Contracts and Copyright – Legal Issues for Freelancers

by Sallie Randolph

Society of Environmental Journalists
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Understanding Copyright , Valuing Copyright, Fair Use, and DMCA Notice and Takedown

2011 Notice and Takedown Letter to an Internet Sales Site (actual letter with names changed)

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Copyright Office FAQ's (edited and consolidated) and Copyright Basics
(The copying and distribution of these Copyright Office FAQs and Copyright Basics is not an infringement because federal government materials are in the public domain. But note: this is NOT necessarily true of state and local government publications.)

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Understanding Copyright

The first copyright was granted by a king to an early printer. It conveyed the right to own and use a printing press to reproduce and distribute various written works and established the legal rights related to the publication of written works. Copying technology has evolved exponentially since the printing press was invented and copyright law has marched along with the advancing technology to create, preserve and protect the property rights of authors in their creations. In the United States, copyright law is authorized in the Constitution and spelled out in a federal statute, the Copyright Act (Title 17 of the United States Code). Copyright is internationally recognized as a basic human right essential to a civilized society. International copyright law, as embodied in treaties, organizations, associations, tribunals, laws and agreements, plays an increasingly important role in a changing world by protecting the rights of individual human beings to property, prosperity, access to information and freedom of expression.

The word copyright means, literally, the right to copy. It is the legal expression of a fundamental property right that has since existed since the earliest civilizations, but only emerged as distinct legal right after invention of the printing press. Before printing, the rights in words and symbols were perceived as a single property right that arose as soon as they were carved in stone, painted on skins, written on paper or fixed in another tangible medium of expression. Printing technology didn't change the concept of written works as property, but it triggered awareness of an important distinction -- the difference between the tangible object upon which written words were fixed and the intangible expression of a unique work created through the writer's selection and arrangement of those words. This distinction between physical property and intellectual property formed the basis of copyright law. Copyright was the first intellectual property right recognized in law as the technology revolution unraveled new strands in the ancient bundle of property rights.

Valuing Copyright

Since the advent of the internet, there have been wild and misguided claims that copyright law is outdated and that information wants to be free. Such claims are simply not true. These critics of copyright are really asking: "Now that it's cheap and easy, isn't it OK to steal words, music and art?" The answer is no. Copyright infringement is theft, pure and simple. Copyright owners are just as entitled to be protected by the law as are the owners of jewelry, bicycles and soccer balls. Copyright law is clear and basic – words, pictures and sounds expressed in a distinctive way and written down or otherwise fixed in a tangible medium of expression are the property of the creator. "Thou shalt not steal," is a core tenant recognized in virtually every civilized society and it applies to the rights of authors today. No civilized society recognizes a right to steal physical property, even when it's easy to do so and tempting to rationalize. No civilized society recognizes the theft of intangible property, either. Copyright law has consistently adapted along with technology . Just as laws, both civil and criminal, provide penalties and sanctions for the theft of jewelry, bicycles and soccer balls, copyright laws provides penalties for the theft of authors' rights. Stealing is stealing. And it's always been wrong.

Fair Use

The U.S. Supreme Court has called the "fair use" doctrine "the most troublesome in the whole law of copyright." Fair use is subtle and complex because its meaning must be determined by context. In fact, one Federal Court justice called it "so flexible as virtually to defy definition." To make things more complicated, courts have not hesitated to expand or restrict the scope of fair use protection to serve the "interests of justice." Is all this complexity really necessary? The answer is yes. The fair use doctrine is a judicial and legislative attempt to balance the interests of copyright holders, society at large, and individual information users. Fair use cannot do that if it is overly simplistic. So, exactly what is fair use and how does it apply to the work of freelancers? Fair use is an affirmative defense to copyright infringement. In legal terms, an affirmative defense acknowledges wrongful behavior but provides an excuse. Self-defense is an affirmative defense to murder because the accused admits to killing the victim, but offers an excuse. This means that the fair use does not apply to material that cannot be protected by copyright in the first place. Copyright cannot protect ideas, facts or events, but only creative description and expression. Ideas and facts, therefore, may be freely copied. Fair use comes into play only when there exists a copyright that has been infringed.

Fair use is codified in statute form as Section 107 of the U.S. Copyright Act, but it is actually a case-based doctrine that existed in the common law long before Congress revised the present copyright law in 1976. The copyright statute does not define the term "fair use" or provide definitive rules for its application. Section 107 was intended, according to a Congressional report at the time, merely to "restate the preexisting judicial doctrine of fair use, not to change, narrow or enlarge it in any way."Section 107 starts with a statement of purpose, and then lists four factors to be considered by the courts. The statute, however, does not explain how to weigh the purpose and the four factors to decide whether any given use of copyrighted material is fair or infringing.

The purposes for which it may be fair to use a copyrighted work include "criticism, comment, news reporting, teaching, scholarship, or research." This list of purposes, however, is not exhaustive but merely illustrates some examples of fair use. In order for a use to be fair, the general rule is that it must result in (1) a public benefit or (b) an increase in knowledge beyond the contribution of the original work. When viewed in light of the statute's stated purpose, a use is not fair, for example, simply because it is a single or small infringement, or a private noncommercial use.

Purpose and Character of the Use

The first factor requires you to consider "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes." In keeping with the goal of social benefit resulting from the unauthorized use of copyrighted material, the courts have been less likely to rule that commercial uses are fair. Despite this, the courts have recognized that virtually all publications are run for profit, and that most uses will exist on a continuum of commercial/nonprofit uses. At the commercial end of the spectrum, the court in the case of *Amana Refrigeration, Inc.* v *Consumers Union of United States, Inc.* (431 F Supp 324), said that quoting a portion of an article published in *Consumer Reports* is not a fair use when used to promote sales of products- it is mainly a commercial use. At the opposite extreme is a

purely nonprofit use such as education. If you intend to use copyrighted material, therefore, you must assess the commercial motive and purpose of the work.

Nature of the Work
The second factor is "the nature of the copyrighted work." It is more likely fair use to quote factual works, news reports, and biographical facts than a work of fiction. In part, this distinction embodies First Amendment considerations and more broadly the public interest in dissemination of import facts. A dramatic illustration of the weight of the public interest in information is found in the case of ***Time Inc.*** **v.** *Bernard Geis Ass.* which dealt with the unauthorized publication of still-frames from the Zapruder motion pictures which depicted the Kennedy assassination. The exclusive rights to the Zapruder tapes belonged to Life Magazine Inc., which had purchased them from Abraham Zapruder for $150,000. Several years later, the defendant Thompson approached *Life* for permission to use frames from the film for a book he was writing about the assassination. When Life declined his offer, Thompson used his access to *Life's* archives to secure photographs of the desired frames that he reproduced in his own book. Life sued for copyright infringement and Thompson asserted the fair use defense. Even where Thompson's behavior in obtaining the images was egregious and the infringement was clear, the court held that the public's interest in the dissemination of information about Kennedy's assassination outweighed *Life's* proprietary interest in the images.

Amount Infringed
The third factor, is "the amount and substantiality of the portion used in relation to the copyrighted work as a whole." Although courts will sometimes point out that an infringing use constituted a certain percent of the entire work, there is no magic number. Both the quality and quantity of the portions used are at issue. One illustrative case involves a videotape of the Reginald Denny beating shot by the Los Angeles News Service from one of its helicopters. The news service licensed several television stations to use the footage but denied permission to KCAL. KCAL, however, aired a purloined version of the video during its coverage of the riot and later argued that its airing constituted fair use because the portion it showed was a relatively small part of the entire video. The court rejected this argument because the news station had aired the most valuable segment of the video and held KCAL's limited use to be infringing.

Market Value
The fourth factor is "the effect of the use upon the potential market for or value of the copyrighted work." A use is unfair when it diminishes the marketability of the original by serving as a substitute. A good illustration of fourth factor analysis is with abstracts of longer works. You have to consider how and why the abstracting is done. In a bibliographic abstract, for example, little of the original work is used and the use is likely to be fair. A synopsis, on the other hand, is likely to contain more material from the original, and you need to take care. There is a higher likelihood that the synopsis will destroy the market for the original work which means that the use is less likely to be fair.

Fair Use Analysis - Fair use is a flexible doctrine. Whether or not a particular infringement can be excused as fair use depends heavily on the facts of each case. In each case, you must considerthe underlying purpose of the fair use provisions of the *Copyright Act* and a balancing of the four factors cited in the statute, as well as the case law interpreting each factor.

Notice & Takedown

The notice and takedown provisions of the DMCA offer copyright owners a way to protect their works online while limiting the liability of ISPs for copyright infringement. Notice and takedown requires you to police the Internet and search for infringing materials. If infringing material is found, you must submit a notification, under penalty of perjury, to the ISP's designated agent. The notification must:

- bear your physical or electronic signature, or that of your agent;
- identify the work that you claim has been infringed, or, if more than one work is infringed on a single web site, a representative list of the works at that site;
- identify the infringing material that is to be removed, and include any information necessary so the ISP can locate the material;
- provide your address, telephone number, and, if available, an email address, so that the ISP can contact you;
- state that you have a good faith belief that use of the material on the web site has not been authorized by you, your agent, or the law; and
- state that the information in the notification is accurate, and under penalty of perjury, that you are the owner of the copyright that has been infringed or that your agent who is filing the notification is authorized to act on your behalf.

If you fail to comply substantially with the statutory requirements, the notification will not be considered by a court in determining whether the ISP has the requisite level of knowledge to support a liability claim.

Upon receiving your notification, the ISP must promptly make a good faith effort to remove the infringing material from its network or disable access to the material. This is called “takedown.” The ISP will not be liable for any action based on the fact that the material was removed. The timely removal or blocking of the infringing material also means that the ISP will not be liable for monetary damages of you file an infringement action in court.

After removing the infringing material, the ISP must take reasonable steps to promptly notify the subscriber that the material has been removed or blocked. If the subscriber responds with a counter notification, the ISP must provide you with a copy of that response and notify you that it will replace the removed material or cease disabling access to it in 10 business days. Unless you notify the ISP’s designated agent that you have filed an action seeking a court order to restrain the subscriber from infringing your work on the ISP’s system or network, the ISP must replace the material within 10 to 14 business days.

The DCMA provides the subscriber to respond to the notice and takedown by issuing a counter notification. The counter notification must:

- bear the physical or electronic signature of the subscriber;
- identify the material that has been removed or blocked and the location at which the material appeared before it was taken down;

- state under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification;
- provide the subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is in another country, for any judicial district in which the ISP may be found, and that the subscriber will accept service of process from the you or your designated agent.

The DCMA imposes damages, including costs and attorney fees, incurred by the alleged infringer, the copyright owner, or the ISP against any party who knowingly misrepresents material facts in either the notification or the counter notification.

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March 12, 2010

Etsy, Inc.
Attn: Legal Department
55 Washington Street Suite 512
Brooklyn, NY 11201

VIA: Fax: (718) 732-2613 and E-mail: abuse@etsy.com

NOTICE OF COPYRIGHT AND TRADEMARK INFRINGEMENT

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Sincerely yours,

Sallie G. Randolph

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December 11, 2011

William Smith
Smythe & Co., Inc.
Corporate headquarters:
345 Hudson Street
New York, NY 10014

VIA: First Class Mail and e-mail (bill.Smythe@smythe.com)

RE: Freelance v. Smythe & Co.

Dear Mr. Smith:

I am the author of *Title of Article*, first published by Strategic Magazine in August, 2011. I am also the owner of the copyright in this article for which the United States Copyright Office has issued registration certificate TX 5-707-594. Smythe & Company has published an unauthorized abstract of my work on its website. (Printout of recent download appended.) This electronic publication of a derivative work based on my article constitutes infringement of my copyright.

Rather than take legal action against Smythe & Company at this point, I am offering you an opportunity to obtain a retroactive license for use of my work for the period of infringement. My charge for the prior unlicensed use is $1,500. If you wish to keep the abstract on your web site, I will make it available on an ongoing basis for an annual license fee of $1,200. For the same reasonable license fee, I will permit you to use a full text version of her work.

If you wish to avoid legal action and take advantage of this reasonable license offer, please contact me to discuss payment arrangements. This offer will remain open for 10 business days from the date on this letter, which constitutes notice of infringement and serves upon you to a demand for payment of a license fee or, alternatively, a demand for damages for copyright infringement. You can avoid such unpleasantness by responding promptly and reasonably to this request. Please don't hesitate to call me if you have questions or would like to discuss this matter. This letter is not a statement of all of my rights relating to this matter and is written without prejudice to my rights, all of which are hereby reserved.

Yours very truly,

Susan Freelance

Contract Dos and Don'ts

Do:

- Read your contract very, very carefully.
- Expect to negotiate. Be very skeptical of any "take it or leave it" offers.
- Use a businesslike approach to your negotiations.
- Take your time to carefully consider any contract. Ask for additional time if you need it.
- Be sure you understand what the contract means. Ask about anything you don't understand and seek competent help if you have any questions.
- Propose any changes you think are reasonable but be prepared to compromise if necessary.
- Have a book contract reviewed by an agent, attorney or organization such as the Authors Guild.
- See the contract clearly and read what's really there, not what you wish was there.
- Remember that a contract doesn't always have to be in writing.
- Recognize that if you haven't signed a written contract for a magazine or newspaper article, you've only granted one time rights to publish.
- Remember that the most effective way to negotiate is to pause when you're offered a deal. Silence can definitely be golden.

Don't:

- Sign anything you don't understand.
- Don't sign any contract that says "all rights" or "work made for hire" unless you understand clearly that your giving up rights in your work.
- Rush – the person who seems to be in control of time has a distinct advantage in a negotiation. The offer isn't going to evaporate just because you want to consider it carefully.
- Make assumptions.
- Rely on verbal assurances. If it's important, get it in writing.
- Accept the first offer. A contract doesn't take effect until both parties have signed. Until then it's just an offer and any offer is subject to negotiation.
- Answer quickly when an offer is made. A pause is an effective negotiating tool and silence can be golden.

Contract Q and A

Q: Do you have a standard collaboration agreement for me to use? I'm going to be ghostwriting a book for a well-known doctor.

A: I am often asked to provide a "standard" contract for one purpose or another. Sometimes I'm asked to look over a particular clause and ask how it can be adjusted to suit the writer's needs. My reply in these cases is the same – there's no such thing as a standard contract. Each contract is an agreement between two parties that is enforceable by a court and it's essential that it reflect the reality of the relationship between those parties.

Any contract must be evaluated as a unified whole. It's a dangerous practice to tinker with one part of a contract without making sure that other parts aren't affected or that other parts don't contradict the changed clause. For this reason, I always insist on seeing the entire contract before commenting on any part of it.

As to the adaptation of a "standard" contract to an individual situation, I am reluctant to recommend this practice to writers, especially with collaboration agreements which present particularly challenging legal complexities. In my experience, collaboration agreements can cause more problems than any other type of publishing contract and should be carefully drafted so that they reflect the true intentions of the parties and use legally correct language. Legally correct language is especially important in the area of copyright ownership and transfer, an issue that often comes up in collaborative projects.

There's nothing wrong with saving effort and money by starting out with a form agreement or attempting to adapt someone else's contract. But it would be a smart investment to have your final draft reviewed by a capable attorney before signing it. A modest legal fee upfront beats paying large fees later to untangle the mess that a do-it-yourself-contract can create.

To paraphrase an old saying: "The writer who acts as her own lawyer has a fool for a client."

Q: What is a cross-collateralization clause? I've been told to watch out for this, but I don't know what it is.

A: Cross-collateralization is highly unfavorable for writers because it authorizes a publisher to make deductions from the income of one work for sums owing on another work. Such sums can be charges for the cost of alterations, permission fees, fees for revisions, overpayments, or an unearned advance. The cross-collateralization clause is unfair because it gives the publisher de facto insurance against an unsuccessful project by permitting recovery from funds due to authors on other projects.

