

Copyright Office  
Library of Congress  
Washington, D. C. 20559

COMPENDIUM OF COPYRIGHT OFFICE  
PRACTICES  
1973 Revisions

INSTRUCTIONS:

The attached revised pages are replacements for those in the Compendium having corresponding numbers, or additional pages to be placed in appropriate numerical sequence.

Each of the attached pages is marked with the identifying date of this revision, thus: [1973]

Particular attention is called to the following new additions to Chapter 2:

Part 2.8 WORKS OF ART (CLASS G)

Part 2.11 PHOTOGRAPHS (CLASS J)

1973 Revisions (continued)

List of replacement and new pages:

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COMPENDIUM

of

COPYRIGHT OFFICE PRACTICES

(As of July 1, 1973)





Compendium of  
Copyright Office Practices

FOREWORD

The Copyright Office has made available to the public its administrative staff manual known as the "Compendium of Copyright Office Practices." This step was taken pursuant to the Freedom of Information Act (5 U.S.C. § 552). Accordingly, the Regulations of the Copyright Office [37 C.F.R., ch. II (24 F.R. 4955)] were amended, effective July 4, 1967, to provide in Section 201.2(b)(3):

The Copyright Office maintains an administrative staff manual referred to as its "Compendium of Office Practices," and an index to the manual, for the general guidance of its staff in making registrations and recording documents. The manual and index, as amended and supplemented from time to time, are available in the Copyright Office for public inspection and copying.

Although previously available for inspection and copying, it was not until the July 1970 edition that the Compendium was published through the Superintendent of Documents of the Government Printing Office.

The Compendium has not yet been completed and does not cover all aspects of Copyright Office work. Additional portions will be issued as they are completed, and amendments and supplements will be issued from time to time. These changes will be published in the form of additional or replacement pages of this looseleaf publication.

REGISTER OF COPYRIGHTS

Compendium of  
Copyright Office Practices

PREFACE

This Compendium is an Office manual intended primarily for the use of the staff of the Copyright Office as a general guide to its operating problems and practices.

It is important to note that the Compendium is not a book of "rules" to be followed. Similarly, it is not a set of ready-made answers to questions arising in cases encountered in daily work.

The Compendium is a condensed digest of Office practices in individual cases representing common fact situations. It is a guide to general precedents and no more. Since the statements of practice in the Compendium are necessarily simplified, they cannot cover every situation that may arise. Each new case presented to the Office involves its own facts which may require special analysis.

The practices of the Copyright Office are subject to constant review and modification in the light of new experience and continuing reappraisal. Accordingly, further additions, deletions, and other changes will be made from time to time. The Copyright Office will maintain a separate record of all material withdrawn from this volume as superseded.

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for  
COMPENDIUM OF COPYRIGHT OFFICE PRACTICES

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Chapter 2

COPYRIGHTABLE MATTER

Part 2.3 PERIODICALS (CLASS B)

Outline of Topics

2.3.1 GENERAL RULES

- I. Publication with notice
- II. Manufacturing requirements
- III. Registration

2.3.2 WHAT ARE PERIODICALS

- I. In general
- II. Annual publications
- III. Irregular publications
- IV. Series of books
- V. Loose-leaf material
- VI. Post-Office classification

2.3.3 SEPARATE EDITIONS OF A PARTICULAR ISSUE

- I. Periodicals other than daily newspapers
- II. Daily newspapers

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- I. Separate registration
- II. Classification

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Chapter 2. COPYRIGHTABLE MATTER

Part 2.3 PERIODICALS (CLASS B)

2.3.1 General Rules

I. Publication with notice.

- a. Each separate issue of a periodical must be published with appropriate notice of copyright before that issue can be registered. (As to Publication, see Chapter 3; as to Notice, see Chapter 4.)
- b. Each separate issue published with notice is to be registered as a separate work.

II. Manufacturing requirements.

- a. To be registered in Class B, the following periodicals must be manufactured in the United States (see Chapter 6):
  1. An English-language periodical of which the "author" (i.e., publisher) is a U. S. citizen or domiciliary. For the possibility of ad interim registration, see item III of this Part
  2. A foreign-language periodical of which the "author" is a U. S. citizen or domiciliary
  3. An English-language periodical by a foreign "author" first published in the United States
  4. An English-language periodical by a foreign "author" which was first published outside the United States, but which has not secured copyright under the U.C.C. exemptions of sec. 9(c). For the possibility of ad interim registration, see item III of this Part.

2.3.1 General Rules (cont'd)

II. Manufacturing requirements. (cont'd)

- b. No affidavit of U. S. manufacture is required for periodicals, but the application requires information concerning any portions of the work manufactured abroad.

III. Registration.

- a. Domestic periodicals. Registration is required for periodicals of U. S. origin which comply with the statutory formalities. The claim should be filed on Form B, accompanied by two complete copies of the periodical and a \$6.00 registration fee.
- b. Foreign periodicals.
  - 1. Ad Interim registration.
    - (a) Claim to ad interim copyright in a periodical manufactured and first published outside the U.S.A. in the English language should be filed within six months of publication abroad, on Form A-B Ad Interim, unless copyright has been secured by virtue of the U.C.C. exemptions of Sec. 9(c), in which event registration is optional but if applied for should be on Form A-B Foreign. Concerning deposit requirements, see 17 U.S.C., § 215, and topics 5.1.5 and 5.2.2 of this compendium.
    - (b) After ad interim registration, an edition of the same periodical manufactured and published in the U. S. (within 5 years) may be registered on Form B. When portions of the foreign periodical are published with notice in the U. S. within the 5-year period (e.g., a novel first published serially abroad), registration may be made in the appropriate class.



2.3.1 General Rules (cont'd)

III. Registration. (cont'd)

b. Foreign periodicals. (cont'd)

2. Foreign-language periodicals. Claim to copyright in a periodical by a foreign "author", manufactured outside the U.S.A., in a language or languages other than English, should be filed on Form A-B Foreign.

2.3.2 What are Periodicals.

- I. In general. Periodicals registrable in Class B include newspapers, magazines, reviews, bulletins, etc. issued at regular intervals of less than a year, the successive issues bearing the same title (with a distinguishing number or date for each issue) and being similar in the general character of their subject matter.

Examples:

- (1) A daily or weekly newspaper
- (2) A literary monthly containing in each issue an installment of a novel and a number of essays, short stories, and poems by various authors
- (3) A weekly journal of opinion containing in each issue a number of articles, editorials, and cartoons on current political events
- (4) A weekly digest of news events
- (5) A semi-annual bulletin reporting current developments in the field of biochemistry
- (6) A monthly publication containing informational articles and illustrations on gardening

2.3.2 What are Periodicals (cont'd)

I. In general. (cont'd)

Examples: (cont'd)

- (7) A quarterly review and forecast of business conditions
- (8) A weekly circular advertising various articles of merchandise
- (9) A monthly publication containing in each issue a new assortment of advertising copy with accompanying mats.

II. Annual publications.

- a. Publications issued at intervals of a year or more (e.g., yearbooks, almanacs, annual or biennial reports) will not be registered in Class B (but may be registrable in Class A).
- b. An annual index or a special supplement to a periodical, having the same title as the periodical, may be registrable in Class B.

III. Irregular publications. Publications issued at irregular intervals generally will not be registered in Class B (but may be registrable in Class A).

IV. Series of books. A series of books, though issued at regular intervals under a general series title, will not be registered in Class B (but may be registrable in Class A).

Examples of series of books:

- (1) A number of volumes, each on a different subject; e.g., the issue successively of a book on grammar, one on history, one on economics, on chemistry, etc.

## 2.3.2 What are Periodicals (cont'd)

### IV. Series of books. (cont'd)

Examples of a series of books: (cont'd)

- (2) A series of volumes, each an individual work complete in itself; e.g., the issue bi-weekly of one of the "100 great books", the monthly selections of a book club, the issue each month of one full-length mystery story
- (3) The successive issues of revised editions of a book; e.g., a directory or a technical handbook revised quarterly
- (4) A single work issued in parts; e.g., the separate volumes of an encyclopedia, or of a set of twelve books comprising a training course.

V. Loose-leaf reporter material. Loose-leaf material published at intervals as additional or replacement pages for loose-leaf books is considered properly classifiable as a book, and the Office will recommend registration in Class A. If the applicant insists, the Office will register such material in Class B under the rule of doubt.

vi. Post-Office classification. The entry of a publication as second class matter at the Post Office is a persuasive indication that it may be registered as a periodical, but is not conclusive.

## 2.3.3 Separate Editions of a Particular Issue

### I. Periodicals other than daily newspapers.

- a. Where an issue of a periodical is published in two or more separate editions containing different copyrightable matter, separate registrations will be required.

2.3.3 Separate Editions of a Particular Issue (cont'd)

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

a. (cont'd)

Examples:

- (1) English, Spanish, and French editions of a magazine
- (2) U.S., Canadian, and European editions of a weekly newsmagazine, in which some of the contents are changed to correspond with the local interests of readers.

- b. Where the only difference between the editions is in the cover, separate registrations will not be required. If separate registrations are requested, they may be made with a cautionary letter.

Example: Ellery Rex's Mystery Magazine, published with a flashy cover for newsstand sale and a conservative cover for subscribers.

- c. Where the only difference between the editions is in advertising matter, separate registrations will not be made unless the advertisements belong (or could belong) to the publisher of the periodical.
- d. Where the only difference between the editions is in uncopyrightable elements such as typography, size, coloring, paper stock, etc., separate registrations will not be made, but copies of the "best edition" may be requested. See topic 5.3.1.

II. Daily newspapers.

- a. Where a daily newspaper is published in two or more separate editions containing different copyrightable matter, separate registrations may be made.

**2.3.3 Separate Editions of a Particular Issue (cont'd)**

**II. Daily newspapers. (cont'd)**

**a. (cont'd)**

**Examples.**

- (1) "Home," "City," "Final" and "Red Star" editions
  - (2) "Bronx," "Manhattan," and "Brooklyn" editions.
- b. Where the Office is informed that a daily newspaper is published in separate editions containing different copyrightable matter, it may, in appropriate cases, suggest the advisability of making separate registrations. If the applicant refuses to make more than one registration, the Office may suggest the advisability of including a limiting statement in the notice on later editions (e.g., "Copyright claimed in contents of Home Edition only.")
- c. Where an applicant chooses to deposit copies of all editions with a single application, only the copies of the earliest edition will be stamped with the registration numbers.

**2.3.4 Contributions to Periodicals**

**I. Separate registration.**

- a. A copyrightable contribution to a periodical, if it is published with a separate notice of copyright, may be registered separately. (As to separate notice, see topic 4.2.1, IV.)
- b. An unpublished manuscript intended as a contribution to a periodical is not registrable.

2.3.4 Contributions to Periodicals (cont'd)

I. Separate registration. (cont'd)

- c. A contribution bearing no separate notice of copyright is not registrable separately. If the author of a contribution bearing no separate notice requests separate registration, the Office may suggest the possibility of his obtaining and recording an assignment from the publisher of the periodical.

II. Classification.

- a. A print advertising articles of merchandise, published with separate notice in a periodical, is not registrable in Class B as a contribution to a periodical, but is to be registered on Form KK as a commercial print.
- b. Except for commercial prints, copyrightable contributions to a periodical, bearing separate notice, may be registered in Class B (on Form BB).
- c. A contribution consisting of a particular class of copyright matter (e.g., a drama, a piece of music, a map, a photograph, etc.), if it bears an appropriate notice, may be registered in that particular class (a drama in Class D, etc.) if the applicant so desires. However, if book material is filed with Form A, Form BB will be suggested.
- d. Copyrightable matter (e.g., a pictorial emblem) to be reproduced in each issue of a periodical as part of the format is not registrable in Class B as a contribution. But if it bears a separate notice, it may be registered separately in the appropriate class (e.g., a pictorial emblem in Class K).

End of Part 2.3.

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Chapter 2

COPYRIGHTABLE MATTER

Part 2.4 WORKS PREPARED FOR ORAL DELIVERY (CLASS C)

Outline of Topics

2.4.1 WHAT IS A "WORK PREPARED FOR ORAL DELIVERY"?

- I. Statutory provisions
- II. Definition
- III. Examples

2.4.2 ONLY UNPUBLISHED WORKS REGISTRABLE IN CLASS C

- I. Published works not registrable
- II. Later publication
- III. No notice required

2.4.3 ONLY NON-DRAMATIC TEXTUAL WORKS REGISTRABLE IN CLASS C

- I. Dramatic material
- II. Copy deposited should be a textual manuscript

2.4.4 PREPARATION AND SUITABILITY FOR ORAL DELIVERY

- I. Preparation in the first instance for oral delivery
- II. Suitability for oral delivery



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Chapter 2. COPYRIGHTABLE MATTER

Part 2.4 WORKS PREPARED FOR ORAL DELIVERY (CLASS C)

2.4.1 What is a "Work Prepared for Oral Delivery"?

- I. Statutory provisions. Class C comprises "lectures, sermons, addresses (prepared for oral delivery)." (17 U.S.C. §5(c).) The statute also refers to "a lecture, sermon, address or similar production" (17 U.S.C. §1(c)), which presumably covers the same class of works.
- II. Definition. A "work prepared for oral delivery" is an unpublished, nondramatic textual work written in the first instance for oral delivery before an audience, or on sound recordings, motion picture sound tracks, etc. It is to be distinguished from a work which, though capable of oral delivery, was written in the first instance for publication and individual reading.
- III. Examples:
  - a. The manuscript of a classroom lecture, of an evangelist's sermon, of an after-dinner speech, or of a debate
  - b. The script of a non-dramatic radio or television broadcast or audition
  - c. The script of a motion picture sound track
  - d. The text of an entertainer's monolog
  - e. The text of a talk to accompany the showing of a filmstrip
  - f. The story to be delivered by a narrator in conjunction with a pageant
  - g. The text of a children's story, or of Spanish lessons, to be recorded on phonograph records

2.4.2 Only Unpublished Works Registrable in Class C.

- I. Published works not registrable. Even though a work has been prepared in the first instance for oral delivery, it cannot be registered in Class C if publication has taken place before the application is submitted. A work of this type should be registered in Class A as a "book," if published with the required copyright notice.

Example: The text of a speech by the president of General Motors, which is released to the press in mimeographed form on the morning of the day the speech is to be delivered.

- II. Later publication. When a work that has been registered in Class C is later published with notice, registration should be made as a "book" in Class A, even if the text is exactly the same.
- III. No notice required. Since only unpublished works are registrable in Class C, no notice requirements pertain to this class.

2.4.3 Only Non-dramatic Textual Works Registrable in Class C.

- I. Dramatic material.
- a. If the work appears clearly to be a dramatic composition (that is, if it has a plot and contains dialogue and directions concerning the action or production) an application on Form C will be questioned, and a new application on Form D will be suggested. (As to what constitutes a dramatic composition, see Part 2.5.)
- b. If the dramatic character of the work is doubtful, or if the dramatic element is not the predominant feature of the work, the claimant's choice of Class C will be accepted without comment.

2.4.3 Only Non-dramatic Textual Works Registrable in Class C.  
(cont'd)

I. Dramatic material. (cont'd)

b. (cont'd)

Example: The script for a commercial film sound track consisting mainly of straight narration, but including two short dramatic scenes.

II. Copy deposited should be a textual manuscript.

a. As a rule the copy deposited for registration in Class C should be a manuscript containing the complete text of the work as it has been, or is expected to be, delivered. A mere outline or collection of notes is not registrable in Class C (see item 2.4.4.II.a., below).

b. A sound recording of a work prepared for oral delivery is not acceptable for registration in Class C. When a sound recording is deposited, the Office will reject the claim but point out to the applicant the possibility of writing out the text in manuscript form and then making registration on the basis of the manuscript. (As to the problem of the sale of recordings as publication, see item 3.1.3.IV.)

c. Where the copy deposited consists of Class C material combined with other material, the practice to follow depends upon the nature of the other material.

1. Where the other material, while registrable in unpublished form, cannot be considered an actual part of the work prepared for oral delivery, separate registrations will be suggested.

Example: The text of a television commercial advertising electrical appliances, and some unpublished drawings intended to be used in magazine advertisements of the appliances.

2.4.3 Only Non-dramatic Textual Works Registrable in Class C. (cont'd)

II. Copy deposited should be a textual manuscript. (cont'd)

c. (cont'd)

2. Where the other material is not registrable but is inseparable from the registrable part, entry will be made without correspondence, unless it is obvious that the applicant is under a misapprehension.

**Example:** A lecture on a bookkeeping system with 2 or 3 illustrative drawings of blank forms.

3. Where the other material is not registrable, and cannot be considered an actual part of the work prepared for oral delivery, the applicant will be requested to re-deposit the work with the unregistrable material omitted.

**Example:** A textual work purporting to be a lecture describing "the Hamframatz Method for Computing Unilateral Bunion Curves," accompanied by a handmade computing device containing no copyrightable material.

4. Where the other material is registrable in unpublished form and can be considered a part of the work prepared for oral delivery, the following practices apply:
  - (a) If application is filled on Form C, and the portion of the work prepared for oral delivery will support a registration in Class C, a single registration in the applicant's choice of class may be made, even though the other material predominates.

2.4.3 Only Non-dramatic Textual Works Registrable in Class C. (cont'd)

II. Copy deposited should be a textual manuscript.  
(cont'd)

c. (cont'd)

4. (cont'd)

(a) (cont'd)

**Example:** A one-page speech, accompanied by eight drawings to be used as illustrations by the speaker.

(b) If application is filed on Form C and the portion of the work prepared for oral delivery is minimal or somewhat borderline, but there is a substantial amount of other material, registration in the class appropriate to the other material will be suggested.

**Example:** A short two-line narration intended to be spoken as part of an original musical composition.

(c) If both the Class C material and the other material are substantial and fairly evenly balanced, the applicant's choice of class will generally be accepted without correspondence although in appropriate cases the possibility of separate registrations may be pointed out.

**Example:** A narration extolling the virtues of chicken chow mein, accompanied by original background music which was composed to be played with the narration but is not integrated with it, can be registered in Class C or Class E; or the two elements can be registered separately.

2.4.4 Preparation and Suitability for Oral Delivery.

I. Preparation in the first instance for oral delivery.

- a. A manuscript that has clearly been prepared in the first instance for publication and individual reading, rather than for oral delivery before an audience, is not registrable in unpublished form, although in rejecting the claim the Office may point out the possibility of registration in Class A as a "book" after publication with notice.

Examples:

- (1) A 300-page novel
  - (2) The usual poem
  - (3) A manuscript consisting primarily of statistical tables and formulae
  - (4) A Ph.D. dissertation
- b. In determining whether a manuscript constitutes a work prepared for oral delivery or an unpublished book, some significance may be attached to the form in which the work is presented, and the presence of such elements as a title page, preface, foreword, table of contents, chapter headings, bibliography, footnotes, index, references to "the reader," specific page references in the text, illustrations, etc. The presence of some of these elements need not necessarily be conclusive, however.
- c. If the applicant insists that the manuscript was prepared in the first instance for oral delivery, and this does not seem altogether implausible, registration may be made in Class C.

2.4.4 Preparation and Suitability for Oral Delivery.  
(cont'd)

I. Preparation in the first instance for oral delivery. (cont'd)

- d. The mere fact that the claimant has read, or intends to read, his work orally to a few friends does not make it a "work prepared for oral delivery," if it is clear that the work was prepared in the first instance for publication.

Example: Claimant states in a letter of transmittal that he has sent his work to various magazines.

II. Suitability for oral delivery.

- a. To be registrable in Class C, a work must be complete enough for actual oral presentation in its present form, without substantial further development.
1. An outline, synopsis, or description of the idea of a television or radio program, stage show, lecture series, etc., is not registrable in Class C, even if fairly detailed.
  2. Where the applicant deposits an outline or synopsis of a series of programs, together with one sample script, the applicant will be asked to detach the outline or synopsis and register the script alone, and will be cautioned that registration for the script will not protect the idea or plan, the future scripts in the series, or the series as a whole.
  3. A general outline of the ideas or information to be expounded in a speech, such as a list of topic words or sentences, or a group of brief notes, is not registrable in Class C. However, if a script is actually capable of oral delivery, the fact that it is in outline form will not preclude registration in Class C.

2.4.4 Preparation and Suitability for Oral Delivery.  
(cont'd)

II. Suitability for oral delivery. (cont'd)

- b. A script in sufficient detail for delivery substantially as written is registrable as a work prepared for oral delivery, even though the script indicates that other material is to be interpolated or added.

Examples:

- (1) Script containing occasional references to the use, during the course of the speech, of unspecified pictures as illustrations.
- (2) Script consisting of the master of ceremonies' remarks during the course of a panel show.
- (3) Script consisting of the interviewer's portion of a television interview.

End of Part 2.4.

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Chapter 2

COPYRIGHTABLE MATTER

Part 2.6 MUSIC (CLASS E)

Outline of Topics

2.6.1 WHAT ARE MUSICAL COMPOSITIONS

- I. Generally
- II. Evaluation of musical content
- III. Evaluation of textual content
- IV. Books of music

2.6.2 NATURE AND COMPLETENESS OF COPIES DEPOSITED

- I. Conventional notation not necessary
- II. Sound recordings not acceptable
- III. Completeness of copies deposited

2.6.3 REQUIREMENTS OF REGISTRATION FOR MUSICAL COMPOSITIONS

- I. Unpublished musical compositions
- II. Published musical compositions

2.6.4 NEW VERSIONS OF MUSICAL COMPOSITIONS

- I. In general
- II. Adaptations or arrangements
- III. Revisions or additions
- IV. Editing
- V. New lyrics
- VI. Compilations



CHAPTER 2. COPYRIGHTABLE MATTER

Part 2.6 MUSIC (CLASS E)

2.6.1 What are musical compositions.

1. Generally. To constitute a "musical composition" for purposes of copyright registration in Class E, a work must generally contain notations representing a succession of musical sounds, usually in some definite melodic and rhythmic pattern. The work may consist of music alone, or of words and music combined. A work consisting of words alone is not registrable in Class E.

II. Evaluation of musical content.

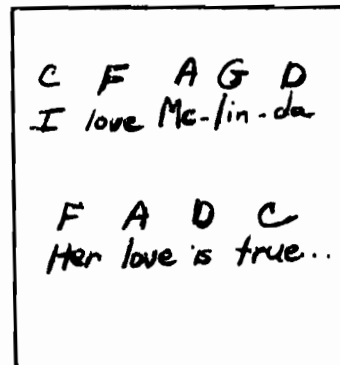
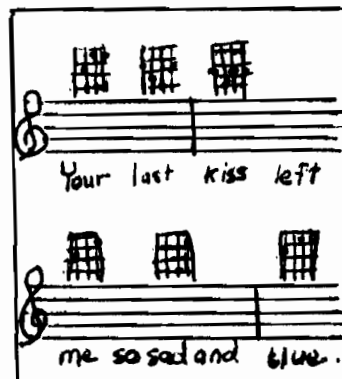
- a. Three elements are usually present in a musical composition: melody (a succession of single tones), rhythm (groupings of tones according to accent and time value), and harmony (chords of differing pitch in various related progressions or modulations). The presence of all or any one or two of these elements may be considered to constitute a musical composition. However, before making registration for certain unpublished works, it may be advisable to write to the applicant, pointing out that protection extends only to the material actually deposited, and suggesting that in his own interest he develop his manuscript to supply the missing element.

2.6.1 What are musical compositions. (cont'd)

II. Evaluation of musical content. (cont'd)

a. (cont'd)

Examples:



**2.6.1 What are musical compositions. (cont'd)**

**II. Evaluation of musical content. (cont'd)**

**c. (cont'd)**

1. A musical score having no element of original composition (e.g., a group of diatonic and chromatic scales for beginning students) is not registrable unless compilation is present. (See topics 2.6.1.IV.c., 2.6.4.VI.)
2. A phrase consisting of a few musical notes (e.g., the NBC signature; clock chimes), standing alone, would not have sufficient substance to constitute a composition.
3. To be registrable in Class E, it is not necessary that all of the underlying musical themes in the composition be original. Variations, popular adaptations, arrangements, and other versions of public domain themes (or of copyrighted themes when permission to use has been secured) may be registered as new works of authorship. (See topic 2.6.4.)

**Examples:**

- (a) Variations on a theme by Paganini
  - (b) A symphonic arrangement of "Yankee Doodle"
  - (c) A popular song based on a theme from Chopin's "Fantasie Impromptu"
4. A work consisting chiefly of text or pictorial matter, although it deals with the subject of music and contains incidental fragments of musical scores, is not registrable in Class E.

**Examples:**

- (a) A book on some musical subject, with brief musical quotations to illustrate the text
- (b) An advertising print containing a few bars of music to convey the idea of music

2.6.1 What are musical compositions. (cont'd)

II. Evaluation of musical content. (cont'd)

4. (cont'd)

Examples: (cont'd)

- (c) A book explaining a new system of musical notation, illustrated by excerpts from familiar works in the public domain
- (d) A piano instruction chart containing text and diagrams showing notes on the staff and on the piano keyboard

III. Evaluation of textual content.

a. Song lyrics.

1. The words or lyrics of a song are a component part of the musical composition and may be registered together with the music in published or unpublished form.
2. The words of a song, without music, are not of themselves a musical composition, and are not registrable in Class E.
  - (a) The words of a song, without the music, are not registrable in unpublished form, even if the manuscript indicates that they are to be sung to a well-known melody.
  - (b) Words alone may be registered in Class A as a book when published with notice.
3. The Office prefers that the words of a song be written above or beneath the notes to which they are sung, but this is not a requirement for registration. A manuscript may be registered in Class E even if the words are on one sheet and the music on another.

2.6.1 What are musical compositions. (cont'd)

III. Evaluation of textual content. (cont'd)

- b. Music with text. Where the copy deposited consists of Class E material combined with textual material, the practice to follow depends upon the nature of the textual material:
1. If the work consists of registrable music with a relatively small amount of incidental text (e.g., brief notes about the composer, references to old music from which the theme is derived, etc.), registration may be made in Class E in either published or unpublished form.
  2. If the work is submitted as unpublished and it consists of registrable music and a substantial amount of text which is in the public domain (e.g., incidental music for a reading of Poe's poems), registration may be made in Class E in either published or unpublished form.
  3. If the work is submitted as unpublished and it consists of registrable music and a substantial amount of original text which is registrable only in published form, the applicant will be requested to redeposit the manuscript with the text omitted and to file a new application omitting any reference to the text.
  4. If the work is submitted as unpublished and the text consists of a work prepared for oral delivery (e.g., a monolog with musical accompaniment; a musical composition with narration) the

2.6.1 What are musical compositions. (cont'd)

III. Evaluation of textual content. (cont'd)

b. Music with text. (cont'd)

4. (cont'd)

following practices apply:

- (a) If application is filed on Form E, and the musical portion of the work will support a registration in Class E, a single registration in the applicant's choice of class may be made, even though the Class C material predominates.
  - (b) If application is filed on Form E and the musical portion of the work is de minimis or somewhat borderline, but there is substantial Class C material, registration in Class C will be suggested.
  - (c) If both the Class E and Class C material are substantial and fairly evenly balanced, the possibility of making separate registrations may be pointed out, although a single registration in the class applied for will not be refused.
5. If the work is submitted as unpublished and it consists of registrable music and text which is dramatic in nature, registration for the work as a whole in Class D as a "dramatico-musical composition" may be appropriate.



