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Lexis Practice Advisor Intellectual Property & Technology

Filing with the Copyright Office

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Overview

It is not necessary to obtain a copyright registration to benefit from copyright protection, as a copyright in an original work is automatically secured when the work is created. However, the registration of a copyright affords the work’s creator or copyright holder a host of benefits and should, therefore, be considered when producing an original work. Although the Copyright Office does not yet provide as advanced an electronic filing system as the United States Patent and Trademark Office, and many submissions must still be in paper form, it does accept (and recommends) electronic filing for most copyright applications. Applications may be completed by or on behalf of the author of the copyrighted work, the copyright claimant, or an owner of one or more of the exclusive rights. Each application for registration of a work must include a “deposit” or submission of a copy or phonorecord of that work. Certain types of applications, such as applications for group registrations, as well as other Copyright Office filings must be made using paper forms rather than through the electronic system. If the Copyright Office refuses to register a copyright, its decision can be appealed up to two times although reversals are infrequent. If its work is still unpublished but in the process of preparation for commercial distribution, a client may benefit from preregistration of its work if it believes someone will infringe its work before it is released. While not required, there are several advantages to recording transfer documents, such as assignments, wills, licenses and notices of termination, including establishing priority between conflicting transfers as well as a public record of the transfer.

Benefits of Copyright Registration

The moment an author fixes his or her original work of expression in a fixed medium – e.g., on paper, in a computer file, or on a sound recording – a copyright attaches to that work automatically. There is no requirement under the Copyright Act to register a work with the Copyright Office in order to obtain the bundle of exclusive rights afforded to owners under Section 106 of the Copyright Act. Nevertheless, the Copyright Act provides several important benefits and privileges to copyright holders who register their works.

Registering a copyright with the Copyright Office:

- Is a prerequisite to bringing a lawsuit in federal court for copyright infringement. Fortunately, a copyright may be registered immediately prior to commencing the lawsuit. In fact, the lawsuit may be brought once the application for the copyright has been submitted to the Copyright Office and while the registration remains pending.
- Is a prerequisite to seeking statutory damages and/or attorneys' fees in an action for infringement. Moreover, the application for registration must be submitted prior to the alleged infringement or within three months of publication of the copyright-protected work. Arguably, this is the most significant benefit of registration. Absent a timely registration, aggrieved copyright owners may only be awarded his or her actual damages and the proportion of the infringers' profits that are attributable to the infringement. Both of these categories of damages are notoriously difficult to prove. Statutory damages, on the other hand, require no such proof and may be substantial, especially when more than one work is at issue. The ability to seek an award of attorneys' fees from the alleged infringer is another valuable right that is available only to eligible copyright registrants.
- Serves as prima facie evidence of the validity of the copyright, provided that the copyright owner applied for the registration within five years of publication of the work.
- Establishes a public record regarding the copyrighted work, which includes the information provided in the application, such as the name and identity of the author, the date of creation and the nature of the work.
- Enables the copyright owner to register with U.S. Customs and Border Protection to help protect against the importation of infringing copies of the work.

Drafting and Filing a Copyright Application

Basic Requirements

There are three required submissions to register a work with the Copyright Office: (1) a properly-completed application, (2) a nonrefundable filing fee, and (3) a nonreturnable deposit of the work. The effective date of registration is the date on which the Copyright Office receives all three submissions, even though it may take months before an application is processed and a certificate of registration issues.

The required components of an application for a copyright registration are codified in Section 409 of the Copyright Act, and include:

- the name and address of the copyright claimant;
- the nationality or domicile of the author(s);
- a statement as to whether the work is a work made for hire;
- if the copyright claimant is not the author, a statement as to how the claimant became the owner of copyright (such as through assignment);
- the title of the work, as well as any previous or alternative titles used in connection with the work;
- the year in which the work was created;
- if published, the date and nation in which the work was first published;
- if the work is a derivative work or compilation, the preexisting works must be identified and the application must include a statement indicating the additional material to be covered by the copyright claim being registered; and
- any other information which has bearing upon the identification of the work, or the existence, ownership or duration of the copyright.