Here is how to spot these clauses, and what to do when you find them. First, a cross-collateralization clause is not likely to be labeled as such. It may be referred to as "Over Payments," "Deduction of Sums Owing Under Other Contracts," or "Joint Accounting." Look for any language in the contract that authorizes the publisher to deduct money owed to the author for other works.

If the publisher refuses to delete the provision entirely try a compromise position: 1) that no deductions for sums owed under other contracts be made from an advance owed to the author, but rather, any deductions be made from the future income stream; 2) that unearned advances not count as sums owed to the publisher.

Q: I have ghostwritten a book proposal and manuscript for a psychologist interested in publishing a self-help book. We have no written collaboration agreement, but have agreed verbally that I'll get 2/3 of any advance and half of all subsequent royalties and income. I was paid an upfront fee for the proposal. The psychologist has circulated the proposal and manuscript to several agents. So far the work isn't represented, but she has hinted that she's having second thoughts about my share of the proceeds. I think she may be planning to hook up with a different writer. Can she really do this to me? Without a contract, what recourse do I have?

A: Your major concern should be protecting your work from unauthorized use. The very first thing you should do, therefore, is to register both the proposal and manuscript with the Copyright Office. Since the material is unpublished so far, you do it by printing a complete copy of everything and sending it in along with a payment of $30 and a completed Form TX, which you can download from the Copyright Office web site.

Registering your unpublished work with the Copyright Office *before* it is infringed is critical in securing the maximum protection under the Copyright Act. Such timely registration can entitle you to statutory damages and attorney's fees and, therefore, provide significant leverage in later disputes over the work. This can mean the difference between a satisfactory resolution and frustration for an author.

Next, a frank discussion with the psychologist is in order. Explain that she is not entitled to leave you behind, even if she doesn't use your work. Although it may be a difficult time to address the possibility of a written collaboration agreement, you should try. In any event, you do have a contract between you despite the fact that it's not in writing all and in one place. Emails or letters explaining your relationship or discussing the project can serve as evidence of

your agreement. With some luck, you may be able to prevent the relationship from falling apart and successfully complete the project. If you are unsuccessful, you may wish to consult an attorney to discuss what remedies are available to you under contract or copyright law.

Q: A group of other writers and I were having a discussion about rewriting and selling stories, if you had sold all rights to previous versions. To what extent must you rewrite to avoid copyright infringement? I have looked and asked in vain for a definitive answer -- or even an authoritative and marginally helpful one. Are you familiar with any relevant statutes or case law? I do understand that in one case copyright infringement occurred on the basis of just two distinctive words.

A: The reason you've had trouble finding a "definitive answer" is that one doesn't exist. This is another question to which the answer is "it depends." It depends, in large part, on whether the particular all rights contract you signed had the effect of transferring the copyright to the publisher. That could have happened in a work made for hire agreement or in an all rights agreement that specifically assigns the copyright.

Absent a clear assignment of copyright, an all rights contract still leaves you as the author and owner of the underlying copyright. True, that underlying copyright is a mere shell of its former self, but it does leave you with the right to create a derivative work, a work "based on" the original. When you have the right to create a work based on the original you can revise fairly lightly and probably be OK, although it would still be wise to make your revisions as extensive as possible.

If, on the other hand, you did convey the copyright to the publisher, then you have only the same fair use rights as anyone else. (See this month's letters to the editor column for an exchange of opinion on this subject.) To make fair use of your own work, you can quote briefly from it and go back to and quote from the same sources, but you should write the rest of the article from scratch.

To avoid this problem altogether, you should avoid signing all rights or WMFH contracts at all. You can tell the publisher who proffers one that you'll be happy to license the rights the publisher reasonably needs at a fair price, but that all rights aren't available. If it's too late because you already signed all the rights away, you can still avoid a problem by getting the publisher's permission to license reprints. If the publisher doesn't care, you'll probably get permission. Consent is a complete defense to copyright infringement, so you change as little or lot as you wish. Even verbal consent is OK, although it would be better to follow up on the verbal consent with a letter thanking the publisher for giving you permission and still better to send the publisher two copies of a letter agreement that asks the publisher to acknowledge the consent by signing and sending back to you. In this case, enclose as SASE to make it as easy as possible for the publisher to do what you want her to do. If you intend to rely on the verbal consent, make a note of the name of the person you talked to, the date, the time, the number called, and the gist of the conversation. Keep those notes in your records. If it's legal to tape a phone conversation in your state, do that, too.

You should also consider the ethical implications of your question. Some methods of recycling an article may be completely legal but ethically ambiguous. If you have doubts, getting permission is probably the best method.

Q: I've just been offered my first book contract, from a small regional publisher. I didn't use an agent and I really want this deal, so I plan to go ahead and sign the contract, even though it's not perfect. I don't want to spook the editor by asking questions or making waves. A friend of mine said that if I don't have an agent I should have a lawyer check the contract over, but I don't want to pay a lawyer to raise unnecessary questions. No offense, but my experience is that lawyers just make things unnecessarily complicated. And they charge an arm and a leg to muck things up.

A: First of all, any legitimate publisher is not going to be offended by reasonable questions about a contract and no good attorney is going to be offended by your concerns about the way the attorney will approach a contract review or by a request to keep fees reasonable. That said, I can well understand that you might be uncomfortable raising contract questions, especially if there's nothing seriously wrong with the contract. But there's no reason you can't ask an attorney to do a quick review, look for any serious problems and, should any important questions arise, make suggestions as to a good way to raise them with the publisher. The charge shouldn't be very great for a simple consultation.

You may also be more comfortable just asking an attorney to handle all the negotiations on your behalf. If you tell the attorney you don't want to stir up any unnecessary trouble, the attorney should be able to step in and spare you the agony of negotiation. The fee might be a little higher for such extended involvement, but it can free you and the editor to concentrate on producing a good book while someone else handles the legal details. Many publishers actually prefer to deal with lawyers or agents, and having an attorney handle the negotiation for you is a way to communicate your status as a serious professional writer.

If you really don't have the resources to pay an attorney, or if you can't find an experienced publishing attorney to help you, you should be aware that the Authors Guild provides a free legal evaluation of any book contract to its members. Your contract review will be done by a legal intern working under the supervision of a staff attorney, but it will be competent and very thorough. The Authors Guild will only provide you with advice, though. They won't represent you in a negotiation. And the turn around time is sometimes longer than busy writers are willing to wait. But the Guild legal program is an invaluable resource to keep in mind.

Q: I wrote two young adult fiction books years ago (in the early eighties) for a flat fee on a work made for hire basis. These two books are long out of print and the publisher is out of business. I have two problems. First, can I get the rights to these two books back? And second, the contract I signed called for me to write a total of six books under the same terms. The contract also said they were to be my "next" six books. If publisher is out of business can I forget about the other four books? The first publisher was bought out by another publisher and that second publisher has faded from the scene.

A: Let's talk about your second question first. Since the publisher is no longer in business and never asked you to produce the last four contract books while it was still publishing, it is not possible for you to "perform" on the contract. So this particular contract clause is not enforceable and I wouldn't worry about it. Even if the first publisher were still in business, if years have gone by without the publisher requesting you to write the next books a court would be reluctant to enforce a contract that unreasonably restrains your right to ply your trade.

As to getting the rights back to your first two books, I would need to examine the contract for "belt and suspenders" language in the work made for hire clause. A contract that simply says the work is considered as a work made for hire is probably not valid. That's because books (except textbooks) are not among the specific categories qualified as work made for hire under the copyright law as it was substantially revamped effective in 1978. If, on the other hand, the contract says something like "in the event that the Work is ever held not to be a work made for hire, the Author hereby agrees to assign the copyright to the Publisher," then the original publisher may be the copyright owner. Assuming a lack of belt and suspenders language, the work made for hire language is not valid because your book isn't a covered category under the law. The next question is if the contract didn't convey the entire copyright to the publisher, what rights did the publisher acquire? Lawyers don't agree on this and there are no definitive cases to guide us, so the best we can do is make an educated guess. My guess is that a court called upon to interpret such a contract would construe it in a light least favorable to the publisher and would say that the publisher acquired the right to publish the book, period. Once the book is out of print and the publisher defunct, the rights would naturally revert to the author.

Very often the legal implications of a decision are something of a gamble based on an analysis of the risk. In this case, your risk is pretty low. The publisher who might try to enforce any rights under that contract is long gone, and, even if someone unearthed that old contract and tried to hold you to it, I doubt that the courts could enforce it. So I'd say that you are reasonably safe. The only potential problem I can see is if you try to license those two old books to a new publisher, you might be asked to warrant that the rights are clear. If you decide to try to get those books published, you would be wise to run your new contract past an attorney. In fact, you'd be wise to run *any* book contract past an attorney or agent.

Q: I have frequently said that you should put together a model magazine contract for use in contract negotiations. It seems to me that this is something that you could easily do, so why don't you?

A: I think model contracts do more harm than good. First of all, few publishers take them seriously. Traditionally the publisher is the one who offers a contract to an author, not the other way around. For the writer to proffer her own contract will look pretentious and unprofessional to many publishers.

But that's not the main reason I'm opposed to model or "fill in the blanks" contracts. A contract is a custom agreement designed to fit a particular set of circumstances and should be carefully drafted to fit the specific terms agreed to by the parties. Model contracts frequently include inapplicable provisions and leave out important things. Sometimes the individual filling in the blanks doesn't really understand what the terms mean. Sometimes specific words are legally required to ensure a certain result. Sometimes certain words sound benign but have a draconian legal effect. Sometimes relying on a model can be a shortcut to disaster.

Q: My publisher has violated our contract in several ways. The most serious problem is that royalty payments are always late. On two different occasions, the payments were not enough and I had to raise a fuss in order to get what was owed me. The publisher is not marketing the book as aggressively as he could. Is there any way I can get out of this contract?

A: The first step is to consider diplomatic action. Talk to your agent if you have one. She should be able to apply pressure to the publisher.

If you seek a legal solution, you should be aware that the publisher must usually fall far short of its contractual obligations before the author can terminate or rescind the contract. A court will generally permit termination only in the event that the licensee has committed a *material breach* of the publishing agreement. Courts define a material breach as a breach of so substantial a nature that it "affects the very essence of the contract and serves to defeat the object of the parties." The breach must, in fact, constitute "a total failure in the performance of the contract." This is a high standard.

In various cases, courts have applied the above test and concluded that delays in royalty payments and certain short falls in amount paid do not amount to a material breach. However, while a publishing agreement can rarely be terminated entirely, there are circumstances when the high standard for a material breach does not apply. Furthermore, even though you are might not be entitled to *terminate* the contract, you may be entitled to damages for the publisher's breach. Accordingly, it is best to consult a knowledgeable attorney who can review your contract and the facts of your case.

Q: I've just been offered a contract to write one article a month for a web site. It has a clause that says I am to be an employee and that everything I write is to be considered a work made for hire. Another clause says that I am an independent contractor. So, if I sign, what will my employment status be?

A: I haven't seen the entire contract, but it sounds like this web site was trying to insure that it will both own the copyright and avoid responsibility for tax withholding, social security and other such obligations of an employer. It also sounds like the contract was patched together by someone trying to avoid paying a lawyer. Whenever a contract is internally inconsistent, it could be subject to interpretation by a court if a dispute arises. In this case, I suspect the court would decide that the "employee" language is less significant than the "independent contractor" language. You might suggest that the language be clarified. If it isn't, however, I don't see this as being a critical element as long as you understand that you are giving up copyright ownership and probably won't be getting any employee benefits.

Q: I've received a letter from a lawyer who represents the author of a book on the same subject as mine accusing me of infringement and threatening to sue me if I don't agree to pay a settlement. As I said, my book is about the same subject, but I did not copy the other author's book. I wasn't even aware of the other book until after my own book was written and submitted to a publisher. I consider this to be an outrageous attempt at blackmail. What should I do?

A: If you never even read a copy of the other book before you completed your own, and you are certain that you haven't copied anything, you have a defense of "independent creation." In order for the other author to succeed in an infringement suit against you, he would have to prove that you had access to his book and that your book is "substantially similar" to his. This is a difficult standard to meet.

If you are confident that your own book is not substantially similar, you probably shouldn't dignify the letter with an answer. If you do decide to respond, however, you should not try to handle it yourself. You might inadvertently do or say something that would compromise your position. I'd consider discussing this situation with a lawyer.

If this other author has contacted anyone else (such as your publisher) about this alleged infringement and if the claim is really as baseless as you say, you may have a cause of action against the other author for injury to your reputation, interference in your relationship with your publisher, or for hurting your profits. Again, you would be wise to get the help of a good lawyer.

You should contact a lawyer immediately if you are actually sued. Even if the lawsuit is totally baseless, you'll need legal help.

Q: My agent sold my first two books, which are still selling well, but he hasn't really done anything with my two most recent proposals. I get the feeling he has bigger fish to fry and that my books aren't the blockbuster types he would prefer. I've decided that another agent might be better for me, but I'm not sure how to proceed from here, from a legal perspective. What do you suggest?

A: You should start with a clear understanding of the legal relationship between you and your present agent. Do you have a written agency agreement or a handshake deal? If you have a written agreement, it probably spells out how the relationship may be ended. For example, either party might be able to terminate upon written notice to the other. The contract might spell out the timing of such notice and, perhaps, specifics such as a requirement to use registered mail. So examine the contract and follow the specified procedure exactly. This is important even if your agent says it's not necessary. It's very important to be precise when dissolving a contractual relationship. This doesn't mean you can't talk to your agent ahead of time to reach an informal understanding. It just means that you should follow up by dotting all the "i"s and crossing all the "t"s. If you have no written agreement, you should plan to give your agent reasonable notice that you're making a change and you should do so in writing so there can be no misunderstanding.

Be aware that the change you're making is only for future deals. You will remain obligated to your first agent for any commissions and expenses related to your first two books. He will also probably continue to receive payments on your behalf and forward them to you after deducting what is owed to him. It may be possible to negotiate a different arrangement, but, if you do, be sure to get a written acknowledgement of the new terms from him. Since your books still generate income, the first agent will probably want to remain agent of record. In the future, though, when the income thins out, he might be agreeable to a change.

Q: My editor recently approached me about a doing a revision of a trade book I wrote for her several years ago. But when I found out that the "revision" involved nearly doubling the size of the book and substantially changing the tone, I declined. Now the editor has hired another writer to do the "revision." The new writer is going to share the copyright with me, get a substantial advance and then get half of my royalties when it earns out. What can I do?

A: Your question raises several issues that revolve around the revision clause of your contract. You should look at that clause to determine whether your editor's "revision" and the deal with the revising writer is consistent with your publishing contract. Unfortunately, a broad revision clause is an invitation for the publisher to select to a collaborator for you who will share your credit, your copyright and your royalties.

The revision clause will dictate what amount of work may qualify as a revision, when the revision can take place and how the process will be handled. If revision is undefined in your contract, your editor will have some latitude in arguing that her plan is a revision. Ideally, however, your revision clause will include a definition of revision that caps the amount of new matter at no more than 25%. You should address this point when you negotiate the contract. If your editor is suggesting changes outside the scope of a permissible "revision" in your contract, you should bring this to her attention. If on the other hand, you have a broadly defined revision clause, then a major overhaul of your book is probably within their rights.

Another issue is copyright ownership of the newly-added material. The ownership of material added by the revision is less likely to become an issue if the amount of material added is small (i.e. a true revision). The issue becomes more complicated when a contract has an overly broad revision clause that permits a publisher to double the size of

the work. But again, you must start with the contract - new material added to the book by a revising writer will either belong to the publisher (if the revision is a work made for hire/assignment) or the reviser (no work made for hire/assignment).