2.6.1 What are musical compositions. (cont'd)

III. Evaluation of textual content. (cont'd)

b. Music with text. (cont'd)

6. If the work is submitted as published and it consists of registrable music and a substantial amount of original text, an application on Form E will generally be accepted; or, if separate notices have been used, separate registrations may be suggested in Classes E and A.

IV. Books of music.

a. In general.

1. One or more pieces of new music or new arrangements of existing music, published in book form with appropriate music notice, may be registered in Class E. Registration in Class A will generally be discouraged unless the applicant clearly wishes it, or unless the notice would be more appropriate for Class A. (See topic 2.6.1.IV.d., below.)
2. A published book consisting principally of new music or new arrangements of existing music, though also containing a substantial amount of other copyrightable matter (e.g., an introduction, pictorial illustrations), may be registered in either Class E or Class A.

b. Books of existing music with new matter.

1. A book of music containing both reprintings of existing compositions and new musical works may be registered in Class E.

2.6.1 What are musical compositions. (cont'd)

IV. Books of music. (cont'd)

b. Books of existing music with new matter.  
(cont'd)

2. A book consisting entirely of previously published music, in which the only new matter consists of non-musical material, will not be registered in Class E (unless the work represents a new compilation or contains copyrightable editing; see topics 2.6.1.IV.c. and 2.6.4.IV. and VI, below). The book may be registrable in Class A, or in some other class appropriate to the new matter.

Examples:

- (a) Chopin Études, with new text of suggestions for teachers and students.
- (b) Bach's "Well-Tempered Clavichord" with a new foreword on the historical development of keyboard instruments.
- (c) The song "America" with patriotic pictures and emblems.

c. Compilations. (See topic 2.6.4.VI)

1. Published and unpublished compilations of original songs, of original arrangements of songs, or of songs with original lyrics, should generally be registered in Class E.
2. Where the only registrable element in a published collection

2.6.1 What are musical compositions. (cont'd)

IV. Books of music. (cont'd)

c. Compilations. (See topic 2.6.4.VI) (cont'd)

2. (cont'd)

of previously published music is the compilation, the preferable classification is Class A, although Form E may be accepted if after correspondence the applicant prefers it. If the collection is unpublished, it should be suggested to the applicant that registration be deferred until after publication with notice, but registration in Class E will not be refused.

d. Position of notice. The position of the notice of copyright may influence the classification of a published book of music.

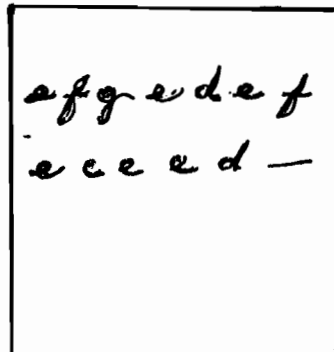
1. When the notice is on the title page, registration may be made either in Class A or in Class E. If Form A is received, the Office will generally suggest the filing of a new application on Form E if the work contains a substantial amount of new music.
2. When the notice is on the first page of music, a Class E application will generally be required. If it seems likely that the notice on the first page of music was intended to cover only the composition appearing on that page, rather than the collection as a whole, registration may be made with a cautionary letter.
3. When the notice is on the back of the title page, Form A will be accepted. If the applicant submits Form E, registration may be made with a cautionary letter.

**2.6.2 Nature and completeness of copies deposited.**

**I. Conventional notation not necessary. As long as it is intelligible and capable of being read and visually perceived, a work may be accepted for registration in Class E, even if it does not employ the conventional form of music notation.**

- a. Copies employing letters, numbers, words, symbols, or other indicia may be accepted if it seems possible for someone to decipher the music in the work.

Examples:



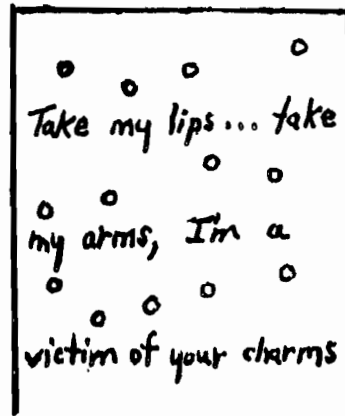
- b. A copy containing a score appropriate for the notation of electronic or concrete music may be accepted.
- c. However, if the work is unpublished and it seems impossible for anyone to determine the music from the copies, the applicant will be requested to prepare a new manuscript for deposit.

2.6.2 Nature and completeness of copies deposited. (cont'd)

I. Conventional notation not necessary. (cont'd)

c. (cont'd)

Example:



II. Sound recordings not acceptable. A sound recording of a musical composition is not acceptable for registration in Class E. When a sound recording is deposited, the Office will reject the claim but point out to the applicant the possibility of writing out the composition in manuscript form and then making registration on the basis of the manuscript. (As to the problem of the sale of recordings as publication, see topic 3.1.3.IV.)

III. Completeness of copies deposited.

a. Unpublished manuscripts.

1. As long as the manuscript appears to contain copyrightable music, no effort will generally be made to determine if the words and music are complete and if the work is in finished form. (But see paragraphs 2 and 3, below.)

2.6.2 Nature and completeness of copies deposited. (cont'd)

III. Completeness of copies deposited. (cont'd)

a. Unpublished manuscripts. (cont'd)

1. (cont'd)

Example: Where the manuscript contains music for verse and chorus, but includes words for the chorus only, the claim will not be questioned.

2. Where the applicant states that the work is incomplete, but indicates that he will complete and submit the finished work shortly, the Office may suggest that registration be deferred until the work has been completed.

3. Where the applicant appears to have skipped a page in copying his manuscript, or where the words end in the middle of a sentence, the Office will question the completeness of the manuscript.

b. Orchestrations, bandstrations, and instrumental parts.

1. Where the copies deposited in connection with a published work for orchestra or band consist only of the piano-conductor or condensed score, and there are indications on the copies that other instrumental parts or band books have been published with it as a unit, the Office will request deposit of all parts or books. The same practice should be followed where the part originally deposited is a full score, even though a full score contains all the music in the other parts in a different form.

**2.6.2 Nature and completeness of copies deposited. (cont'd)**

**III. Completeness of copies deposited. (cont'd)**

**b. Orchestrations, bandstrations, and instrumental parts. (cont'd)**

2. Where the copies deposited indicate that the work is a part for a certain kind of instrument (e.g., "for Bass Clef Instruments"), and that parts for other instruments are also published with it as a unit, the Office will request deposit of all parts, even if they represent mere transpositions of the material on hand.
3. Where an unpublished manuscript consists of a "piano part" or "piano conductor" part, registration will generally be made without correspondence or annotation.

2.6.3 Requirements of registration for musical compositions.

I. Unpublished musical compositions.

a. In general. Claims to copyright in unpublished musical compositions may be registered in Class E. (As to publication, see Chapter 3; as to the formalities of registration, see chapters 5, 9, and 10.)

b. Two or more versions.

1. When an applicant submits two or more different unpublished arrangements or other versions of the same composition, separate registrations will be encouraged. A single registration may be considered if the applicant insists, provided the authorship of each version is the same, and a single identifying title is given.

Examples:

(a) Arrangements of a composition for piano and for dance orchestra

(b) English, French, and Spanish versions of a popular song, with different lyrics and minor changes in tempo and phrasing

2. When an applicant submits two or more unpublished versions of the same composition, in which the only differences are in uncopyrightable elements, they may be registered together on a single application.

Example:

The same music in different keys



2.6.3 Requirements of registration for musical compositions. (cont'd)

I. Unpublished musical compositions. (cont'd)

c. Collections of unpublished musical compositions.

A collection of two or more unpublished musical compositions may be registered on one application when all of the following conditions are met:

1. The collection is assembled in an orderly arrangement; and
2. The collection bears a single title identifying the collection as a whole; and
3. The collection as a whole is the subject of a single claim of copyright; and
4. All the compositions are by the same author; or, if they are by different authors, the collection as a whole represents the work of a single author in its compilation or editing.

II. Published musical compositions.

- a. In general. Claims to copyright in musical compositions published with the appropriate copyright notice may be registered in Class E. (As to publication, see chapter 3; as to notice, see chapter 4; as to the formalities of registration, see chapters 5, 9, and 10.)
- b. Publication of registered manuscript. When a musical composition, previously registered in unpublished form, is published with appropriate notice, registration should again be made to cover the published edition. (17 U.S.C. §12.)
- c. Books of music. See topic 2.6.1.IV.

**2.6.4 New versions of musical compositions.**

- I. In general. In order for registration of a new version of an existing musical composition to be valid, the composition employed must be in the public domain or, if copyrighted or protected under common law, must be used with the owner's permission.
  - a. Frequently the claimant of copyright in the new version is also the owner of copyright in the composition employed in the new version, in which case no question of permission arises.
  - b. In all cases the Copyright Office will assume that use of the existing material is authorized unless there are fairly clear indications that permission has not been obtained (e.g., where the claimant tells us so.) In the latter case, the Office will not refuse registration for the new version, but will suggest the advisability of securing permission before registering a copyright claim or publishing the work.
- II. Adaptations or arrangements. An adaptation or arrangement of existing music, involving original composition, constitutes a registrable new musical work.

**Examples:**

- a. An adaptation of an organ work for orchestra
- b. A new piano accompaniment for an old English vocal air
- c. An arrangement for dance orchestra of the songs from "The Boy Friend"

**III. Revisions or additions.**

- a. The substantial revision of the score of existing music, or the addition to an old score of a substantial amount of new music, creates a registrable new version.

**Examples:**

1. The rewriting of a substantial portion of the music of a previously copyrighted composition

2.6.4 New versions of musical compositions. (cont'd)

III. Revisions or additions. (cont'd)

a. (cont'd)

Examples: (cont'd)

2. The addition of a piano accompaniment to a copyrighted lead sheet
  3. A medley of old songs joined together by the interpolation of new music
- b. Minor changes in existing music, such as any musician might readily make, and which are not substantial enough to constitute original composition, do not create a registrable new version.

Examples:

1. The change of a few notes in the melody of "The Star Spangled Banner"
2. Mere transposition of an old song into a different key
3. The omission of two measures from an old song

IV. Editing. Whether editing of a musical composition constitutes registrable "new matter" depends upon its nature and extent. Assuming it is sufficient to constitute creative authorship, editing will be regarded as a "writing" registrable in Class E.

V. New lyrics. (See also topic 2.6.1.III.a.)

- a. The addition of copyrightable new words to existing music creates a new version registrable in Class E.

2.6.4 New versions of musical compositions. (cont'd)

V. New lyrics. (cont'd)

a. (cont'd)

Examples:

1. A new verse to "America the Beautiful"
  2. New words to be sung to the melody of Schumann's "Traumerei"
  3. English translations of the words of Russian folk songs, accompanied by the music
- b. The setting of an existing poem to existing music, if it involves some element of creative selection and combination, may constitute a new version or adaptation, registrable as music.
- c. Minor changes in the words of an existing lyric (e.g., change of the words "Mary dear" to "Ellen dear") will not constitute a new version.

VI. Compilations. (See also topic 2.6.1.IV.c.)

- a. A published or unpublished collection of previously published musical works, in which the assembling, selection, or combination of works represents some degree of original authorship, constitutes a registrable compilation.

Examples:

1. A collection of compositions for the violin by various composers
  2. A graded selection of Schumann's composition for the piano
  3. An album of Piano arrangements titled "Hits of the Forties"
- b. The mere republication together of several

2.6.4 New versions of musical compositions. (cont'd)

VI. Compilations. (cont'd)

- b. (cont'd)  
previously published musical works, where no appreciable degree of original authorship was involved in putting them together, does not constitute a registrable compilation.

Examples:

1. The songs from "Oklahoma"
2. Beethoven's twelve contra dances
3. Mozart's Symphonies Nos. 39, 40, and 41

End of Part 2.6.

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Chapter 2

Copyrightable Matter

Part 2.8

WORKS OF ART  
(CLASS G)

Outline of Topics

2.8.1 IN GENERAL

- I. Copyrightable matter subject to registration in Class G
  - a. Constituent elements
  - b. Forms of embodiment

2.8.2 CLASSIFICATION OF WORKS OF ART

- I. Nature of the material
  - a. Single-page works
  - b. Folders and the like
  - c. Multi-page works
  - d. Contributions to "books" or "periodicals"
  - e. Work of art and text combined
  - f. Three-dimensional works
  - g. Utilitarian articles
- II. Purpose, function, or use for which the material is designed
  - a. Drawings or plastic works of a scientific or technical character
  - b. Commercial prints or labels

**2.8.3 REGISTRATION REQUIREMENTS**

- I. Copyrightable subject-matter
  - a. Pictorial or graphic material
  - b. Sculptural material
  - c. New matter
  - d. Utilitarian articles
  
- II. Formalities of registration
  - a. Deposit of copy or copies



Chapter 2

COPYRIGHTABLE MATTER

Part 2.8

WORKS OF ART  
(CLASS G)

2.8.1 In general

I. Copyrightable matter subject to registration  
in Class G

a. Constituent elements

1. Pictorial or graphic material. Class G is appropriate for the registration of published and unpublished pictorial or graphic works containing original authorship of a copyrightable nature, such as, for example, paintings, drawings, etchings, engravings, and two-dimensional abstract or representational designs.
2. Sculptural material. Class G is appropriate for the registration of published and unpublished three-dimensional sculptural works containing original authorship of a copyrightable nature, such as, for example, statuary, carving in relief, and three-dimensional abstract or representational designs.

2.8.1 In general (cont'd)

- I. Copyrightable matter subject to registration in Class G (cont'd)
  - a. Constituent elements (cont'd)
    3. Text. Class G is not appropriate for works which are primarily textual, although the presence of captions and incidental text in a work which is primarily pictorial, graphic, or sculptural will not prevent registration in Class G.
  - b. Forms of embodiment. Copyrightable graphic, pictorial, or sculptural material capable of supporting registration in Class G may be embodied in a variety of forms, including both ornamental and useful articles.
    1. Ornamental articles. This category includes all decorative articles designed primarily to beautify, embellish, or adorn, such as, for example, drawings, paintings, carvings, statuary, wall plaques, murals, ceramic figurines, tapestries, scenic wallpaper, mosaics, stained glass, jewelry, artificial flowers, dolls, and toy animals.
    2. Useful articles. This category includes all articles designed primarily to serve a utilitarian function, such as, for example, lamps and lighting fixtures, ceramic tiles, china and glassware, textile fabrics, lace, and ashtrays. (See topics 2.8.2.II and 2.8.3.I.d.)

2.8.2 Classification of works of art

I. Nature of the material

a. Single-page works. A single-page work of art is one whose content appears on one or both sides of a leaf, sheet, or their equivalent. A painting on canvas, board, or the like, may be considered a single-page work for purposes of classification.

1. Pictorial or graphic material.  
Class G is the appropriate category for the registration of all individual pictorial or graphic works of art, in either published or unpublished form.
- (a) Class H. If the copyright claim is based only upon a published reproduction of an existing work of art and does not extend to the underlying work reproduced, Class H is the more appropriate category for registration. (See Part 2.9.)
- (b) Class I. If the pictorial or graphic material is designed for a scientific or technical use, such as a mechanical drawing, registration in Class I is more appropriate. (See Part 2.10.) However, if the work is primarily aesthetic in its appeal or in the effect it produces, as for example, a drawing depicting the exterior of a building in perspective with trees and shrubbery, registration in Class G may not be inappropriate.

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

a. Single-page works (cont'd)

1. Pictorial or graphic material (cont'd)

(c) Class K. If the copyright claim is based only upon a published reproduction of a work which is not a work of fine art, registration in Class K on Form K is appropriate. (See Part 2.12.)

b. Folders and the like. A published pictorial or graphic folder, leaflet, or the like, which opens out so as to form a single sheet, is considered a single-page work for purposes of classification. Thus, for example: twelve color reproductions of original paintings appearing on the twelve faces of an accordion-like folder published by the museum in which the paintings are exhibited.

1. Single pictorial or graphic work of art on more than one page. A published single pictorial or graphic work of art whose content extends continuously across two or more pages may be considered a single-page work for purposes of classification, as for example: an original engraving of costumed figures in procession reproduced across the three faces or folds of a triptych-like greeting card.

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

c. Multi-page works. A multi-page work of art is one whose content appears on two or more pages, sheets, or their equivalent.

1. Published pictorial or graphic material. Class A is generally appropriate for the registration of claims to copyright in published multi-page collections and compilations of pictorial or graphic works of art which have been published together as a unit and are identified by a common title, such as, for example: a portfolio of twenty original paintings selected by the artist from his own previously unpublished work and reproduced in color with a textual introduction. NOTE: A single registration in Class G may also be appropriate in cases where the copyright claim is based essentially upon original artwork, such as, a set of original watercolor prints published in a portfolio without any appreciable amount of text.

(a) Copyright notice insufficient for Class A. If a multi-page pictorial or graphic work of art has been published with a copyright notice which fails to satisfy the notice requirements prescribed by the law for "books," registration in Class A will not be possible. Nevertheless, if such a work bears a

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

c. Multi-page works (cont'd)

1. Published pictorial or graphic material (cont'd)

(a) Copyright notice insufficient for Class A (cont'd)

notice which satisfies the requirements of the law prescribed for material registrable in Classes F through K, registration may be made on that basis under the rule of doubt. The following procedures apply:

- (1) Application Form A received. If an application has been submitted on Form A, registration in Class A will be rejected. In such a case, the Office may offer a single registration in Class G on Form G on the basis of the pictorial or graphic material which the work contains, informing the applicant of the doubtful nature of the registration.
- (2) Application Form G received. If an application has been submitted on Form G, registration in Class G may be considered

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

c. Multi-page works (cont'd)

1. Published pictorial or graphic material (cont'd)

(a) Copyright notice insufficient for Class A (cont'd)

(2) Application Form G received (cont'd)

on the basis of the pictorial or graphic material which the work contains. In such case, the Office will inform the applicant of the doubtful nature of the registration.

(3) No application received.  
If no application has been received, or if an opinion is requested, the Office will point out to the applicant why registration in Class A is not possible. In such a case, the Office may offer a single registration in Class G on Form G on the basis of the pictorial or graphic material which the work contains, informing the applicant of the doubtful nature of the registration.

2.8.2 Classification of works of art (cont'd)I. Nature of the material (cont'd)c. Multi-page works (cont'd)1. Published pictorial or graphic material (cont'd)

(b) separate registration of individual work of art. The mere fact that two or more pictorial or graphic works of art have been published together in multi-page form and are identified by a common title will not prevent the separate registration on Form G of individual pictorial or graphic works of art which bear a separate copyright notice.

2. Unpublished pictorial or graphic material. A collection of unpublished pictorial or graphic works of art which are the subject of a single claim of copyright may be considered for registration together as a unit in Class G on Form G, provided the pictorial or graphic material constitutes a single work of common authorship which can be identified as a whole by a single title.

d. Contributions to "books" or "periodicals." An original pictorial or graphic work of art first published in the form of a contribution to a "book," newspaper, magazine, or other "periodical," may be considered for registration in Class G,



2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

d. Contributions to "books" or "periodicals" (cont'd)

provided the contribution contains its own separate copyright notice. However, if the contribution includes a substantial amount of text, or consists of many pictorial or graphic works of art, a single registration in either Class A or in Class B may be more appropriate, depending upon the form of publication.

1. Class A. A single registration in Class A is appropriate for a work which contains text or other "book" material and was first published in the form of a contribution to a "book," subject to the requirements explained in Part 2.2; see also topic 2.8.2.I.c.1.

Example:

Included as a part of a published educational kit for elementary school children is a set of ten reproductions of original watercolor paintings never previously published which depict the colonial architecture of New England. Each reproduction bears a copyright notice acceptable for "book" material, together with three or four paragraphs of textual commentary on the particular subject depicted. Practice:

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

d. Contributions to "books" or "periodicals"  
(cont'd)

1. Class A (cont'd)

Example (cont'd)

The set of ten reproductions may be accepted for a single registration in Class A on Form A as a contribution to a "book." However, if the applicant insists on Class G, a single registration may be made on Form G.

2. Class B. A single registration in Class B on Form BB is appropriate for a work which contains text or other "book" material and was first published in the form of a "contribution to a periodical," subject to the requirements explained in Section 2.3.4. However, even if the contribution is wholly pictorial or graphic, registration may be considered either on Form BB or in Class G on Form G, depending upon the applicant's choice.

Example:

An eight-page supplement to the Sunday edition of a newspaper is devoted entirely to an autobiographical article by a local artist, several of whose original

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

d. Contributions to "books" or "periodicals" (cont'd)

2. Class B (cont'd)

Example (cont'd)

paintings are reproduced in color and published for the first time in the supplement. A copyright notice acceptable for a "contribution to a periodical" appears on the front page of the supplement. Practice: The supplement may be accepted for a single registration in Class B on Form BB as a "contribution to a periodical." However, if the applicant insists on Class G, a single registration may be made on Form G, even though the extent of protection given to the textual material by such registration is doubtful.

- e. Work of art and text combined. The presence of captions and incidental text in a work of art will not prevent registration in Class G. However, if the copyrightable contents of a work which is pictorial, graphic, or sculptural in form are entirely textual, registration in Class G is not authorized.

2.8.2 Classification of works of art (cont'd)I. Nature of the material (cont'd)e. Work of art and text combined (cont'd)

1. Published works. If the textual material in a work predominates, or if the principal copyrightable element is textual, registration in Class A may be more appropriate (See Part 2.2), or, under certain circumstances, in Class B on Form BB (See topics 2.3.4.II and 2.8.2.I.d.)
  2. Unpublished works. If the textual material is substantial and it appears that copyright is being claimed in both text and the work of art, the claim should not be registered, until the scope of registration in Class G has been explained to the applicant. Generally, unpublished textual material (except captions and incidental text) should be separated from the copy deposited, wherever possible, and returned to the applicant. Unpublished textual material is ordinarily not entitled to copyright registration. However, works prepared for oral delivery and dramas are exceptions. (See Parts 2.4 and 2.5.)
- f. Three-dimensional works. Class G is the appropriate category for the registration of claims to copyright in both published and unpublished three-dimensional works of art containing a substantial amount of original sculpture. Copyrightable sculpture includes statuary, abstract and

2.8.2 Classification of works of art (cont'd)

I. Nature of the material (cont'd)

f. Three-dimensional works (cont'd)

representational carvings, bas-relief, and the like, which are commonly executed in hard material such as marble, bronze, glass, or wood. Sculptural authorship may also be embodied in works which are shaped, cast, or molded, such as, for example, a ceramic figurine, a plaster of Paris plaque in bas-relief, or a "plastic" toy formed from one of the commonly known synthetic chemical derivatives such as styrenes, vinyl compounds, or acrylic resins. Sculptural authorship may also be embodied in other materials such as, for example: a molded chocolate rabbit, a stuffed toy doll, or a floral design decorating a cake. However, a work may be three-dimensional in form and yet lack authorship of a sculptural nature. Thus, a work consisting of two-dimensional pictorial prints reproduced on separate pieces of cardboard which are interlocked at right angles with one another so as to produce an illusion of depth would not be considered sculpture in the copyright sense. (See also topic 2.8.3.I.)

- g. Utilitarian articles. Class G is appropriate for the registration of a copyrightable work of art, even though it is embodied in an article of utility. (See also topic 2.8.2.II.) Regardless of utility or commercial value, any work must contain sufficient copyrightable matter to support registration. (See topic 2.8.3.I.d.)

2.8.2 Classification of works of art (cont'd)

- II. Purpose, function, or use for which the material is designed. Generally, registration may be made in Class G regardless of the purpose, function, or use for which a work of art is intended. Thus, for example, registrability would not be affected by the fact that (1) a painting is to be used as decoration on metal serving trays, or (2) a hand-carved bracket is to be used as a wall shelf. (See also topic 2.8.2.I.g.)
- a. Drawings or plastic works of a scientific or technical character. Class I is the appropriate category for the registration of claims to copyright in published and unpublished pictorial, graphic, or sculptural material that is designed for a scientific or technical use, such as a mechanical drawing or an anatomical model. (See Part 2.10.)
- b. Commercial prints or labels. If a work of art has been published in connection with the sale or advertisement of an article or articles of merchandise, registration in Class K on Form KK is appropriate. For example, registration on Form KK would be appropriate for a painting reproduced and first published on the cover of a candy box, or a carved lion's head intended for promotional display in connection with the sale or advertisement of imported beer. However, if the principal copyrightable element is sculptural, Class G may be the appropriate category for registration. (See topic 2.13.2.II.e.1.)

2.8.3 Registration requirements

- I. Copyrightable subject-matter. To be entitled to copyright protection, a work of art must contain an appreciable amount of original pictorial, graphic, or sculptural material. If a work of art consists entirely of uncopyrightable elements, registration is not authorized. On the other hand, the mere presence of uncopyrightable elements in a work will not prevent registration on the basis of features susceptible of protection under the statute. Thus, an abstract design may be registrable even though it incorporates uncopyrightable standard geometric forms, such as circles and squares. The copyrightability of a work of art does not depend upon artistic merit or aesthetic evaluation. For example, a child's drawing may exhibit a very low level of draftsmanship as judged by adult standards and yet be entitled to registration as a work of art. Similarly, it is not necessary that a work of art adhere to established aesthetic criteria. Hence, the form of a copyrightable work of art may be representational or abstract, naturalistic or stylized. It may express a traditional theme in a conventional manner, or it may rely for its effect upon fantastic or incongruous imagery and unnatural juxtapositions or combinations. Regardless of form, however, nothing is entitled to statutory protection as a work of art unless it can be considered the "writing of an author" within the meaning of the United States Constitution and the Statute.
  - a. Pictorial or graphic material. Class G is appropriate for the registration of

2.8.3 Registration requirements (cont'd)I. Copyrightable subject-matter (cont'd)a. Pictorial or graphic material (cont'd)

original pictorial or graphic material which embodies creative authorship in its pattern, form, shape, or configuration. Creative authorship may be expressed in the linear contours of a drawing, the brush marks or strokes characteristic of a painting, the assemblage of diverse fragments comprising a collage, the arrangement and juxtaposition of pieces of colored stone in a mosaic portrait, or the pattern of an abstract design executed in marquetry. Visual representation is always basic, regardless of the form in which a work is presented.