Electronic Filing

The Copyright Office provides a simple, step-by-step electronic filing system – called eCO or "Electronic Copyright Office" at www.copyright.gov/eco/ – for most (but not all) types of copyright applications. The online application for copyright registration may be completed by the copyright owner or his, her or its authorized representative. Benefits of filing through the online system, as opposed to the legacy paper route, include lower filing fees, faster processing time, online tracking of applications and alternative methods of

payment. Given these benefits, there are few (if any) reasons to file by paper where electronic submissions are available.

Filing Fees

Each registration requires a filing fee. The current cost of online registration is \$35. The filing fee may be paid online at [pay.gov](https://www.pay.gov) using a credit or debit card or electronic check. The Copyright Office permits registrants to establish a deposit account from which filing fees may be deducted. A complete list of Copyright Office registration and recordation fees as well as special services fees can be found at www.copyright.gov/docs/fees.html.

Completing the Application

The copyright application may be completed by or on behalf of:

- the author of the copyrighted work;
- the copyright claimant; or
- an owner of one or more exclusive rights.

The first step of electronic copyright registration is setting up a profile with the Electronic Copyright Office (eCO) at www.copyright.gov/eco. File a new application by clicking "Register a New Claim," which initiates the online application process.

Type of Work

The applicant must identify the type of work being registered. Options include:

- Literary Work;
- Work of the Visual Arts;
- Sounds Recording;
- Work of the Performing Arts (which includes music, lyrics, screenplays, etc.);
- Motion Picture / Audio Visual Work;
- Mask Work; or
- Single Serial Issue

If it is unclear which type of work is being registered, the website provides helpful descriptions of each category. Additionally, for a more detailed discussion on the types of copyrightable works above, see [Definition, Eligibility & Requirements for Copyright Protection by Eric E. Bensen, Attorney at Law — Copyright Eligibility](#).

Title of Work

Each work requires a title, but that is about the extent of the requirement. Any title will do. The work may even be registered as an "untitled" work, although designation of a title is recommended to better identify the work.

Publication/Completion

The application must indicate whether the work has been published and provide details of the publication, if applicable. The Copyright Act defines "publication" as distributing copies of the work to the public, or offering the work to be distributed to the public. The "to the public" requirement is often the key to determining

whether a work has been published. Sharing a manuscript with family and friends will generally not constitute publication; posting it on a public blog likely would constitute publication.

Applications for published works must include:

- the nation of first publication;
- the year of completion; and
- the date of first publication

Where a work has not been published, the application must include the year in which the unpublished work was completed.

If a work had been "pre-registered," the Preregistration Number is submitted in this step. For further discussion of preregistration, see Preregistration of Copyrights, [37 CFR 202.16](#).

Authors and Claimants

The application must identify the work's "author" and the copyright "claimant." Though the author and claimant are often the same person or entity, often they are different.

Authors. The author of a copyrighted work is generally the creator of the work – the one who initially fixed the original work of authorship in a tangible medium of expression. With few exceptions, the creator (author) of a work ordinarily is the initial owner of the copyright in and to the work and should be listed as the author in the application. For a more detailed discussion on copyright authors, see [Authorship and Ownership of Copyright](#).

However, where the work is a work made for hire, the author listed in the application is generally not the creator. A work made for hire is a work made by an employee within the scope of employment or, in certain circumstances, a specially commissioned work created by an independent contractor. Where a work is a work made for hire, the creator (employee or independent contractor) is not identified as the author or the initial owner of the copyright. Rather, the employer or party that specially commissioned the work is listed as the author on the application and is considered the original owner of the work. Works for hire must be identified as such on the application. For a more detailed discussion on the work made for hire doctrine, see [Works Made for Hire](#).

For derivative works, the listed author should be the author of the copyrightable material claimed. The author of the preexisting work should not be named as an author of the derivative work unless he or she is also the author of the new material. For a more detailed discussion on derivative works, see [Derivative Works](#).