Your question also raises the issue of authorship credit. Some revision clauses are silent on the issue, while others give control to either the publisher or the author. Obviously, an author would want the contractual right to sole credit for his work, even if another author is hired to do a revision. In addition, look for a provision that permits you to withdraw your name if you don't like the book.

The final issue is how you and the revising author will be paid. The revision clause will provide (some more clearly than others) how the payment will be made to a person hired to revise the work in the event that you decline to do so. Some contracts provide for sharing of royalties (on a pro rata basis or by a simple split). Others provide that the publisher will deduct the "actual cost of preparing the revision" from the royalties due to the author. In the latter case, the revising writer is paid a simple fee that will probably have to be earned out.

After looking at your contract, you'll find that either your editor's plan is within the contract or it's not. If it's not, or the clause is ambiguous on any the substantial issues, you should contact your editor, your agent or your attorney to attempt to resolve the matter. If nothing else, be prepared to address these issues in your next negotiation.

Q: I wrote 20 short articles for a sports web site for which I was supposed to be paid $100 each. Although I have had received repeated promises to pay, there is always an excuse. Now I'm being told that they're waiting for a new investor to provide additional capital. In the meantime, they want me to write more articles. Any advice on how to get paid?

A: My advice as one writer to another is not to write any more articles until you've been paid for the work already done. My advice as an attorney is to use aggressive collection methods and take advantage of whatever legal remedies you may have available. It sounds like they are on the brink of going under. If that's the case, you shouldn't wait another day.

Since the total amount due you is relatively modest, you may want to try small claims court. You could hire a collection agency or a lawyer. (Either will expect a substantial percentage of whatever they mange to collect). In the meantime, you would be wise to demand that they take your work down from the web site, indicating that without payment they don't have the right to have it up. If you haven't done so already, you should also register your copyright in the articles. This is essential.

I'm not optimistic about your chances of collecting. Many web sites start out with grand ambitions and inadequate financing. This sounds like it could be one of them. Good luck.

Copyright Office FAQs

Please note that these frequently asked questions were used without permission from the Copryight Office. That is because the federal government (note that is federal but not state governments) is not permitted to hold copyrights and most federal publications are in the public domain.

What is copyright?
Copyright is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works.

What does copyright protect?

Copyright, a form of intellectual property law, protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed. See Circular 1, Copyright Basics, section "What Works Are Protected."

How is a copyright different from a patent or a trademark?
Copyright protects original works of authorship, while a patent protects inventions or discoveries. Ideas and discoveries are not protected by the copyright law, although the way in which they are expressed may be. A trademark protects words, phrases, symbols, or designs identifying the source of the goods or services of one party and distinguishing them from those of others.

When is my work protected?
Your work is under copyright protection the moment it is created and fixed in a tangible form that it is perceptible either directly or with the aid of a machine or device.

Do I have to register with your office to be protected?
No. In general, registration is voluntary. Copyright exists from the moment the work is created. You will have to register, however, if you wish to bring a lawsuit for infringement of a U.S. work. See Circular 1, Copyright Basics, section "Copyright Registration."

Why should I register my work if copyright protection is automatic?
Registration is recommended for a number of reasons. Many choose to register their works because they wish to have the facts of their copyright on the public record and have a certificate of registration. Registered works may be eligible for statutory damages and attorney's fees in successful litigation. Finally, if registration occurs within 5 years of publication, it is considered prima facie evidence in a court of law. See Circular 1, Copyright Basics, section "Copyright Registration" and Circular 38b, Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA), on non-U.S. works.

I've heard about a "poor man's copyright." What is it?
The practice of sending a copy of your own work to yourself is sometimes called a "poor man's copyright." There is no provision in the copyright law regarding any such type of protection, and it is not a substitute for registration.

Is my copyright good in other countries?
The United States has copyright relations with most countries throughout the world, and as a result of these agreements, we honor each other's citizens' copyrights. However, the United States does not have such copyright relationships with every country. For a listing of countries and the nature of their copyright relations with the United States, see Circular 38a, International Copyright Relations of the United States.

What does copyright protect?
Copyright, a form of intellectual property law, protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed. See Circular 1, Copyright Basics, section "What Works Are Protected."

Can I copyright my website?
The original authorship appearing on a website may be protected by copyright. This includes writings, artwork, photographs, and other forms of authorship protected by copyright. Procedures for registering the contents of a website may be found in Circular 66, Copyright Registration for Online Works.

Can I copyright my domain name?
Copyright law does not protect domain names. The Internet Corporation for Assigned Names and Numbers (ICANN), a nonprofit organization that has assumed the responsibility for domain name system management, administers the assignation of domain names through accredited registers.

How do I protect my recipe?
A mere listing of ingredients is not protected under copyright law. However, where a recipe or formula is accompanied by substantial literary expression in the form of an explanation or directions, or when there is a collection of recipes as in a cookbook, there may be a basis for copyright protection. Note that if you have secret ingredients to a recipe that you do not wish to be revealed, you should not submit your recipe for registration, because applications and deposit copies are public records. See FL 122, Recipes.

Can I copyright the name of my band?
No. Names are not protected by copyright law. Some names may be protected under trademark law. Contact the U.S. Patent & Trademark Office, 800-786-9199, for further information.

How do I copyright a name, title, slogan or logo?
Copyright does not protect names, titles, slogans, or short phrases. In some cases, these things may be protected as trademarks. Contact the U.S. Patent & Trademark Office, 800-786-9199, for further information. However, copyright protection may be available for logo artwork that contains sufficient authorship. In some circumstances, an artistic logo may also be protected as a trademark.

How do I protect my idea?
Copyright does not protect ideas, concepts, systems, or methods of doing something. You may express your ideas in writing or drawings and claim copyright in your description, but be aware that copyright will not protect the idea itself as revealed in your written or artistic work.

Does my work have to be published to be protected?
Publication is not necessary for copyright protection.

Can I register a diary I found in my grandmother's attic?
You can register copyright in the diary only if you own the rights to the work, for example, by will or by inheritance. Copyright is the right of the author of the work or the author's heirs or assignees, not of the one who only owns or possesses the physical work itself. See Circular 1, Copyright Basics, section "Who Can Claim Copyright."

How do I protect my sighting of Elvis?
Copyright law does not protect sightings. However, copyright law will protect your photo (or other depiction) of your sighting of Elvis. File your claim to copyright online by means of the electronic Copyright Office (eCO). Pay the fee online and attach a copy of your photo. Or, go to the Copyright Office website, fill in Form CO, print it, and mail it together with your photo and fee. For more information on registration a copyright, see SL-35. No one can lawfully use your photo of your sighting, although someone else may file his own photo of his sighting. Copyright law protects the original photograph, not the subject of the photograph.

Does copyright protect architecture?
Yes. Architectural works became subject to copyright protection on December 1, 1990. The copyright law defines "architectural work" as "the design of a building embodied in any tangible medium of expression, including a building, architectural plans, or drawings." Copyright protection extends to any architectural work created on or after December 1, 1990. Also, any architectural works that were unconstructed and embodied in unpublished plans or drawings on that date and were constructed by December 31, 2002, are eligible for protection. Architectural designs embodied in buildings constructed prior to December 1, 1990, are not eligible for copyright protection. See Circular 41, Copyright Claims in Architectural Works

Can I get a star named after me and claim copyright to it?
No. There is a lot of misunderstanding about this. Names are not protected by copyright. Publishers of publications such as a star registry may register a claim to copyright in the text of the volume [or book] containing the names the registry has assigned to stars, and perhaps the compilation of data; but such a registration would not extend protection to any of the individual star names appearing therein. Copyright registration of such a volume of star names does not confer any official or governmental status on any of the star names included in the volume. For further information on copyright protection and names, see Circular

34,CopyrightProtection Not Available for Names, Titles, or Short Phrases

Can foreigners register their works in the United States?
Any work that is protected by U.S. copyright law can be registered. This includes many works of foreign origin. All works that are unpublished, regardless of the nationality of the author, are protected in the United States. Works that are first published in the United States or in a country with which we have a copyright treaty or that are created by a citizen or domiciliary of a country with which we have a copyright treaty are also protected and may therefore be registered with the U.S. Copyright Office. See Circular 38a, International Copyright Relations of the United States, for the status of specific countries.

Can a minor claim copyright?
Minors may claim copyright, and the Copyright Office issues registrations to minors, but state laws may regulate the business dealings involving copyrights owned by minors. For information on relevant state laws, consult an attorney.

Can I register a diary I found in my grandmother's attic?
You can register copyright in the diary only if you own the rights to the work, for example, by will or by inheritance. Copyright is the right of the author of the work or the author's heirs or assignees, not of the one who only owns or possesses the physical work itself. See Circular 1, Copyright Basics, section "Who Can Claim Copyright."

How do I register my copyright?
To register a work, submit a completed application form, a nonrefundable filing fee, which is $35 if you register online or $50 if you register using Form CO; and a nonreturnable copy or copies of the work to be registered. See Circular 1, Copyright Basics, section "Registration Procedures."

Where can I get application forms?
See SL-35.

Can I make copies of the application form?
You may not make copies of Form CO, which is available only on the Copyright Office website. Form CO is a fill-in form that creates and contains unique 2-D barcodes as you fill it in. The barcodes contain the information you place on the form, and they enable the Office to process your application faster and more efficiently.

Can I file online?
Yes. We offer online registration through our electronic Copyright Office (eCO) at a reduced fee of $35. See SL-35.

What is the registration fee?
If you file online using eCO eService, the fee is $35 per application. If you file using Form CO, the fee is $50 per application. Generally, each work requires a separate application. See Circular 4, Copyright Fees.

Do you take credit cards?
If you file your application online using eCO eService, you may pay by credit card. Credit cards are not accepted for registration through the mail, but may be used for registrations that are filed in person in the Copyright Office. There are other services for which the Copyright Office will accept a credit card payment. For more information see Circular 4, Copyright Fees.

Do I have to send in my work? Do I get it back?
Yes, you must send the required copy or copies of the work to be registered. Your copies will not be returned. If you register online using eCO eService, you may attach an electronic copy of your deposit. However, even if you register online, if the Library of Congress requires a hard-copy deposit of your work, you must send what the Library defines as the "best edition" of your work. For further information, see Circular 7b, Best Edition of Published Copyrighted Works for the Collection of the Library of Congress, and Circular 7d, Mandatory Deposit of Copies or Phonorecords for the Library of Congress. Upon their deposit in the Copyright Office, under sections 407 and 408 of the copyright law, all copies and identifying material, including those deposited in connection with claims that have been refused registration, are the property of the U.S. government.

Will my deposit be damaged by security measures in place on Capitol Hill?
To avoid damage to your hard-copy deposit caused by necessary security measures, package the following items in boxes rather than envelopes for mailing to the Copyright Office:

- *electronic media such as audiocassettes, videocassettes, CDs, and DVDs*
- *microform*
- *photographs*
- *slick advertisements, color photocopies, and other print items*

May I register more than one work on the same application? Where do I list the titles?
You may register unpublished works as a collection on one application with one title for the entire collection if certain conditions are met. It is not necessary to list the individual titles in your collection. Published works may only be registered as a collection if they were actually first published as a collection and if other requirements have been met. See Circular 1, Copyright Basics, section "Registration Procedures."

Do I have to use my real name on the form? Can I use a stage name or a pen name?
There is no legal requirement that the author be identified by his or her real name on the application form. For further information, see FL 101, Pseudonyms. If filing under a fictitious name, check the "Pseudonymous" box when giving information about the authors.

Will my personal information be available to the public?
Yes. Please be aware that when you register your claim to a copyright in a work with the U.S. Copyright Office, you are making a public record. All the information you provide on your copyright registration is available to the public and will be available on the Internet.

How long does the registration process take, and when will I receive my certificate?
The time the Copyright Office requires to process an application varies, depending on the number of applications the Office is receiving and clearing at the time of submission and the extent of questions associated with the application. Current Processing Times

Can I submit my manuscript on a computer disk?
No. Floppy disks and other removal media such as Zip disks, except for CD-ROMs, are not acceptable. Therefore, the Copyright Office still generally requires a printed copy or audio recording of the work for deposit. However, if you register online using eCO eService, you may attach an electronic copy of your deposit. However, even if you register online, if the Library of Congress requires a hard-copy deposit of your work, you must send what the Library defines as the "best edition" of your work. For further information, see Circular 7b, Best Edition of Published Copyrighted Works for the Collection of the Library of Congress, and Circular 7d, Mandatory Deposit of Copies or Phonorecords for the Library of Congress.

Can I submit a CD-ROM of my work?
Yes. The deposit requirement consists of the best edition of the CD-ROM package of any work, including the accompanying operating software, instruction manual, and a printed version, if included in the package.

Does my work have to be published to be protected?
Publication is not necessary for copyright protection.

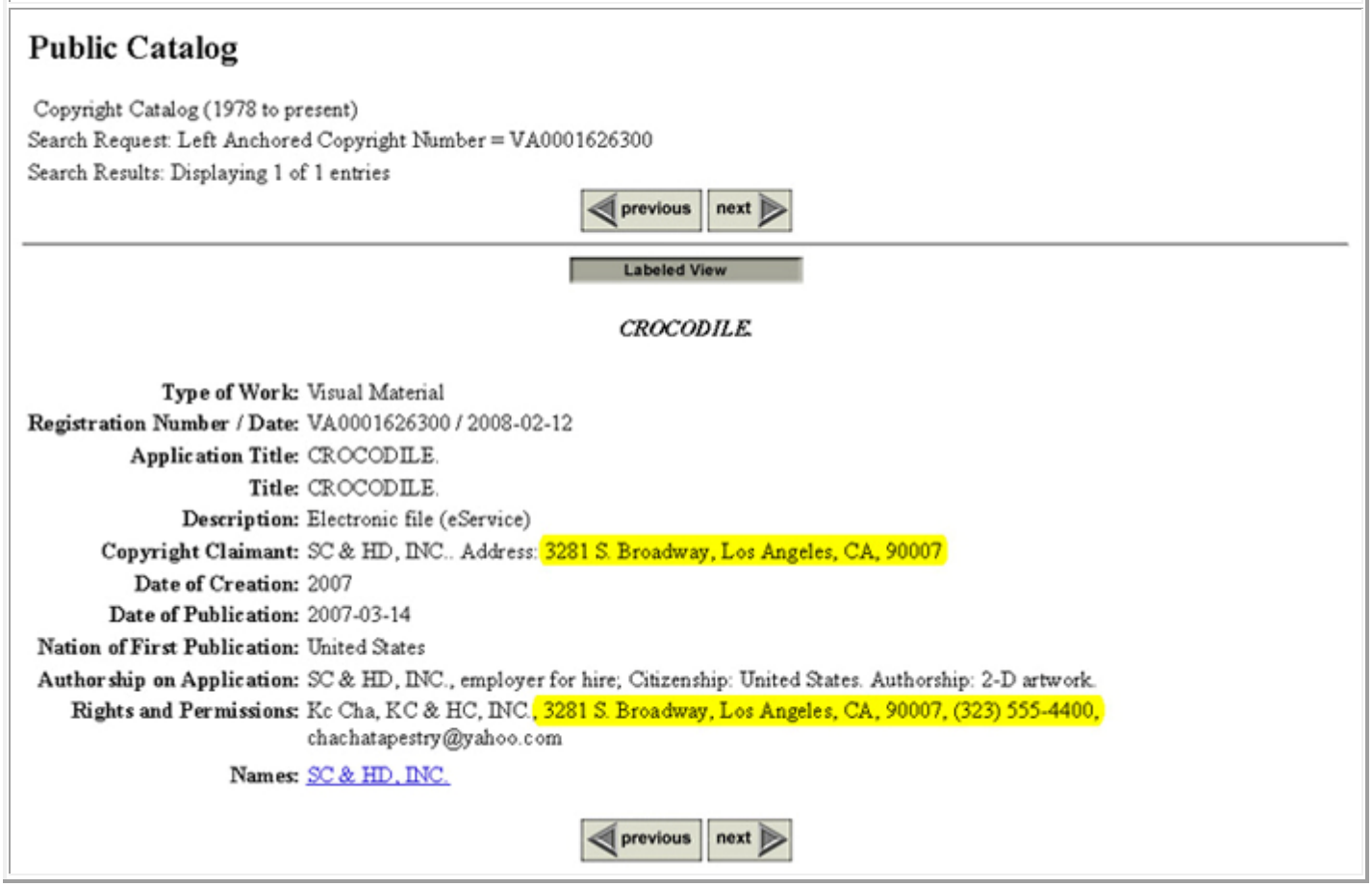
How much do I have to change in my own work to make a new claim of copyright?
You may make a new claim in your work if the changes are substantial and creative, something more than just editorial changes or minor changes. This would qualify as a new derivative work. For instance, simply making spelling corrections throughout a work does not warrant a new registration, but adding an additional chapter would. See Circular 14, Copyright Registration for Derivative Works, for further information.