1. Minimal standards. A certain minimal amount of original creative authorship is essential for registration in Class G or in any other class. Copyrightability depends upon the presence of creative expression in a work, and not upon aesthetic merit, commercial appeal, or symbolic value. Thus, registration cannot be based upon the simplicity of standard ornamentation such as chevron stripes, the attractiveness of a conventional fleur-de-lys design, or the religious significance of a Greek cross. Similarly, it is not possible to copyright common geometric figures or shapes such as the hexagon or the ellipse, a standard symbol such as an arrow or



2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

a. Pictorial or graphic material (cont'd)

1. Minimal standards (cont'd)

a five-pointed star. Likewise, mere coloration cannot support a copyright even though it may enhance the aesthetic appeal or commercial value of a work. For example, it is not possible to copyright a new version of a textile design merely because the colors of red and blue appearing in the design have been replaced by green and yellow, respectively. The same is true of a simple combination of two or three standard symbols such as a circle, a star, and a triangle, with minor linear or spatial variations.

Examples:

- (a) An unpublished design for textile fabric is submitted for registration in Class G. The design consists of a standard unembellished character of Chinese calligraphy painted upon horizontally striated grass cloth. Practice: Registration is not authorized in this case. Like typography, calligraphy is not copyrightable as such, notwithstanding the effect achieved by calligraphic brush strokes across a striated surface.

2.8.3 Registration requirements (cont'd)I. Copyrightable subject-matter (cont'd)a. Pictorial or graphic material (cont'd)1. Minimal standards (cont'd)

## Examples (cont'd)

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

b. Sculptural material. Class G is appropriate for the registration of original sculpture which embodies creative authorship expressed in three-dimensional form

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. Sculptural material (cont'd)

by means of carving, casting, cutting, molding, shaping, or otherwise processing plastic or hard materials. Creative sculptural authorship may be expressed in the form, or the peripheral outline of whatever has been given a three-dimensional form or shape.

1. Minimal standards. The requisite minimal amount of original sculptural authorship necessary for registration in Class G does not depend upon the aesthetic merit, commercial appeal, or symbolic value of a work. Copyrightability is based upon the creative expression of the author, that is, the manner or way in which he forms or fashions his material. Thus, registration cannot be based upon standard designs which lack originality, such as common architectural moldings, or the volute used to decorate the capitals of Ionic and Corinthian columns. Similarly, it is not possible to copyright common geometric figures or shapes in three-dimensional form, such as the cone, cube, or sphere. The mere fact that a work of sculpture embodies uncopyrightable elements, such as standard forms of ornamentation or embellishment, will not prevent registration. However, the creative expression capable of supporting copyright must

**2.8.3 Registration requirements (cont'd)****I. Copyrightable subject-matter (cont'd)****b. Sculptural material (cont'd)****1. Minimal standards (cont'd)**

consist of something more than the mere bringing together of two or three standard forms or shapes with minor linear or spatial variations. In no event can registration rest solely upon the fact that an idea, method, plan, or system has been successfully communicated in three-dimensional form. In every case, it is the creative expression of the author which must be able to stand alone as an independent work apart from the general idea which informs it.

**Examples:**

- (a) Registration in Class G is requested for a design or model of a table lamp. Cast in plaster of Paris, the design features the head of a horse mounted on an iron horseshoe with toe and heel calks which supports the entire fixture. Electrical wiring is concealed within the plaster casting. Practice: If the head of the horse is original, registration may be considered on that basis. However, the general idea of embellishing a lighting fixture with a work of art is

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. Sculptural material (cont'd)

1. Minimal standards (cont'd)

Examples (cont'd)

(a) (cont'd)

not copyrightable. The same is true of the decorative idea of using a horseshoe as support for a lamp base, regardless of the pleasing effect thereby achieved.

(b) A toy manufacturer conceives a novel idea for a toy consisting of multi-colored geometrical spheres, cubes, and cylinders of varying sizes. All of these parts or pieces are magnetized, and will adhere to each other when placed in close proximity. Thus, it is possible to construct an indefinite variety of shapes and figures by means of the magnetized parts or pieces. The manufacturer desires to protect the three-dimensional aspects of the toy before publication occurs. He applies to the Copyright Office for registration of a design for an unpublished sculptural work of art. His application Form G is accompanied by one complete set of magnetized spheres, cubes, and

2.8.3 Registration requirements (cont'd)I. Copyrightable subject-matter (cont'd)b. Sculptural material (cont'd)1. Minimal standards (cont'd)

Examples (cont'd)

## (b) (Cont'd)

cylinders arranged in a plain box according to size and color. Practice: We will refuse a registration in Class G based solely upon the unassembled toy, even though its component parts or pieces are potentially capable of being arranged in copyrightable shapes and forms. The general idea of the toy is, of course, uncopyrightable, regardless of its novelty or uniqueness.

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

2.8.3 Registration requirements (cont'd)I. Copyrightable subject-matter (cont'd)b. Sculptural material (cont'd)1. Minimal standards (cont'd)

Examples (cont'd)

(c) (cont'd)

describes as "three-dimensional." No copyrightable authorship is claimed in the design of the individual pieces of glass. Practice: Registration based upon the cumulative effect produced by the component members of the mobile will be refused. If these members had contained copyrightable authorship, registration could have been considered on the basis of the two-dimensional design features displayed by the pieces of glass.

- c. New matter. If a work of art which has been previously published or previously registered in unpublished form contains new pictorial, graphic, or sculptural material, registration based upon such material may be made in Class G, provided the "new matter" is original and copyrightable in itself.

Examples:

- (1) A pencil drawing of an old man's head has been registered as an unpublished

2.8.3 Registration requirements (cont'd)I. Copyrightable subject-matter (cont'd)c. New matter (cont'd)

## Examples (cont'd)

## (1) (Cont'd)

drawing. Another version of the same work is subsequently submitted for registration. The later version incorporates the earlier drawing with the addition of new pictorial matter showing the arms and torso. Practice: The later version is entitled to registration on the basis of additional pictorial matter.

- (2) A statuette depicting a costumed female dancer was originally published in clear white porcelain. Later, a color version was produced with much hand-painted detail such as the facial features and decorative embroidery designs appearing on the figure's clothing. Practice: The painting embodied in the color version would support an additional registration. However, a mere change in coloration apart from any original artwork would not support registration, such as, a change in the color combination of the dancer's skirt from blue and gold to red and yellow.



2.8.3 Registration requirements (cont'd)I. Copyrightable subject-matter (cont'd)

d. Utilitarian articles. The copyrightability of a work of art is not affected by the fact that the work may also embody utilitarian features, or that it may itself be embodied in an article of utility. In all cases, registration must be based upon those copyrightable features such as artistic sculpture, carving, or pictorial representation which can be identified separately and are capable of existing independently as a work of art, as for example: (1) a statuette used as a base for a table lamp, (2) an original painting reproduced on a porcelain dinner plate, (3) a sculptured figure used as a handle for a letter opener, (4) an artistic design reproduced on textile fabric, or (5) a stained glass window.

1. Attractiveness of design. The mere fact that an article of utility is novel, unique, and attractively designed does not warrant its registration as a "work of art." Thus, where design is dictated by utilitarian requirements rather than aesthetic considerations, it cannot provide a sufficient basis for registration. Examples of useful articles whose design is generally dictated by function rather than aesthetic considerations include the following:  
(1) automotive bodies and parts,  
(2) marine hulls, (3) stoves,  
toasters, vacuum cleaners and other

2.8.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

d. Utilitarian articles (cont'd)

1. Attractiveness of design (cont'd)

household appliances, (4) bottles and food containers, (5) kitchen utensils, (6) articles of clothing, (7) machinery, and (8) tools and implements.

2. Availability of protection under design patent law. A useful article may be accepted for registration as a work of art, even though it may also be entitled to protection under the design patent law. (See Title 35, United States Code.) However, a copyright claim in the drawings or other pictorial material submitted in connection with a patent application is not entitled to registration after the patent has been issued. (See sections 202.10(b) and 202.10(c) of the Regulations of the Copyright Office.)

II. Formalities of registration

a. Deposit of copy or copies

1. Published textiles and lace. The requirement that both copies comprising a deposit must be identical may present special problems in cases where the copyrighted work consists of a repetitive design

2.8.3 Registration requirements (cont'd)

II. Formalities of registration (cont'd)

a. Deposit of copy or copies

1. Published textiles and lace (cont'd)

reproduced on a continuous roll or sheet, as for example, a bolt of cloth or a "web" of lace. Generally, the copies submitted for deposit should represent the form in which publication first occurred. In the case of goods sold by the yard or fractions thereof, the copies need not exceed one yard in length. However, if the notice of copyright appears at regular intervals along the selvage, margin, or edge of the material, it is always desirable that each copy be of sufficient length to show two such notices in order to establish the frequency and regularity of their position on the work.

END OF PART 2.8  
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Chapter 2

Copyrightable Matter

Part 2.11

PHOTOGRAPHS  
(CLASS J)

Outline of Topics

2.11.1 IN GENERAL

- I. Statutory provisions
  - a. United States Code
  - b. The Regulations of the Copyright Office
- II. Copyrightable matter subject to registration in Class J
  - a. Constituent elements
  - b. Forms of embodiment

2.11.2 CLASSIFICATION OF PHOTOGRAPHS

- I. Origin of the material
  - a. Domestic works
  - b. Foreign works
- II. Nature of the material
  - a. Single photographs
  - b. Multiple photographs
  - c. Photographs and text combined
  - d. Contributions to "books" and "periodicals"

2.11.3 REGISTRATION REQUIREMENTS

- I. Copyrightable subject-matter
  - a. Photographic composition
  - b. The subject of the photograph
  - c. Old photographs
  - d. Mechanical reproduction
  - e. New matter
  
- II. Publication with notice
  - a. Publication
  - b. Notice of copyright
  - c. Exception to the general rule
  - d. Unpublished photographic material
  
- III. Formalities of registration
  - a. Application form prescribed
  - b. Deposit of copy or copies
  - c. Fee prescribed
  - d. Time limitation
  
- IV. Manufacturing requirement

Chapter 2

COPYRIGHTABLE MATTER

Part 2.11

PHOTOGRAPHS  
(CLASS J)

2.11.1 In general

I. Statutory provisions

- a. United States Code. The copyright law provides for the registration of claims to copyright in "Photographs." (Title 17, U.S.C. sec. 5(j)(1964)).
- b. The Regulations of the Copyright Office. "This class [J] includes published or unpublished photographic prints and filmstrips, slide films and individual slides. Photoengravings and other photomechanical reproductions of photographs are registered in Class K on Form K." (37 C.F.R. sec. 202.13(1967)).

II. Copyrightable matter subject to registration in Class J

a. Constituent elements

1. Photographic material. Class J is appropriate for the registration of published and unpublished still photographs involving original authorship in their composition. For a more detailed discussion of the nature of the authorship capable of supporting registration in Class J, see topic 2.11.3.I.

2.11.1 In general (cont'd)

II. Copyrightable matter subject to registration in Class J (cont'd)

a. Constituent elements (cont'd)

1. Photographic material (cont'd)

- (a) Printed reproductions. A published reproduction of a photograph produced by lithography, photoengraving, rotogravure, collotypy, mezzotinto, or other similar process of reproduction, is ordinarily not classified as a "photograph," but may be considered for registration in Class K, either on Form K as a "print or pictorial illustration" (See topic 2.12.1.II.a.1), or on Form KK as a "commercial print or label" (See topic 2.13.1.II.a.1). Under certain circumstances, registration in Class B on Form BB as a "contribution to a periodical" may be appropriate. (See Section 2.3.4.)
- (b) Motion pictures. Motion pictures are not registrable in Class J. Classes L and M are appropriate for photographic motion-picture films which are mounted on reels and intended for projection or exhibition. (See Part 2.14.)



2.11.1 In general (cont'd)

II. Copyrightable matter subject to registration in Class J (cont'd)

a. Constituent elements (cont'd)

2. Text and compilations. Class J is generally not appropriate for works which are primarily textual, although the presence of captions and incidental text in a work which is primarily photographic will not prevent registration in Class J. Compilations of photographs may be considered for registration in Class J, but Class A may be preferable in cases where the copyright claim in a published collection of photographs is limited to the compilation. (See topic 2.11.2.II.b.1.)

b. Forms of embodiment. Copyrightable photographic material capable of supporting registration in Class J may be embodied in photographic prints and filmstrips, slide films, and individual slides.

2.11.2 Classification of photographs

I. Origin of the material

a. Domestic works

1. Definition. For purposes of registration, a photograph is considered of domestic origin, if:

2.11.2 Classification of photographs (cont'd)I. Origin of the material (cont'd)a. Domestic works (cont'd)1. Definition (cont'd)

- (a) The author was a citizen of, or domiciled in, the United States at the time of first publication, or,
- (b) The work was first published in the United States, or
- (c) The work is in unpublished form.

2. Registration designator. Claims to copyright in domestic photographs are assigned registration numbers preceded either by the letters Ju (unpublished works) or the letters Jp (published works).b. Foreign works1. Definition. For purposes of registration, a published photograph is considered of foreign origin, if:

- (a) The author was neither a citizen of, nor domiciled in, the United States at the time of first publication, and
- (b) The work was first published outside the United States.

2.11.2 Classification of photographs (cont'd)

I. Origin of the material (cont'd)

b. Foreign works (cont'd)

1. Definition (cont'd)

(b) (cont'd)

NOTE: A photograph which is entitled to registration in unpublished form is always considered of domestic origin for purposes of registration, even if the work was produced by an author who is neither a citizen of, nor domiciled in, the United States. (See topic 2.11.2.I.a.1(c).)

2. Registration designator. Claims to copyright in foreign photographs are assigned registration numbers preceded either by the letters Jf or Jfo. The terminal letters "f" and "fo" signify registration under Option A and Option B, respectively. (See topics 2.11.3.III.b.3 and 2.11.3.III.c.2)

II. Nature of the material

- a. Single photographs. Class J is the appropriate category for the registration of all individual photographic prints and film slides, in either published or unpublished form.
- b. Multiple photographs. Class J is the appropriate category for the registration of collections of two or more

2.11.2 Classification of photographs (cont'd)

II. Nature of the material (cont'd)

b. Multiple photographs (cont'd)

photographs including filmstrips, slide films, and the like, in either published or unpublished form.

1. Published works. A collection of photographs in book form may also be considered for registration in Class A on Form A, provided the work has been published with a notice of copyright in the form and position prescribed by the law for a "book or other printed publication." (See Part 2.2 topic 4.2.1.I and Section 4.3.1.) In such case, if neither Form A nor Form J is received, but an opinion is requested, the Office will suggest registration in Class A, even though registration in Class J would not necessarily be considered doubtful.

2. Unpublished works. A collection of unpublished photographs which are the subject of a single claim of copyright may be considered for registration together as a unit in Class J on Form J, provided the photographs constitute a single work of common authorship which can be identified as a whole by a single title.

c. Photographs and text combined. The presence of captions and incidental text in a photographic work will not

2.11.2 Classification of photographs (cont'd)

II. Nature of the material (cont'd)

c. Photographs and text combined (cont'd)

prevent registration in Class J. However, if the copyrightable contents of a work which is photographic in form are entirely textual, registration in Class J is not authorized, regardless of the fact that the text is reproduced by a photomechanical process or that the work appears on microfilm, photographic transparencies, or the like.

1. Published works. If the textual material is substantial, registration in Class A would be appropriate, provided the requirements of the law relating to the notice of copyright on a "book" have been satisfied. (See Part 2.2, topic 4.2.1.I and Section 4.3.1.)
2. Unpublished works. If the textual material is substantial and it appears that copyright is being claimed in both text and photography, the claim should not be registered until the scope of registration in Class J has been pointed out to the applicant. Generally, unpublished textual material (except captions and incidental text) should be separated from the copy deposited, wherever possible, and returned to the applicant. Unpublished textual material is ordinarily not entitled to copyright

2.11.2 Classification of photographs (cont'd)

II. Nature of the material (cont'd)

c. Photographs and text combined (cont'd)

2. Unpublished works (cont'd)

registration. Works prepared for oral delivery and dramas are exceptions, however. (See Parts 2.4 and 2.5.)

d. Contributions to "books" or "periodicals." Class J is ordinarily not appropriate for photographic material first published in the form of a contribution to a "book," newspaper, magazine, or other "periodical," because such contributions are generally photographic reproductions printed by means of lithography, photoengraving, rotogravure, collotype, mezzotinto, or other similar process. (See topic 2.11.1.II.a.1(a).) However, in the unusual case where the contribution consists of a photograph itself rather than a printed reproduction, registration may be considered in Class J, provided the contribution contains its own separate copyright notice.

1. Class A. If the contribution to a "book" includes a substantial amount of text, or consists of many photographs, a single registration in Class A is appropriate, subject to the requirements explained in Part 2.2. (See also topic 2.11.2.II.b.1.)

2.11.2 Classification of photographs (cont'd)

II. Nature of the material (cont'd)

d. Contributions to "books" or "periodicals" (cont'd)

1. Class A (cont'd)

Example:

A pictorial filmstrip of eighty frames, thirty of which embody original text, has been published with its own separate notice as a part of an audio-visual kit. **Practice:** Request application on Form A, pointing out the possible limitations of registration in Class J. If the applicant nevertheless insists on Class J, register the claim on Form J.

2. Class B. A "contribution to a periodical" may be an article, story, pictorial illustration, or other work first published in a periodical; a "periodical" is a magazine, newspaper, or similar work published at regular intervals of less than a year under the same general title. If such a contribution includes a substantial amount of text, or consists of many photographs, a single registration in Class B on Form BB is appropriate, subject to the requirements explained in Section 2.3.4.

2.11.2 Classification of photographs (cont'd)

II. Nature of the material (cont'd)

d. Contributions to "books" or "periodicals (cont'd)

2. Class B (cont'd)

Example:

A set of six photographic film slides illustrating undersea life has been published with a separate notice on each slide as part of the May 1970 issue of a monthly scientific journal on marine biology. Practice: Register the claim either on Form BB or Form J. However, if the contribution had included a substantial amount of text, we should request application on Form BB, pointing out the possible limitations of registration in Class J. If the applicant nevertheless insists on Class J, register the claim on Form J.

2.11.3 Registration requirements

- I. Copyrightable subject-matter. To be entitled to copyright protection as a "photograph," a work must contain an appreciable amount of original photographic authorship. Registration in Class J is not authorized if creative authorship of a copyrightable nature is lacking, as, for example, in a case where the photograph results solely



2.11.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

from the operation of mechanical or photo-mechanical processes. (See topic 2.11.3.I.d.)

NOTE: The copyrightability of a photograph depends upon the variety and extent of elements involved in its composition and not upon the nature of the thing depicted or the subject photographed.

- a. Photographic composition. Original photographic composition capable of supporting registration in Class J may involve a variety of elements, such as, time and light exposure, camera angle, arrangement or disposition of persons, scenery, or other subjects depicted in the photograph. The copyrightability of photographic composition does not depend upon artistic merit or aesthetic evaluation.
  1. Minimal standards. Although the copyrightability of photographic material is not determined by qualitative or aesthetic standards, a certain minimal amount of original creative authorship is essential for registration in Class J or in any other class. The mechanical, photomechanical, or other processes involved in the production of a photograph, are not themselves capable of supporting registration in Class J.
- b. The subject of the photograph. Registration of claims to copyright in published or unpublished photographs does

2.11.3 Registration requirements (cont'd)I. Copyrightable subject-matter (cont'd)b. The subject of the photograph (cont'd)

not depend upon the nature of the subject photographed, nor does such registration extend to the subject depicted, regardless of their nature.

1. Kinds of subjects. In general, anything capable of being reduced to visual perception by photographic means could become the subject of a copyrightable photograph. Examples of commonly photographed subjects include, but are not necessarily limited to, the following categories:
  - (a) An uncopyrightable subject, such as a typewriter, diesel engine, or sailing vessel. (See also topic 2.11.3.I.b.4.)
  - (b) A copyrightable subject, such as an oil painting or a statue. (See also topics 2.11.3.I.b.2 and 2.11.3.I.b.4.)
  - (c) A living subject, such as a human person, an animal, or flowers.
  - (d) A natural subject, such as a seascape, a sunset, or a cluster of shade trees.
  - (e) An artificial subject, such as the steel framework of an office building, or a violin.

2.11.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. The subject of the photograph (cont'd)

2. Textual matter. A photographic reproduction of textual matter is generally not registrable as a "photograph." However, the mere fact that the principal subject of a "photograph" is textual will not prevent registration in Class J, provided there is sufficient original photographic authorship. For example, a copyrightable photograph could depict a book of poems opened in the candlelight showing the text of Samuel Taylor Coleridge's poem "Kubla Khan."
3. Duplication of subjects. The same subject may be depicted in two or more copyrightable photographs. For example, the dome of the Capitol building in Washington could be the subject of many copyrightable photographs.
4. The subject as basis of claim. A claim to copyright in Class J based upon the premise that the copyright will protect the subject depicted in a photograph will ordinarily be rejected. However, there are certain exceptions:
  - (a) Published works. If the photograph itself is copyrightable as such, and has been published with the required statutory

2.11.3 Registration requirements (cont'd)I. Copyrightable subject-matter (cont'd)b. The subject of the photograph (cont'd)4. The subject as basis of claim (cont'd)(a) Published works (cont'd)

notice, registration may be made on that basis, but the Office will call the applicant's attention to the scope of registration in Class J.

## Example:

A copyrightable photograph, published with notice, depicts a bronze statue which the author of the photograph wishes to protect by registration in Class J.

Practice: Write to the applicant, advising him of the scope of registration of the "photograph," and pointing out the registration requirements for a sculptural "work of art" in Class G. (See Part 2.8.) However, if the applicant desires registration in Class J, knowing that the claim is limited to the photograph, registration may accordingly then be made on Form J.

2.11.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. The subject of the photograph (cont'd)

4. The subject as basis of claim (cont'd)

- (b). Unpublished works. If the photograph itself is copyrightable as such, registration may be made on that basis. However, if there is reason to believe that the applicant desires copyright protection for the subject depicted in the photograph, registration should not be made until the scope of protection afforded by registration in Class J has been pointed out to the applicant.

Example:

An unpublished photograph depicts an electronic recording device which has been the subject of an unsuccessful application for design patent.

Practice: Write to the applicant, pointing out that registration in Class J will not protect the recording device as such. Registration may be made thereafter, if the applicant so desires.

- (c). Old photographs. The mere fact that a photograph is old or depicts a subject no longer in existence will not prevent registration. However, if the author of an old photograph is deceased or unknown, the Office may request an explanation of the basis of the copyright before registering the claim.

2.11.3 Registration requirements (cont'd)

I. Copyrightable subject-matter (cont'd)

b. The subject of the photograph (cont'd)

4. The subject as basis of claim (cont'd)

(c). Old photographs (cont'd)

1. Authorship. Copyright depends upon authorship. Unless a person is the author of a photograph, or holds rights which derive from the author, he is not entitled to claim copyright in it. A sharp distinction must be drawn between title to, or possession of, the physical copy of a photograph, and the copyright in the work.

(d). Mechanical reproduction. Although the production of a photograph necessarily involves a mechanical process, a photograph produced solely by the operation of a mechanical process lacks the requisite element of creative composition and, consequently, is not subject to registration in Class J. The photographic reproduction of pictorial, graphic, or textual material for the purpose of providing regular copies of such material, rather than for the sake of producing "photographs" as such, indicates that registration in Class J is not authorized, as for example, in the case of a photostatic reproduction of a real property deed.

(e). New matter. New photographic material appearing in revised versions of photographs may support registration in Class J, provided the new matter is original and copyrightable in itself.

2.11.3 Registration requirements (cont'd)

- I. Copyrightable subject-matter (cont'd)
  - b. The subject of the photograph (cont'd)
    4. The subject of the claim (cont'd)
      - (e). New matter (cont'd)

Example:

A filmstrip consisting of twenty-four frames, seven of which appeared in an earlier published version.

- II. Publication with notice. Publication is not a prerequisite for registration in Class J. Thus, a photograph may be considered for registration in either published or unpublished form.
  - a. Publication. A photograph is generally not considered published in the copyright sense until copies have actually been placed on sale, sold, or publicly distributed. However, the unrestricted public exhibition of a photograph may also constitute a publication in the copyright sense. (See Section 3.1.1 and topic 3.1.3.II; see also Part 4.1.)
  - b. Notice of copyright. The published copies of a "photograph" must contain a copyright notice in the form and position prescribed by law.
    1. Form. The law requires that the copyright notice include the word "Copyright," the abbreviation "Copr.," or the symbol ©, accompanied by either: (1) the name of the copyright owner, or (2) the initials, monogram, mark, or symbol of the copyright owner,

2.11.3 Registration requirements (cont'd)

II. Publication with notice (cont'd)

b. Notice of copyright (cont'd)

1. Form (cont'd)

provided his name appears on some accessible part of the work. (See also topic 4.2.1.II.)

2. Position. A notice on any accessible part of a single-page work is acceptable for purposes of registration in Class J. A notice located on the margin or permanent mounting of a work (such as a base, pedestal, selvage, or frame) is also acceptable, provided the notice is visible and not concealed. (See also Section 4.3.6.)

3. Year date. The year date of publication may be included in the notice on a "photograph" but, ordinarily, it is not required. However, for the U.C.C. requirements in this regard, see topic 2.11.3.II.b.4 and Section 4.2.4.

4. U.C.C. notice. The notice prescribed in the Universal Copyright Convention consists of the symbol ©, accompanied by the name of the copyright owner and the year date when copyright was first secured, either by publication, or, in the case of an unpublished work, by registration in the Copyright Office. (See also topic 4.2.4.III.) The notice must be



2.11.3 Registration requirements (cont'd)

II. Publication with notice (cont'd)

b. Notice of copyright (cont'd)

4. U.C.C. notice (cont'd)

located on the work in such manner and position as to give reasonable notice of the copyright claim.