Claimants. In addition to listing the work's author, the application must also identify all known claimants to the copyrighted work. A claimant is someone who owns all rights in the work that are protected by the Copyright Act. Ownership of some of the rights is insufficient. The initial claimant of a copyrighted work is the author of that work, and the author may always be listed as the claimant on an application for registration of copyright, irrespective of whether rights to the work have been transferred to another party. Other parties may become claimants as a result of a transfer of copyright ownership in the work, such as by assignment or operation of law.

Where the claimant and author are different parties, a transfer statement is required. Transfer statements identify how copyright ownership in the work was transferred to the claimant - for example, by written agreement (such as by assignment or contract), or by inheritance (such as by will or by intestate succession).

Limitation of Claim

A limitation of claim is made when a copyright owner wishes to exclude a portion of the work from the copyright registration, and is required where the applied-for work contains material that was previously published, previously registered, is in the public domain, or is not included in the claim for copyright registration.

Limitations of claim most frequently arise when applying for registrations of derivative or collective works, since the copyright registration for such works will only be for the new material created by the author. Thus, applicants must identify the preexisting material that should be excluded from protection (whether registered or unregistered). Applicants should identify the format (text, artwork, photographs, computer program, etc.) as well as the registration number and year of the preexisting material used, if available. The application must also indicate the new material that is included in the work.

For instance, a producer applying for a copyright registration in a new film based on the novel "The Great Gatsby" by F. Scott Fitzgerald, would file a limitation of claim excluding the "text" from the registration, and identify the new material as the "entire motion picture." To the extent the motion picture included preexisting music and sound recordings or elements of a screenplay that are separately subject to copyright protection, the application would also have to identify those elements as limitations of claim.

Rights and Permissions and Mail Certificate

The copyright application provides a section to identify the individual or entity to be contacted in the event a party wishes to secure permission to use the work. The applicant, its agent or even a post office box may be listed. This section is optional.

However, the applicant must provide the name of an individual or organization and the mailing address where the certificate of registration should be delivered. Attorneys often list their own address here to ensure they retain a copy (or original) of their client's registration in the attorney's files.

Special Handling

Applicants have the option of expediting the registration process by paying an additional fee – currently \$760 for a single claim. The Copyright Office attempts to process expedited claims within five business days, although that is not guaranteed. Once the claim has been processed, the Copyright Office will either issue a certificate of registration or notify the correspondent of a defect in the claim. Applicants requiring special handling must indicate the reason for the rush, which may include one or more of the following reasons:

- Pending or prospective litigation (since registration is required in order to bring a copyright infringement claim in federal court);
- Customs matters; or
- Contract or publishing deadlines that require expedited issuance of a certificate of registration.

Certification

Applicants are required to certify their applications. The Copyright Office provides the following certification on the application: "I certify that I am the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights of this work and that the information given in this application is correct to the best of my knowledge." Applicants are subject to fines for making false representations in a copyright application.

The Single Application

As of June 28, 2013, the Copyright Office initiated a new application option called the "single application." This option is being offered as an alternative to the standard application for individual authors or claimants who are registering a single claim (a claim for one work such as a single song, poem, or photograph).

Applications for single works are the simplest for the Copyright Office to process, and its goal is to streamline the application process for single works to encourage more authors of such works to register. The single application requires initial confirmation that (1) only a single work is being registered, (2) the work was created by one person, and (3) copyright in the work is owned solely by the individual creator.

This form may not be used for:

- Works made for hire;
- Collective works;
- Unpublished collections;
- Units of publication;
- Group registrations;
- Databases; or
- Websites.

Deposit of Work

Each application for registration of a work must include a "deposit" or submission of a copy or phonorecord of that work. The deposit must be either the first published edition or the "best edition" of the work. When multiple editions of the work have been published, a copy of the highest quality may be considered the best edition. The Copyright Office provides a complete list of what it deems to be the best edition of various types of works (<http://www.copyright.gov/circs/circ07b.pdf>).

Deposit requirements vary based upon the nature of the work, but generally:

- For unpublished works, one copy or phonorecord;
- For post-1978 published U.S. works, two complete copies or phonorecords of the best edition;
- For pre-1978 published U.S. works, two complete copies or phonorecords of first published edition; and
- For works first published outside of the U.S., one complete copy or phonorecord as first published.