Do you have special mailing requirements?
If you register online, you may attach an electronic copy of your deposit unless a hard-copy deposit is required under the "Best

Edition" requirements of the Library of Congress. See Circular 7b. If you file using a paper application, our only requirement is that all three elements—the application, the copy or copies of the work together with the shipping slip printed when you fill out Form CO online, and the filing fee—be sent in the same package. Please limit any individual box to 20 pounds. Many people send their material to us by certified mail, with a return receipt request, but this is not required.
Please note that our mail service is severely disrupted. (Read more details.)

Sample Catalog Records

The sample catalog records below show the information from copyright applications that is typically displayed in the Copyright Office online database. Highlighting is added to show certain personal information that may appear in the record.



Public Catalog

Copyright Catalog (1978 to present)
Search Request: Left Anchored Copyright Number = VA0001626300
Search Results: Displaying 1 of 1 entries

previous next

Labeled View

CROCODILE.

Type of Work: Visual Material
Registration Number / Date: VA0001626300 / 2008-02-12
Application Title: CROCODILE.
Title: CROCODILE.
Description: Electronic file (eService)
Copyright Claimant: SC & HD, INC.. Address: 3281 S. Broadway, Los Angeles, CA, 90007
Date of Creation: 2007
Date of Publication: 2007-03-14
Nation of First Publication: United States
Authorship on Application: SC & HD, INC., employer for hire; Citizenship: United States. Authorship: 2-D artwork.
Rights and Permissions: Kc Cha, KC & HC, INC., 3281 S. Broadway, Los Angeles, CA, 90007, (323) 555-4400, chachatapestry@yahoo.com
Names: SC & HD, INC.

previous next

Public Catalog

Copyright Catalog (1978 to present)
Search Request: Left Anchored Copyright Number = SR0100620956
Search Results: Displaying 1 of 1 entries

previous next

Labeled View

Happy Some of the Time, et al.

Type of Work: Sound Recording and Music
Registration Number / Date: SR0100620956 / 2008-03-11
Application Title: Dips, Mids, and Highs.
Title: Happy Some of the Time, et al.
Description: Electronic file (eService)
Copyright Claimant: Whitson David Erickson, 1979- d.b.a. JoyfulSandbox Music. Address: 512 NE 4th St., Chisholm, MN 55719
Date of Creation: 2005
Date of Publication: September 28, 2005
Nation of First Publication: United States
Authorship on Application: Whitson David Erickson, 1979- d.b.a. JoyfulSandbox Music; Domicile: United States; Citizenship: United States. Authorship: sound recording, performance, production, Composition of Music and Lyrics.
Rights and Permissions: Whitson David Erickson, 512 NE 4th St., Chisholm, MN, 55719, United States, (612) 555-2352, (218) 555-3077, whit1124@vcu.edu
Contents: 1. Happy Some of the Time -- 2. Starlight -- 3. Rollercoaster Baby -- 4. Get Outta Here -- 5. I -- 6. Pick Up the Pieces -- 7. Will I? -- 8. Transient Thoughts from a Steady State Mind -- 9. Get to You -- 10. Star -- 11. The Storm -- 12. Don't Try and Tell Me -- 13. End Transmission -- 14. Broken Bones -- 15. Thank You.

Can I see my copyright registration records?

Yes. The Copyright Office is required by law to maintain records of copyright registrations and to make them available for public inspection. Once a registration is completed and a claim has been cataloged, it becomes part of the public record. Individuals have always been able to come to the Copyright Office to inspect its public records. Information in post-1978 registration records is also available on the Copyright Office's website.

Will my registration records help provide contact information for someone interested in using my work?

Yes. Records of copyright registrations and documents that are recorded in relationship to them can be used by the public to identify the author(s) and copyright owner(s) of a work. The public record may also provide information about an agent of the owner who can be contacted to license the registered work or to request permission to use it.

Can I remove information that I don't want publicized?

No. When you register a claim to copyright in a work with the Copyright Office, you create a public record of your claim to copyright. This record cannot be removed from the public record once it has been entered. All information you provide on your copyright registration will be available to the public and some of it on the Internet. You may wish to consider whether you want to include a birth date, nickname, alias, or any other optional detail you consider to be sensitive on your application.

How can I prevent personal information from being placed on the Copyright Office's website?

All information provided on the application for registration will become a permanent part of the public record of the Copyright Office, and some of that information will be available online through the Office's website, including the name and address of the copyright claimant. Any information provided in the rights and permissions section of the application will also be made available online, but providing rights and permissions information is optional. Applicants who want to include rights and permissions information but do not want to provide personal details can use third-party agents, post office boxes, or designated email accounts. If someone else submits an application on your behalf, it is still your responsibility to ensure that information that you want to keep out of the public record is omitted. In certain cases, it may be permissible to register a claim in a work either anonymously or pseudonymously (under a fictitious name). Other categories of information in copyright applications that may be made available online include the following: type of work, registration number, title of the work, author, authorship, preexisting material date of creation, date of publication.

Why is my copyright registration information now appearing on search engines such as Google?

Because your copyright registration is a public record, others can access it and may create alternative means to make the information in it more widely available. The Copyright Office is not responsible for the form or the substance of third-party redistribution of Copyright Office records.

What is preregistration? What works can be preregistered?
Preregistration is a new procedure in the Copyright Office for certain classes of works that the Register of Copyrights has determined have a history of pre-release infringement. Preregistration serves as a place-holder for limited purposes, mainly where a copyright owner needs to sue for infringement while a work is still being prepared for commercial release. Preregistration is not a substitute for registration, and its use is only appropriate in certain circumstances.
A work submitted for preregistration must meet three conditions:

1. *the work must be **unpublished**;*
2. *the work must be in the process of **being prepared for commercial distribution** in either physical or digital format, e.g., film copies, CDs, computer programs to be sold online, and the applicant must have a reasonable expectation of this commercial distribution*
3. *the work must **fall within the following classes of works** determined by the Register of Copyrights to have had a history of infringement prior to authorized commercial distribution. The works determined to be eligible under this requirement are: motion pictures;sound recording;s musical compositions; literary works being prepared for publication in book form; computer programs (which may include videogames); advertising or marketing photographs*

Is preregistration a substitute for registration?
No. Preregistration is not a form of registration but is simply an indication of an intent to register a work once the work has been completed and/or published. When the work has been completed, it may be registered as an unpublished work, and when it has been published, it may be registered as a published work.
Preregistration of a work offers certain advantages to a copyright owner pursuant to 17 U.S.C. 408(f), 411 and 412. However, preregistration of a work does not constitute prima facie evidence of the validity of the copyright or of the facts stated in the application for preregistration or in the preregistration record. The fact that a work has been preregistered does not create any presumption that the Copyright Office will register the work upon submission of an application for registration.
A person who has preregistered a work must register the work within one month after the copyright owner becomes aware of infringement and no later than three months after first publication. If full registration is not made within the prescribed time period, a court must dismiss an action for copyright infringement that occurred before or within the first two months after first publication.

Will I need to make a regular registration after my work is completed?
Preregistration is not a form of registration but is simply an indication of an intent to register a work once the work has been completed and/or published. The law requires that if you have preregistered a work, you are required to register the work within one month after the copyright owner becomes aware of infringement and no later than three months after first publication.
If full registration is not made within the prescribed time period, a court must dismiss an action for copyright infringement that

occurred before or within the first two months after first publication. See U.S.C. 17 408(f) and 411, as amended; also 37 C.F.R. 202.16, as added.

When should I register my work if I have already preregistered it?
A person who has preregistered a work is required, in order to preserve the legal benefits of preregistration, to register the work within one month after the copyright owner becomes aware of infringement and no later than three months after first publication. If full registration is not made within the prescribed time period, a court must dismiss an action for copyright infringement that occurred before or within the first two months after first publication. See U.S.C. 17 408(f) and 411, as amended; also 37 C.F.R. 202.16, as added.

How do I preregister? *You must apply online; no paper application form is available. Only an application and fee are required; a copy or phonorecord of the work itself, or any finished part thereof, should not be submitted. Instead, the applicant must give as full a description of the work as possible in the online application.*

What is the effective date of my preregistration? *The effective date is the day on which the completed application and fee for an eligible work have been received in the Copyright Office.*

How do I complete a preregistration application?
The preregistration application is only available online. We recommend that you read the detailed information by clicking here, including the screen-by-screen instructions, before beginning your online application. Much of this information is also provided on the individual application screens. To begin the preregistration process, go to the Preregister Your Work page and click on the Start the Preregistration Process button at the bottom of the page.
You ask for a description in the preregistration application. What should it include?
Your description should be sufficient to reasonably identify the work but should consist of no more than 2,000 characters (approximately 330 words). It need not be detailed and need not include confidential information. This description will be made part of the online public record. (See specific help about the description).

Will I receive a certificate for my preregistration?
No. When the Copyright Office completes your preregistration, we will send you an official notification email containing the information from your application, and the preregistration number and date. This same information will also appear in the Copyright Office permanent online catalog record of the preregistration. A certified copy of the official notification may be obtained from the Certifications and Documents Section of the Copyright Office.

What is the fee for preregistration?
$100 nonrefundable filing fee per application. ***NOTE:*** *The filing fee will not be refunded whether or not the preregistration is ultimately made.*

What methods of payment are accepted for preregistration?
You may pay the nonrefundable filing fee for your submission(s) with a credit card, by ACH, or by debiting your existing Copyright Office Deposit Account.
What does ACH (payment) mean?
ACH is an acronym for The Automated Clearing House Network. If you choose this option of payment, you may have money transferred electronically from your personal or corporate bank account to make your payment to the Copyright Office. If you choose this method, you will need your bank's routing number and your bank account number. These usually appear on your check; the routing number is sometimes the one appearing at the bottom left on your check, with your check account number appearing to the right of the routing number. You may give a check number on the online payment screen, but it is not required.

Do I receive a password from the Copyright Office to log into the eCO website to preregister my work? Or do I create my own password? *The Copyright Office doesn't issue you a password unless you forget one you have already established when you create*

your New User profile. (In that case, you are issued a temporary password, which you should change to your own password immediately.)

What Form Do I Fill Out to Register My Copyright? *Online registration through the electronic Copyright Office (eCO) is the preferred way to register basic claims. The next best option for registering basic claims is the new fill-in Form CO. Using 2-D barcode scanning technology, the Office can process these forms much faster and more efficiently than paper forms completed manually. Complete Form CO on your personal computer, print it out, and mail it along with a check or money order and your deposit. Do not save your filled-out Form CO and reuse it for another registration. The 2-D barcode it contains is unique for each work that you register. name=whichform>Paper versions of Form TX (literary works); Form VA (visual arts works); Form PA (performing arts works, including motion pictures); Form SR (sound recordings); and Form SE (single serials) are still available but not on the Copyright Office website. However, staff will send them to you by postal mail upon request. Remember that online registration through eCO and fill-in Form CO can be used for these types of applications.*

How do I copyright my business name? Which form do I use?
Names, titles, short phrases, and slogans are not copyrightable. You may have protection under the federal trademark laws. Contact the U.S. Patent & Trademark Office, 800-786-9199, for more information.

How do I register an automated database?
See Circular 65, Copyright Registration for Automated Databases, for information on registering a database.

How do I register a computer software application I am creating?
See Circular 61, Copyright Registration for Computer Programs for information on registering a computer software application.

I have several copyrights on file with the Copyright Office, and have moved since submitting those applications. Is there a form to submit to change the address on my applications?
Although there is no statutory requirement to notify the Copyright Office of a change of address, you may wish to have our records reflect such information. There are several ways to do this: 1) You may file a document listing all your registered works by title and registration number, along with your new address. Your current address will then be included in our records and be available to those who search the documents file. However, the original registration records are not changed. See Circular 12, Recordation of Transfers and Other Documents, for more information. 2) You may file a supplementary registration Form CA to amend a completed registration to indicate the new address. If you have multiple registrations, filing a Form CA only on the most recent registration will effectively get your new address on record. See Circular 8, Supplementary Copyright Registration, for more information. 3) Finally, filing a registration for a new work in the future will also effectively get your new address on record. For more information on fees, please refer to Circular 4.

How can I know when my submission for registration is received by the Copyright Office?
If you apply for copyright registration online, you will receive an email stating that your application has been received. Otherwise, the Copyright Office does not provide a confirmation of receipt. Currently, if you use a commercial carrier (such as Federal Express, Airborne Express, DHL Worldwide Express, or United Parcel Service), that company may be able to provide an acknowledgment of receipt by the Copyright Office. Due to the mail disruption, an acknowledgment of receipt for mail sent via the U.S. Postal Service, e.g., certified, registered and overnight delivery, may take several weeks or longer to receive. Claims to copyright may also be hand-delivered to the Copyright Office. See About the Office for hours and location.
Please note that our mail service is severely disrupted. (Read more details).

How long does the registration process take, and when will I receive my certificate?*The time the Copyright Office requires to process an application varies, depending on the number of applications the Office is receiving and clearing at the time of submission and the extent of questions associated with the application. Current processing times are:*

Average Processing Time for e-Filing: *Most online filers should receive a certificate within 4.5 months. Many will receive their certificates earlier.*

Average Processing Time for Form CO and Paper Forms: *Most of those who file on these forms should receive a certificate within 15 months of submission. Many will receive their certificates earlier.* ***Note:*** *Whatever time is needed to issue a certificate, the effective date of registration is the day the Copyright Office receives a complete submission in acceptable form. You do not need to wait for a certificate to proceed with publication.*

I've been getting solicitation letters from publishers. Is the Copyright Office selling my personal information?
The Copyright Office does not sell information. Copyright Office records, however, are public records, which means anyone may come to our office and inspect them. Occasionally organizations such as music publishers or book publishers send a representative to the Copyright Office to compile lists of names and addresses of those authors who have most recently registered their works. Their purpose, undoubtedly, is to solicit new business. This practice is not a violation of the law.

How long does a copyright last?
The term of copyright for a particular work depends on several factors, including whether it has been published, and, if so, the date of first publication. As a general rule, for works created after January 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years. For an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first. For works first published prior to 1978, the term will vary depending on several factors. To determine the length of copyright protection for a particular work, consult chapter 3 of the Copyright Act (title 17 of the United States Code). More information on the term of copyright can be found in Circular 15a, Duration of Copyright, and Circular 1, Copyright Basics.

Do I have to renew my copyright?
No. Works created on or after January 1, 1978, are not subject to renewal registration. As to works published or registered prior to January 1, 1978, renewal registration is optional after 28 years but does provide certain legal advantages. For information on how to file a renewal application as well as the legal benefit for doing so, see Circular 15, Renewal of Copyright, and Circular 15a, Duration of Copyright.