(a) Defective U.C.C. notice acceptable under U.S. law. If the registrability of a work depends upon the availability of the U.C.C. exemptions granted under the copyright law [17 U.S.C. sec. 9(c)], the copies as first published should bear the above-mentioned U.C.C. notice. However, in such a case, where the notice satisfies the requirements of Section 19 of the statute, but not the U.C.C. requirements of Section 9(c), registration will be made under the rule of doubt, and a cautionary letter will be sent. (See also Part 8.2.)

c. Exception to the general rule. A "photograph" by a foreign author which was first published outside the United States before June 18, 1959 may be considered for registration, even if the copyright notice was omitted or defective. However, a cautionary letter will be sent in every such case. (See topic 4.1.3.II.b; see also topics 8.2.1.I.a and 8.2.1.III.a.)

2.11.3 Registration requirements (cont'd)II. Publication with notice (cont'd)

d. Unpublished photographic material. As long as a "photograph" remains in unpublished form, no copyright notice is required in order to secure statutory protection. NOTE: If a "photograph" is first registered in unpublished form and later published with notice of copyright, a second registration should be made. (See Chapter 10; see also topic 5.3.4.III.)

III. Formalities of registration. Generally, registration of a claim to copyright in a "photograph" cannot be made until the Copyright Office has received a completed application form, together with the required copy or copies, and the prescribed registration fee. Under certain circumstances, a catalog card may be substituted in lieu of the registration fee for published works of foreign origin. (See topic 2.11.3.III.c.2.)

a. Application form prescribed. Application for registration of a claim to copyright in a "photograph" should be submitted on Form J, which is appropriate for published or unpublished works of both domestic and foreign origin. (Regarding the distinction between works of domestic and foreign origin, see topic 2.11.2.I.)

2.11.3 Registration requirements (cont'd)

III. Formalities of registration (cont'd)

b. Deposit of copy or copies

1. Unpublished works. Registration of an unpublished "photograph" of either domestic or foreign origin requires the deposit of one complete copy of the work. (See topic 5.2.1.II.c.)
2. Published domestic works. Registration of a published "photograph" not of foreign origin requires the deposit of two complete copies of the "best edition" of the work as first published. (See topic 5.2.2.I.a.)
3. Published foreign works. Registration of a published "photograph" of foreign origin may be made on the basis of the deposit of either one or two copies. (See topic 5.2.2.I.b.)
  - (a) Option A. One complete copy of the "best edition" of the photographic work as first published (together with the required registration fee) will suffice for purposes of deposit under Option A. In all other respects, the deposit requirements are the same as those specified for published domestic works in topic 2.11.3.III.b.2.

2.11.3 Registration requirements (cont'd)

III. Formalities of registration (cont'd)

b. Deposit of copy or copies (cont'd)

3. Published foreign works (cont'd)

(b) Option B. Two complete copies of the "best edition" of the photographic work as first published (together with the required catalog card) will suffice for purposes of deposit under Option B, provided the copies (together with the required application and catalog card) are received in the Copyright Office within six months of the date of first publication outside the United States. Option B is not available if either the author, co-author, or copyright proprietor of the work is a U.S. citizen, domiciliary, or resident on the date the application is filed. In all other respects the deposit requirements are the same as those specified for published domestic works in topic 2.11.3.III.b.2.

4. Best edition. In the case of a published "photograph," the copy or copies submitted for deposit should represent the form in which the work was first made available to the public without restriction. Where two or more editions or issues of different quality are published

2.11.3 Registration requirements (cont'd)

III. Formalities of registration (cont'd)

b. Deposit of copy or copies (cont'd)

4. Best edition (cont'd)

simultaneously, deposit of a copy or copies of the "best edition" will be required. Thus, if a "photograph" is published in both black and white and color versions, the color version would ordinarily be considered the "best edition." If two copies are required for deposit, both copies should be duplicates. For further explanation of the requirements relating to "best edition," see Part 5.3.

c. Fee prescribed

1. Generally. The fee for each registration is six dollars (\$6.00).
2. Waiver-of-fee option. Published "photographs" of foreign origin may be entitled to registration without payment of the customary fee, provided all of the following elements are received in the Copyright Office within six months after the date of first publication outside the United States: (1) a completed application Form J, (2) two copies of the work as first published, and (3) a completed catalog card. (See also topic 2.11.3.III.b.3(b).) NOTE: Payment of the registration fee is always required if:

2.11.3 Registration requirements (cont'd)

III. Formalities of registration (cont'd)

c. Fee prescribed (cont'd)

2. Waiver-of-fee option (cont'd)

- (a) The "photograph" is in unpublished form, or
- (b) The author was a U.S. citizen or domiciliary on the date of first publication, or if the author of the work, a co-author, or the proprietor of the copyright in the work is a U.S. citizen, domiciliary, or resident on the date the application is filed.

d. Time limitation

- 1. Unpublished works. There is no obligation to register a claim to copyright in an unpublished work. As long as a "photograph" remains in unpublished form, it is subject to protection under the common law against unauthorized use before publication without any action being required in the Copyright Office. However, if a work registered in unpublished form is later published with notice of copyright, a second registration should be made "promptly" thereafter. (See topic 2.11.3.III.d.2.)

2.11.3 Registration requirements (cont'd)

III. Formalities of registration (cont'd)

d. Time limitation (cont'd)

2. Published works. Application for registration should be made "promptly" after publication with notice, but in no event after the expiration of the original twenty-eight year term of statutory protection. The special six-month limitation prescribed for the registration of foreign works under Option B is explained in topics 2.11.3.III.b.3(b) and 2.11.3.III.c.2.

- IV. Manufacturing requirement. A "photograph" may be considered for registration in Class J regardless of the place where the work was produced or manufactured. (See topic 6.4.1.II.a.)

END OF PART 2.11  
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Chapter 2

COPYRIGHTABLE MATTER

Part 2.14 MOTION PICTURES (CLASSES L-M)

Outline of Topics

2.14.1 WHAT IS A MOTION PICTURE?

- I. In general
- II. Classification
  - a. Two classes
  - b. Single application form
  - c. Video tapes
  - d. Types of material not eligible
- III. Sound tracks

2.14.2 STATUTORY REQUIREMENTS FOR COPYRIGHT IN MOTION PICTURES

- I. Publication
- II. Notice
  - a. Form
  - b. Position
- III. Manufacture

2.14.3 PROCEDURE FOR REGISTRATIONS

- I. Copies
  - a. Published motion pictures
  - b. Unpublished motion pictures
- II. Fees
- III. Information contained in application
  - a. Authorship
  - b. New matter
- IV. Unit registrations



CHAPTER 2. COPYRIGHTABLE MATTER

Part 2.14 MOTION PICTURES (CLASSES L-M)

2.14.1 What is a Motion Picture?

I. In general. "A motion picture is a series of pictures presenting to the eye the illusion of motion, which pictures are projected on a screen or transmitted by means of television or otherwise, and have as their origin a series of connected pictures on film or other recording media."

II. Classification.

a. The copyright law provides for registration of motion pictures in two classes: (17 U.S.C. §5)

1. Photoplays (Class L). Photoplays are motion pictures that are dramatic in character and tell a connected story.

Examples:

- (1) DAVID COPPERFIELD, a feature film based on the Dickens novel
- (2) THE WHITE ROSE OF MEMPHIS, a filmed, original teleplay
- (3) THE STRAWBERRY ISLAND ADVENTURE, an animated cartoon
- (4) LARRY LAGER AND PHIL PILSNER GO CAMPING, a filmed T.V. cartoon commercial

2. Motion Pictures Other than Photoplays (Class M). This class includes motion pictures which do not tell a connected story by dramatic means.

Examples:

- (1) THE NEWS OF THE WORLD IN REVIEW, a news-reel
- (2) INTO THE SETTING SUN, a travelog

2.14.1 What is a Motion Picture? (cont'd)

II. Classification. (cont'd)

a. (cont'd)

2. (cont'd)

Examples: (cont'd)

(3) GASOLINE ENGINES FOR WOMEN, a filmed educational T.V. program

(4) YOUR SIDEWALK REPORTER, a filmed T.V. program

b. For purposes of registration, all motion pictures are entered on a single application, Form L-M. The application must indicate whether the film is a photoplay or other than a photoplay.

c. If otherwise qualified as a motion picture, a work reproduced on video tape may be considered for registration in Class L or Class M.

d. The following types of material are not eligible for registration in Class L or Class M:

1. Motion picture scripts. Registration for such works may be considered in Classes C or D.

2. Motion picture scenarios, synopses, outlines, etc. Such works are regarded as "books," and may not be registered in unpublished form.

3. Filmstrips. Such works may be considered for registration as "photographs" in Class J.

III. Sound tracks.

a. The Copyright Office takes no position as to whether copyright in a motion picture covers the integrated sound track portions of the work.

2.14.1 What is a Motion Picture? (cont'd)

III. Sound tracks. (cont'd)

- b. Registration is not made for a sound track alone, or for a sound track as the only new matter in a previously published or registered motion picture.

Examples:

- (1) An old silent film with a new sound track.
- (2) A previously published foreign film with a dubbed sound track in English.

2.14.2 Statutory Requirements for Copyright in Motion Pictures.

I. Publication.

- a. Claims are registered in both published and unpublished motion pictures.
- b. Publication of a motion picture is generally deemed to have taken place when prints of the film are placed on sale, sold, distributed to the public, or distributed to film exchanges, film distributors, exhibitors, or broadcasters under a lease or similar arrangement.

Examples of publication:

- (1) Prints of a "public service" film are sent out free of charge to various television stations for exhibition.
- (2) Prints of a theatrical film are sent out to distributors for rental to exhibitors.
- c. Mere public exhibition or performance is not generally regarded as publication of a motion picture.

2.14.2 Statutory Requirements for Copyright in Motion Pictures. (cont'd)

I. Publication. (cont'd)

c. (cont'd)

Examples:

- (1) "Preview" of a film to test audience reaction.
- (2) Performance of a film on television.

II. Notice.

a. Form.

1. The notice on a published motion picture should generally consist of "the word 'Copyright,' the abbreviation 'Copr.,' or the symbol ©, accompanied by the name of the copyright proprietor, and. . .the year in which the copyright was secured by publication."
2. A notice lacking the year date will be considered for registration either in Class L or Class M, but we caution the applicant that such a notice may not be adequate, especially in Class L.

b. Position.

1. The law does not specify where a notice should be placed on a motion picture film, but the Office will recommend that the notice appear on or near the title frame.
2. Registration will be made if the notice appears either in the opening frames containing the title and credits or at the end of the film.
3. Registration will be refused if the notice appears only on one of the reels in the middle of the film.

2.14.2 Statutory Requirements for Copyright in Motion Pictures. (cont'd)

II. Notice. (cont'd)

b. Position. (cont'd)

4. The notice should be legible when the film is screened or exhibited.

(a) A notice scratched on the leader of a film will be questioned. Registration will be made upon advice that a legible notice appeared on all copies of the film.

(b) A notice on the reel or container will not be accepted.

III. Manufacture. The manufacturing requirements of Sec. 16 (17 U.S.C.) do not apply to motion pictures.

2.14.3 Procedure for Registration.

I. Copies.

a. Published motion pictures.

1. The law requires deposit of two complete copies of the best edition of the film as published; or, if the "author" of the film is a citizen or subject of a foreign state or nation, one complete copy of the best edition is required. (17 U.S.C. §§ 13, 215)
2. The copies must be complete, identical, and of the best edition published.

**Example:**

**A copy of an 8-reel film in which reel 6 is missing will not be accepted.**

2.14.3 Procedure for Registration. (cont'd)

I. Copies.(cont'd)

a. Published motion pictures. (cont'd)

3. In addition to the actual prints of the film, the Copyright Office requires the deposit of a description of a published motion picture. This may take the form of a shooting script, a synopsis, a press book, a continuity, or other identifying matter.
4. A contract for the return of deposited copies may be made between the copyright claimant and the Librarian of Congress, under terms and conditions prescribed by the Librarian.
  - (a) In the absence of such a contract, copies are either held pending the execution of an agreement or are transferred to the Library's Exchange and Gift Division.
  - (b) When such a contract exists, the copies may be returned to the applicant immediately following examination.
  - (c) Such contracts are not encouraged in the case of foreign claimants, but requests for such contracts should be forwarded to the Library's Exchange and Gift Division.

b. Unpublished motion pictures.

1. Photoplays. Section 12 (17 U.S.C.) requires the deposit "...of a title and description, with one print taken from each scene or act, if the work be a motion-picture photoplay."
2. Motion pictures other than photoplays. Section 12 (17 U.S.C.) requires the deposit "...of a title and description, with not less than two prints taken from different sections of a complete motion picture, if the work be a motion picture other than a photoplay."



2.14.3 Procedure for Registration. (cont'd)

II. Fees.

a. Published motion pictures.

1. The registration fee for all domestic motion pictures is \$6.00.
2. If the motion picture qualifies as a work of foreign origin, it may be registered without fee if two copies, a catalog card, and application are received within six months of first publication.

b. Unpublished motion pictures. The registration fee for all unpublished motion pictures is \$6.00.

III. Information contained in application.

a. Authorship.

1. The law requires a statement of the author's citizenship and the application form calls for his name.
2. The law does not make the identity of the "author" of a motion picture clear.
  - (1) Ordinarily a motion picture embodies a large number of contributions, including those of the author of the story, author of the screenplay, director, editor, cameraman, individual producer, etc. These persons ordinarily are not regarded as the "author" of the film in the copyright sense.
  - (2) Since most films are largely "made for hire" the employer is usually regarded as the "author." In most cases the employer is the producing company, although there may be cases where a releasing company, a bank or other organization or an individual is regarded as the author.

2.14.3 Procedure for Registration. (cont'd)

III. Information contained in application. (cont'd)

a. Authorship. (cont'd)

2. (cont'd)

- (3) The statement of authorship given on the application will ordinarily not be questioned unless there is a clear conflict with the facts appearing in the descriptive matter.

- b. New matter. To be registrable as a "new version," a motion picture should contain new visual elements or substantial revisions.

Examples of copyrightable new matter:

- (1) English subtitles on a previously published foreign film.
- (2) An explanatory prologue added to an Italian film version of an opera.
- (3) An edited version of War and Peace, running 100 minutes rather than 200.

- IV. Unit registrations. Related works, such as consecutive installments of a series, must be registered separately under individual titles unless they were actually first published as a unit.

End of Part 2.14

Chapter 3

Publication

Outline of Topics

Part 3.1 WHAT IS PUBLICATION

3.1.1 General publication

- I. General policy with respect to publication
- II. Definition of general publication
- III. Examples of general publication
- IV. Publication of part of a work

3.1.2 Limited publication

- I. Definition of limited publication
- II. Examples of limited publication
- III. General policy with respect to limited publication

3.1.3 Public disclosure by means other than distribution of copies

- I. Performance or rendition
- II. Exhibition of an artistic or graphic work
- III. Exhibition of motion pictures
- IV. Distribution of phonorecords

Part 3.2 DATE OF PUBLICATION

3.2.1 In general

- I. Definition
- II. General policy with respect to the date of publication

Part 3.2 DATE OF PUBLICATION (cont'd)

3.2.2 Choice of a date

- I. Factors to consider
- II. Consignment or release
- III. Publication of separate parts or installments
- IV. Previous registration and new versions
- V. Works first published abroad

3.2.3 Unacceptable dates of publication

- I. Date missing
- II. Incomplete date
- III. Qualified or indefinite date
- IV. Separate parts or installments
- V. Previous edition or version
- VI. Application in advance of date of publication

Part 3.3 EVIDENCE OF PUBLICATION

3.3.1 Factors raising questions as to publication

- I. General practice
- II. Appearance of copies
- III. Information furnished by applicant

3.3.2 After rejection for publication without statutory notice

- I. Resubmission
- II. Unauthorized publication

Chapter 3. PUBLICATION

Part 3.1 WHAT IS PUBLICATION

3.1.1 General Publication.

- I. General Policy with Respect to Publication. Although the statute defines the "date of publication" (see part 3.2, below), the copyright law does not contain a definition of the act of publication itself, and this question is generally left to the courts in specific cases. As a rule, the Copyright Office will not attempt to make any factual determination as to whether or not publication has actually occurred, but will leave this decision to the applicant.
- a. When asked for advice, the Copyright Office will generally refrain from taking a definite position, but will state the meaning of publication in broad terms.
  - b. In fairly clear cases, the Copyright Office may indicate the likelihood that publication has or has not taken place, without foreclosing the applicant from taking the opposite position.
  - c. Where the applicant furnishes information that leaves virtually no room for doubt on the question of publication, registration may be refused.

Examples:

- (1) Applicant states that he has kept one of the three copies of his short story manuscript, and that he considers depositing the other two in the Copyright Office an act of publication.
- (2) Applicant states that his booklet (which bears no notice) has been advertised for sale in a newspaper, and that 350 copies have been sold.

3.1.1 General Publication. (cont'd)

II. Definition of General Publication. Under the court decisions, a general publication may be defined as the act of making one or more copies of a work available to the general public, without express or implied restrictions as to future use, usually by means of a sale, an offering for sale, or a public distribution. As a rule, the act is one which, if the copies in question did not contain a copyright notice, would imply an abandonment of the right of copyright or a dedication to the public.

III. Examples of General Publication. The statutory definition of the "date of publication" (17 U.S.C. § 26) indicates that the placing on sale, or public distribution of copies will normally be regarded as publication. In addition, the following acts may constitute publication in appropriate cases:

- a. Sale of a single copy. Sale or offering for sale of a single copy could be publication, depending upon the intent of the copyright proprietor. When the applicant states that only one copy has been sold, registration will be made if the applicant also indicates that he considers this publication.
- b. Leaving copies in a public place for anyone to take.
- c. Indiscriminate gifts of copies.
- d. Leasing or renting of copies. Lease or rental will ordinarily be regarded as publication unless the distribution was to a limited group or for a restricted purpose.

**Examples:**

- (1) Leasing of copies of a theatrical motion picture to film distributors or exhibitors would be regarded as publication.

3.1.1 General publication. (cont'd)III. Examples of General Publication. (cont'd)d. Leasing or renting of copies. (cont'd)

Examples: (cont'd)

- (2) Rental of a framed painting to an individual on a monthly basis for private display would not be regarded as publication.

e. Deposit of copies in a public library.

1. The deposit of a manuscript in a public library (including the Library of Congress) for unrestricted access by the public will be accepted as constituting publication.
2. When an applicant asserts that a work was published by deposit in a public library, it will be assumed that the deposit was unrestricted unless information to the contrary exists.
3. Deposit in the Copyright Office for registration will not be deemed to constitute publication. ]

f. Exhibition of an artistic or graphic work.  
(See item 3.1.3 II.a, below.)IV. Publication of Part of a Work.

- a. Publication of a portion of a work does not necessarily mean that the work as a whole has been published.

Examples:

- (1) Publication of a detailed plot summary of a play does not constitute publication of the play as a whole.

3.1.1 General publication. (cont'd)

IV. Publication of Part of a Work. (cont'd)

a. (cont'd)

Examples: (cont'd)

(2) Publication of a movie version of an unpublished story does not constitute publication of the story as such.

b. Where a work first appears in serial form and later comes out as a book, its appearance in serial form is considered as first publication. Registration of a claim in the book would depend upon the existence of new matter.

c. Where a work of art (painting, drawing, sculpture, etc.) is reproduced in copies, and the reproduction is published, the Copyright Office regards the work of art as having been published to the extent that its copyrightable features also appeared in the reproduction.

3.1.2 Limited publication.

I. Definition of Limited Publication. Under the court decisions, a limited publication may be defined as one that communicates a knowledge of the contents of a work under conditions expressly or impliedly precluding its dedication to the public.

II. Examples of Limited Publication. Usually limited publication takes place when copies have been circulated privately, have been distributed to a limited group for a specific purpose, or when restrictions as to the use of the work have been imposed.

Examples:

(1) An application on Form E stating no date of publication will be



### 3.1.2 Limited publication. (cont'd)

#### II. Examples of Limited Publication. (cont'd)

##### Examples: (cont'd)

accepted when the applicant indicates that, although printed professional copies have been distributed to various orchestra leaders and singers, he does not regard this as publication.

(2) An application on Form G stating no date of publication will be accepted when the applicant explains that only 40 of his hand-made Christmas cards were sent out to personal friends.

(3) Registration for a printed textbook will not be foreclosed by previous classroom distribution of mimeographed copies of the various chapters, when the applicant states that he does not regard the earlier distribution as publication.

III. General policy with respect to limited publication. As a rule, the Copyright Office will not attempt to decide whether a publication is limited or general, but may indicate the probabilities in fairly clear cases. When there is virtually no room for doubt that general, rather than limited, publication has occurred without statutory notice, registration may be refused.

### 3.1.3 Public disclosure by means other than distribution of copies.

#### I. Performance or Rendition.

a. The performance, rendition, or presentation of a literary, dramatic, or musical work, whether or not it is in public or for profit, is not regarded as publication of the work.

3.1.3 Public disclosure by means other than distribution of copies. (cont'd)

I. Performance or Rendition. (cont'd)

- b. Broadcasts and telecasts are not considered publication, regardless of the size of their audience.
- c. Publication will be questioned where words such as "performed," "televised," "broadcast," etc., have been added to the publication line of the application.

II. Exhibition of an Artistic or Graphic Work.

- a. Where an artistic or graphic work (i.e., a work registrable in Classes F-K) is placed on public exhibition with no restrictions against copying, an application that alleges publication will be accepted.

Examples:

- (1) A photograph exhibited at a White House Press Photographers' show at the Library of Congress, where neither the Library nor the Association places any restrictions against taking photographs of the exhibits.
  - (2) A cemetery memorial erected in a public cemetery where there are no restrictions against copying the monuments.
  - (3) A work of art exhibited at a public gallery where there are no posted by-laws or other notification against copying, and where there is no tacit understanding that copying is forbidden.
- b. Where the exhibition of an artistic or graphic work is not open to the public, or where restrictions on copying have been imposed, general publication is not deemed to have occurred.

3.1.3 Public disclosure by means other than distribution of copies. (cont'd)

II. Exhibition of an Artistic or Graphic Work. (cont'd)

b. (cont'd)

Examples:

- (1) Artistic glassware is exhibited at an industrial fair limited to the trade only.
  - (2) Photographs of textile designs are exhibited with a legend expressly prohibiting reproduction.
- c. Where an artistic or graphic work is shown on television, the Copyright Office will explain that it is not clear whether this constitutes publication, but will make registration as a published work if the applicant believes that publication has occurred.
- d. Publication will be questioned where the words "exhibited," "shown," "televised," etc., have been added in the publication line of an application covering an artistic or graphic work.

III. Exhibition of Motion Pictures.

- a. Lease or rental of copies of a motion picture to a film exchange, film distributor, exhibitor, or broadcaster ordinarily constitutes publication (see item 3.1.1 III. d, above), but mere public exhibition would not be regarded as publication.

Examples:

- (1) A "sneak preview" of a theatrical film at a single theatre would not constitute publication.
- (2) A television film shown simultaneously on a network of 300 stations would not be regarded as published.

3.1.3 Public disclosure by means other than distribution of copies. (cont'd)

III. Exhibition of Motion Pictures. (cont'd)

- b. Publication will be questioned where the words "exhibited," "shown," "televised," etc., have been added in the publication line of an application covering a motion picture.

IV. Distribution of Phonorecords.

- a. A phonorecord, such as a disc, tape, or other similar reproduction of a sound recording, is not regarded as a "copy" of the musical composition, dramatic composition, or literary work recorded on it, and is not acceptable as a deposit copy for copyright registration of the musical composition or the literary or dramatic work. Therefore, the act of distributing phonorecords does not constitute such publication as will invest a statutory copyright, except for registration as a sound recording in Class N.
- b. For the purposes of securing statutory copyright and registration for a sound recording, phonorecords are regarded as "copies" thereof, and discs, tapes, cassettes, cartridges, and other similar reproductions of sound recordings will be accepted as deposit copies in Class N.
- c. Distribution of phonorecords may constitute either investitive or divestitive publication of a sound recording, and the rules stated in sections 3.1.1 and 3.1.2 above are applicable.

Part 3.2 DATE OF PUBLICATION

3.2.1 In General.

- I. Definition. The date of publication is defined in the copyright law (17 U.S.C. §26) as the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority.
- II. General Policy with Respect to the Date of Publication.
  - a. While the Copyright Office may offer some general guidance concerning the choice of a specific publication date, the final decision is up to the applicant.
  - b. The date of publication stated in the application must be complete (month, day, and year), unqualified, and earlier than the date the application was submitted.

3.2.2 Choice of a date.

- I. Factors to Consider. When the applicant is uncertain as to the date he should state, the Copyright Office may outline the following factors to be considered:
  - a. When the exact date is not known, the best approximate date may be chosen, but it should be stated without qualifying language.
  - b. Where the applicant is uncertain as to which of several possible dates to choose, it is generally advisable to choose the earliest date, to avoid implication of an attempt to lengthen the copyright term.
  - c. In the case of books, the affidavit may either state the date of publication or the date of completion of printing, while the application must state the date of publication.  
Ordinarily, a difference between these dates will not be questioned.

3.2.2 Choice of a date. (cont'd)

II. Consignment or Release. Books and other works are frequently sold or consigned before the date set for their "publication" or release to the general public. In such cases, the Copyright Office will accept the date chosen by the applicant without question.

III. Publication of Separate Parts or Installments.

- a. Where various parts or installments of a work are first published separately, each part or installment is regarded as a separate work, subject to its own registration on the basis of its own publication date.
- b. An application giving more than one date of publication will not be accepted.
- c. Where a work is first published as a unit, the fact that parts of the work are later distributed separately will not preclude a single registration for the work.

Example:

Syndicated cartoons first published by distribution in "book" form to newspapers.

IV. Previous Registration and New Versions.

- a. Where the work in question is the first published edition of a work previously registered in unpublished form, the application should give the date of first publication. This is true even if the published edition contains no new matter and the copyright term is not computed from the date of publication.
- b. Where the work is a new version of a previously published work, the application should give the date of publication of the new version, rather than that of the previously published edition.

### 3.2.2 Choice of a date. (cont'd)

#### V. Works First Published Abroad.

- a. An application covering a work first published abroad should state the date of first publication abroad, and should be accompanied by a copy or copies of the foreign edition. As a rule, registration for an American edition of the work depends upon whether or not new matter has been added.
- b. An application covering an American edition of a work first registered for ad interim copyright should state the date of publication of the American edition, but should also indicate the year date of publication of the foreign edition.