Certain categories of deposits may be uploaded directly to the eCO, including:

- Unpublished works;
- Works published only electronically;
- Published works, where the deposit requirement is identifying material (such as a photograph or drawing, in the case of a three-dimensional work of visual art); or
- Published works, where there are special agreements for the hard copy deposits to be sent separately to the Library of Congress.

Even when the Copyright Office requires a hard copy of the deposit, the application may still be submitted electronically. In that case, the applicant must print out a shipping slip for delivery of the hard copy deposit and submit it to the Copyright Office by mail. The shipping slip is unique to the applicant's deposit and enables the Copyright Office to link the applicant's deposit with the applicant's electronic application.

In the process of examining an application for registration, the Register of Copyrights will review the deposited work. If the Register determines that the material deposited is copyrightable, the work will be registered and a certificate of registration will issue to the applicant. This process may take a number of months. If, on the other hand, the Register determines that the material deposited is not copyrightable, the Register will refuse registration and send a written statement to the applicant setting forth the reasons for refusal. In either case, the deposit will not be returned to the applicant.

All deposit copies are property of the U.S. government, and the Copyright Office may make them available for public inspection, even if the work is unpublished. Consequently, several guidelines have been put in to effect (such as those described below with respect to computer programs) to protect confidential materials and trade secrets that may be contained in the deposit of the work. Applicants concerned about maintaining the confidentiality of deposited works may make a request for special relief in writing to the Associate Register for Registration Program. Special Deposit Requirements

Special Deposit Requirements

There are exceptions to the general deposit requirements for many types of works. Common exceptions include:

- In the case of motion picture works, the deposit requirement is one copy of the work regardless of whether it is published or unpublished, along with a written description of the work.
- If the work is a literary, dramatic, or musical work that has only been published as a phonorecord, the deposit requirement is one phonorecord of the work.
- In the case of a computer program, whether it is published or unpublished, the deposit requirement is one copy in source code of the first 25 and last 25 pages of code. If the program consists of fewer than 50 pages, the deposit requirement is a copy of the entire program. However, when a computer program contains trade secret or confidential material, the electronic copy provided may include only: (1) the first and last 10 pages of the source code; (2) the first and last 25 pages of object code plus 10 consecutive pages of source code from any portion of the program; or (3) the first and last 25 pages of source code, blocking out any trade secrets or confidential material contained therein.

Thus, when registering a computer program, applicants should determine whether the program contains trade secret or confidential material prior to submitting the application. In the event that it does contain such material, one of the three alternate deposit requirements should be fulfilled in order to protect it.

- There are a variety of special deposit requirements for works of visual arts, such as where a photograph or drawing of the work will suffice (in the case of three-dimensional works), or instances where only one copy of the work is required (in the case of greeting cards or games).
- Where the work is unpublished or has only been published electronically, electronic copies may satisfy the deposit requirements.

Questions regarding the deposit requirement for a particular work may be directed to the Copyright Office's helpline at (202) 707-5959 or 1 (877) 476-0788 (toll free).

Mandatory Deposit to the Library of Congress

The owner of copyright in a work published in the United States has an obligation to deposit, within three months of publication, two copies or phonorecords of the work for the use of the Library of Congress. Works first published outside of the United States are subject to mandatory deposit upon distribution in the United States of either imported copies or copies that are of an American edition of the work. This mandatory deposit requirement is separate and apart from the deposit requirement of an application for registration.

Fines and penalties may be imposed for failing to make the mandatory Library of Congress deposit, but this does not affect copyright protection.

The Copyright Act permits use of the mandatory deposit to satisfy the deposit requirements for registration, so long as the copies or phonorecords are submitted with the completed application and filing fee. However, if an application and deposit are made online, the physical deposit must still be submitted separately to meet the mandatory deposit requirements, except where the published work is only available electronically.