How do I get permission to use somebody else's work?
You can ask for it. If you know who the copyright owner is, you may contact the owner directly. If you are not certain about the ownership or have other related questions, you may wish to request that the Copyright Office conduct a search of its records or you may search yourself. See the next question for more details.

How can I find out who owns a copyright?
We can provide you with the information available in our records. A search of registrations, renewals, and recorded transfers of ownership made before 1978 requires a manual search of our files. Upon request, our staff will search our records at the statutory rate of $165 for each hour (2 hour minimum). There is no fee if you conduct a search in person at the Copyright Office. Copyright registrations made and documents recorded from 1978 to date are available for searching online. For further information, see Circular 22, How to Investigate the Copyright Status of a Work, and Circular 23, Copyright Card Catalog and the Online File.

How can I obtain copies of someone else's work and/or registration certificate?
The Copyright Office will not honor a request for a copy of someone else's protected work without written authorization from the copyright owner or from his or her designated agent, unless the work is involved in litigation. In the latter case, a litigation statement is required. A certificate of registration for any registered work can be obtained for a fee of $35. Circular 6, Access to and Copies of Copyright Records and Deposit, provides additional information.

How much of someone else's work can I use without getting permission?
Under the fair use doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports. There are no legal rules permitting the use of a specific number of words, a certain number of musical notes, or percentage of a work. Whether a particular use qualifies as fair use depends on all the circumstances. See FL 102, Fair Use, and Circular 21, Reproductions of Copyrighted Works by Educators and

Librarians.

How much do I have to change in order to claim copyright in someone else's work?
Only the owner of copyright in a work has the right to prepare, or to authorize someone else to create, a new version of that work. Accordingly, you cannot claim copyright to another's work, no matter how much you change it, unless you have the owner's consent. See Circular 14, Copyright Registration for Derivative Works.

Somebody infringed my copyright. What can I do?
A party may seek to protect his or her copyrights against unauthorized use by filing a civil lawsuit in federal district court. If you believe that your copyright has been infringed, consult an attorney. In cases of willful infringement for profit, the U.S. Attorney may initiate a criminal investigation.

Could I be sued for using somebody else's work? How about quotes or samples?
If you use a copyrighted work without authorization, the owner may be entitled to bring an infringement action against you. There are circumstances under the fair use doctrine where a quote or a sample may be used without permission. However, in cases of doubt, the Copyright Office recommends that permission be obtained.

Do you have a list of songs or movies in the public domain?
No, we neither compile nor maintain such a list. A search of our records, however, may reveal whether a particular work has fallen into the public domain. We will conduct a search of our records by the title of a work, an author's name, or a claimant's name. Upon request, our staff will search our records at the statutory rate of $165 for each hour (2 hour minimum). You may also search the records in person without paying a fee.

I saw an image on the Library of Congress website that I would like to use. Do I need to obtain permission?
With few exceptions, the Library of Congress does not own copyright in the materials in its collections and does not grant or deny permission to use the content mounted on its website. Responsibility for making an independent legal assessment of an item from the Library's collections and for securing any necessary permissions rests with persons desiring to use the item. To the greatest extent possible, the Library attempts to provide any known rights information about its collections. Such information can be found in the "Copyright and Other Restrictions" statements on each American Memory online collection homepage. If the image is not part of the American Memory collections, contact the Library custodial division to which the image is credited. Bibliographic records and finding aids available in each custodial division include information that may assist in assessing the copyright status. Search our catalogs through the Library's Online Catalog. To access information from the Library's reading rooms, go to Research Centers.

Is it legal to download works from peer-to-peer networks and if not, what is the penalty for doing so?
Uploading or downloading works protected by copyright without the authority of the copyright owner is an infringement of the copyright owner's exclusive rights of reproduction and/or distribution. Anyone found to have infringed a copyrighted work may be liable for statutory damages up to $30,000 for each work infringed and, if willful infringement is proven by the copyright owner, that amount may be increased up to $150,000 for each work infringed. In addition, an infringer of a work may also be liable for the attorney's fees incurred by the copyright owner to enforce his or her rights.

Whether or not a particular work is being made available under the authority of the copyright owner is a question of fact. But since any original work of authorship fixed in a tangible medium (including a computer file) is protected by federal copyright law upon creation, in the absence of clear information to the contrary, most works may be assumed to be protected by federal copyright law.Since the files distributed over peer-to-peer networks are primarily copyrighted works, there is a risk of liability for downloading material from these networks. To avoid these risks, there are currently many "authorized" services on the Internet that allow consumers to purchase copyrighted works online, whether music, ebooks, or motion pictures. By purchasing works through authorized services, consumers can avoid the risks of infringement liability and can limit their exposure to other potential risks, e.g., viruses, unexpected material, or spyware.For more information on this issue, see the Register of Copyrights' testimony before the Senate Judiciary Committee.

Can a school show a movie without obtaining permission from the copyright owner?
If the movie is for entertainment purposes, you need to get a clearance or license for its performance. It is not necessary to obtain permission if you show the movie in the course of "face-to-face teaching activities" in a nonprofit educational institution, in a classroom or similar place devoted to instruction, if the copy of the movie being performed is a lawful copy. 17 U.S.C. § 110(1). This exemption encompasses instructional activities relating to a wide variety of subjects, but it does not include performances for recreation or entertainment purposes , even if there is cultural value or intellectual appeal.Questions regarding this provision of the copyright law should be made to the legal counsel of the school or school system.

My local copying store will not make reproductions of old family photographs. What can I do?
Photocopying shops, photography stores and other photo developing stores are often reluctant to make reproductions of old photographs for fear of violating the copyright law and being sued. These fears are not unreasonable, because copy shops have been sued for reproducing copyrighted works and have been required to pay substantial damages for infringing copyrighted works. The policy established by a shop is a business decision and risk assessment that the business is entitled to make, because the business may face liability if they reproduce a work even if they did not know the work was copyrighted.

In the case of photographs, it is sometimes difficult to determine who owns the copyright and there may be little or no information about the owner on individual copies. Ownership of a "copy" of a photograph – the tangible embodiment of the "work" – is distinct from the "work" itself – the intangible intellectual property. The owner of the "work" is generally the photographer or, in certain situations, the employer of the photographer. Even if a person hires a photographer to take pictures of a wedding, for example, the photographer will own the copyright in the photographs unless the copyright in the photographs is transferred, in writing and signed by the copyright owner, to another person. The subject of the photograph generally has nothing to do with the ownership of the copyright in the photograph. If the photographer is no longer living, the rights in the photograph are determined by the photographer's will or passed as personal property by the applicable laws of intestate succession.

There may be situations in which the reproduction of a photograph may be a "fair use" under the copyright law. Information about fair use may be found at: www.copyright.gov/fls/fl102.html. However, even if a person determines a use to be a "fair use" under the factors of section 107 of the Copyright Act, a copy shop or other third party need not accept the person's assertion that the use is noninfringing. Ultimately, only a federal court can determine whether a particular use is, in fact, a fair use under the law.

Are copyrights transferable?
Yes. Like any other property, all or part of the rights in a work may be transferred by the owner to another. See Circular 1, Copyright Basics, section "Transfer of Copyright," for a discussion of ownership.

Do you have any forms for transfer of copyrights?
There are no forms provided by the Copyright Office to effect a copyright transfer. The Office does, however, keep records of transfers if they are submitted to us. If you have executed a transfer and wish to record the document, see Circular 12, Recordations of Transfers and Other Documents, for detailed instructions.

Can I backup my computer software?
Yes, under certain conditions as provided by section 117 of the Copyright Act. Although the precise term used under section 117 is "archival" copy, not "backup" copy, these terms today are used interchangeably. This privilege extends only to computer programs and not to other types of works.
Under section 117, you or someone you authorize may make a copy of an original computer program if:

- *the new copy is being made for archival (i.e., backup) purposes only;*
- *you are the legal owner of the copy; and*
- *any copy made for archival purposes is either destroyed, or transferred with the original copy, once the original copy is sold, given away, or otherwise transferred.*

You are not permitted under section 117 to make a backup copy of other material on a computer's hard drive, such as other copyrighted works that have been downloaded (e.g., music, films).It is also important to check the terms of sale or license agreement of the original copy of software in case any special conditions have been put in place by the copyright owner that might affect your ability or right under section 117 to make a backup copy. There is no other provision in the Copyright Act that

specifically authorizes the making of backup copies of works other than computer programs even if those works are distributed as digital copies.

Is it legal to sell backup copies of computer software (in online auctions or on website)? Is it legal to buy and use a backup copy of software I already own?
No. The Copyright Act does not permit anyone to sell backup copies to third parties separately from the original copy of the software. If you lawfully own a computer program, you may sell or transfer that lawful copy together with a lawfully made backup copy of the software, but you may not sell the backup copy alone.

We have been made aware of websites that are offering to sell "backup" copies of software via download over the Internet or in a custom-burned CD-R format, under the guise that section 117 permits this. Section 117 does NOT permit the sale of backup copies. Again, section 117 does not allow you to sell backup copies to someone else except when such backup copies are sold together with the original lawfully owned copy. It does not allow anyone to solely distribute "backup" copies to the public. In addition to being a violation of the exclusive right of distribution, such activity is also likely to be a violation of the terms of the license to the software. In many cases these sites appear to be a front for distribution of illegal copies, which is copyright infringement. You should be wary of sites that offer to sell you a backup copy.

And if you do buy an illegal backup copy, you will be engaging in copyright infringement if you load that illegal copy onto your computer, i.e., the unauthorized reproduction of the infringing computer program into memory. Lesson: if you want a backup copy of a lawfully owned computer program, back it up yourself.

Can I copyright my website?
The original authorship appearing on a website may be protected by copyright. This includes writings, artwork, photographs, and other forms of authorship protected by copyright. Procedures for registering the contents of a website may be found in Circular 66, Copyright Registration for Online Works.

Can I copyright my domain name?
Copyright law does not protect domain names. The Internet Corporation for Assigned Names and Numbers (ICANN), a nonprofit organization that has assumed the responsibility for domain name system management, administers the assignation of domain names through accredited registers.

Is it legal to download works from peer-to-peer networks and if not, what is the penalty for doing so?
Uploading or downloading works protected by copyright without the authority of the copyright owner is an infringement of the copyright owner's exclusive rights of reproduction and/or distribution. Anyone found to have infringed a copyrighted work may be liable for statutory damages up to $30,000 for each work infringed and, if willful infringement is proven by the copyright owner, that amount may be increased up to $150,000 for each work infringed. In addition, an infringer of a work may also be liable for the attorney's fees incurred by the copyright owner to enforce his or her rights.

Whether or not a particular work is being made available under the authority of the copyright owner is a question of fact. But since any original work of authorship fixed in a tangible medium (including a computer file) is protected by federal copyright law upon creation, in the absence of clear information to the contrary, most works may be assumed to be protected by federal copyright law.

Since the files distributed over peer-to-peer networks are primarily copyrighted works, there is a risk of liability for downloading material from these networks. To avoid these risks, there are currently many "authorized" services on the Internet that allow consumers to purchase copyrighted works online, whether music, ebooks, or motion pictures. By purchasing works through authorized services, consumers can avoid the risks of infringement liability and can limit their exposure to other potential risks, e.g., viruses, unexpected material, or spyware.

For more information on this issue, see the Register of Copyrights' testimony before the Senate Judiciary Committee.

How do I get on your mailing or email list?
The Copyright Office does not maintain a mailing list. The Copyright Office sends periodic email messages via NewsNet, a free electronic mailing list. (See subscribing information at the link.) Important announcements and new or changed regulations and the

like are published in the Federal Register. These also appear on the Copyright Office website.

Are you the only place I can go to register a copyright?
Yes. Although copyright application forms may be available in public libraries and some reference books, the U.S. Copyright Office is the only office that can accept applications and issue registrations.

Can you provide me with copies of my application and my work?
Contact the Records Research and Certifications Section of the Copyright Office at (202)707-6787 or see Circular 6, Access to and Copies of Copyright Records and Deposit, for details.

I lost my certificate. Can I get a new one?
Yes, we can produce an additional certificate for a fee of $35. See Circular 6, Access to and Copies of Copyright Records and Deposits, for details on how to make a request.

Can you tell me who owns a copyright?
We can provide you with the information available in our records. A search of registrations, renewals, and recorded transfers of ownership made before 1978 requires a manual search of our files. Upon request, our staff will search our records at the statutory rate of $165 for each hour (2 hour minimum). There is no fee if you conduct a search in person at the Copyright Office. Copyright registrations made and documents recorded from 1978 to date are available for searching online. For further information, see Circular 22, How to Investigate the Copyright Status of a Work, and Circular 23, Copyright Card Catalog and the Online File.

Is the Copyright Office open to the public?
Yes. Hours of service are 8:30 a.m. to 5:00 p.m. eastern time, Monday through Friday, except federal holidays. Activities available in person include speaking with a Copyright Office staff member, requesting various services, and searching our card catalog.

Does the Copyright Office give legal advice?
No. The Copyright Office does not give legal opinions concerning the rights of persons in cases of alleged infringement, contracts, or the copyright status of any particular work other than the information shown in the records of the Office.

How do I get my work published?
Publication occurs at the discretion and initiative of the copyright owner. The Copyright Office has no role in the publication process.

How do I collect royalties?
The collection of royalties is usually a matter of private arrangements between an author and publisher or other users of the author's work. The Copyright Office plays no role in the execution of contractual terms or business practices. There are copyright licensing organizations and publications rights clearinghouses that distribute royalties for their members.

How do I get my work into the Library of Congress?
Copies of works deposited for copyright registration or in fulfillment of the mandatory deposit requirement are available to the Library of Congress for its collections. The Library reserves the right to select or reject any published work for its permanent collections based on the research needs of Congress, the nation's scholars, and of the nation's libraries. If you would like further information on the Library's selection policies, you may contact: Library of Congress, Collections Policy Office, 101 Independence Avenue, S.E., Washington, D.C. 20540.

What is mandatory deposit?
Mandatory deposit (17 U.S.C. section 407) requires the owner of copyright or of the exclusive right of distribution to deposit in the U.S. Copyright Office for the use of the Library of Congress two complete copies of the best edition within 3 months after a work is published. Copies of all works under copyright protection that have been published or distributed in the United States must be deposited with the Copyright Office within 3 months of the date of first publication. (See Copyright Office Circular 7d, Mandatory Deposit of Copies or Phonorecords for the Library of Congress, and the Deposit Regulation 202.19.)

We are a foreign publisher. Do we need to submit our publication to comply with the U.S. deposit requirement?
Yes. If you distribute your work in the United States, you are subject to the deposit requirements of the United States. These requirements apply to a work that is first published in a foreign country as soon as that work is distributed in the United States through the distribution of copies that are either imported or are part of an American edition. The deposit requirement is one copy.

What is the difference between mandatory deposit and copyright registration?
Mandatory deposit (17 U.S.C. section 407) requires the owner of copyright or the exclusive right of distribution to deposit in the Copyright Office for the use of the Library of Congress two complete copies of the best edition within 3 months after a work is published. Section 408 of the copyright law, for a fee, provides the option to formally register the work with the U.S. Copyright Office. This registration process provides a legal record of copyright ownership as well as additional legal benefits in cases of infringement. Optional registration fulfills mandatory deposit requirements.