### 3.2.3 Unacceptable dates of publication.

#### I. Date Missing.

- a. In classes where registration can be made for published works only, an application in which no date of publication is given will generally be rejected unless it appears likely that publication has taken place or will take place in the near future.
- b. In classes where registration can be made for both unpublished and published works, an application in which no date of publication is given will be questioned if the copies appear susceptible of publication. (See item 3.3.1.II.e, below.)
- c. Where it is probable that publication has taken place or will take place in the near future, a new application following publication will generally be suggested. However, in classes where unpublished registration is possible, registration may be made without correspondence if it seems clear that the applicant understands the statutory requirements and actually wishes registration in unpublished form.

- II. Incomplete Date. An application lacking one or more of the three necessary elements of the date of publication (month, day, and year) will not be accepted.

3.2.3 Unacceptable dates of publication. (cont'd)

II. Incomplete Date. (cont'd)

- a. Where the element is missing from the publication line of the application, the Office may either request the information and add it to the application, or request a new application.
- b. Where the date given in the affidavit on Form A is incomplete, a new application and affidavit will be requested.

III. Qualified or Indefinite Date.

- a. An application in which the date of publication is qualified by language such as "approximately," "on or about," "posted" (for billboard posters), "exhibited," "telecast," etc., will not be accepted.
- b. An indefinite date, such as one extending over a period of time, will not be accepted.

Examples:

- (1) "July 20-26, 1962"
- (2) "Last week of December, 1962"

IV. Separate Parts or Installments. An application giving more than one date of publication will not be accepted. (See item 3.2.2 III, above.)

V. Previous Edition or Version. An application giving only the date of publication for a previous edition or version will not be accepted. (See item 3.2.2 IV, above.)

VI. Application in Advance of Publication. An application stating a date of publication that is later than the date the application is received will ordinarily not be accepted.

- a. Where the date of publication given in the application is less than one month in advance of the date the application was received in the Copyright Office, the application, copies, and fee will be retained, and the applicant will be requested to submit a new application after publication occurs.



3.2.3 Unacceptable dates of publication. (cont'd)

VI. Application in Advance of Date of Publication. (cont'd)

- b. Where the date of publication given in the application is more than one month in advance of the date of receipt, the application will be retained but the copies and fee will be returned and the case will be closed. The applicant will be asked to submit a new application, copies, and fee after publication.
- c. Where the date of publication is the same as, or a few days earlier than, the date of receipt in the Copyright Office, and the circumstances clearly indicate that the application left the applicant's hands before the date of publication stated in it, a new application will be requested.

Example:

An application received March 2, 1962 gives March 1, 1962 as the date of publication, but was mailed in an envelope postmarked from Honolulu on February 27.

- d. In the case of well-established daily newspapers, application on Form P may be accepted if received not more than one month in advance of the date of publication they state.

Part 3.3 EVIDENCE OF PUBLICATION

3.3.1 Factors raising questions as to publication.

I. General Practice. In general, the presence of a date of publication in the application will be accepted as indicating that publication has taken place, unless the deposit copies, or information furnished by the applicant, raise questions as to whether publication actually has taken place.

II. Appearance of Copies.

- a. Material submitted as published in Classes A and E will not generally be questioned on the single ground that copies are handmade or in preliminary form (e.g., photostats, mimeographed copies, etc.). Such material may be questioned when the copies contain deletions or insertions, when the deposit copies are not identical, or when the copies appear incomplete.
- b. Material submitted as published in other classes may be questioned if the copies are handmade or are in preliminary form, unless the nature of the work would make publication in that form a normal occurrence.

Examples:

- (1) Artist's handmade drawing of a commercial label will be questioned.
  - (2) Mimeographed copies of a play would normally not be questioned.
- c. Where the notice on a work has been added by hand, the action to be taken depends upon the nature of the work and other available information.
    1. If the handmade notice is consistent with the nature of the copies, and there is no other reason to question publication, registration is made without correspondence.

### 3.3.1 Factors raising questions as to publication. (cont'd)

#### II. Appearance of Copies. (cont'd)

##### c. (cont'd)

2. In certain cases the rough or tentative nature of the notice may furnish a reason to question whether the work has actually been published.
  3. In appropriate cases the nature of the notice may prompt a search of the correspondence records to determine whether the claim had previously been rejected for publication without statutory notice.
- d. The fact that the copies bear a statement indicating that their distribution has been restricted or limited in some way will not generally be sufficient cause to question publication.

##### Examples:

- (1) "Confidential--these specifications are for subscribers' use only"
  - (2) "Not for general distribution"
  - (3) "For professional use only"
- e. Where the copy of a work submitted for registration in unpublished form bears the prescribed notice and is printed or otherwise susceptible of publication, registration will generally be deferred and the applicant informed of the necessity for making a new registration after publication. If the applicant, after being informed, still desires an unpublished registration, it will not be refused. (See item 3.2.3.I, above.)
- f. Where an application is submitted for a pictorial or graphic work, whether as unpublished or published, and the transmittal letter accompanying the application bears the same work, without notice, as part of the letterhead design, publication with notice will be questioned.

3.3.1 Factors raising questions as to publication. (cont'd)

III. Information Furnished by Applicant. Information volunteered by the applicant or furnished in response to correspondence may contradict the publication statements (or lack of them) in the application.

3.3.2 After rejection for publication without statutory notice.

I. Resubmission.

- a. Where a claim has been rejected for publication without statutory notice, and the applicant resubmits the material with a good notice but without reference to the earlier rejection, the claim will again be rejected if the new application contains the same date of publication or a date earlier than that of the letter of rejection.
- b. In such cases, where the date of publication has been changed to a date later than that of the rejection letter, the Copyright Office will request an explanation of the second application.
- c. Where there has been a previous rejection but the applicant explains that publication had not actually taken place when the earlier application was submitted, registration will be made following publication with notice.

II. Unauthorized Publication.

- a. In the rare case in which the applicant alleges that the work (which lacks the statutory notice) was not published "by the copyright proprietor or under his authority," the Copyright Office may consider registration following an "authorized" publication with notice.
- b. Generally, when the copyright proprietor has authorized publication with notice, the mere fact that the person acting under his authority omitted the notice or made an error in it, will not make the publication "unauthorized."

Chapter 4

Notice

Outline of Topics

Part 4.1 WHEN REQUIRED

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- II. Classes F to K
- III. Classes L and M
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  - c. Deceased person
  - d. Estate, executor or administrator
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Part 4.2 FORM OF NOTICE (cont'd)

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4.2.4 Year date

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- a. Copyright by publication
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- a. Date in notice later than date of publication
  - 1. General rule
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- b. Date in notice earlier than date of publication
  - 1. General rule
  - 2. Previous publication or registration indicated

4.2.5 Dispersed notice

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- II. Where elements are separated
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Part 4.3 POSITION OF NOTICE

4.3.1 In books

- I. Statute
- II. Title page

Part 4.3 POSITION OF NOTICE (Cont'd)

4.3.1 In books (Cont'd)

- III. Page following the title page
- IV. Page opposite the title page or its reverse
- V. Individual work in compilation
- VI. Work of several volumes published at the same time

4.3.2 In periodicals

- I. Statute
- II. Title page
- III. First page of text
- IV. Under title heading

4.3.3 In contributions to periodicals

4.3.4 In dramatic works

4.3.5 In music

- I. Statute
- II. Title page
- III. First page of music
- IV. Reverse of title page

4.3.6 In Classes F-K

- I. Single-page work
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4.3.7 In motion pictures

Part 4.4 MISCELLANEOUS

4.4.1 Manuscript notice

4.4.2 Legibility and visibility

- I. Blurred notice
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4.4.3 Notice affected by use of work

- I. Notice on tag or container

Part 4.4 MISCELLANEOUS (Cont'd)

4.4.3 Notice affected by use of work (Cont'd)

- II. Notice likely to be lost in use of work
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- IV. Dust jacket

4.4.4 Limitations in notice

- I. Limitation not required
- II. When limitation given



Chapter 4. NOTICE

Part 4.1 WHEN REQUIRED

4.1.1 Unpublished works.

I. Without notice. No notice is required on an unpublished work. Hence, for those classes of works which can be registered in unpublished form (all classes except A, B, F, H, and K), an unpublished work bearing no notice may be registered.

II. With notice.

a. If an unpublished work bears a notice naming a claimant who is not the same person as the claimant in the application, the Office will write for an explanation. (See topic 4.2.3 II and III.)

b. If an unpublished work bears a notice which would be faulty if used on the work when published, the work may be registered but the Office will send a cautionary letter.

Examples:

- (1) A notice on an unpublished dramatic script lacking the name of the copyright proprietor.
- (2) A notice with the wrong year date on unpublished music.
- (3) A notice at end of a ten-page lecture.

4.1.2 Works published in U.S.

I. General Rule. To be registrable, the deposit copies of a work published in the U.S. must bear an acceptable notice. (As to Publication, see Chapter 3.)

II. Accidental omission.

a. If the Office is informed that the great bulk of the published copies of a work bore an appropriate notice, but that the notice was accidentally omitted from a very few of the published copies,

4.1.2 Works published in U.S. (cont'd)

II. Accidental omission. (cont'd)

a. (cont'd)

registration may be made. In such cases, if the deposit copies do not bear the notice, copies with the notice will be requested.

b. If a considerable number of copies have been published without notice, registration will be denied.

c. If the entire first edition of a work was published without notice, registration will be denied even if the first edition consisted of a relatively small number of copies.

4.1.3 Works published abroad. (See Part 8.2)

I. Works subject to ad interim registration. (See Part 8.4)

a. No notice is required for the copies of a work subject to ad interim registration which are published abroad, or which are deposited for registration, regardless of the citizenship or domicile of the author.

b. Where the copies deposited for ad interim registration lack any notice, registration will be made without a cautionary letter. Where they contain a defective notice or present a variance in claim, the practices described in topics 8.2.2,II.e.2 and 8.4.4. will be followed.

II. Works other than those subject to ad interim registration.

a. In general, works first published abroad after June 18, 1959 (other than those subject to ad interim registration) must bear a notice of copyright in the required form and position in order for registration to be made. However, the Copyright Office will apply a liberal standard in evaluating the acceptability of the notice on such works, and will generally accept the notice at face value. (See topic 8.2.1.III.)

4.1.3 Works published abroad. (cont'd)

II. Works other than those subject to ad interim registration. (cont'd)

- b. Works by foreign authors first published before June 18, 1959 will be considered for registration even if the notice is defective or lacking, but a cautionary letter will be sent in every such case.
- c. For practices with respect to the form and position of the notice on works first published abroad, see topic 8.2.2.

Part 4.2 FORM OF NOTICE

4.2.1 Elements required. (17 U.S.C. sec. 19; for U.C.C. requirements, see topic 8.2.2.II.a.)

- I. Classes A, B, D, and E. The form of notice for works in these classes consists of (1) the word "Copyright," the abbreviation "Copr.," or the symbol ©, (2) the year in which copyright was secured, and (3) the name of the copyright proprietor.
- II. Classes F to K.
  - a. For works in these classes, a notice in any of the following forms may be accepted:
    1. The word "Copyright" or the abbreviation "Copr." or the symbol ©, accompanied by the name of the proprietor, with or without the year date; or
    2. The word "Copyright" or the abbreviation "Copr." or the symbol ©, accompanied by the initials or other mark of the proprietor, provided that his name appears on some accessible portion of the copies or its margin, back, base, pedestal, or mounting.
- III. Classes L and M. A notice without the year date will be accepted for either Class L or M, but the applicant will be cautioned that such a notice may not be adequate, especially for Class L.
- IV. Contributions to periodicals. The notice on a contribution to a periodical must be in a form appropriate to the character of the contribution as a separate work. Thus, if the contribution is a literary or musical work, the notice must include the year date. If the contribution is a graphic work (Class F-K material), a notice lacking the year date is acceptable.

4.2.2. "Copyright" or "Copr." or © variants.

I. A misspelled or variant form of "Copyright" or "Copr." may be accepted if it is clear that copyright is meant. Examples of variants which may be accepted:

1. Copyrighted
2. Copywrite
3. Copywritten
4. Copyright Pending
5. Copyright Applied For
6. Copyright and Registered
7. Registered U.S. Copyright Office
8. Copy.
9. Copyr.
10. Cpr.
11. Corp. (if clearly not used to refer to a corporation.)

II. The equivalent of "Copyright" in a foreign language (e.g., the Spanish "derechos reservados") will not be accepted.

III. A variant of the symbol © will be acceptable only where it resembles the © closely enough to indicate clearly that the copyright symbol is meant.

## Acceptable variants:

1. ©
2. ©
3. ©
4. @
5. (c)

## Unacceptable variants:

1. CO
2. C
3. C/O
4. c
5. @

4.2.3 Name of claimant

I. Identity of claimant

a. In general

1. For all classes of works, the notice must include "the name of the copyright proprietor." (17 U.S.C. sec. 19.)
2. Ordinarily the Copyright Office will not question the name given in the notice, as long as it is substantially the same as the name given as claimant in the application and appears sufficient to identify the copyright proprietor.
  - (a) Abbreviations, last names alone, trade names, etc., will ordinarily be accepted if substantially the same form of name also appears as claimant in the application. (See Supplementary Practice No. 37).

Examples:

- (1) Colo. Mfg. and Merch. Co.
- (2) Doloukanova
- (3) Maxwell's

- (b) Where it is clear from the face of the copies that the person named in the notice is not the copyright proprietor, registration will be denied.

Examples:

- (1) "Copyright 1960 by Hill and Dale Songs, licensee of U.S. publishing rights"
- (2) "Copyright 1960 by George Jean Kronenberger (for the unknown author or owner of copyright in this play)"

- (c) Where the name in the notice is so vague, abbreviated, or ambiguous that it could not be considered to identify the claimant, registration will be denied. (But see topic 4.2.3.II, below, concerning variant forms of claimant's name.)

4.2.3. Name of claimant (cont'd)I. Identity of claimant (cont'd)a. In general (cont'd)

2. (cont'd)

(c) (cont'd)

## Examples:

- (1) "Copyright 1960 by All Right-Thinking Citizens of Eastport, Maine"
  - (2) "Copyright 1960 by C.L." (Where the claimant is apparently an individual and there is no indication that the initials represent a trade name)
  - (3) "Copyright 1960 Birds and Beasts" (Where "Birds and Beasts" is the title of the particular textile design, and there is no indication that it is the accepted alternative designation of the claimant)
- (d) Where the 'name' in the notice is a trademark, registered or otherwise, copyright registration will not be made unless the trademark also serves as a trade name or accepted alternative designation under which the public might identify the claimant. (See topic 4.2.3.II.d.6, below.)
- (e) If it is unclear whether the 'name' in the notice and application is sufficient, inquiry should be made, and a new application explaining the nature of the identification may be requested.

## Examples:

- (1) HB Co., accepted alternative designation of Humbert Bakery Co., Inc.
  - (2) Fandango, trade name of the Status Seekers Jewelry Co.
- (f) For practices with respect to variances in claim, see topic 4.2.3. II-III, below.

4.2.3 Name of claimant (cont'd)

I. Identity of claimant (cont'd)

b. Identity by reference. A notice reading "Copyright 1960 by the author" or "by the publisher" may be accepted if the author or publisher is named and identified as such in some position where it will be readily seen. The claim will ordinarily be rejected where more than one author is named on the work, or where for other reasons the identity of the copyright owner is ambiguous or unclear.

c. Deceased person.

1. If the person named in the notice died after the work was published, registration should be made in his name.

2. When the Office has knowledge that the person named in the notice died within three months before the work was published:

(a) an application in the name of the estate of the deceased, or in the name of the executor or administrator of his estate as such, may be accepted. Thus, any of the following would be acceptable:

Examples:

(1) The Estate of A

(2) The Estate of A, by B, Executor  
(or Administrator)

(3) B, Executor (or Administrator)  
of the Estate of A

(b) An application in the name of the deceased, or in the name of the publisher, will be rejected. In such cases the possibility of registration in the name of the estate, or of the executor or administrator as such, will be suggested.

(c) When an application is received in the name of a person claiming as the widow or heir of the deceased, the Office will suggest that a new application be submitted in the name of the appropriate legal representative, pointing out, however, that if no administration of the estate has been or will be had, the application may be filed in the name of the estate.



4.2.3 Name of Claimant. (cont'd)I. Identity of claimant. (cont'd)c. Deceased person. (cont'd)

3. Any case in which the person named in the notice died more than three months before the date of publication will be considered individually on its special facts. Registration (in the name of the estate or of the executor or administrator) may be made in some instances where the use of the deceased's name in a work published more than three months after his death is explained by special circumstances; for example: where the work was sent to the printer before the death occurred and a subsequent change in the notice would not have been feasible, or where the publisher was not informed of the death until after or very shortly before the date of publication.

d. Estate, executor, or administrator. A notice in the name of the estate of a deceased person, or in the name of the executor or administrator of an estate as such, may be accepted for registration in the same name (e.g., "Estate of John Doe," or "James Smith, Executor of Estate of John Doe"). If the application gives only the name of the executor or administrator without designating him as such (merely "James Smith"), the application will be annotated to show the full form given in the notice.

e. Wrong claimant. Where the Office is advised that the wrong person is named in the notice (e.g., the printer's name inserted by mistake), an application in the name given in the notice may be accepted with a cautionary letter, if there is some indication that use of the name in the notice was a good faith error, or if tacit authorization may be implied. An application in the name of the rightful claimant not given in the notice will not be accepted. For practices with respect to works first published abroad, see topic 8.2.2, II.

f. Trustee. Where the notice is in the name of a trustee (e.g., "John Doe, Trustee," or "John Doe, Trustee for James Smith," or "John Doe for the benefit of James Smith"):

4.2.3 Name of claimant. (cont'd)

I. Identity of claimant. (cont'd)

f. Trustee. (cont'd)

1. An application in the name of the trustee as such ("John Doe, Trustee") or in the same form as given in the notice (e.g., "John Doe for the benefit of James Smith") may be registered.
2. An application giving only the name of the trustee without designating him as trustee (merely "John Doe") may be registered, but the Office will annotate to show the full form given in the notice.
3. An application in the name of the beneficiary alone ("James Smith") will not be registered.

g. Assignee.

1. Where the notice names one person and the application names another person who is identified (either in the application or in correspondence) as his assignee, the Office will request a new application in the name given in the notice, with the suggestion that the assignment be recorded.
2. Where the notice names an assignee alone (e.g., "Copyright 1960 assigned to Doaks Publishing Co."), an effort will be made to determine, through searching and/or correspondence, whether an earlier edition has been published or registered, and whether the present edition contains new matter. (Note: This situation can be altered by the year date used in the notice; see topic 4.2.4).
  - (a) If this is the first publication of the work, and there has been no previous unpublished registration, registration will be in the name in the notice.
  - (b) If this is not the first published edition of the work, and the earlier edition contained a notice in another person's name:

4.2.3 Name of claimant. (cont'd)I. Identity of claimant. (cont'd)g. Assignee. (cont'd)

## 2. (cont'd)

## (b) (cont'd)

(1) If there is new matter, registration will be made in the name in the notice and the desirability of recording the assignment will be suggested.

(2) If there is no new matter, the claim will be rejected because the work is a reprint, with a warning as to the effect of substituting an assignee's name in the notice before recordation.

(c) If this is the first publication of the work, but an unpublished version has been registered in another name, registration will be made in the name in the notice, whether or not there is new matter. The applicant will be notified of the desirability of recording his assignment and (unless there is new matter) warned about the substitution of his name in the notice before recordation. The same practice is followed with respect to the American edition of a work registered ad interim.

3. Where the notice names both an assignor and an assignee (e.g., "Copyright 1960 by John Doe, assigned to Doaks Publishing Co.," ) an effort will be made to determine, through searching and/or correspondence, whether an earlier edition has been published or registered, and whether the present edition contains new matter. (Note: This situation can be altered by the year date used in the notice; see topic 4.2.4.)

(a) If this is the first publication of the work, and there has been no previous unpublished registration, registration will be made in the name of the assignee, provided he was the owner on the date of first publication.

(b) If this is not the first published edition of the work, and the earlier edition contained a notice in the assignor's name:

4.2.3 Name of claimant. (cont'd)

I. Identity of claimant. (cont'd)

g. Assignee. (cont'd)

3. (cont'd)

(b) (cont'd)

(1) If there is new matter, registration will be made in the name of the assignee, assuming he was the owner on the date of first publication. The desirability of recording the assignment will be suggested.

(2) If there is no new matter, the claim will be rejected because the work is a reprint. The desirability of recording the assignment will be suggested.

(c) If this is the first publication of the work but an unpublished version has been registered in the name of the assignor:

(1) If there is new matter, or if the assignment has been recorded, registration should be made in the name of the assignee, provided he was the owner on the date of first publication.

(2) If there is no new matter, and if the assignment is not recorded, registration will be made in the name of the assignor, and registration in the name of the assignee will be refused.

(d) An application in both names will be rejected, even if it follows the form of the notice.

(e) In any case, the application will be annotated to reflect the form of the notice.

h. Licensee.

1. A notice naming a licensee alone (e.g., "Copyright 1960, Tinpan Music Co., U.S. Licensee") will not be accepted.

**4.2.3 Name of claimant. (cont'd)****I. Identity of claimant. (cont'd)****h. Licensee.****1. (cont'd)**

(a) If it is not apparent that the name is that of a licensee, it will be assumed that the party named is the proprietor.

2. Where a notice names both the copyright owner and a licensee (e.g., "Copyright 1960 by Herman Schmitt. Tinpan Music Co., U.S. Licensee"), registration may be made in the name of the copyright owner (Herman Schmitt) but not in the name of the licensee.

**II. Variant form of claimant's name.****a. Minor variations.**

1. Where there are relatively minor variations between the form of the claimant's name or corporate title in the application and in the notice, registration will be made without correspondence.
2. Where the variance is quite minor, or where it involves mere descriptive matter, no annotation is made.

**Examples:**

- (1) In notice: J. P. Higgins  
In application: John Paul Higgins
- (2) In notice: Swamplands Realty Co., Inc.  
a Delaware Corporation  
In application: Swamplands Realty Co.,  
Inc.
- (3) In notice: Rosetta Stone, Music Publisher  
In application: Rosetta Stone

4.2.3 Name of claimant (cont'd)

II. Variant form of claimant's name (cont'd)

a. Minor variations (cont'd)

3. Where it is a question whether the application should be annotated or not, the rule to follow generally is to annotate when the fuller form of the name appears in the notice.
4. Annotations should generally be made where the differences between the forms of the name might otherwise cause difficulty in identifying the claimant or the registration, but are not sufficient to require correspondence.

Examples:

- (1) In notice: Mrs. Tommy Deauville  
In application: Arlene Deauville
  - (2) In notice: Fairchild Publishing Corp.  
In application: Fairchild Pub. Co. Inc.
  - (3) In notice: Educational Council of the  
Affiliated American Snooker  
Players  
In application: Council on Education of  
the Snooker Players of  
America
  - (4) In notice: Anthony C. Payola Music  
Publishing Company  
In application: Payola Music
  - (5) In notice: H. B. Leary, Jr., and  
Bro., Inc.  
In application: H. B. Leary, Inc.
- b. "Inc." and "Corp." Where the variance involves omission of the designation "Inc." or "Corp.," the question of whether to write or annotate is determined by the circumstances.
1. In notice: Fairchild Publishing Co., Inc.  
In application: Fairchild Publishing Co.

4.2.3 Name of claimant (cont'd)

II. Variant form of claimant's name (cont'd)

b. "Inc." and "Corp." (cont'd)

1. (cont'd)

Practice: Where the applicant is a regular remitter and the error seems likely to recur (e.g., in periodicals, serials, jewelry, etc.), the Office writes for a new application. Otherwise, registration is made with an annotation.

2. In notice: Fairchild Publishing Co.  
In application: Fairchild Publishing Co., Inc.

Practice: If it seems clear that the names refer to the same legal entity, the claim is registered with an annotation; and if the variance seems likely to recur, a cautionary letter is sent. If the identity between the names is open to question (e.g., if there is a possibility that the company has been incorporated between the time of publication and registration), the application is questioned.

Corporate subsidiary or department. Where the variance is between the name of a corporation and the name of a subsidiary or department of the corporation, registration may be made with an annotation if the relation between the two names is nationally known, or if it is clear from information on the copies. Otherwise, the variance will be questioned.

Examples:

- (1) In notice: Chevrolet Division  
In application: General Motors Corporation  
Practice: Annotate

4.2.3 Name of claimant (cont'd)

II. Variant form of claimant's name (cont'd)

c. Corporate subsidiary or department (cont'd)

Examples: (cont'd)

(2) In notice: Wacky Record Corp., a  
subsidiary of Black  
and Blue Music, Inc.

In application: Black and Blue  
Music, Inc.

Practice: Annotate

(3) In notice: Titanic Film Corp.  
In application: Gigantic Pictures,  
Inc.

Practice: Question the variance

d. Abbreviations, initials, trade names, and other variants

1. An application stating only the full name of the copyright claimant will be questioned or rejected when the notice contains only the claimant's initials, a sharply abbreviated form of his name, or a different designation which might be considered his trade name.
2. Registration will be refused when it is apparent on the face of the application, or it develops from correspondence, or otherwise that the designation in the notice is not the claimant's trade name and is not capable of identifying him to the public.
  - (a) Under ordinary circumstances an application in the name of an individual will be rejected outright when only the individual's initials appear in the notice.
  - (b) In determining whether the designation in the notice can be considered the claimant's "name," the most important factor is whether the designation is capable of identifying the claimant to the public generally, as distinguished from the trade itself or from the specialized public in the trade. However, where it does not fly in the face of common sense, the applicant's



4.2.3 Name of claimant (cont'd)

II. Variant form of claimant's name (cont'd)

d. Abbreviations, initials, etc. (cont'd)

2. (cont'd)

(b) (cont'd)

assertion as to use of the designation as a trade name will generally be accepted without further question. (See topic 4.2.3.II.d.5, below)

(c) Examples where registration is refused:

(1) In notice: O.L.

In application: Oliver Lemming

(2) In notice: C

In application: Caledonian Boar Hunts, Inc.

(3) In notice: Or. Pst. Frd. Cb.

In application: Oregon Postalworkers Friendship Club

(4) In notice: "© 1959 Circles and Squares"

In application: (covering a fabric design entitled "Circles and Squares"): "Harpweaver Fabrics, Inc."

3. When the designation in the notice appears to be a trade name, an accepted alternative designation, or similar variant under which the public may be able to identify the claimant, a new application will be requested, reflecting the designation in the notice, the full name, and the relationship between them.