The Register of Copyrights may make a written demand of the author for deposit in a case where deposit is not made voluntarily. If the deposit is not made within three months of the demand, the party upon whom the demand was made will be liable for a fine of up to \$250 per work, to pay the retail price of the copies or phonorecords demanded (or its reasonable cost if no retail price was assigned) into a fund specially designated in the Library of Congress, and to pay a fine of \$2,500 in addition, in the event that the party "willfully or repeatedly fails or refuses to comply with such a demand." [17 U.S.C. 407\(d\)](#).

Mandatory deposit copies must be sent to the following address:

Library of Congress
Copyright Office
Attn: 407 Deposits
101 Independence Avenue, SE Washington, DC 20559

Mandatory deposits may be made without obtaining a registration, but obtaining a registration is not possible without a deposit. Thus, it makes little sense to respond to a written demand for a mandatory deposit to the Library of Congress without simultaneously applying for registration. This is particularly so since a mandatory deposit may not be used retroactively to satisfy the deposit requirement for registration.

Other Copyright Office Filings

Paper Forms

All Copyright Office forms other than the online application must be filed as paper forms. Paper forms may be accessed by visiting the Copyright Office's website at www.copyright.gov/forms. Some of the forms provided include: Form CA to correct an error or amplify information provided in a registration; Form RE for renewal claims; and the Document Cover Sheet for recording documents.

While electronic application filing is recommended, paper forms are available and acceptable. Each type of work has its own registration form, such as Form TX for literary works, Form VA for visual art works, Form PA for performing art works, including motion pictures, Form SR for sounds recordings, and Form SE for single serials. Paper forms may be typewritten or handwritten. Once complete, forms should be mailed to the Copyright Office along with payment of the applicable fee (by check or money order or, when available, by identifying the applicant's deposit account on the form) and copyright deposit.

The application filing fee for paper forms is \$65, which is \$30 more than the cost of electronic filing.

Certain types of applications, such as applications for group registrations, must be made using paper forms rather than the online application. These include:

- Form GR/PPH for groups of published photographs;
- Form GR/CP for contributions to periodicals;
- Form SE/Group for serials; and
- Form G/DN for daily newspapers and newsletters.

The mailing address for paper applications, as well as for hard-copy deposits is:

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

Recording Documents

Recordation of transfer documents, such as assignments, wills, licenses and notices of termination, is not required under the Copyright Act. Nevertheless, there are several advantages to recording transfer documents, such as:

- Establishing priority between conflicting transfers;
- Establishing a public record of the transfer document;
- Providing constructive notice of the transfer; and
- Perfecting a security interest.

Documents may be recorded in connection with both registered and unregistered works.

In order for a document to be recorded, it must:

- Have the original signature of the party or parties who executed the document, or it must be a properly certified photocopy (either a "sworn" or "official" certification);
- Be complete by its own terms, such that if the document itself makes references to an addendum, schedule, or exhibit, such addendum, schedule, or exhibit must be included;
- Be legible and capable of being reproduced legibly; and
- Be submitted with the correct fee.

A document will not be recorded if it does not meet these requirements, or if it is unclear to the Copyright Office that the document is to be recorded, or if the document was submitted in error.

Documents submitted for recordation may be submitted with a Document Cover Sheet. The Document Cover Sheet may be accessed online by visiting www.copyright.gov/forms and clicking the link for "Document Cover Sheet." Use of this form is optional, but is encouraged, and it may be used to satisfy the sworn certification requirement indicated above (found in space 7 of the form). The form also provides basic information like name, title, calculation of the fee and method of payment, which aids the Copyright Office in processing the recordation. If you elect to use the Document Cover Sheet, two copies of the cover sheet should be submitted with each document. Any cover sheet submitted will be recorded with the document.

The party submitting a document for recordation is responsible for verifying the legal sufficiency of it. The Copyright Office will not examine the documents for that purpose.

The fee to record a document including one title is \$105, with an additional cost of \$30 for each additional title for a group of less than ten titles. This cost is per title, not per work. Thus if the same work is known by three different titles and the applicant indicates all three in the recorded document, the cost of filing will be \$165. Additional transfers cost \$105 each.

Electronic filing is not currently available for document recordation. All recorded documents must be submitted using the paper forms.