Where do I send my published works to comply with mandatory deposit?
Send deposit copies to:

Library of Congress
Copyright Office-CAD 407
101 Independence Avenue, SE
Washington, DC 20559-6607

If I choose to register my copyright, should I use the same address that I use for mandatory deposit?
*No. If you choose to register your work, file your application and pay the fee online with eCO, the Electronic Copyright Office. If you cannot file online, use Form CO. If you send a hard-copy deposit and file using eCO, include the shipping slip that is created when you fill out the application on your computer. If you file using Form CO, send the work, the completed application form, and the fee, and the shipping slip in one package. Use this address for both eCO registrations and Form CO registrations: Library of Congress U.S. Copyright Office 101 Independence Avenue SE Washington, DC 20559-**** To expedite the processing of your claim, use the address above with the zip code extension for your type of work: 6222 for literary work, 6211 for visual arts work, 6233 for performing arts work, 6238 for motion picture or other audiovisual work, 6237 for sound recording, 6226 for single serial issue*

Is there an exception to mandatory deposits?
Yes. Under certain circumstances, special relief from deposit requirements may be granted. The grant of special relief is discretionary with the U.S. Copyright Office and will depend on a careful balance of the acquisition policies of the Library of Congress, the examining requirements of the Copyright Office (if registration is sought), and the hardship to the copyright owner.

Requests must set forth specific reasons why special relief should be granted and must be signed by or on behalf of the owner of copyright or the owner of the exclusive right of distribution in the work.

If my publication does not have a copyright notice, do I still have to deposit?
Yes. On March 1, 1989, the qualification "with notice of copyright" was eliminated from the mandatory deposit provision (Public Law 100-568). As a result of this change, all works under copyright protection that are published in the United States on or after March 1, 1989, are subject to mandatory deposit whether published with or without a notice.

What is the difference between the mandatory deposit obligation and the Cataloging in Publication (CIP) obligation?
Mandatory deposit is a legal obligation (17 U.S.C. section 407) and applies to all U.S. and foreign publishers distributing their works in the United States. A CIP obligation is limited to those publishers who have entered a contractual agreement with the Library of Congress. In exchange for the Library providing preliminary cataloging information to the publisher for works submitted to the CIP program, the publisher agrees to provide a copy of the publication to the Library of Congress.

Will my Cataloging In Publication (CIP) copy fulfill my mandatory deposit obligation?

No. CIP is a separate program within the Library of Congress that requires participating publishers to submit one copy of published works. The CIP is in addition to the two copies required for mandatory deposit.

If I send deposit copies of a sample issue of my serial publication to the Register of Copyrights, have I fulfilled the deposit requirement with respect to my serial publication?
No. For copyright purposes each serial issue is considered a separate work. You must deposit two copies of each issue within three months after the date of publication. If you do not intend to register, you may find it convenient to add the address of the Register of Copyrights to your mailing list so that two copies are automatically sent to the Copyright Office each time an issue is published.

I have already deposited identifying material to register my computer software as described in Circular 61-Copyright Registration for Computer Programs. Why am I now being requested to send the actual software?
As described in Circular 61, the deposit requirement for registration is one copy of identifying portions of the computer program. However, to satisfy the mandatory deposit under section 407, a "complete copy" of the published work must be deposited. A complete copy is defined in the regulations as a copy that includes all components that make up the unit of publication, even if any of those units are in the public domain. So, if the published user guide is normally part of a package that contains other elements, then the mandatory deposit requirement requires the deposit of those other elements, too. For example, if the user guide is published as part of a package that contains a CD-ROM, an installation guide, and installation software, then each of these other elements must be deposited in addition to the user guide to fulfill the mandatory deposit requirement.

Since copyright protection exists when the work is created, is it necessary to apply for copyright registration for our newspaper? What are the benefits of copyright registration?
Even though copyright protection is secured automatically upon creation, there are certain definite advantages to copyright registration. Registration establishes a public record of the copyright claim. Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin. If made before or within five years of publication, registration establishes prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate. If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Also, registration allows the owner of the copyright to record the registration with the U.S. Customs Service for protection against importation of infringing copies.

Who is an author?
Under the copyright law, the creator of the original expression in a work is its author. The author is also the owner of copyright unless there is a written agreement by which the author assigns the copyright to another person or entity, such as a publisher. In cases of works made for hire, the employer or commissioning party is considered to be the author. See Circular 9, Work-Made-For-Hire Under the 1976 Copyright Act.

What is a deposit?
A deposit is usually one copy (if unpublished) or two copies (if published) of the work to be registered for copyright. In certain cases such as works of the visual arts, identifying material such as a photograph may be used instead. See Circular 40a, Deposit Requirements in Visual Arts Material. The deposit is sent with the application and fee and becomes the property of the Library of Congress.

What is publication?
Publication has a technical meaning in copyright law. According to the statute, "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." Generally, publication occurs on the date on which copies of the work are first made available to the public. For further information see Circular 1, Copyright Basics, section "Publication."

What is a copyright notice? How do I put a copyright notice on my work?

A copyright notice is an identifier placed on copies of the work to inform the world of copyright ownership that generally consists of the symbol or word "copyright (or copr.)," the name of the copyright owner, and the year of first publication, e.g., ©2008 John Doe. While use of a copyright notice was once required as a condition of copyright protection, it is now optional. Use of the notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the Copyright Office. See Circular 3, Copyright Notice, for requirements for works published before March 1, 1989, and for more information on the form and position of the copyright notice.

What is copyright infringement?
As a general matter, copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner.

What is peer-to-peer (P2P) networking?
A type of network where computers communicate directly with each other, rather than through a central server. Often referred to simply as peer-to-peer, or abbreviated P2P, a type of network in which each workstation has equivalent capabilities and responsibilities in contrast to client/server architectures, in which some computers are dedicated to serving the other computers. A "network" is a group of two or more computer systems linked together by various methods. In recent usage, peer-to-peer has come to describe applications in which users can use the Internet to exchange files with each other directly or through a mediating server.

Where is the public domain?
The public domain is not a place. A work of authorship is in the "public domain" if it is no longer under copyright protection or if it failed to meet the requirements for copyright protection. Works in the public domain may be used freely without the permission of the former copyright owner.

What is mandatory deposit?
Copies of all works under copyright protection that have been published in the United States are required to be deposited with the Copyright Office within three months of the date of first publication. See Circular 7d, Mandatory Deposit of Copies or Phonorecords for the Library of Congress, and the Deposit Regulation 202.19.

What is a work made for hire?
Although the general rule is that the person who creates the work is its author, there is an exception to that principle; the exception is a work made for hire, which is a work prepared by an employee within the scope of his or her employment; or a work specially ordered or commissioned in certain specified circumstances. When a work qualifies as a work made for hire, the employer, or commissioning party, is considered to be the author. See Circular 9, Work-Made-For-Hire Under the 1976 Copyright Act.

What is a Library of Congress number?
The Library of Congress Control Number is assigned by the Library at its discretion to assist librarians in acquiring and cataloging works. For further information call the Cataloging in Publication Division at (202) 707-6345.

What is an ISBN number?
The International Standard Book Number is administered by the R.R. Bowker Company, 877-310-7333. The ISBN is a numerical identifier intended to assist the international community in identifying and ordering certain publications.

What are some other terms commonly used by the U.S. Copyright Office?
Please see our list of U.S. Copyright Office Definitions.

U.S. Copyright Office Definitions

***2-D barcode:** A 2-dimensional barcode that a scanner reads both horizontally and vertically. A 2-D barcode is generated when an applicant completes Form CO on the Office's website. The 2-D barcode is unique for each work registered. It contains information that the applicant has entered on the blank form, but in encrypted format.*

Application forms: *The Office provides a number of forms for use in applying for registration of a claim to copyright. Registration makes a public record of the basic facts of a particular copyright.*

Berne Convention: *An international treaty, the "Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto." The United States acceded to the Berne Convention effective March 1, 1989.*

Certificate of registration: *An official paper denoting that a particular copyright has been registered with the Copyright Office. Provided the claim is registered within 5 years of the date on which the work is first published, the facts on a certificate of registration and the validity of the copyright are accepted by courts of law as self-evident unless later shown to be false.*

Circulars: *Informational brochures published by the Copyright Office for distribution to the public. Each circular deals with an aspect of the copyright law, e.g., duration of copyright, copyright registration of musical compositions, and copyright notice..*

Copy *(noun): The material object, other than a phonorecord, in which the copyrighted work is first fixed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.*

Copyright: *A form of protection provided by the laws of the United States for "original works of authorship" including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. "Copyright" literally means the right to copy, but has come to mean that body of exclusive rights granted by law to copyright owners for protection of their work. Copyright protection does not extend to any idea, procedure, process, system, title, principle, or discovery. Similarly, names, titles, short phrases, slogans, familiar symbols, mere variations of typographic ornamentation, lettering, coloring, and listings of contents or ingredients are not subject to copyright.*

Copyright notice: *The copyright notice consists of three elements. They are the "c" in a circle (©), the year of first publication, and the name of the owner of copyright. A copyright notice is no longer legally required to secure copyright on works first published on or after March 1, 1989, but it does provide legal benefits.*

DART: *Digital Audio Recording Technology. Refers to digital audio recording devices and media covered by the Audio Home Recording Act of 1992 (P.L.102-563), the first statutory license to grant royalties to copyright owners for home copying.*

Deposit *(noun): The copy, copies, or phonorecords of an original work of authorship that are placed in the Copyright Office to support the claim to copyright in the work or to meet the mandatory deposit requirement of the 1976 Copyright Act. Deposits become part of the public record and may be selected by the Library of Congress for its collections.*

Deposit *(verb): To send to the Copyright Office a copy, copies, or phonorecords of an original work of authorship to support a claim to copyright or to meet the mandatory deposit requirement of the 1976 Copyright Act.*

Deposit account: *Money kept in a special account set up in the Copyright Office by individuals or firms and from which copyright fees are deducted.*

Document: *A paper relating to the ownership of a copyright or to any other matter involving a copyright. Documents may be recorded in the Copyright Office for the public record.*

eCO: *The electronic Copyright Office. eCO has two parts: eCO Service, a system for inputting and processing copyright information, and eCO Search, the Copyright Office records search system that provides access to Copyright Office records.*

eSearch: *The online computer system that allows users to search Copyright Office registration and recordation records from 1978*

to the present.

eService: *The online computer system that receives applications for copyright registration, records and tracks all service requests, and supports all Copyright Office business requirements.*

Exclusive rights of the copyright owner (section 106 , title 17, U.S. Code): *1. To reproduce the work;2. To prepare derivative works;3. To distribute copies or phonorecords of the work to the public by sale, rental, lease, or lending; 4. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the work publicly; 5. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; 6. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.*

Mandatory deposit: *A requirement of the 1976 Copyright Act that copies or phonorecords of every work published in the United States be sent to the Copyright Office within 3 month of publication whether or not copyright registration is sought. In general, two copies are required. Deposits are made available to the Library of Congress for its collections or for exchange or transfer to any other library. Works deposited under the mandatory deposit requirement may also be used for copyright registration.*

Peer-to-peer (P2P) networking: *A type of network where computers communicate directly with each other, rather than through a central server. Often referred to simply as peer-to-peer, or abbreviated P2P, a type of network in which each workstation has equivalent capabilities and responsibilities in contrast to client/server architectures, in which some computers are dedicated to serving the other computers. A "network" is a group of two or more computer systems linked together by various methods. In recent usage, peer-to-peer has come to describe applications in which users can use the Internet to exchange files with each other directly or through a mediating server.*

Phonorecord: *A material object in which sounds 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. A phonorecord may include a cassette tape, an LP vinyl disk, a compact disk, or other means of fixing sounds. A phonorecord does not include those sounds accompanying a motion picture or other audiovisual work.*

Publish*: To publish a work is to distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending. Publication also includes offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display. A public performance or display of a work does not of itself constitute publication.*

Recordation: *The official filing in the Copyright Office of a document having to do with copyright, such as a transfer of ownership or a grant of a security interest. The purpose of recordation is to make a public record of the facts in the document. The document must bear the actual signature of the person who executed it, or it must be accompanied by a sworn or official certification that it is a true copy of the original signed document.*

Sound recording: *A sound recording is a work that results from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material objects in which they are embodied. A sound recording does not include the sounds accompanying a motion picture or other audiovisual work. Copyright in a sound recording protects the particular series of sounds embodied in the sound recording. Copyright registration for a sound recording alone is not the same as registration for the musical, dramatic, or literary work recorded. The underlying work may be registered in its own right apart from any recording of the performance.*

ACRONYMS

CARP Copyright Arbitration Royalty Panel*: When the affected parties cannot come to a voluntary agreement, a CARP is convened to determine royalty rate adjustments and the distribution of royalty funds collected by the Licensing Division. CARPs are jointly*

administered by the Library of Congress and the Copyright Office. Each panel is composed of three arbitrators, two of whom are selected by the Librarian of Congress. The third is selected by the first two.

***CIS Copyright Imaging System**:This system is used to capture and store an online computer image of each copyright registration form. It applies a barcode label indicating the registration number; prints the registration certificate through use of high speed printers working from the stored image; and stores the registration form for archival use.*

***CMS Correspondence Management System:** CMS records written transactions with remitters and has largely replaced the earlier ETS system.*

***COHD Copyright Office History Documents:** This program is an index to recorded documents from 1978 to the present that transfer copyright ownership or that pertain to a copyright. COHD is a subsystem of COPICS.*

***COHM Copyright Office History Monographs:**This program is an index to original registrations and renewal registrations of monographs from 1978 to the present. Monographs include all subject matter that is not serials. COHM is a subsystem of COPICS.*

***COHS Copyright Office History Serials:** This program is an index to original registrations and renewal registrations of serials from 1978 to the present. Serials include periodicals, newspapers, magazines, bulletins, newsletters, annuals, journals, proceedings of societies, and other similar works. COHS is a subsystem of COPICS.*

***COINS Copyright Office In-Process System:**This computer system tracks copyright claims and other fee services through the Copyright Office and records whether proper fees have been received. When deposits are received for copyright registration, they are given a barcode number and are entered into the COINS tracking system.*

***COPICS Copyright Office Publication and Interactive Cataloging System:**This system includes COHD, COHM, and COHS and is an automated card catalog to original and renewal copyright registrations in the United States and an automated index to recorded documents from 1978 to the present.*

***CORCATS Copyright Office Registration Cataloging System:**This program creates COPICS records and serves as an interface between CORDS and COPICS.*

***DART Digital Audio Recording Technology:**This acronym refers to digital audio recording devices and media covered by the Audio Home Recording Act of 1992 (P.L.102-563), the first statutory license to grant royalties to copyright owners for home copying.*

***ETS Exception Tracking System:**This system is integrated with the RIP record and tracks cases in which correspondence with a remitter is required. ETS records pertinent information about the case.*

***RIP Receipt In Process:** This record is created by COINS for each claim to copyright received in the Office. Automatic status updating is performed as the claim is processed.*

***UB Unfinished Business:** Individual files are maintained on claims that are received but that cannot be processed until some matter is resolved.*

***What is special handling?**Special handling is the expedited processing of an online or paper application for registration of a claim to copyright or for the recordation of a document pertaining to copyright. It is granted in certain circumstances to those who have compelling reasons for this service. It is subject to the approval of the chief of the Receipt Analysis and Control Division, who must consider the workload of the Copyright Office at the time the request is made.*

Copyright
United States Copyright Office

Copyright Basics

What Is Copyright?

Copyright is a form of protection provided by the laws of the United States (title 17, *U.S. Code*) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- reproduce the work in copies or phonorecords
- prepare derivative works based upon the work
- distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works
- display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work
- perform the work publicly (in the case of sound recordings*) by means of a digital audio transmission

In addition, certain authors of works of visual art have the rights of attribution and integrity as described in section 106A of the 1976 Copyright Act. For further information, see Circular 40, *Copyright Registration for Works of the Visual Arts*.

It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. These rights, however, are not unlimited in scope. Sections 107 through 122 of the 1976 Copyright Act establish limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use," which is given a statutory basis in section 107 of the 1976 Copyright Act. In other instances, the limitation takes the form of a "compulsory license" under which certain limited uses of copyrighted works are permitted upon payment of specified royalties and compliance with statutory conditions. For further information about the limitations of any of these rights, consult the copyright law or write to the Copyright Office.