(a) Whenever possible, the applicant should be encouraged to state the claimant in line 1 of the application in the following order: (1) variant designation exactly as it appears in the notice, (2) relationship between the variant and the full name, (3) the full name. This will not always be possible in cases where the relationship is expressed as "doing business as", "trading as", etc.

4.2.3 Name of claimant (cont'd)

II. Variant form of claimant's name (cont'd)

d. Abbreviations, initials, etc. (cont'd)

3. (cont'd)

(a) (cont'd)

**Example:** "A.A.S., Inc., accepted alternative designation of Affiliated Abominable Snowmen, Incorporated," rather than "Affiliated Abominable Snowmen, Incorporated, whose accepted alternative designation is A.A.S., Inc."

(b) The phraseology expressing the relationship between the variant designation in the notice and the full name of the claimant will vary depending upon the nature of the claimant and other circumstances. However, whenever appropriate, the applicant should be encouraged to use uniform phraseology in the pending case and in future cases of the same sort. The following represent the preferred phrases in the most common situations, although variations expressing the same thought may be accepted.

(1) Where the claimant is not a corporation, the following are examples of acceptable phrases:

- (i) Thomas Jones, doing business as Fielding Record Co.
- (ii) Emma Hart, sole owner of Nelson's Chile Parlor
- (iii) Ella Wheeler Parkington, pseudonym of Calvin T. Smith
- (iv) Harry Lillis Crosby, also known as Bing Crosby
- (v) Richard Ackroyd, trading as Rump-sprung Mattress Co.

4.2.3 Name of claimant (cont'd)II. Variant form of claimant's name (cont'd)d. Abbreviations, initials, etc. (cont'd)

3. (cont'd)

(b) (cont'd)

(1) (cont'd)

(vi) S & D Co., accepted alternative designation of Sturm and Drang Company

(vii) Andante, trade name of Millville Jewelry Co., a partnership

(2) Where the claimant is a corporation, the following are examples of acceptable phrases:

(i) Florenza, accepted alternative designation of Dan Kasoff, Inc.

(ii) KT, trade name of Kaytee Imports, Inc.

(iii) Trifari, accepted alternative designation of Trifari, Krussman & Fishel, Inc.

(iv) Glunch, registered firm name of Glumpy Optical Co., Inc.

4. In cases where use of the abbreviation or variant in the notice has not been discussed or established in previous correspondence, and where questions might be raised as to the validity of the notice, a cautionary letter should be sent. Future use of the variant should be discouraged except where the article is so small that no other alternative exists (e.g., jewelry), or where the variant is so well-known nationally that it is fully effective in identifying the claimant to the public (e.g., "GE," "GM," "AAA.")

5. The basis for acceptance of abbreviation, initials, and other variants is that they are capable of identifying the copyright claimant to the public as a trade name, nickname, pseudonym, or other accepted alternative designation. Ordinarily the Office will not question an applicant's assertion to this effect

4.2.3 Name of claimant (cont'd)

II. Variant form of claimant's name (cont'd)

d. Abbreviations, initials, etc. (cont'd)

5. (cont'd)

and will not require him to submit proof of his statement. However, if the statement appears to be clearly inconsistent or incorrect on its face, the application may be questioned or rejected.

Examples:

- (1) Dwight D. Eisenhower, pseudonym of John Brown
- (2) X, accepted alternative designation of Louella Chalfont
- (3) Oscar Claiffey, doing business as the American Red Cross

6. A trade name identifies a business and a trademark identifies the goods produced by that business. Thus, when a trademark serves only to identify goods or products, it cannot be accepted as the "name" of the proprietor in the copyright notice. However, when a trademark also serves as a trade name in identifying the copyright proprietor to the public, registration may be considered. (See topic 4.2.3.I.a.2.(d), above.)

- (a) Where the notice contains a designation which is identified only as a trademark (registered or not) inquiry will be made as to whether the mark also serves as the trade name or accepted alternative designation of the claimant himself. If so, a new application stating this fact will be requested. If not, registration will be refused.

Examples:

- (1) In notice: Skip-Itch  
In application: Skip-Itch, registered trademark of Samuel L. Beitchman, d.b.a. Sylbe Drug Co.

4.2.3 Name of claimant (cont'd)

II. Variant form of claimant's name (cont'd)

d. Abbreviations, initials, etc. (cont'd)

6. (cont'd)

(a) (cont'd)

Examples: (cont'd)

(1) (cont'd)

Practice: Reject unless new application received stating that "Skip-Itch" is trade name or accepted alternative designation of claimant.

(2) In notice: Trifari

In application: Trifari, accepted alternative designation and registered trademark of Trifari, Krussman & Fishel, Inc.

Practice: Accept, but if possible discourage reference to trademark in line 1.

(b) The fact that a trademark or trade name is registered in the Patent Office or elsewhere has no bearing on copyright registration one way or the other.

(c) To be considered a trade name or accepted alternative designation, a trademark must contain recognizable letters or words. A purely pictorial or graphic mark cannot be considered a "name" for this purpose.

7. Where the difference between the designation in the notice and the claimant's name is more than a minor variation (see topic 4.2.3.II.a, above), the Office will write for a new application reflecting the relationship between the two names, rather than resolving the variance itself by annotation.

4.2.3 Name of claimant (cont'd)

II. Variant form of claimant's name (cont'd)

d. Abbreviations, initials, etc. (cont'd)

7. (cont'd)

Examples:

(1) In notice: B & W Labs  
In application: B & W Labs, accepted  
alternative designation  
of Bang and Whimper  
Atomic Laboratories,  
Inc.

(2) In notice: Verdi's Pizza Palace  
In application: Joe Green, d.b.a.  
Verdi's Pizza Palace

8. Where there is any question as to precisely what name is considered a part of the notice (e.g., in dispersed notice cases, or where other names follow the notice), the application will be annotated to show what is regarded the name in the notice.

III. Different claimants in notice and application.

a. In general. Where the application and notice appear to name different persons, the Office will write for an explanation. (The explanation may show, for example, that the name in the notice is the pseudonym

4.2.3 Name of claimant. (Cont'd)III. Different claimants in notice and application. (Cont'd)a. In general. (Cont'd)

or trade name of the applicant: see the preceding topics 4.2.3, I and II). If they are actually different persons whose claims would conflict, the application will be rejected. (See topic 4.2.3.I.e.)

b. Additional names.

1. Where the notice names two claimants and only one of them is given in the application, a new application giving both names will be suggested. But if registration in the one name only is desired, the Office will so register with an annotation.
2. Where the application gives two claimants and only one of them is named in the notice, a new application in the name in the notice will be requested, with the suggestion that, if a transfer of part-ownership of the copyright is involved, the assignment be recorded.

4.2.4 Year date.

- I. When required. The year date must be included in the notice in any "printed literary, musical, or dramatic work." (17 U.S.C. § 19). It is required on works in Classes A, B, D, and E published in the United States. It is not required, so far as Title 17 is concerned, for Classes F-K. The Office will recommend use of the year date on motion pictures, Classes L and M; however, motion pictures without the year date may be accepted but a cautionary letter will be sent.

Note: In order to claim the exemptions of §9(c), pursuant to the U.C.C., the year date is required in the notice (which should also contain the symbol © for all classes.

4.2.4 Year Date. (cont'd)

II. Form of year date. The Office will accept a year date in any of the following forms:

- (1) Arabic numerals, e.g., 1960
- (2) Roman numerals, e.g., MCMLX
- (3) Abbreviation of Arabic numerals, e.g., '60
- (4) Spelled out in words instead of numerals, e.g., Nineteen Sixty

III. Appropriate year date.

- a. Copyright by publication. Where copyright was secured by publication, the year date should be the year in which the work was first published as stated in the application.
- b. Prior registration as unpublished. Where copyright was secured by registration of the work in unpublished form, copies later published without change in substance should bear the year date of such original registration. If there is new matter in the published work, the notice may include either the year date of first publication alone or, preferably, both the dates of registration and of publication.
- c. Edition containing new matter. Where a new edition of a work previously copyrighted as a published work contains new matter, the year date in the new edition may be the year of its own publication. Or both the year date of the original copyright and the year date of publication of the new edition may be given.
- d. American edition. Where a work was first published abroad, the later American edition should bear the year date of such first publication. An American edition bearing only the later year date of its own publication will be rejected unless it contains new matter.



4.2.4 Year date. (Cont'd)IV. Variance between notice and application.

- a. Date in notice later than date of publication. Where the date in the notice is later than the date of publication (that is, apparently a postdated notice):
1. General rule: Where there is nothing in the copies, application or correspondence to indicate that the work, or a substantial part of it has been previously published or registered in unpublished form, the claim should be rejected without searching or preliminary correspondence.
  2. Exception: Where no previous publication or registration is indicated, but the date of publication given in the application falls within the year immediately preceding the year in the notice, the claim should be entered without searching. A warning letter should be sent, and the application (not the certificate) should be annotated to show the date in the notice.
  3. Previous publication or registration indicated. Where something on the application, in the notice, on the copy, or elsewhere in the correspondence file indicates that the work, or a substantial part of it, has been previously published or registered in unpublished form, the Office should search or correspond to determine the date of the earlier publication or unpublished registration, and whether or not the present copies contain new copyrightable matter.
    - (a) If an earlier publication for the work (other than foreign publication for an English-language book registered ad interim) is found, and there is no reason to suppose that the present copies contain new copyrightable matter, the claim should be rejected as a reprint and the problem presented by postdating the notice should be pointed out.
    - (b) If unpublished registration (or foreign publication for an English-language book registered ad interim) took place before the year immediately preceding the year in the notice, the claim should be rejected for postdated notice, unless:

4.2.4 Year date. (Cont'd)

IV. Variance between notice and application. (Cont'd)

a. Date in notice, etc. (cont'd)

3. Previous publication, etc. (cont'd)

(b) (Cont'd)

- (1) the present copies contain copyrightable new matter and the date of publication falls within the year immediately preceding the year in the notice; or
- (2) the present copies contain new copyrightable matter and the year date of publication given on the application is wrong.

(c) If unpublished registration (or foreign publication for an English-language book registered ad interim) took place within the year immediately preceding the year in the notice — and if there is no reason to suppose that the present copies contain new copyrightable matter and the year date of publication given on the application is wrong — the claim should be entered as a doubtful case. (See topic 4.2.4.IV.a.2, above.) In such cases the application (not the certificate) should be annotated to reflect both the year in the notice and the date of the earlier registration; for example:

- (1) "Year date in notice: 1958  
Registered Eu 123456, Oct. 27, 1957" or
- (2) "Year date in notice: 1958  
Ad interim registration AIO 9876, following  
publication May 2, 1957."

(d) If search or correspondence indicates that the present version contains new copyrightable matter justifying use of the later date in the notice, and that the earlier date of publication given in the application was incorrect, a new application should be requested.

4.2.4 Year date. (Cont'd)IV. Variance between notice and application (Cont'd)b. Date in notice earlier than date of publication.

Where the date in the notice is earlier than the date of publication (that is, apparently an antedated notice):

1. General rule: Where there is nothing in the application, copies, or correspondence to indicate that the work, or a substantial part of it, has been previously published or registered in unpublished form, the claim should be entered without searching or preliminary correspondence. Both the application and the certificate should be annotated to reflect the date in the notice, and a warning letter should be sent.
2. Previous publication or registration indicated. Where something on the application, in the notice, on the copies, or elsewhere in the correspondence file indicates that the work, or a substantial part of it, has been previously published or registered in unpublished form, the Office should search or correspond to determine the date of the earlier publication or unpublished registration, and whether or not the present copies contain new copyrightable matter. (No search or correspondence is necessary if these facts are shown on the face of the application.)
  - (a) If an earlier publication for the work (other than foreign publication for an English-language book registered ad interim) is found, and there is no reason to suppose that the present copies contain new copyrightable matter, the claim should be rejected as a reprint.
  - (b) If unpublished registration (or foreign publication for an English-language book registered ad interim) took place in the year shown in the notice, and if there is no reason to suppose that the present copies contain new copyrightable matter, the claim should be entered without correspondence and without any annotation referring to the date in the notice. However, if the fact of earlier registration does not already appear on the application, an annotation referring to the earlier entry should be added; for example: "Reg'd Eu-123456, July 6, 1957."

4.2.4 Year date. (cont'd)

IV. Variance between notice and application. (cont'd)

b. Date in notice, etc. (cont'd)

2. Previous publications, etc. (cont'd)

- (c) If unpublished registration (or foreign publication for an English-language book registered ad interim) took place before the year immediately preceding the year in the notice, and if there is no reason to suppose that the present copies contain new copyrightable matter, the claim should be rejected for postdated notice. (See topic 4.2.4.IV.a.3.(b)).
- (d) If unpublished registration (or foreign publication for an English-language book registered ad interim) took place within the year immediately preceding the year in the notice, and if there is no reason to suppose that the present copies contain new copyrightable matter, the claim should be entered as a doubtful case. (See topic 4.2.4.IV.a.3.(c)).
- (e) If an earlier publication or registration is found, but the present copies contain sufficient new copyrightable matter to support a new copyright, a statement of the new matter should appear on the application. Both application and certificate should be annotated to reflect the date in the notice, and a warning letter should be sent.

c. Where no year date is required. Where a year date is not required, as for Classes F-K, but a variance exists between the date in the notice and that in the application, the practices outlined in items 4.2.4.IV.a and b should be followed.

d. Two dates in notice. Where there are two or more dates in the notice and the last ones, if used alone, would not be acceptable because new matter is lacking, the Office will register despite the last date, sending a cautionary letter and annotating the application (not the certificate).

4.2.5 Dispersed notice.

I. Standard form of notice.

- a. The three elements of the notice ("Copyright" or "Copr.," or the symbol ©, the name of the claimant,

4.2.5 Dispersed notice. (Cont'd)I. Standard form of notice (Cont'd.)a. Standard form of notice (cont'd)

and the year date). should be given together as a single continuous statement.

- b. In the abbreviated form of notice for Classes F-K, the symbol © (or "Copyright" or "Copr.") and the initials or other mark of the claimant (or his name) should be given together. If the symbol © (or "Copyright" or "Copr.") is accompanied by the initials or other mark of the claimant, his name shall appear on some other accessible portion of the work.

II. Where elements are separated.

- a. General rule. Where the elements of the notice are all present but are separated, the notice may be accepted as long as it is reasonably clear that the name is that of the claimant and the date is the year date of copyright. When a dispersed notice is accepted, a cautionary letter will be sent.

b. Separated name.

1. Where the separated name is the only name appearing on the same page as the rest of the notice, it may be accepted as part of the notice.
2. Where two separated names appear on the same page and either might be the logical claimant (e.g., the author and the publisher):
  - (a) If one such name is near the rest of the notice and the other is much farther removed, registration may be made in the first name, but not in the second name.
  - (b) If both names are equally identifiable with the rest of the notice, registration will not be made in either name.
3. Where one of two equally separated names is a logical claimant (e.g., the author), and the other is identified as someone not likely to

4.2.5 Dispersed notice. (cont'd)

II. Where elements are separated. (cont'd)

b. Separated name. (cont'd)

3. (cont'd)

be the claimant (e.g., "Printed by the Wayward Press"), registration may be made in the first name, but not in the second name.

c. Separated year date.

1. Where a separated year date is the only one appearing on the same page and is the appropriate date, it may be accepted as part of the notice.

Example:

The year date in the Library of Congress Catalog Card numbers can be tied in as the year date for the notice

2. In the case of periodicals, where the year date does not accompany the rest of the notice, the periodical issue date appearing on the same page may be considered part of the notice.
3. In the case of contributions to periodicals, where the year date does not accompany the rest of the notice, the periodical issue date ordinarily will not be considered part of the notice, whether it appears on the same page or not.

d. Other matter intervening.

1. The presence of other matter between the elements of the copyright notice will not preclude acceptance of the notice as long as the elements are identifiable together. For example, the Office will accept a notice such as:

Closet Caddy  
Trade Mark Reg. U. S. Pat. Off.  
Copyright 1948. Pat. Pending.

2. The separation of the elements of the notice by a line drawn between them will not preclude acceptance of the notice. For example, the Office will accept a notice such as:

Copyright 1953  
Standard Pulpwood Co.

## Part 4.3. POSITION OF NOTICE

4.3.1 In books.

I. Statute. In "a book or other printed publication," the notice is to be placed "upon its title page or the page immediately following." (17 U.S.C. §20)

II. Title page.

a. The title page is generally one on which the title is given special prominence as a principal feature of that page, usually preceding the body of the work. A book may have more than one such page. A notice on any page that can reasonably be considered a title page may be accepted.

Examples:

(1) Preceding the text, a book has one page giving the title, author, and publisher, and another page giving the title alone: a notice on either of these pages would be acceptable

(2) The title is given with special prominence at the head of the first page of text: a notice on that page may be accepted.

b. The mere fact that the title appears on several or all of the pages of a book does not make every such page a title page.

Thus, for example, although every page of a 50-page book bore the title, a notice on page 20 would not be acceptable.

c. The cover of a book may be its title page.

d. The dust jacket on a book cannot be its title page. A notice on the dust jacket would not be acceptable for registration of the book (but the dust jacket itself may be registrable as a separate work).

e. If an unlimited notice appears on the title page of the book itself but the book as such contains no new

4.3.1 In books. (Cont'd)

II Title page (Cont'd)

e. (Cont'd)

matter whatsoever, the fact that the dust jacket contains copyrightable material would not justify registration for the book as a whole.

III. Page following the title page. The "page immediately following" the title page is the reverse side of the title page. A notice on the reverse of the title page is acceptable for a book.

IV. Page opposite the title page or its reverse. A notice which is visible when the book is open at the title page or at the reverse of the title page may be accepted. Hence, a notice on the page opposite the title page or opposite the reverse of the title page is acceptable. In such cases a cautionary letter will be sent.

V. Individual work in compilation. For separate registration of an individual article or story in a compilation, the notice should appear on the title page of the article or story. However, a notice referring to the individual work and appearing on the title page for the compilation as a whole may be accepted with a cautionary letter.

VI. Work of several volumes published at the same time. Where a work consists of two or more volumes published at the same time, the Office will recommend that the notice be placed in each volume. A notice appearing in the first volume only may be accepted under the rule of doubt with a cautionary letter.

4.3.2 In periodicals.

I. Statute. In a periodical, the notice should appear "either upon the title page or upon the first page of text of each separate number, or under the title heading." (17 U.S.C. §20)

II. Title page.

a. A notice on any page of a periodical that may reasonably be considered a title page may be accepted. The page should contain the title



4.3.2 In periodicals. (cont'd)II. Title page. (cont'd)

## a. (cont'd)

displayed prominently and the number or date of the particular issue. The rules stated in topic 4.3.1, II as to what may be a title page in a book apply generally to periodicals.

b. A page in a periodical preceded by a number of pages containing advertisements, publishing information, table of contents, etc., may be its title page.

c. A page in a periodical containing other matter (such as text, pictures, or advertisements), as well as the title, may be its title page. In such cases, the notice should be so placed as to be identified with the title rather than with other matter on the same page.

III. First page of text.

a. A notice on the first page of a periodical is acceptable, whether the material on that page is text, musical, or pictorial matter.

b. Any of several pages might be considered the "first page of text" of a periodical, e.g., the cover, the page giving the table of contents, or the first page of the main body (but not a page devoted exclusively to advertisements of articles other than the periodical itself). A notice on any page that can reasonably be considered its first page may be accepted.

IV. Under title heading.

a. A notice included in the masthead of a periodical may be accepted.

b. The title of a periodical appearing prominently on any page where it would be reasonable to look for the notice may be considered a title heading.

4.3.2 In periodicals. (Cont'd)IV. Under title heading. (Cont'd)

- c. A notice may be accepted, though not placed "under" the title heading, if it appears near the title heading (whether below or above) so as to be seen and identified with the title.

4.3.3 In contributions to periodicals.

- I. A notice appearing anywhere on a single-page contribution may be accepted.
- II. For a multi-page contribution, the Office will recommend that the notice be placed on the first page. If a contribution consists of not more than a few pages, a notice on any page other than the first may be accepted with a cautionary letter. If a contribution consists of many pages, a notice at the end may be accepted with a cautionary letter.

4.3.4 In dramatic works. A published dramatic work is a "printed publication" in which the notice should appear in a position appropriate for a book. (See topic 4.3.1.)4.3.5 In music.

- I. Statute. In "a musical work" the notice should appear "either upon its title page or the first page of music." (17 U.S.C. § 20)
- II. Title page. A published book of music with notice on the title page may be registered in either Class E or Class A. If Form A is submitted, Form E will be suggested instead. (As to what is the title page, see topic 4.3.1, II.)
- III. First page of music. A notice on the first page of music is acceptable for registration in Class E. If an application on Form A is submitted, an application on Form E will be requested.
- IV. Page opposite the title page or the first page of music and reverse of title page. Where a published book of music has the notice on the reverse of the title page, an application on Form A may be accepted. Form A may also be accepted with a cautionary letter where the notice appears on a page opposite the title page or the reverse thereof. Form E may also be accepted in these cases and where the notice appears opposite the first page of music; a cautionary letter should be sent.

#### 4.3.6 In classes F-K.

- I. Single-page work. On a single-page work in Classes F-K, a notice on any accessible portion of the work is acceptable. Thus a notice on either the front or back of the work may be accepted. A single sheet, though folded one or more times (e.g., a folded greeting card), constitute a single-page work.
- II. Margin or mounting. On individual works in Classes F-K, a visible notice on the margin or permanent mounting (such as a base, pedestal, selvage, or frame) is acceptable.
- III. Accessibility. See topics 4.4.2, III and 4.4.3.
- IV. Multi-page works. On a multi-page work of Classes F-K material in book form (e.e., an atlas or a book of prints):
  - a. The Office will recommend the full form of notice in book position (see topic 4.3.1).
  - b. Where the notice is not in book position but does appear at the front or back of the book where it is readily seen, an application on the appropriate Form F-K may be accepted with a cautionary letter. If Form A is submitted, the Office will reject it but mention the possibility (with a note of caution) of registration on the appropriate Form F-K.
  - c. A notice which is not readily seen (e.g., on page 25 of a 50-page work) is not acceptable.
- V. Repetitive units. The statute says nothing about how often the notice should be repeated when the copyrighted work consists of repetitive or continuous units on sheet-like materials such as textile fabrics, plastics, and paper products.
  - a. The Office will suggest that, if possible, it would be safest under the court decisions to apply the notice directly to every repeat.
  - b. For purposes of registration, the Copyright Office will accept a notice appearing in the selvage or on the reverse side of the material at frequent and regular intervals. For example, in the case of material printed from plates or cylinders on rotary presses, a notice appearing

4.3.6 In classes F-K. (Cont'd)

V. Repetitive units. (Cont'd)

b. (Cont'd)

at intervals representing each revolution of the plate is acceptable.

c. In certain cases, such as laces or translucent plastics, the material may contain neither a selvage nor a reverse side on which the notice can be applied. Here a gummed or sewn label bearing the notice and made to adhere firmly to the material at frequent and regular intervals may be considered.

d. In determining whether the notice is repeated frequently and regularly enough, the most important factor is the size of the unit in which the consumer ordinarily buys the goods. Thus, if the material is usually sold by the yard, deposit copies which are one yard long and which show one or more notices may be accepted.

4.3.7 In motion pictures. The Office will recommend that the notice in a motion picture appear on or near the title frame. However, a notice appearing either in the opening frames or at the end of a motion picture is acceptable.

## Part 4.4 MISCELLANEOUS

4.4.1 Manuscript notice. Where the deposit copies bear a manuscript notice which appears to have been inserted as an afterthought (e.g., a rubber-stamped or handwritten notice or a typewritten notice on a printed work), the Office records will be checked in appropriate cases to see whether the work was previously submitted and rejected as having been published without notice. If not, the Office will assume (unless otherwise informed) that the manuscript notice appeared on all published copies. In those relatively infrequent cases where it seems clear that such a notice could not have been placed on all published copies (e.g., a handwritten notice on a printed label), the notice will be questioned.

4.4.2 Legibility and visibility.

I. Blurred notice. A blurred notice may be accepted as long as it is legible. But a notice so badly blurred as to be illegible will not be accepted.

II. Microscopic notice.

a. Except as noted in the following paragraph b., a notice so microscopic that it cannot be read without a magnifying glass is not acceptable.

b. Where the work itself requires magnification for its ordinary use (e.g., a microfilm, microcard, or motion picture film), a notice which will be readable when so magnified may be accepted.

III. Concealed notice.

a. A notice which is permanently covered up so that it cannot be seen without tearing the work apart is not acceptable.

## Examples:

- (1) A notice which the Office is told is on the margin or back of a painting but which is concealed under a permanent frame or mat

4.4.2 Legibility and visibility. (cont'd)

III. Concealed notice. (cont'd)

a. (cont'd)

Examples: (cont'd)

- (2) A notice which the Office is told is on the bottom of a figurine cemented on a base that conceals the notice.
  - (3) A notice on a print used for a calendar, with the calendar pad securely pasted down over the notice.
- b. A notice which, though not visible on casual inspection of the work, becomes visible upon ordinary use of the work, may be accepted.

Examples:

- (1) A revolving set of disks on which the notice (as well as some or all of the copyright matter) is concealed when the disks are in starting position, but is revealed upon their manipulation as directed.
- (2) A print used for a calendar, with a calendar pad suspended over the notice which is seen when the pad is lifted.

4.4.3 Notice affected by use of work.

I. Notice on tag or container.

- a. A notice on a detachable tag (such as a name or price tag tied to a work by a piece of string) which will evidently be detached and discarded when the work is put in use, is not acceptable. Likewise, a notice on a wrapper or container which is not a part of the work and which will evidently be removed and discarded when the work is put in use, is not acceptable. (Note that the tag, wrapper, or container may itself be registrable as a label.)

4.4.3 Notice affected by use of work. (cont'd)

I. Notice on tag or container. (cont'd)

b. A notice on a tag affixed with reasonable permanency to the work is acceptable (e.g., a metal tag nailed onto a wood sculpture, a cloth tag sewn into the hem of a scarf, a plastic label sealed to lace by heat process). Similarly a notice on a container in which the work may be expected to be kept by the user may be accepted (e.g., on a box containing a set of cards, or on a folder containing a group of maps).

II. Notice likely to be lost in use of work. Where the work as deposited has a good notice, but there is reason to believe that the notice will be concealed or lost when the work is used, the notice may be accepted, and a warning letter may be sent in appropriate cases.

