, the Photoduplication Service, or the Motion Picture, Broadcasting, and Recorded Sound Division.

1913.01 Statutory fees. Statutory fees are provided for certain services by section 708 of the Copyright Act and are payable to the Register of Copyrights.

1913 Fees in general. (cont'd)

1913.01 Statutory fees. (cont'd)

1) For issuance of an additional certificate of registration;

2) For issuance of any other certification;

3) For making a search or any related service;

4) For a special service, such fees as the Register may fix.

1913.02 Photoduplication Service and Motion Picture, Broadcasting, and Recorded Sound Division fees. Fees for the making of copies by these units are established by them and are payable to the Library of Congress at the copying rate then in effect for their services.

1913.03 Certification fees. If the Certifications and Documents Section is to do the certification, the check should be made out to the Register of Copyrights. If the Photoduplication Service or Motion Picture, Broadcasting, and Recorded Sound Division is to do so, the check should be made out to the appropriate unit. If payment is due to both the Copyright Office and one of the other units, two checks are preferable. If only one check is received, the Certifications and Documents Section will transfer the Library of Congress portion of the fee to it.

1914 Applicability of fees to other U.S. Government agencies. Section 708(b) of the Copyright Act provides that all fees prescribed by the Act are applicable to the United States Government and any of its agencies, employees, or officers, but that the Register of Copyrights has discretion to waive these requirements in occasional or isolated cases involving relatively small amounts.

[END OF CHAPTER 1900]

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INDEX TO COMPENDIUM II

COMPENDIUM

OF

COPYRIGHT OFFICE PRACTICES

Under the Copyright Law Which
Became Fully Effective on
January 1, 1978, Including
Title 17 of the United States
Code and Amendments Thereto.

COPYRIGHT OFFICE
THE LIBRARY OF CONGRESS
WASHINGTON, D. C. 20559

1984

INDEX TO THE COMPENDIUM OF COPYRIGHT OFFICE PRACTICES

This is an index to the 1984 text of the Compendium of Copyright Office Practices under the copyright law which became fully effective on January 1, 1978, including Title 17 of the United States Code and amendments thereto. This Compendium is designated as Compendium II. Each term is indexed to the pertinent page or pages of this Compendium where the term is to be found.

An earlier Compendium (now called Compendium I) was issued a number of years ago to reflect Copyright Office practices under the Copyright Act of 1909, as amended. Compendium I has its own index. The present index covers only Compendium II.

NOTE: The present index does not include references to the text of Chapters 600 and 1900 which were added in 1988.

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