***NOTE:** Sound recordings are defined in the law as "works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work." Common

examples include recordings of music, drama, or lectures. A sound recording is not the same as a phonorecord. A phonorecord is the physical object in which works of authorship are embodied. The word "phonorecord" includes cassette tapes, CDs, and vinyl disks as well as other formats.

Who Can Claim Copyright?

Copyright protection subsists from the time the work is created in fixed form. The copyright in the work of authorship immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright.

In the case of works made for hire, the employer and not the employee is considered to be the author. Section 101 of the copyright law defines a "work made for hire" as:

1 a work prepared by an employee within the scope of his or her employment; *or*

2 a work specially ordered or commissioned for use as:
- a contribution to a collective work
- a part of a motion picture or other audiovisual work
- a translation
- a supplementary work
- a compilation
- an instructional text
- a test
- answer material for a test
- 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.

The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution.

Two General Principles

- Mere ownership of a book, manuscript, painting, or any other copy or phonorecord does not give the possessor the copyright. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.
- Minors may claim copyright, but state laws may regulate the business dealings involving copyrights owned by minors. For information on relevant state laws, consult an attorney.

Copyright and National Origin of the Work

Copyright protection is available for all unpublished works, regardless of the nationality or domicile of the author.

Published works are eligible for copyright protection in the United States if any one of the following conditions is met:

- On the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party,* or is a stateless person wherever that person may be domiciled; *or*
- The work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party. For purposes of this condition, a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be; *or*
- The work is a sound recording that was first fixed in a treaty party; *or*
- The work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; *or*
- The work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; *or*
- The work is a foreign work that was in the public domain in the United States prior to 1996 and its copyright was restored under the Uruguay Round Agreements Act (URAA). See Circular 38b, *Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act* (*URAA-GATT*), for further information.
- The work comes within the scope of a presidential proclamation.

***A treaty party is a country or intergovernmental organization other than the United States that is a party to an international agreement.**

What Works Are Protected?

Copyright protects "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device. Copyrightable works 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
7 sound recordings
8 architectural works

These categories should be viewed broadly. For example, computer programs and most "compilations" may be registered as "literary works"; maps and architectural plans may be registered as "pictorial, graphic, and sculptural works."

What Is Not Protected by Copyright?

Several categories of material are generally not eligible for federal copyright protection. These include among others:

- works that have not been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- works consisting entirely of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)

How to Secure a Copyright

Copyright Secured Automatically upon Creation

The way in which copyright protection is secured is frequently misunderstood. No publication or registration or other action in the Copyright Office is required to secure copyright. See the following note. There are, however, certain definite advantages to registration. See *Copyright Registration* on page 7.

Copyright is secured automatically when the work is created, and a work is "created" when it is fixed in a copy or phonorecord for the first time. "Copies" are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm. "Phonorecords" are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as cassette tapes, CDs, or vinyl disks. Thus, for example, a song (the "work") can be fixed in sheet music ("copies") or in phonograph disks ("phonorecords"), or both. If a work is prepared over a period of time, the part of the work that is fixed on a particular date constitutes the created work as of that date.

Publication

Publication is no longer the key to obtaining federal copyright as it was under the Copyright Act of 1909. However, publication remains important to copyright owners.

The 1976 Copyright Act defines publication as follows:

> *"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.*

NOTE: Before 1978, federal copyright was generally secured by the act of publication with notice of copyright, assuming compliance with all other relevant statutory conditions. U.S. works in the public domain on January 1, 1978, (for example, works published without satisfying all conditions for securing federal copyright under the Copyright Act of 1909) remain in the public domain under the 1976 Copyright Act.

Certain foreign works originally published without notice had their copyrights restored under the Uruguay Round Agreements Act (URAA). See Circular 38B and see *Notice of Copyright* section on page 4 for further information.

Federal copyright could also be secured before 1978 by the act of registration in the case of certain unpublished works and works eligible for ad interim copyright. The 1976 Copyright Act automatically extended copyright protection to full term for all works that, as of January 1, 1978, were subject to statutory protection.

A further discussion of the definition of "publication" can be found in the legislative history of the 1976 Copyright Act. The legislative reports define "to the public" as distribution to persons under no explicit or implicit restrictions with respect to disclosure of the contents. The reports state that the definition makes it clear that the sale of phonorecords constitutes publication of the underlying work, for example, the musical, dramatic, or literary work embodied in a phonorecord. The reports also state that it is clear that any form of dissemination in which the material object does not change hands, for example, performances or displays on television, is not a publication no matter how many people are exposed to the work. However, when copies or phonorecords are offered for sale or lease to a group of wholesalers, broadcasters, or motion picture theaters, publication does take place if the purpose is further distribution, public performance, or public display.

Publication is an important concept in the copyright law for several reasons:

- Works that are published in the United States are subject to mandatory deposit with the Library of Congress. See discussion on "Mandatory Deposit for Works Published in the United States" on page 10.
- Publication of a work can affect the limitations on the exclusive rights of the copyright owner that are set forth in sections 107 through 122 of the law.
- The year of publication may determine the duration of copyright protection for anonymous and pseudonymous works (when the author's identity is not revealed in the records of the Copyright Office) and for works made for hire.
- Deposit requirements for registration of published works differ from those for registration of unpublished works. See discussion on "Registration Procedures" on page 7.
- When a work is published, it may bear a notice of copyright to identify the year of publication and the name of the copyright owner and to inform the public that the work is protected by copyright. Copies of works published before March 1, 1989, must bear the notice or risk loss of copyright protection. See discussion on "Notice of Copyright" below.

Notice of Copyright

The use of a copyright notice is no longer required under U.S. law, although it is often beneficial. Because prior law did contain such a requirement, however, the use of notice is still relevant to the copyright status of older works.

Notice was required under the 1976 Copyright Act. This requirement was eliminated when the United States adhered to the Berne Convention, effective March 1, 1989. Although works published without notice before that date could have entered the public domain in the United States, the Uruguay Round Agreements Act (URAA) restores copyright in certain foreign works originally published without notice. For further information about copyright amendments in the URAA, see Circular 38b.

The Copyright Office does not take a position on whether copies of works first published with notice before March 1, 1989, which are distributed on or after March 1, 1989, must bear the copyright notice.

Use of the notice may be important because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, if a proper notice of copyright appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in section 504(c)(2) of the copyright law. Innocent infringement occurs when the infringer did not realize that the work was protected.

The use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the Copyright Office.

Form of Notice for Visually Perceptible Copies

The notice for visually perceptible copies should contain all the following three elements:

1 The symbol © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr."; *and*

2 The year of first publication of the work. In the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying textual matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful article; *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.

Example: © *2011 John Doe*

The "C in a circle" notice is used only on "visually perceptible copies." Certain kinds of works—for example, musical, dramatic, and literary works—may be fixed not in "copies" but by means of sound in an audio recording. Since audio recordings such as audio tapes and phonograph disks are "phonorecords" and not "copies," the "C in a circle" notice is not used to indicate protection of the underlying musical, dramatic, or literary work that is recorded.

Form of Notice for Phonorecords of Sound Recordings

The notice for phonorecords embodying a sound recording should contain all the following three elements:

1 The symbol ℗ (the letter P in a circle); *and*

2 The year 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 label or container and if no other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice.

Example: ℗ *2011 A.B.C. Records Inc.*

NOTE: Since questions may arise from the use of variant forms of the notice, you may wish to seek legal advice before using any form of the notice other than those given here.

Position of Notice

The copyright notice should be affixed to copies or phonorecords in such a way as to "give reasonable notice of the claim of copyright." The three elements of the notice should ordinarily appear together on the copies or phonorecords or on the phonorecord label or container. The Copyright Office has issued regulations concerning the form and position of the copyright notice in the *Code of Federal Regulations* (37 *CFR* 201.20). For more information, see Circular 3, *Copyright Notice*.

Publications Incorporating U.S. Government Works

Works by the U.S. government are not eligible for U.S. copyright protection. For works published on and after March 1, 1989, the previous notice requirement for works consisting primarily of one or more U.S. government works has been eliminated. However, use of a notice on such a work will defeat a claim of innocent infringement as previously described provided the notice also includes a statement that identifies either those portions of the work in which copyright is claimed or those portions that constitute U.S. government material.

Example: © *2011 Jane Brown*
Copyright claimed in chapters 7–10, exclusive of U.S. government maps

Copies of works published before March 1, 1989, that consist primarily of one or more works of the U.S. government should have a notice and the identifying statement.

Unpublished Works

The author or copyright owner may wish to place a copyright notice on any unpublished copies or phonorecords that leave his or her control.

Example: Unpublished work © *2011 Jane Doe*

Omission of Notice and Errors in Notice

The 1976 Copyright Act attempted to ameliorate the strict consequences of failure to include notice under prior law. It contained provisions that set out specific corrective steps to cure omissions or certain errors in notice. Under these provisions, an applicant had five years after publication to cure omission of notice or certain errors. Although these provisions are technically still in the law, their impact has been limited by the amendment making notice optional for all works published on and after March 1, 1989. For further information, see Circular 3.

How Long Copyright Protection Endures

Works Originally Created on or after January 1, 1978

A work that was created (fixed in tangible form for the first time) on or after January 1, 1978, is automatically protected from the moment of its creation and is ordinarily given a term enduring for the author's life plus an additional 70 years after the author's death. In the case of "a joint work prepared by two or more authors who did not work for hire," the term lasts for 70 years after the last surviving author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 95 years from publication or 120 years from creation, whichever is shorter.

Works Originally Created Before January 1, 1978, But Not Published or Registered by That Date

These works have been automatically brought under the statute and are now given federal copyright protection. The duration of copyright in these works is generally computed in the same way as for works created on or after January 1, 1978:

the life-plus-70 or 95/120-year terms apply to them as well. The law provides that in no case would the term of copyright for works in this category expire before December 31, 2002, and for works published on or before December 31, 2002, the term of copyright will not expire before December 31, 2047.

Works Originally Created and Published or Registered before January 1, 1978

Under the law in effect before 1978, copyright was secured either on the date a work was published with a copyright notice or on the date of registration if the work was registered in unpublished form. In either case, the copyright endured for a first term of 28 years from the date it was secured. During the last (28th) year of the first term, the copyright was eligible for renewal. The Copyright Act of 1976 extended the renewal term from 28 to 47 years for copyrights that were subsisting on January 1, 1978, or for pre-1978 copyrights restored under the Uruguay Round Agreements Act (URAA), making these works eligible for a total term of protection of 75 years. Public Law 105-298, enacted on October 27, 1998, further extended the renewal term of copyrights still subsisting on that date by an additional 20 years, providing for a renewal term of 67 years and a total term of protection of 95 years.

Public Law 102-307, enacted on June 26, 1992, amended the 1976 Copyright Act to provide for automatic renewal of the term of copyrights secured between January 1, 1964, and December 31, 1977. Although the renewal term is automatically provided, the Copyright Office does not issue a renewal certificate for these works unless a renewal application and fee are received and registered in the Copyright Office.

Public Law 102-307 makes renewal registration optional. Thus, filing for renewal registration is no longer required to extend the original 28-year copyright term to the full 95 years. However, some benefits accrue to renewal registrations that were made during the 28th year.

For more detailed information on renewal of copyright and the copyright term, see Circular 15, *Renewal of Copyright*; Circular 15a, *Duration of Copyright*; and Circular 15t, *Extension of Copyright Terms*.

Transfer of Copyright

Any or all of the copyright owner's exclusive rights or any subdivision of those rights may be transferred, but the transfer of exclusive rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent. Transfer of a right on a nonexclusive basis does not require a written agreement.

A copyright may also be conveyed by operation of law and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

Copyright is a personal property right, and it is subject to the various state laws and regulations that govern the ownership, inheritance, or transfer of personal property as well as terms of contracts or conduct of business. For information about relevant state laws, consult an attorney.

Transfers of copyright are normally made by contract. The Copyright Office does not have any forms for such transfers. The law does provide for the recordation in the Copyright Office of transfers of copyright ownership. Although recordation is not required to make a valid transfer between the parties, it does provide certain legal advantages and may be required to validate the transfer as against third parties. For information on recordation of transfers and other documents related to copyright, see Circular 12, *Recordation of Transfers and Other Documents*.

Termination of Transfers

Under the previous law, the copyright in a work reverted to the author, if living, or if the author was not living, to other specified beneficiaries, provided a renewal claim was registered in the 28th year of the original term.* The present law drops the renewal feature except for works already in the first term of statutory protection when the present law took effect. Instead, the present law permits termination of a grant of rights after 35 years under certain conditions by serving written notice on the transferee within specified time limits.

For works already under statutory copyright protection before 1978, the present law provides a similar right of termination covering the newly added years that extended the former maximum term of the copyright from 56 to 95 years. For further information, see circulars 15a and 15t.

***Note:** The copyright in works eligible for renewal on or after June 26, 1992, will vest in the name of the renewal claimant on the effective date of any renewal registration made during the 28th year of the original term. Otherwise, the renewal copyright will vest in the party entitled to claim renewal as of December 31st of the 28th year.*

International Copyright Protection

There is no such thing as an "international copyright" that will automatically protect an author's writings throughout the entire world. Protection against unauthorized use in a particular country depends, basically, on the national laws of that country. However, most countries do offer protection to

foreign works under certain conditions, and these conditions have been greatly simplified by international copyright treaties and conventions. For further information and a list of countries that maintain copyright relations with the United States, see Circular 38A, *International Copyright Relations of the United States*.

Copyright Registration

In general, copyright registration is a legal formality intended to make a public record of the basic facts of a particular copyright. However, registration is not a condition of copyright protection. Even though registration is not a requirement for protection, the copyright law provides several inducements or advantages to encourage copyright owners to make registration. Among these advantages are the following:

- Registration establishes a public record of the copyright claim.
- Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin.
- If made before or within five years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate.
- If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.
- Registration allows the owner of the copyright to record the registration with the U.S. Customs Service for protection against the importation of infringing copies. For additional information, go to the U.S. Customs and Border Protection website at *www.cbp.gov/*.

Registration may be made at any time within the life of the copyright. Unlike the law before 1978, when a work has been registered in unpublished form, it is not necessary to make another registration when the work becomes published, although the copyright owner may register the published edition, if desired.

Registration Procedures

Filing an Original Claim to Copyright with the U.S. Copyright Office

An application for copyright registration contains three essential elements: a completed application form, a nonrefundable filing fee, and a nonreturnable deposit—that is, a copy or copies of the work being registered and "deposited" with the Copyright Office.

If you apply online for copyright registration, you will receive an email saying that your application was received. If you apply for copyright registration using a paper application, you will not receive an acknowledgment that your application has been received (the Office receives more than 600,000 applications annually). With either online or paper applications, you can expect:

- a letter, telephone call or email from a Copyright Office staff member if further information is needed *or*
- a certificate of registration indicating that the work has been registered, or if the application cannot be accepted, a letter explaining why it has been rejected

Requests to have certificates available for pickup in the Public Information Office or to have certificates sent by Federal Express or another mail service cannot be honored.

If you apply using a paper application and you want to know the date that the Copyright Office receives your material, send it by registered or certified mail and request a return receipt.

You can apply to register your copyright in one of two ways.

Online Application

Online registration through the electronic Copyright Office (eCO) is the preferred way to register basic claims for literary works; visual arts works; performing arts works, including motion pictures; sound recordings; and single serials. Advantages of online filing include:

- a lower filing fee
- the fastest processing time
- online status tracking
- secure payment by credit or debit card, electronic check, or Copyright Office deposit account
- the ability to upload certain categories of deposits directly into eCO as electronic files

NOTE: You can still register using eCO and save money even if you will submit a hard-copy deposit, which is required under the mandatory deposit requirements for certain published works. The system will prompt you to specify whether you intend to submit an electronic or a hard-copy deposit, and it will provide instructions accordingly.