Examples:

- (1) A mounted reproduction of a painting with notice on the edge of the mounting where it would be covered in framing.
- (2) A decal with notice on the margin or back only, so that the notice will not appear on the decal when transferred to another surface.
- (3) A mold with notice on the margin only, so that the notice will not appear on the figure cast from the mold.
- (4) A motion picture film with notice on the leader which is not projected when the film is screened.

4.4.3 Notice affected by use of work. (Cont'd)

II. Notice likely to be lost in use of work. (Cont'd)

Examples: (Cont'd)

(5) A work consisting of a perforated page or pages, where the notice appears on the part of the work that contains no copyrightable matter, and the other part will inevitably be detached and distributed without notice.

III. Notice in reverse. Where the deposited work, such as a mold or decal, is the reverse of the product to result from its intended use, the Office will recommend the use of both a reverse notice on the portion of the work that will appear in the product and a regular notice on the margin or back. The reverse notice alone, if otherwise readable, may be accepted with a warning letter.

IV. Dust jacket. A notice on a dust jacket containing copyrightable matter is not acceptable as notice for a book reissued with no other new matter, since dust jackets are removable. (See also topics 4.3.1. II. d.)

4.4.4 Limitations in notice.

I. Limitation not required. Although the claim of copyright, as shown in the application, is limited to a portion of the work (such as new matter), the notice need not specify such a limitation. Where the work contains both copyrightable and noncopyrightable matter, a general notice (e.g., "Copyright 1960 by John Doe") may be accepted.

II. When limitation given.

a. A notice limited to specified portions or features of the work, if they are copyrightable, may be accepted (e.g., "Introduction and Illustrations Copyright 1960 by Popular Publishing Co." or "Arrangement Copyright 1960 by Newstyle Music Co."). If the limitations in the notice are not shown on the application, it will be annotated.



4.4.4 Limitations in notice. (cont'd)II. When limitation given. (cont'd)

- b. A notice which refers explicitly to noncopyrightable matter as the subject of the copyright is not acceptable.

Examples:

- (1) Where an asterisk follows the brand name in an advertisement and precedes the notice, thereby indicating that copyright is claimed in the name
- (2) In a booklet advertising a system for teaching languages, a notice reading "The Fortnight System copyrighted 1960 by Linguistics Ltd."



## Chapter 5

### Deposit of Copies

#### Outline of Topics

#### Part 5.1 TIME OF DEPOSIT

- 5.1.1 Unpublished works
- 5.1.2 Published works
- 5.1.3 Premature deposits
- 5.1.4 Delayed deposits
- 5.1.5 Ad Interim and waiver-of-fee deposits

#### Part 5.2 ARTICLES TO BE DEPOSITED

- 5.2.1 Unpublished works
- 5.2.2 Published works
- 5.2.3 Multiple registrations

#### Part 5.3 QUALITY AND CONTENT OF COPIES

- 5.3.1 Best edition
  - I. General requirement
  - II. Presumption as to best edition
  - III. Where we are aware of a better edition
  - IV. Where copies are not of published edition
- 5.3.2 Complete copies
- 5.3.3 Defective copies
- 5.3.4 Notice in copies
  - I. Works first published in the United States
  - II. Works first published abroad (See topic 8.2.1)
  - III. Unpublished works
- 5.3.5 Domestic manufacture
- 5.3.6 Identity between deposit copies

Part 5.4 FAILURE TO DEPOSIT

5.4.1 Statute

5.4.2 Exceptions

Chapter 5. DEPOSIT OF COPIES

Part 5.1 TIME OF DEPOSIT

5.1.1 Unpublished works. Copies of an unpublished work may be deposited at any time between the completion of the work and its publication.

5.1.2 Published works. The law provides that "After copyright has been secured by publication of the work with the notice of copyright . . . ., there shall be promptly deposited," . . . . (17 U.S.C. § 13) Concerning ad interim and waiver-of-fee deposits see topic 5.1.5.

5.1.3 Premature deposits.

I. When copies of a work otherwise acceptable for registration are deposited before the date of publication, and the Office is informed that publication will be made in the near future, the Office will hold the copies pending the receipt (after publication) of the application and fee.

Example: Two copies of a book ready for publication are deposited by a publisher shortly before the announced date of publication.

II. When book material is received in manuscript or other unpublished form, the copy or copies are usually returned to the applicant. If there is some question as to the copyrightability of the work, the Office will retain one copy for the file. If advised that publication in the form submitted will be made in the near future and the copies will be acceptable for registration after publication, the Office will retain both copies.

5.1.4 Delayed deposits.

I. The Office will accept deposits for full-term registration at any time during the copyright term of 28 years after first publication.

5.1.4 Delayed deposits. (cont'd)

- a. A deposit made after the expiration of the 28-year term will not be accepted for registration (except for foreign works specially qualified for later registration under an applicable extension proclamation).

5.1.5 Ad Interim and waiver-of-fee deposits.

- I. A deposit for ad interim registration must be received within six months after the book or periodical was first published abroad. (17 U.S.C. § 22) Registration for foreign works under the waiver-of-fee provisions is likewise conditional upon deposit of two copies (with application and catalog card) within six months following publication abroad. (17 U.S.C. § 215)
  - a. The six-months' period expires on the same day of the month as the date of first publication. Thus, if publication occurred on January 15, the period runs through July 15.
  - b. If the six-months' period ends on a non-working day (Saturday, Sunday or a holiday), receipt of the deposit in the Library of Congress or the Copyright Office on the next working day (Monday or the day after the holiday) will be on time. (17 U.S.C. § 216)

Part 5.2 ARTICLES TO BE DEPOSITED

5.2.1 Unpublished works.

- I. Unpublished works cannot be registered in Classes A, B, F, H, or K, and the registration of unpublished works in other classes is optional with the claimant.
- II. The following deposits are required for the registration of unpublished works:
  - a. Class C, D, or E: one complete copy (which may be a photostat).
  - b. Class G or I: one copy, photograph or other identifying reproduction.
  - c. Class J: one photographic print.
  - d. Class L: a title and description, with one print taken from each scene or act.
  - e. Class M: a title and description, with at least two prints taken from different sections of the complete motion picture.

5.2.2 Published works.

- I. The following deposits are required for the registration of published works:
  - a. In general, two complete copies of the best edition then published.
  - b. For a work by a foreign or stateless author published abroad: either (1) one complete copy of the best edition so published, if the fee is paid, or (2) two such copies if a catalog card is submitted in lieu of the fee. (But see topic 5.3.1 as to "best edition.")

5.2.2 Published works. (cont'd)

- c. U. S. citizens or domiciliaries are required to deposit two copies of their works first published abroad except works subject to ad interim copyright.
- d. For a work to be registered ad interim: If by an American author or domiciliary, one complete copy of the foreign edition. If by a foreign or stateless author, same as in item (b).
- e. For special registration of an article in a multi-volume encyclopedia: two copies of the volume containing the article.
- f. For special registration of a contribution to a periodical other than a commercial print: one complete copy of the issue containing the contribution.
- g. For a commercial print published in a periodical: two copies of the periodical, one copy of the periodical and one tear sheet, or two tear sheets.
- h. In exceptional cases, where the applicant states that it is impossible to obtain a copy or copies of the work, photostat or microfilm copies will be accepted. Reprints will be accepted only where the applicant states that it is impossible to secure copies or to make copies of the original edition. In such cases, the Office will annotate its records (the application and certificate) to show the nature of the copies deposited.



5.2.2 Published works. (cont'd)

1. For any published work in Class G, H, I, or K that is impracticable of deposit or unsuited to Copyright Office filing procedures because of its weight, size, fragility, or monetary value, photographs or other identifying reproductions may be deposited in lieu of copies. (17 U.S.C. § 13)
1. The word "photographs" in this connection includes photostats and other photographic methods of reproduction. The Office will encourage the filing of photographs in most cases falling within the four specified classes. The Examining Division will write in appropriate cases requesting that the optional form of deposit be considered, but if applicant insists upon depositing copies, registration will be made, and his future deposits of actual copies will not be questioned.
2. The term "filing procedures" is to be construed as referring to the ordinary procedure of filing material on bookshelves or in filing cabinets. It should not be confused with the storage procedures in the stacks utilized for bulky objects.
3. Exceptions to optional deposit:
  - (1) Where the work involved is a fine print or two-dimensional art reproduction
  - (11) Where the Library of Congress determines that the actual work is needed for its collections or for exchange purposes (e.g., anatomical models)

5.2.2 Published works. (cont'd)

3. Exceptions to optional deposit: (cont'd)
  - (iii) Works which the Copyright Office cannot adequately examine from photographs
  - (iv) Two-dimensional works which are not impracticable of deposit because of their size, weight, fragility, or monetary value (e.g., textiles)
4. Two sets of photographs or reproductions will be required whenever two copies of the work would ordinarily be deposited, and each set must be complete and identical.
5. All photographs and reproductions of any one work shall be of equal size and must not be smaller than 5 x 7 inches or larger than 9 x 12 inches in dimension. The preferred size is 8 x 10 inches. Each photograph or reproduction, regardless of size, shall present the work in an image that is lifesize or larger; or, if smaller than lifesize, the image must be at least 4 inches in one of its dimensions.
6. At least one corresponding photograph or reproduction in each set must show or bear an indication on the front or back thereof of the exact measurement of one dimension of the work.
7. The copyright notice and its position on the work must be clearly visible on at least one corresponding photograph or reproduction in each set. In those cases where it is difficult or impossible to obtain a photograph properly showing the notice, the applicant may include in each set a drawing of the form of the notice showing its exact appearance, its dimensions, and its specific position on the work. Such drawing shall be of the same dimension as the submitted photographs.

5.2.2 Published works. (cont'd)

8. Each photograph or reproduction must contain the title of the work either on the front or back thereof.
9. Where the required dimension or title is omitted from the photograph but appears on the application, it may be added by the examiner, with an appropriate annotation.
- j. For a published motion picture (Class L or M), the Office requests, in addition to the required copies, a description which may consist of a synopsis, press book, continuity, or other identifying matter.

5.2.3 Multiple registrations.

- I. Where two or more applications are submitted for separate component works within a composite or other larger work, or for the composite or other larger work as a whole and separate component works therein, the applicant will not be required to deposit more than two copies of the complete work (or one copy where this satisfies the statutory requirement).

Examples:

- (1) A telephone directory in one volume, with two Class A applications for separate registration of the alphabetical (white) section and the classified (yellow) section
  - (2) A book of six musical compositions with seven Class E applications, one for the book as a whole and six for the individual compositions
- II. The necessity for depositing copies with each application may be avoided only when the several applications are submitted at the same time and all the works fall within the same class.

5.2.3 Multiple registrations. (cont'd)

Exception: In cases where a bilingual<sup>↗</sup> work is registered at the same time on Form A-B Ad Interim and Form A-B Foreign, only one copy (or two under the waiver-of-fee provisions) will be required.

Examples:

- (1) A book of text and illustrations, with Class A application for text and Class K application for illustrations: four copies required.
- (2) Separate application for an individual musical composition in a collection, submitted after registration for the song book as a whole had been completed: two additional copies required.

III. Where the applicant requests our advice concerning the number of copies to be deposited in cases of multiple registrations, the Office will suggest deposit of two copies (or one where appropriate) for each application, as a matter of caution.

Part 5.3 QUALITY AND CONTENT OF COPIES

5.3.1 Best Edition.

I. General requirement. The deposit copies must be "of the best edition thereof then published, ..." (17 U.S.C. § 13). If the copies themselves, or other information at our disposal at the time of registration, indicate that the work is simultaneously published in two or more editions of different quality, we will generally require that the deposit copies be of the best edition.

Examples:

- (1) A deluxe limited edition of a book rather than the regular trade edition.
- (2) A cloth-bound trade edition of the book rather than a paper-bound "pocket" edition.
- (3) An illustrated edition of a book rather than an unillustrated one.
- (4) A printed edition rather than a mimeographed one.

II. Presumption as to best edition. Where we have no reason to believe otherwise, we will assume that the deposit copies are of the best edition. Thus, mimeographed or typewritten copies will generally be accepted without question, unless we have reason to believe that the work has been published in a better edition. The Examining Division will not write for copies of the best edition after registration is made where, on the basis of the usual examination, it would not have been aware of the fact that a better edition had been published.

III. Where we are aware of a better edition.

- a. Where two or more editions of different quality are published simultaneously, or where the best edition is published first, we will require deposit of copies of the best edition. The facts given in the application (and affidavit, where required) shall refer to the edition deposited.

5.3.1 Best Edition. (cont'd)

III. Where we are aware of a better edition. (cont'd)

- b. In the case of a foreign work, registration may be made on the basis of the copies received, and a request for copies of the best edition may be sent later.
  
- c. Where the Copyright Office has information that prior to the date on which the application is filed two or more editions of the same work but of different physical quality have been published at different times, and the best edition is not the first published edition, we will request submission of copies of both the first published edition and of the best edition.
  - 1. The facts given on the application (and affidavit, where required) shall refer to the first published edition.
  - 2. The copies will be compared generally to determine that they are substantially identical as to copyright notice and literary, musical, or artistic content.
  - 3. If the copies are substantially identical as to copyrightable matter, both sets will be referred to the Library for selection. One set will be selected for retention and the other set will be returned following registration.
  - 4. If the copies differ as to notice or copyrightable matter, the case will be dealt with on its own merits.

Examples:

- (1) The first published copies bear an inadequate notice; the claim will be rejected.
- (2) The best edition contains new copyrightable matter; registration for both editions will be required.

5.3.1 Best Edition. (cont'd)IV. Where copies are not of published edition.

- a. When the character of the copies received or other information suggests that they are not copies of a published edition, the Office may question whether the work has been published in a better edition, or has been published at all.

## Examples:

- (1) Proof copies or unbound copies of a printed book.
  - (2) Printed pages with handwritten inserts.
  - (3) A map consisting of parts pasted together.
  - (4) Photographs of a print (with Class K application).
  - (5) Photostats of a commercial label.
- b. But if the applicant states that the work was published in the questioned form, the copies in that form will generally be accepted, unless we are informed of a better edition.
- c. Publication of the work ordinarily will not be questioned simply because the copies are typewritten or handmade, unless there are other circumstances indicating that the work has not been published.
- d. Copies of a book consisting of page proof, if the applicant states that the work was published in that form, are acceptable even though the material is intended for later republication in periodicals as a number of separate items or as a serial.

5.3.2 Complete copies.

- I. The copies deposited must be "complete copies"  
(17 U.S.C. §§ 12, 13, 22)
- II. In general, copies of an entire work as published  
must be deposited. (See topic 5.2.2., I)

Examples of copies not acceptable because  
not complete:

- (1) A book with missing pages
  - (2) Illustrations cut out of a book
  - (3) One song taken out of a songbook
  - (4) A contribution clipped from a  
periodical or from an encyclopedia
  - (5) One volume of a single two-volume  
work
  - (6) Reprints of individual maps published  
in an atlas
  - (7) One earring
- III. Where a copyrightable work is a part of a larger  
work which includes separate parts which are not  
copyrightable, deposit of the uncopyrightable  
portions is not required.

Example:

- (1) A game consisting of a copyrightable  
board and directions, and uncopy-  
rightable game rack and pieces
- IV. An unpublished manuscript (Class C, D, or E) which  
is sufficiently developed to be used for delivery  
or performance, is acceptable as a complete copy  
even though there is some indication that additional  
material may later be added.



### 5.3.3 Defective copies.

- I. The copies deposited should be free from substantial defects such as blank pages, overprinted pages, torn or mutilated pages, broken pieces of jewelry, etc.. Where the defect is found during the course of ordinary examination of the copies, registration will be withheld and a perfect copy will be requested.
- II. Where the defect is not one that would normally have been found in the course of ordinary examination, but is discovered within six months after registration, the Copyright Office will write requesting a new copy. If the defect is discovered after six months, the case will be returned to the Library to be handled by the Department concerned.
  - a. In such cases the defective copy will be held in the U.B. envelope, but no follow-up letter will be sent. If no reply is received in 30 days, the Service Division will return the imperfect copy, with a carbon copy of the Copyright Office letter, to the Library.
  - b. In such cases it is not necessary to offer to return the defective copy to the applicant. However, the copy should be returned if the applicant requests it, even if it has been accessioned.
  - c. In such cases the application will not be annotated, and the registration number will not be stamped on the new copy.

### 5.3.4 Notice in copies.

- I. Works first published in the United States. The deposit copies of a work of a U. S. citizen or domiciliary, (except a work subject to the ad interim provisions), or the deposit copies of a work first published in the United States, must bear an appropriate notice of copyright. (As to appropriate notice, see Chapter 4; as to publication, see Chapter 3.)

5.3.4 Notice in copies. (cont'd)

I. Works first published in the United States. (cont'd)

- a. If such copies do not bear an appropriate notice, the application will be rejected.
  - 1. But if there is reason to doubt that the work has been published, the Office may advise the applicant as to publication and the appropriate notice to use if not yet published.
- b. The notice in the deposit copies must be such as presumably appeared in all copies of the published edition. The Office may question, for example, a handwritten notice in the deposit copies of a printed book or a typewritten notice on a contribution to a printed periodical.
  - 1. But it will be assumed that a handwritten or typewritten notice on the deposit copies appeared on all published copies wherever that assumption is plausible; for example, on a mimeographed work or on any work of which only a few copies were published.

II. Works first published abroad. (See topic 8.2.1)

- a. With the exception of works seeking ad interim registration, the copies of works deposited for registration following publication abroad after June 18, 1959 must bear a notice of copyright in the required form and position.
- b. For works by foreign authors published abroad before June 18, 1959, the deposit copies may be accepted even if they do not bear an adequate copyright notice but a warning letter will be sent in such cases.

III. Unpublished works. The deposit copies of unpublished works need not bear a copyright notice. If an unpublished work bears a notice which would be faulty if used on the work when published, the work may be registered but we will send a cautionary letter.

5.3.5 Domestic manufacture. The deposit copies of a work subject to the manufacturing clause must have been produced in the United States; and the deposit copies of a book subject to the manufacturing clause must be accompanied by an appropriate affidavit of their domestic production. (17 U.S.C. §§ 16 and 17; see also Chapter 6.)

5.3.6 Identity between deposit copies.

I. Where the law requires deposit of two copies of a work, these copies should be identical.

a. Examples of unacceptable deposits:

- (1) Two pieces of jewelry, identical except for their gems; one contains emeralds and the other rubies
- (2) Two textile swatches, one containing a design in red and green, the other containing the same design in gray and blue
- (3) Two textile swatches showing different stretches of the repetitive pattern
- (4) Two labels, identical except for the product name; one for Dri-Dup Prunes and the other for C-D Raisins
- (5) A tear sheet of a periodical advertisement and a proof copy of the same advertisement
- (6) Two copies of a telephone book, the contents of which are identical but which are bound in different covers because they are distributed in different localities

II. Exceptions to the requirement for identity between the copies are recognized only when the circumstances are unusual or the differences are so minor as to be negligible.

Part 5.4 FAILURE TO DEPOSIT

5.4.1 Statute. If the required copies are not "promptly deposited" after the work has been published with notice, "the Register of Copyrights may at any time after the publication of the work, upon actual notice, require the proprietor of the copyright to deposit them ...." (17 U.S.C. § 14)

- I. The statute will be deemed to authorize the Register to require the submission of an application and fee for registration as well as the deposit of copies. The request for compliance will ask for all three.
- II. Even where all three elements, copy, application and fee, have been received, compliance action may be undertaken to require correction of an existing informality in the application preventing immediate registration.
- III. If the claimant refuses to comply with requests or ignores several letters, the Office will then consider in each case whether to make a formal demand for compliance and what further action to take.

5.4.2 Exceptions.

- I. Foreign works protected under the Universal Copyright Convention and first published abroad with the copyright notice specified in sec. 9(c) of the statute are exempt from the deposit, demand, and compliance provisions.
- II. It is not the practice of the Compliance Section to initiate compliance action with respect to any foreign publications.
- III. Generally, unless the works upon examination seem clearly registrable, including correct notice of copyright, the Compliance Section will not initiate compliance action.

Chapter 6

Manufacturing Clause

Outline of Topics

Part 6.1 IN GENERAL

6.1.1 Requirement of U. S. manufacture

- I. Works covered
- II. Affidavit of U. S. manufacture
- III. Limits of the United States

6.1.2 Ad interim registration

- I. In general
- II. American edition

Part 6.2 BOOKS OF TEXT

6.2.1 Books subject to manufacturing clause

- I. In general
- II. Other works published in book form
- III. Language and authorship

6.2.2 Manufacture in U. S.

- I. Processes to be performed in U. S.
- II. Partial manufacture in U. S.
- III. Limited claims and disclaimers

6.2.3 Affidavit

- I. When required
- II. As evidence of U. S. manufacture
- III. Form of affidavit
- IV. Content
- V. Execution

6.2.4 Illustrations in books

Part 6.3 PERIODICALS

6.3.1 Periodicals subject to manufacturing clause

- I. In general
- II. Exceptions to general rule

Part 6.3 PERIODICALS (cont'd)

6.3.2 Book rules applicable

6.3.3 Book rules not applicable

- I. Evidence of U. S. manufacture
- II. Binding
- III. Illustrations

Part 6.4 LITHOGRAPHS AND PHOTOENGRAVINGS

6.4.1 When subject to manufacturing clause

- I. General rule
- II. Pictorial or graphic works not included
- III. Statutory exceptions

6.4.2 Illustrations in books

- I. Where book is subject to manufacturing clause
- II. Where book is not subject to manufacturing clause
- III. Where text is in public domain
- IV. Separability of text and illustrations

6.4.3 Separate lithographs and photoengravings

- I. In general
- II. Illustrations in books as separate works
- III. Collection of pictorial works

6.4.4 Evidence of registrability

- I. As to illustrations in books
- II. As to separate pictorial works

Chapter 6. MANUFACTURING CLAUSE

Part 6.1 IN GENERAL

6.1.1 Requirement of U. S. manufacture.

- I. Works covered. In general, the following works, to be registrable, must be manufactured "within the limits of the United States" (17 U.S.C. § 16):
  - a. The text of any book or periodical by a U. S. author or domiciled alien, except the English-language text of a work exempted by virtue of the ad interim provisions. (See Part 6.2.)
  - b. The text of any book or periodical in the English language by a foreign author, except the text of works exempted by virtue of the ad interim provisions, or of the U.C.C. and § 9(c) of the Code. (See Part 6.2.)
  - c. Lithographs or photoengravings, either as illustrations in a book or periodical, or as separate works, except where they are exempt by virtue of the U.C.C. and § 9(c) of the Code, or where they represent a subject located abroad and illustrate a scientific work or reproduce a work of art. (See Part 6.4.)
- II. Affidavit of U. S. manufacture. For the registration in Class A of a book subject to the manufacturing clause (see topic 6.2.1.), the application must be accompanied by an affidavit (on page 2 of Application Form A) showing that the book was manufactured in the U. S. (See topic 6.2.3.)
- III. Limits of the United States.
  - a. Manufacture in an incorporated territory or in an organized unincorporated territory of the U. S. will be regarded as manufacture "within the limits of the United States" (Code, § 16), for purposes of registration. Included are:
    1. Panama Canal Zone
    2. The Virgin Islands
    3. Puerto Rico
    4. Guam

6.1.1 Requirement of U. S. manufacture. (cont'd)

III. Limits of the United States. (cont'd)

- b. Manufacture in an unorganized area under the jurisdiction of the U. S., such as Samoa, is not regarded as manufacture "within the limits of the United States."

6.1.2 Ad Interim registration.

I. In general.

- a. Ad interim registration may be made for three general types of books and periodicals in the English language manufactured and first published outside the United States. (See Ch. 8, Works first published abroad.)

1. Works by U. S. citizens or domiciliaries.
2. Works which would have been exempted from the manufacturing requirements by virtue of § 9(c) of the Code, but which failed to meet the U.C.C. notice requirements provided in that section.
3. Works by authors who are citizens of countries with which the U. S. has established copyright relations, but who are not citizens of a country party to the U.C.C. and who do not first publish the work in such a country.

- b. A book or periodical in a foreign language is not registrable ad interim.

- c. If an application for ad interim registration is received for a work in a class which is not subject to the manufacturing clause (e.g., a drama or a book of music), an application for full-term registration on the appropriate form (e.g., Form D or Form E Foreign) may be suggested instead.

- II. American edition. After a book or periodical in the English language has been registered ad interim, an edition manufactured and published in the United States with appropriate notice within five years of foreign publication may be registered in Class A or B.



Part 6.2 BOOKS OF TEXT

6.2.1 Books subject to manufacturing clause.

I. In general.

- a. General rule. To be registrable in Class A (except as noted in the following paragraph b), a printed book of text must be manufactured in the United States (see topic 6.2.2) when:
1. The text is in the English language (see topic 6.2.1, III), or
  2. Regardless of the language, the author is a citizen of or domiciled in the U. S. (see topic 6.2.1, III.)

Examples:

- (1) English language book by a U. S. author.
- (2) Foreign language book by a U. S. citizen, even though he is domiciled in France.
- (3) Foreign language book by an Italian citizen domiciled in New York.

- b. Exceptions. Manufacture in the U. S. is not required for the registration of books in the following instances:
1. Books in raised characters for the blind (such as Braille).
  2. Books "of foreign origin in a language or languages other than English" -- that is, foreign-language books by foreign authors. Note: a book by a U. S. citizen or domiciliary is not regarded as a work "of foreign origin." (See topic 6.2.1, III.)
  3. English-language books manufactured and first published abroad, for which ad interim copyright protection is being sought. (See topic 6.1.2 and Chapter 8.)

6.2.1 Books subject to manufacturing clause. (cont'd)

I. In general. (cont'd)

b. Exceptions (cont'd)

4. Books in any language by nationals of foreign U.C.C. countries, first published outside the United States with the U.C.C. notice specified in § 9(c). (See Chapter 8.)
5. Books in any language by foreign authors, first published in a U.C.C. country with the U.C.C. notice specified in § 9(c). (See Chapter 8.)

c. Books not printed. Whether a Class A book which is mimeographed, typewritten, or produced by a similar process of manual duplication is required to be so produced in the United States is regarded as doubtful. Hence:

1. If a mimeographed, typewritten, or similar book apparently produced in the U. S. is submitted for registration in Class A without an affidavit, the Office will suggest that the affidavit be filed. But if the applicant insists, registration may be made in Class A without the affidavit.
2. Where the manufacturing requirements would not apply to a work, as explained in paragraph b, above, registration for a mimeographed, typewritten, or similar book may be made on Form A-B Foreign.
3. Where the ad interim requirements would apply to the book if it were printed, the applicant will be offered the alternative of making registration on Form A-B Ad Interim or on Form A-B Foreign. In the latter event, Form A (without the affidavit) would be used if the book was by an American citizen or domiciliary, and Form A-B Foreign would be used in all other cases.