Transfer documents and other documents pertaining to a copyright should be submitted to:

Library of Congress
Copyright Office – DOC
101 Independence Avenue SE
Washington, DC 20559

Notices of termination being recorded should be submitted to:

Copyright Office Notices of Termination
P.O. Box 71537
Washington, DC 20024-1537

Responses to Copyright Office Inquiries

In some instances, the Copyright Office may have questions regarding an application. Applicants contacted by the Copyright Office with an inquiry and a time period in which to reply must either respond or request an extension before the reply deadline. Failure to respond within the specified time frame may result in:

- Closure of the case file;
- Making the submitted deposit available for use by the Library of Congress;
- Return of any unpublished deposit; and/or
- Relinquishment of the filing fee.

Moreover, the Register of Copyrights may refuse registration where the material deposited does not constitute copyrightable subject matter (such as where it is not sufficiently creative) or if the claim is invalid for other reasons (such as inaccurate information provided in the application). Such rejections are rare and occur far less frequently than with trademark or patent applications.

When the Copyright Office refuses to register a copyright, it will notify the applicant in writing detailing the reasons for the refusal. Within three months of such notice, the applicant may request reconsideration of its application via a letter indicating the applicant's objection to the refusal and any arguments in support of its position. The first request for reconsideration is reviewed by the Copyright Office's Registration and Recordation Program. Only a small percentage of such appeals ultimately result in a reversal of the Register's prior determination.

If registration is again refused, the applicant may submit a second request in writing. The second request for reconsideration is reviewed by the Copyright Office's Board of Review, which consists of the Register of Copyright, the Copyright Office's general counsel, and the associate Register for Registration and Recordation, or their respective designees. A decision of the Copyright Board of Review in connection with a second request constitutes a final agency action.

First and second requests for reconsideration must:

- Be submitted in writing;
- Provide the reasons why the claim should be registered, along with any arguments that the refusal was improper;
- Be received by the Copyright Office within three months of the date of the Copyright Office's notice of refusal to register;
- Include the Copyright Office control number on the first page;
- Indicate in the subject line whether it is a first or second request for reconsideration;
- Include the appropriate fee (\$250 for first request for reconsideration, \$500 for second); and
- Be addressed to:

U.S. Copyright Office
Receipt Analysis and Control Division
P.O. Box 71380
Washington, D.C. 20024-1380

Preregistration of Copyright

Preregistration is a service provided for works that are often subject to prerelease infringement. Preregistration typically applies in the case of works that are commonly "leaked" before their commercial release, such as highly anticipated rap albums or popular action films. For instance, several "Harry Potter" films were preregistered.

To be eligible for preregistration, the work must be unpublished and in the process of preparation for commercial distribution. Only certain types of works are eligible for preregistration:

- Motion pictures;
- Sound recordings;
- Musical compositions;
- Literary works being prepared for publication as books;
- Computer programs (including videogames); and
- Photographs for use in advertising and marketing

In essence, preregistration provides the ability to sue for prerelease infringement. However, preregistration is not a substitute for registration and does not serve as prima facie evidence of the validity of copyright. Preregistration does not create a presumption that the Copyright Office will register the work once it is submitted for registration. Furthermore, preregistration applicants must register their works upon completion in order to preserve the legal benefits of preregistration. The subsequent registration must be made within one month of the copyright owner becoming aware that the work has been infringed, or within three months of completion or publication of the work. Failure to register within these prescribed timeframes may result in the dismissal of an action for infringement. Consequently, preregistration is not widely used and many practitioners find it unnecessary, choosing instead to simply register the work upon its completion.

The form for preregistration, Form PRE, is only available through the Copyright Office's online filing system, eCO under "Preregister a Claim." A deposit is not required for preregistration; applicants need only submit the application and fee of \$115. Applicants also are required to provide a description of the work in fewer than 2,000 characters. The description will become part of the online public record, and therefore it should not include confidential information.

There are no certificates issued for preregistration. Rather, the Copyright Office emails an official notification containing information from the application, as well as the preregistration number and date of preregistration.

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