Basic claims include (1) a single work; (2) multiple unpublished works if the elements are assembled in an orderly form; the combined elements bear a single title identifying the collection as a whole; the copyright claimant in all the elements and in the collection as a whole is the same; and all 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; and (3) multiple published works if they are all first published together in the same publication on the same date and owned by the same claimant.

Online submissions of groups of published photographs and automated databases consisting predominantly of photographs may be permitted if the applicant first calls the Visual Arts Division (202) 707-8202) for approval and special instructions. See the Copyright Office website at *www.copyright.gov* for further information. To access eCO, go to the Copyright Office website and click on *electronic Copyright Office.*

Paper Application

You can also register your copyright using forms TX (literary works); VA (visual arts works); PA (performing arts works, including motion pictures); SR (sound recordings); and SE (single serials). To access all forms, go to the Copyright Office website and click on *Forms.* On your personal computer, complete the form for the type of work you are registering, print it out, and mail it with a check or money order and your deposit. Blank forms can also be printed out and completed by hand, or they may be requested by postal mail or by calling the Forms and Publications Hotline at (202) 707-9100 (limit of two copies of each form by mail). Informational circulars about the types of applications and current registration fees are available on the Copyright Office website at *www.copyright.gov* or by phone.

Applications That Must Be Completed on Paper

Certain applications must be completed on paper and mailed to the Copyright Office with the appropriate fee and deposit. Forms for these applications include the following:

- Form D-VH for registration of vessel hull designs
- Form MW for registration of mask works
- Form CA to correct an error or to amplify the information given in a registration
- Form GATT for registration of works in which the U.S. copyright was restored under the 1994 Uruguay Round Agreements Act
- Form RE for renewal of copyright claims
- Applications for group registration, including group registration of automated databases consisting predominantly of photographs and Form GR/PPh (published photographs), unless permission to enter the online pilot project mentioned above in "Online Application" is approved by the Visual Arts Division; Form GR/CP (contributions to periodicals); Form SE/Group (serials); and Form G/DN (daily newspapers and newsletters).

NOTE: If you complete the application form by hand, use black ink pen or type. You may photocopy blank application forms. However, photocopied forms submitted to the Copyright Office must be clear and legible on a good grade of 8½" × 11" white paper. Forms not meeting these requirements may be returned, resulting in delayed registration. You must have Adobe Acrobat Reader® installed on your computer to view and print the forms accessed on the Internet. Adobe Acrobat Reader may be downloaded free from *www.copyright.gov*.

Mailing Addresses for Applications Filed on Paper and for Hard-copy Deposits

Library of Congress
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559

Filing a Renewal Registration

To register a renewal, send the following:

1 a properly completed application Form RE and, if necessary, Form RE Addendum, *and*

2 a nonrefundable filing fee* for each application and each Addendum. Each Addendum form must be accompanied by a deposit representing the work being renewed. See Circular 15, *Renewal of Copyright*.

***NOTE: For current fee information, check the Copyright Office website at *www.copyright.gov*, write the Copyright Office, or call (202) 707-3000 or 1-877-476-0778.**

Deposit Requirements

If you file an application for copyright registration online using eCO, you may in some cases attach an electronic copy

of your deposit. If you do not have an electronic copy or if you must send a hard copy or copies of your deposit to comply with the "best edition" requirements for published works, you must print out a shipping slip, attach it to your deposit, and mail the deposit to the Copyright Office. Send the deposit, fee, and paper registration form packaged together to:

Library of Congress
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559

The hard-copy deposit of the work being registered will not be returned to you.

The deposit requirements vary in particular situations. The general requirements follow. Also note the information under "Special Deposit Requirements" in the next column.

- if the work is unpublished, one complete copy or phonorecord
- if the work was first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition
- if the work was first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published
- if the work was first published outside the United States, one complete copy or phonorecord of the work as first published

When registering with eCO, you will receive via your printer a shipping slip that you must include with your deposit that you send to the Copyright Office. This shipping slip is unique to your claim to copyright and will link your deposit to your application. Do not reuse the shipping slip.

NOTE: It is imperative when sending multiple works that you place all applications, deposits, and fees in the same package. If it is not possible to fit everything in one package, number each package (e.g., 1 of 3; 2 of 4) to facilitate processing and, where possible, attach applications to the appropriate deposits.

Special Deposit Requirements

Special deposit requirements exist for many types of works. The following are prominent examples of exceptions to the general deposit requirements:

- If the work is a motion picture, the deposit requirement is one complete copy of the unpublished or published motion picture and a separate written description of its contents, such as a continuity, press book, or synopsis.
- If the work is a literary, dramatic, or musical work published only in a phonorecord, the deposit requirement is one complete phonorecord.
- If the work is an unpublished or published computer program, the deposit requirement is one visually perceptible copy in source code of the first 25 and last 25 pages of the program. For a program of fewer than 50 pages, the deposit is a copy of the entire program. For more information on computer program registration, including deposits for revised programs and provisions for trade secrets, see Circular 61, *Copyright Registration for Computer Programs.*
- If the work is in a CD-ROM format, the deposit requirement is one complete copy of the material, that is, the CD-ROM, the operating software, and any manual(s) accompanying it. If registration is sought for the computer program on the CD-ROM, the deposit should also include a printout of the first 25 and last 25 pages of source code for the program.

In the case of works reproduced in three-dimensional copies, identifying material such as photographs or drawings is ordinarily required. Other examples of special deposit requirements (but by no means an exhaustive list) include many works of the visual arts such as greeting cards, toys, fabrics, and oversized materials (see Circular 40A, *Deposit Requirements for Registration of Claims to Copyright in Visual Arts Material*); computer programs, video games, and other machine-readable audiovisual works (see Circular 61); automated databases (see Circular 65, *Copyright Registration for Automated Databases*); and contributions to collective works. For information about deposit requirements for group registration of serials, see Circular 62, *Copyright Registration for Serials*.

If you are unsure of the deposit requirement for your work, write or call the Copyright Office and describe the work you wish to register.

Unpublished Collections

Under the following conditions, a work may be registered in unpublished form as a "collection," with one application form and one fee:

- The elements of the collection are assembled in an orderly form;
- The combined elements bear a single title identifying the collection as a whole;
- The copyright claimant in all the elements and in the collection as a whole is the same; *and*

- All 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.

NOTE: A Library of Congress Control Number is different from a copyright registration number. The Cataloging in Publication (CIP) Division of the Library of Congress is responsible for assigning LC Control Numbers and is operationally separate from the Copyright Office. A book may be registered in or deposited with the Copyright Office but not necessarily cataloged and added to the Library's collections. For information about obtaining an LC Control Number, see the following website: *http://pcn.loc.gov/pcn*. For information on International Standard Book Numbering (ISBN), write to: *ISBN, R.R. Bowker, 630 Central Ave., New Providence, NJ 07974*. Call (800) 269-5372. For further information and to apply online, see *www.isbn.org*. For information on International Standard Serial Numbering (ISSN), write to: *Library of Congress, National Serials Data Program, Serial Record Division, Washington, DC 20540-4160*. Call (202) 707-6452. Or obtain information from *www.loc.gov/issn*.

An unpublished collection is not indexed under the individual titles of the contents but under the title of the collection.

Filing a Preregistration

Preregistration is a service intended for works that have had a history of prerelease infringement. To be eligible for preregistration, a work must be unpublished and must be in the process of being prepared for commercial distribution. It must also fall within a class of works determined by the Register of Copyrights to have had a history of infringement prior to authorized commercial distribution. Preregistration is not a substitute for registration. The preregistration application Form PRE is only available online. For further information, go to the Copyright Office website at *www.copyright.gov*.

Effective Date of Registration

When the Copyright Office issues a registration certificate, it assigns as the effective date of registration the date it received all required elements—an application, a nonrefundable filing fee, and a nonreturnable deposit—in acceptable form, regardless of how long it took to process the application and mail the certificate. You do not have to receive your certificate before you publish or produce your work, nor do you need permission from the Copyright Office to place a copyright notice on your work. However, the Copyright Office must have acted on your application before you can file a suit for copyright infringement, and certain remedies, such as statutory damages and attorney's fees, are available only for acts of infringement that occurred after the effective date of registration. If a published work was infringed before the effective date of registration, those remedies may also be available if the effective date of registration is no later than three months after the first publication of the work.

Corrections and Amplifications of Existing Registrations

To correct an error in a copyright registration or to amplify the information given in a registration, file with the Copyright Office a supplementary registration Form CA. File Form CA in the same manner as described above under *Registration Procedures.* The information in a supplementary registration augments but does not supersede that contained in the earlier registration. Note also that a supplementary registration is not a substitute for original registration, for renewal registration, or for recordation of a transfer of ownership. For further information about supplementary registration, see Circular 8, *Supplementary Copyright Registration*.

Mandatory Deposit for Works Published in the United States

Although a copyright registration is not required, the Copyright Act establishes a mandatory deposit requirement for works published in the United States. See the definition of "publication" on page 3. In general, the owner of copyright or the owner of the exclusive right of publication in the work has a legal obligation to deposit in the Copyright Office, within three months of publication in the United States, two copies (or in the case of sound recordings, two phonorecords) for the use of the Library of Congress. Failure to make the deposit can result in fines and other penalties but does not affect copyright protection.

If a registration for a claim to copyright in a published work is filed online and the deposit is submitted online, the actual physical deposit must still be submitted to satisfy mandatory deposit requirements.

Certain categories of works are exempt entirely from the mandatory deposit requirements, and the obligation is reduced for certain other categories. For further information about mandatory deposit, see Circular 7D, *Mandatory Deposit of Copies or Phonorecords for the Library of Congress*.

Use of Mandatory Deposit to Satisfy Registration Requirements

For works published in the United States, the copyright law contains a provision under which a single deposit can be made to satisfy both the deposit requirements for the Library and the registration requirements. To have this dual effect, the copies or phonorecords must be accompanied by the prescribed application form and filing fee. If applicable, a copy of the mandatory deposit notice must also be included with the submission.

Who May File an Application Form?

The following persons are legally entitled to submit an application form:

- **The author.** This is either the person who actually created the work or, if the work was made for hire, the employer or other person for whom the work was prepared.
- **The copyright claimant.** The copyright claimant is defined in Copyright Office regulations as either the author of the work or a person or organization that has obtained ownership of all the rights under the copyright initially belonging to the author. This category includes a person or organization who has obtained by contract the right to claim legal title to the copyright in an application for copyright registration.
- **The owner of exclusive right(s).** Under the law, any of the exclusive rights that make up a copyright and any subdivision of them can be transferred and owned separately, even though the transfer may be limited in time or place of effect. The term "copyright owner" with respect to any one of the exclusive rights contained in a copyright refers to the owner of that particular right. Any owner of an exclusive right may apply for registration of a claim in the work.
- **The duly authorized agent of such author, other copyright claimant, or owner of exclusive right(s).** Any person authorized to act on behalf of the author, other copyright claimant, or owner of exclusive rights may apply for registration.

There is no requirement that applications be prepared or filed by an attorney.

Fees*

All remittances that are not made online or by deposit account should be in the form of drafts, that is, checks, money orders, or bank drafts, payable to *Register of Copyrights*. Do not send cash. Drafts must be redeemable without service or exchange fee through a U.S. institution, must be payable in U.S. dollars, and must be imprinted with American Banking Association routing numbers. International Money Orders and Postal Money Orders that are negotiable only at a post office are not acceptable.

If a check received in payment of the filing fee is returned to the Copyright Office as uncollectible, the Copyright Office will cancel the registration and will notify the remitter.

The filing fee for processing an original, supplementary, or renewal claim is nonrefundable, whether or not copyright registration is ultimately made. Do not send cash. The Copyright Office cannot assume any responsibility for the loss of currency sent in payment of copyright fees. For further information, read Circular 4, *Copyright Fees.*

***NOTE:** Copyright Office fees are subject to change. For current fees, check the Copyright Office website at *www.copyright.gov*, write the Copyright Office, or call (202) 707-3000 or 1-877-476-0778.

Certain Fees and Services May Be Charged to a Credit Card

If an application is submitted online, payment may be made by credit card or Copyright Office deposit account. If an application is submitted on a paper application form, the fee may not be charged to a credit card.

Some fees may be charged by telephone and in person in the office. Others may only be charged in person in the office. Fees related to items that are hand-carried into the Public Information Office may be charged to a credit card.

- **Records Research and Certification Section:** Fees for the following can be charged in person in the Office or by phone: additional certificates; copies of documents and deposits; search and retrieval of deposits; certifications; and expedited processing. In addition, fees for estimates of the cost of searching Copyright Office records and for searches of the copyright facts of registrations and recordations on a regular or expedited basis may be charged to a credit card by phone.
- **Public Information Office:** These fees may only be charged in person in the office, not by phone: standard registration request forms; special handling requests for all standard registrations; requests for services provided by the Records, Research, and Certification Section when the

request is accompanied by a request for special handling; additional fee for each claim using the same deposit; full term retention fees; appeal fees; secure test processing fee; short fee payments when accompanied by a remittance due notice; and online service providers fees.

- **Public Records Reading Room:** On-site use of Copyright Office computers, printers, or photocopiers can be charged in person in the office.
- **Accounts Section:** Deposit accounts maintained by the Accounts Section may be replenished by credit card. See Circular 5, *How to Open and Maintain a Deposit Account in the Copyright Office*.

NIE recordations and claims filed on Form GATT may be paid by credit card if the card number is included in a separate letter that accompanies the form.

Search of Copyright Office Records

The records of the Copyright Office are open for inspection and searching by the public. Upon request and payment of a fee,* the Copyright Office will search its records for you. For information on searching the Office records concerning the copyright status or ownership of a work, see Circular 22, *How to Investigate the Copyright Status of a Work*, and Circular 23, *The Copyright Card Catalog and the Online Files of the Copyright Office*.

Copyright Office records in machine-readable form cataloged from January 1, 1978, to the present, including registration and renewal information and recorded documents, are available for searching on the Copyright Office website at *www.copyright.gov*.

For Further Information

By Internet

Circulars, announcements, regulations, all application forms, and other materials are available from the Copyright Office website at *www.copyright.gov*. To send an email communication, click on *Contact Us* at the bottom of the homepage.

By Telephone

For general information about copyright, call the Copyright Public Information Office at (202) 707-3000 or 1-877-476-0778 (toll free). Staff members are on duty from 8:30 AM to 5:00 PM, eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day. If you want to request paper application forms or circulars, call the Forms and Publications Hotline at (202) 707-9100 and leave a recorded message.

By Regular Mail

Write to:

Library of Congress
Copyright Office-COPUBS
101 Independence Avenue SE
Washington, DC 20559

The Copyright Public Information Office is open to the public 8:30 AM to 5:00 PM Monday through Friday, eastern time, except federal holidays. The office is located in the Library of Congress, James Madison Memorial Building, 101 Independence Avenue SE, Washington, DC, near the Capitol South Metro stop. Staff members are available to answer questions, provide circulars, and accept paper applications for registration. Access for disabled individuals is at the front door on Independence Avenue SE.

The Copyright Office may not give legal advice. If you need information or guidance on matters such as disputes over copyright ownership, suits against possible infringers, procedures for publishing a work, or methods of obtaining royalty payments, you may need to consult an attorney.

NOTE: The Copyright Office provides *NewsNet*, a free electronic mailing list that issues periodic email messages on the subject of copyright. The messages alert subscribers to hearings, deadlines for comments, new and proposed regulations, updates on eService, and other copyright-related subjects. *NewsNet* is not an interactive discussion group. Subscribe to *NewsNet* on the Copyright Office website at *www.copyright.gov*. Click on *News*. You will receive a standard welcoming message indicating that your subscription to *NewsNet* has been accepted.

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