II. Other works published in book form.

- a. Dramas. Dramatic works, though published in book form, may be registered in Class D without regard to the place of manufacture. However, when the

6.2.1 Books subject to manufacturing clause. (cont'd)II. Other works published in book form.a. Dramas. (cont'd)

bulk of the copyrightable matter in a work is textual rather than dramatic, the work will generally be treated as a book subject to the manufacturing requirements.

## Examples:

- (1) A new English translation of Tartuffe would be registered in Class D without regard to the manufacturing requirements.
- (2) A new edition of Hamlet with a 50-page introduction by a Canadian professor would be subject to the manufacturing requirements.

b. Music. Musical compositions, though published in book form and with lyrics and incidental text in English, may be registered in Class E without regard to the place of manufacture.

1. When the bulk of the copyrightable matter is text, rather than music, or words and music combined, the work will generally be treated as a book subject to the manufacturing requirements.
2. When the bulk of the copyrightable matter is compilation or editing rather than actual literary or musical composition, the work may be submitted for registration either as a book or as a musical composition. Where the compilation or editing relates primarily to the text rather than the music, the applicant may be cautioned that the work (manufactured outside the United States) may not meet the manufacturing requirements.

c. Classes F-K. Graphic works registrable in any of the Classes F-K, though published in book form and with incidental text in English, may be registered in that class without regard to the place of manufacture, unless those works are lithographs or photoengravings subject to the manufacturing clause (see Part 6.4).

6.2.1 Books subject to manufacturing clause. (cont'd)

III. Language and authorship.

a. English language.

1. The following English-language books are subject to the manufacturing requirements:
  - (a) Books first published in the United States.
  - (b) Books by U. S. citizens and domiciliaries.
  - (c) Books by citizens of countries not party to the U.C.C. and not first published in a U.C.C. country.
  - (d) Books by citizens of countries which are parties to the U C.C., or which were first published in a U.C.C. country, but which do not contain a notice conforming to the U.C.C. requirements specified in § 9(c).
2. Works falling into any of the above categories, except that specified in paragraph (a), are eligible for ad interim registration if manufactured and first published abroad.

b. Foreign language.

1. Assuming that it otherwise qualifies for registration, a book in a foreign language by a foreign author, first published abroad, may be registered on Form A-B Foreign without regard to the place of manufacture.
2. Assuming that it otherwise qualifies for registration, a book in a foreign language by a foreign author, manufactured abroad but first published in the U. S., may be registered on Form A-B Foreign, under the rule of doubt. A cautionary letter should be sent in such cases.
3. A book in a foreign language must be manufactured in the United States if the author is a citizen of or domiciled in the United States; if manufactured abroad, it cannot be registered on either Form A-B Foreign or Form A-B Ad Interim.

6.2.1 Books subject to manufacturing clause. (cont'd)

III. Language and authorship. (cont'd)

c. Mixed languages: foreign author. Where a book by a foreign author, manufactured abroad, is partly in English and partly in a foreign language:

1. If the work qualifies under the U.C.C. exemptions of § 9(c), registration should be made on Form A-B Foreign.

2. If the work does not qualify under the U.C.C. exemptions:

(a) If the foreign-language material predominates, a single registration may be made on Form A-B Foreign, or dual registrations may be made on both Form A-B Foreign and Form A-B Ad Interim, without correspondence. If only Form A-B Ad Interim is received, registration should be deferred; the applicant should be informed that entry on Form A-B Foreign, or on both Forms A-B Foreign and A-B Ad Interim, might be preferable.

(b) If the English and foreign language material are evenly balanced, dual registrations may be made on both Form A-B Foreign and Form A-B Ad Interim, without correspondence. If either Form A-B Ad Interim or Form A-B Foreign is received alone, registration will be made, but a cautionary letter should be sent pointing out the possibility of an additional entry on the other form.

6.2.1 Books subject to manufacturing clause. (cont'd)

III. Language and authorship. (cont'd)

c. (cont'd)

2. (cont'd)

(c) If the English-language material clearly predominates, a single registration may be made on Form A-B Ad Interim, or dual registrations may be made on both Form A-B Foreign and Form A-B Ad Interim, without correspondence. If only Form A-B Foreign is received, registration should be made, but a cautionary letter pointing out the possibility of ad interim registration should be sent.

(d) In any of the above cases, no disclaimer or limitation of claim need be included on the application.

d. Mixed languages: U. S. author. Where a book by a U. S. author, manufactured abroad, is partly in English and partly in a foreign language:

1. An application on Form A-B Foreign cannot be accepted.

2. An application on Form A-B Ad Interim can be accepted if received within six months of first publication abroad. No disclaimer or limitation of claim is necessary in such cases, but a cautionary letter should be sent where the English and foreign-language material are evenly balanced, or the foreign-language material predominates.

e. Mixed authorship: foreign-language work. Where a book in a foreign-language, manufactured abroad, is written by authors of more than one nationality, registration may be made on Form A-B Foreign, even if one or more of the authors is a U. S. citizen. No disclaimer or limiting statement need be included in the application, but a cautionary letter should be sent where U. S. authorship clearly predominates.

6.2.1 Books subject to manufacturing clause. (cont'd)III. Language and authorship. (cont'd)

f. Mixed authorship: English-language work. Where a book in English, manufactured and first published abroad, is written by authors of more than one nationality:

1. If one or more of the authors is the citizen of a U.C.C. country, or if the work was first published in a U.C.C. country, registration may be made on Form A-B Foreign, regardless of the citizenship of the other authors; no disclaimer or limiting statement is necessary. If U. S. authorship clearly predominates, or if U. S. or non-U.C.C. authorship together predominate in a work first published abroad in a non-U.C.C. country, a cautionary letter pointing out the possibility of an additional ad interim registration may be sent.
2. If none of the authors is the citizen of a U.C.C. country, and the work was not first published in a U.C.C. country, registration on Form A-B Foreign cannot be made. Ad interim registration may be made (assuming copyright relations) within six months of first publication abroad.

6.2.2 Manufacture in U. S.I. Processes to be performed in U. S.

- a. Printing from type. If a book subject to the manufacturing clause is printed from type, then the setting of the type, the making of any plates, and the printing from the type or plates, must all be done in the United States.

For example, a book printed in the U. S. from plates made in England, or a book printed in Canada from type set in the U. S., would not meet the requirements of manufacture in the U. S.

6.2.2 Manufacture in U. S. (cont'd)

I. Processes to be performed in U. S. (cont'd)

b. Lithographic or photoengraving process.

1. If the text of a book subject to the manufacturing clause is printed by any lithographic or photoengraving process, then such process must be performed entirely in the United States. (Note: The process commonly known as "offset" or "photo-offset" printing is a lithographic process.)
2. Where a book subject to the manufacturing clause was first printed from type abroad, and the pages printed abroad are reproduced in the United States by "offset" or other lithographic process, such reproduction may be considered, under the rule of doubt, as complying with the requirement that the lithographic process be performed in the U. S. The book so reproduced in the United States may be registered in Class A, with a warning letter.

- c. Binding. If a book subject to the manufacturing clause is bound, the binding must be done in the United States.

II. Partial manufacture in U. S.

- a. Where the text of a book subject to the manufacturing clause is an indivisible unit, the entire text must be manufactured in the United States. Where only a portion of the text has been manufactured in the United States, neither the book as a whole nor the portion so manufactured may be registered in Class A.

Examples:

- (1) A 300-page novel in English of which 200 pages are printed in the United States and 100 pages are printed abroad.
- (2) An English-French and French-English dictionary by a United States author, printed partly in the United States and partly abroad.



## 6.2.2 Manufacture in U. S. (cont'd)

### II. Partial manufacture in U. S. (cont'd)

- b. Where a book subject to the manufacturing clause consists of separable component works, some manufactured in the United States and some manufactured abroad (and the binding is done in the United States), a claim limited to the separable works manufactured in the United States may be registered in Class A.

#### Examples:

- (1) A book by a U. S. author containing a treatise in English printed in the United States and the same treatise in German printed abroad, the claim being limited to the English version.
- (2) Defoe's "Moll Flanders" with its public domain text printed abroad and a new introduction printed in the United States, the claim being limited to the introduction.
- (3) A collection of short stories in English, some by U. S. authors printed in the U. S. and some by Australian authors printed in Australia, the claim being limited to the works of the U. S. authors.

### III. Limited claims and disclaimers.

- a. Where portions of a work meet the manufacturing requirements and other separable portions do not, it is preferable for the copyright notice on the copies to contain a limiting statement or disclaimer. Example: "© John Doe 1958 in pages 101-432." The same statement should appear on the application.
- b. Where the notice contains no limitation or disclaimer, an application in which the claim is clearly limited may be accepted with a cautionary letter.

## 6.2.3 Affidavit.

- I. When required. An appropriate affidavit of manufacture in the United States must be submitted as a prerequisite to the registration in Class A of a book subject to the manufacturing clause. It is not required in any other case.

6.2.3 Affidavit. (cont'd)

II. As evidence of U. S. manufacture.

- a. A properly completed affidavit showing compliance with the requirements of U. S. manufacture will usually be accepted as establishing such compliance. But if the Office has other information (e.g., from the transmittal letter, or from a brochure accompanying the deposit copies, or from the imprint in the book) indicating that the book was actually manufactured abroad, the accuracy of the affidavit may be questioned.
- b. If the affidavit or other information shows definitely that the requirements of American manufacture have not been complied with, an application on Form A (for a book subject to the manufacturing clause) must be rejected. But in an appropriate case the Office may then suggest ad interim registration (see Chap. 8).

For example: the affidavit and imprint show that the book was printed in Canada.

III. Form of affidavit.

- a. The Office will generally require use of the affidavit form on the back of Application Form A. However, in exceptional cases a separate affidavit containing the required data may be accepted, in which case the application will be annotated to refer to the affidavit.
- b. An incomplete affidavit not signed or notarized will generally be returned to the applicant for completion. If an incomplete affidavit has been signed or notarized, a new affidavit is requested.

IV. Content. The affidavit form on page 2 of Form A calls for a sworn statement or affirmation of the following facts (17 U.S.C. § 17):

- a. Either that (1) the deposit copies were printed in the U. S. from type set, plates made from type set, or by other process performed in the U. S. or (2) that the text was produced by lithographic or photoengraving process wholly performed in the U. S.

(Note: If the book is mimeographed or typewritten, the form of affidavit on Application Form A may be revised to state that the copies were "produced" (or "mimeographed" or "typed") in the U. S.)

6.2.3 Affidavit. (cont'd)IV. Content. (cont'd)

- b. If the book is bound in a hard cover, that the binding was done in the U. S.
- c. The name and the city and state (street address not required) of the establishment performing each process; and
- d. The date of the completion of the printing of the book or the date of publication (see Chap. 3).

V. Execution.a. Venue.

1. The affidavit should ordinarily state the venue, but an affidavit omitting this statement may be accepted if otherwise in order.
2. A variance between the statement of venue at the top of the form and that in the jurat or seal may be ignored as long as the two give the same state.

## Examples:

- (1) "Baca County, Colorado" in one place, "Yucca County, Colorado" in the other: acceptable.
- (2) "Baca County, Colorado" in one place, "Jasper County, Missouri" in the other: the Office will request a new affidavit.

b. Affiant.

1. The affidavit must be made by (1) the copyright claimant, or (2) his authorized agent residing in the U. S., or (3) the printer.
2. A mistake or oversight in indicating the capacity of the affiant will not bar acceptance of the affidavit.

## Examples:

- (1) Affiant is the claimant but he has checked the block referring to the agent or printer.

6.2.3 Affidavit. (cont'd)V. Execution. (cont'd)

## b. (cont'd)

## Examples: (cont'd)

- (2) Affiant is not the claimant but he has checked that block. Unless the Office is otherwise informed, it will assume he is the authorized agent of the claimant.
- (3) None of the three blocks on the form has been checked but the affidavit has been signed. Unless otherwise informed, the Office will assume that the signature is that of the claimant, the claimant's agent, or the printer.

c. Signature of affiant.

1. The affidavit must be signed by the affiant. The signature should preferably be his name in handwriting. However:
  - (a) His handwritten initials may be accepted where they are identifiable with a name given elsewhere in the affidavit or application.
  - (b) A mark or rubber-stamped signature may be accepted only if the affidavit states that it represents his signature.
  - (c) An illegible handwritten signature may be accepted.
2. The name of a corporation or other organization is not acceptable as the signature of the affiant unless it is accompanied by the signature of an individual.

## Examples:

- (1) "Sturm and Drang Co." is not acceptable.
- (2) "John Callahan, Inc. by John Callahan, President" is acceptable.

6.2.3 Affidavit. (cont'd)V. Execution. (cont'd)

- d. Date of execution. The affidavit must ordinarily give the date of its execution. The date of execution must not be earlier than the date of publication or completion of printing stated in the affidavit; if it is, a new affidavit will be requested.
- e. Signature of notary. The jurat must be signed by a notary or by some other officer authorized to administer oaths in the United States.
- f. Expiration of notary's commission. An affidavit without the date of expiration of the notary's commission may be accepted, even though the state law may require that date. The date of expiration, if given, must not be earlier than the date of execution.
- g. Seal. A seal is required only when the state law requires it. The Examining Division maintains a list of states requiring the seal.

(Note: The Examining Division list also includes other formalities required in certain states. Compliance with these other formalities is not required, but if it is necessary to request a new application such compliance may be suggested.)

- h. Certificate of notary's commission. The Office does not require such a certificate even though the state law may provide for it. If such a certificate is attached to the affidavit, it will be detached and filed separately, and the affidavit will be annotated to refer to it.

6.2.4 Illustrations in books. Where a book subject to the manufacturing clause contains illustrations produced by lithographic or photoengraving process, such illustrations (if not within an excepted category) must also be manufactured in the United States to be registrable. (See Part 6.4.)

Part 6.3 PERIODICALS

6.3.1 Periodicals subject to manufacturing clause.

I. In general. To be registrable in Class B (except as noted in the following paragraph II), the text of any periodical must be manufactured in the U. S. when:

- a. The text is in the English language, or
- b. Regardless of the language, the author (that is, generally, the publisher) is a citizen of or domiciled in the U. S.

II. Exceptions to general rule. Manufacture in the U. S. is not required for the registration of periodicals in the following instances:

- a. Periodicals in raised characters for the blind (such as Braille).
- b. Periodicals "of foreign origin in a language or languages other than English" -- that is, foreign-language periodicals of foreign publishers. Note: a periodical published by a U. S. citizen or domiciliary is not regarded as a work "of foreign origin." (See topic 6.2.1.III.)
- c. English-language periodicals manufactured and first published abroad, for which ad interim copyright protection is being sought. (See topic 6.1.2 and Chapter 8.)
- d. Periodicals in any language by nationals of foreign U.C.C. countries, first published outside the United States with the U.C.C. notice specified in § 9(c). (See Chapter 8.)
- e. Periodicals in any language by foreign authors, first published in a U.C.C. country with the U.C.C. notice specified in § 9(c). (See Chapter 8.)

6.3.2 Book rules applicable. Except as indicated in the following topic 6.3.3, the rules stated in topics 6.2.1 and 6.2.2 regarding the text of books are applicable generally to the text of periodicals.

6.3.3 Book rules not applicable.

- I. Evidence of U. S. manufacture. No affidavit is required for registration of a periodical in Class B. Instead, if any portion of a periodical was manufactured outside the United States, Form B requires a statement of this fact.
- II. Binding. If a periodical is bound, the place of binding does not affect the registrability of the work.
- III. Illustrations. The place of manufacture of the illustrations in a periodical, even though they are lithographs or photoengravings, is not considered in determining the registrability of a work.

Part 6.4 LITHOGRAPHS AND PHOTOENGRAVINGS

6.4.1 When subject to manufacturing clause.

I. General rule and exceptions. As a general rule, a lithograph or photoengraving, either as an illustration in a book of text (see topic 6.4.2) or as a separate work (see topic 6.4.3) must be manufactured in the United States in order to be registrable. Exceptions:

- a. A lithograph or photoengraving which represents a subject located abroad and which illustrates a scientific work or reproduces a work of art need not be manufactured in the United States, and may be registered regardless of where it was manufactured. (See topic 6.4.1., III.)
- b. Where the author of a lithograph or photoengraving first published abroad is the citizen of a foreign country party to the U.C.C., or where the lithograph or photoengraving was first published in a foreign U.C.C. country and the author is neither a U.S. citizen nor domiciliary, the work is exempted from the manufacturing requirements if it bears the special U.C.C. copyright notice prescribed in § 9(c). (See Chapter 8)

II. Pictorial or graphic works not included.

a. Those produced by other processes. Pictorial or graphic works produced abroad by a process not technically a lithographic or photoengraving process may be registered.

Examples:

- (1) Photogravures, rotogravures, etchings, line engravings, mezzotints, wood cuts, drypoints, aquatints, collotypes, and works produced by stipple and crayon engraving, etc.
- (2) Photographs.
- (3) Hand drawings or paintings.

b. Illustrations in works other than books. Lithographs or photoengravings which are neither illustrations in a work classified as a book nor separate works are not considered subject to the manufacturing requirements. Thus, where a work to be registered in a class other than A (e.g., a periodical, a drama, or a musical composition) contains lithographs or photoengravings as illustrations, they may be included as component parts of the work registered (in class B, D, or E), regardless of where they were manufactured.



6.4.1 When subject to manufacturing clause. (cont'd)

III. Statutory exceptions.

- a. In general. Lithographs and photoengravings, whether published separately or in books, are exempted from the manufacturing requirements if "the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art" (§ 16). This provision means that a lithograph or photoengraving is exempted from the manufacturing requirements if:
  1. The lithograph or photoengraving represents a "subject" that is "located" in a foreign country, and
  2. The lithograph or photoengraving is either (a) an illustration published as part of a "scientific work," or (b) a reproduction of a "work of art."
- b. Scope of the exemptions.
  1. The "subject represented." The subject which must be located abroad may be either:
    - (a) The actual thing shown in the picture (e.g., a real person or thing, such as Winston Churchill, the Eiffel Tower, or Mont Blanc), or
    - (b) The pictorial or graphic work which is reproduced in the lithograph or photoengraving (e.g., a German anatomical drawing, a painting in the Louvre).
  2. "Located in a foreign country."
    - (a) The "subject" is "located in a foreign country" when:
      - (1) The actual "subject" was in existence in a foreign country at the time the graphic or artistic work depicting it was prepared (e.g., Westminster Abbey, shown in a drawing; an African elephant, shown in a photograph reproduced in a scientific textbook); or

6.4.1 When subject to manufacturing clause. (cont'd)

III. Statutory exceptions. (cont'd)

b. (cont'd)

2. (cont'd)

(a) (cont'd)

(2) The pictorial or graphic work which is reproduced in the lithograph or photoengraving was permanently located in a foreign country at the time the lithograph or photoengraving was prepared (e.g., a painting in the Louvre; illustrations of DAVID COPPERFIELD prepared and reproduced in England).

(b) A "subject" is not "located in a foreign country" simply because it has been transported there from the United States for the purpose of being reproduced.

Examples:

(1) A painting located permanently in an American gallery (even though by a foreign artist)

(2) Sketches created in the United States for the purpose of reproduction as illustrations in a book

3. Illustration of a scientific work. A lithograph or photoengraving "illustrates a scientific work" if it is an illustration published in a book or similar work dealing with a scientific subject, or if the lithograph or photoengraving itself depicts a scientific subject.

Examples:

(1) Lithographic reproductions of anatomical drawings by a physician in Germany, published as separate wall charts

6.4.1 When subject to manufacturing clause. (cont'd)III. Statutory exceptions. (cont'd)

## b. (cont'd)

## 3. (cont'd)

Examples: (cont'd)

- (2) A photoengraving of the Taj Mahal in a book on architecture
- (3) Lithographic reproductions of photographs of native villages in the Belgian Congo, illustrating a treatise on anthropology

4. Reproduction of a work of art.

- (a) A lithograph or photoengraving "reproduces a work of art" when the lithograph or photoengraving was prepared as a reproduction of an already-existing artistic, graphic, or pictorial work.

Examples:

- (1) Lithographic reproductions of paintings in the Louvre, or of statuary in Rome
  - (2) Photoengravings reproducing drawings of scenes in London
- (b) A lithograph or photoengraving which reproduces a work of art located abroad need not be manufactured in the United States, even though the work of art was created abroad for the sole purpose of such reproduction.

Examples are lithographs or photoengravings reproducing:

- (1) Drawings made in England to illustrate a special edition of Dickens' works
- (2) Paintings of Christmas symbols made in Germany for greeting cards

6.4.2 Illustrations in books.

- I. Where book is subject to manufacturing clause. Where the text of a book is subject to the requirement of U. S. manufacture (see topic 6.2.1), lithographs or photoengravings illustrating the book must also be manufactured in the U. S. unless they come within the statutory exceptions noted in topic 6.4.1, III.
- II. Where book is not subject to manufacturing clause. Where the text of a book is not required to be manufactured in the U. S., the illustrations in the book need not be manufactured in the U. S.

Examples:

- (1) Illustrations in a book by a foreign author in a foreign language (see topic 6.2.1, III) may be included as part of the work registered on Form A-B Foreign, regardless of where they were manufactured.
  - (2) Illustrations in a book of dramas or a book of music (see topic 6.2.1, II) may be included as part of the work registered in Class D or E, regardless of where they were manufactured.
- III. Where text is in public domain. Where the entire text of a book is in the public domain, with illustrations as the only new matter, the illustrations are treated as separate works. (See topic 6.4.3.)
  - IV. Separability of text and illustrations. The text and illustrations in a book may be treated as separable works. Thus:
    - a. Where both are required to be manufactured in the U. S.:
      1. If the text was manufactured in the U. S. but the illustrations were manufactured abroad, a claim limited to the text alone may be registered in Class A.
      2. If the illustrations were manufactured in the U. S. but the text was manufactured abroad, a claim limited to the illustrations alone may be registered in the appropriate Class F-K.

6.4.2 Illustrations in books. (cont'd)IV. Separability of text and illustrations. (cont'd)

b. Where the illustrations in a book are not required to be manufactured in the U.S. (e.g., lithographs or photoengravings illustrating scientific works, lithographic reproductions of works of art located abroad, or wood cuts):

1. A claim limited to the illustrations alone may be registered in the appropriate Class F-K, even though the text and illustrations were both manufactured abroad.
2. If the book is registered ad interim, the illustrations may be registered separately in the appropriate Class F-K.

c. Limited claims and disclaimers. See topic 6.2.2 III.

6.4.3 Separate lithographs and photoengravings.

- I. In general. Lithographs or photoengravings, to be registrable as separate works in Classes F-K, must be manufactured in the U.S. unless they come within the statutory exceptions noted in topic 6.4.1, III.
- II. Illustrations in books as separate works. The illustrations in a book may be treated as separate works (see topic 6.4.2, IV).
- III. Collection of pictorial works. A number of lithographs or photoengravings published together in book form (with only brief incidental text or none) may be a collection of separate works. Thus:
  - a. For registration of the entire collection as a whole in an appropriate Class F-K, each lithograph or photoengraving must be manufactured in the United States or must be within the statutory exceptions noted in topic 6.4.1, III.
  - b. If any of the lithographs or photoengravings in the collection is not within the statutory exceptions and has been manufactured abroad, a claim limited to the other works in the collection (those manufactured in the U.S. and those within the exceptions) may be registered in an appropriate Class F-K.

6.4.4 Evidence of registrability.

- I. As to illustrations in books. Where an appropriate affidavit of U. S. manufacture (see topic 6.2.3) is submitted with a Form A application for a book of text and illustrations:
  - a. No separate statement regarding manufacture of the illustrations is required. It will be assumed, unless the Office is otherwise informed, that registration of the book may include the illustrations.
  - b. If the Office has information indicating that the illustrations are lithographs or photoengravings produced abroad, it will seek to determine whether they are in a category excepted from the manufacturing requirement (see topic 6.4.1, III). If so excepted, the registration of the book may include the illustrations. If not excepted, it may suggest that the application be limited to the text.
  
- II. As to separate pictorial works.
  - a. Unless the application indicates, or the Office is otherwise informed, that a pictorial work is a lithograph or photoengraving produced abroad, it will be assumed that registration of the pictorial work is not barred by the manufacturing clause.
  - b. When the Office is informed, by the application or otherwise, that a pictorial work is a lithograph or photoengraving produced abroad, it will seek to determine whether it is in a category excepted from the manufacturing requirement (see topic 6.4.1, III). If so excepted, it may be registered in an appropriate Class F-K. If not so excepted, it is not registrable.

Chapter 7

CITIZENSHIP AND DOMICILE OF THE AUTHOR

Outline of Topics

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Chapter 7. CITIZENSHIP AND DOMICILE OF THE AUTHOR

Part 7.1 IN GENERAL

7.1.1 Statutory Provisions

I. U. S. Authors. A work by a citizen of the U. S. may be eligible for registration, even if the author permanently resides abroad and the work was first published abroad. (But see Ch. 6.2.1, III. b. 3 concerning books and periodicals by U. S. authors in a foreign language manufactured abroad.)

II. Foreign Authors. In general, a work by an author who is not a citizen of the U. S. is subject to copyright only under one of the following conditions:

- a. If the author was domiciled in the U. S. on the date of first publication of the work (17 U.S.C. §9(a));
- b. If the country of which the author is a citizen shares reciprocal or multilateral copyright relations with the U. S. (17 U.S.C. §§9(b) and 9(c))--that is:
  1. If the author is a citizen of a "proclaimed country" (one with which the U. S. has copyright relations as determined by a Presidential proclamation) or
  2. If the author is a citizen of a country which is a party to the Universal Copyright Convention, the Buenos Aires Convention of 1910, or the Mexico City Convention of 1902. (See item 7.2.1.II.b. concerning a work whose author is a citizen of a country with which the U. S. has copyright relations only through the U.C.C. and that is first published in the U. S.)
- c. If the work was first published in a country (other than the U. S.) which is a party to the U.C.C. (17 U.S.C. §9(c));
- d. If the author is stateless.

7.1.2 Copyright Office Policy. In general, a statement of citizenship or domicile will be accepted at face value. Such a statement will not be questioned unless it is contradicted by other information in the file, or unless it appears contrary to facts that are commonly known. Likewise, the Copyright Office will not attempt to settle questions of domicile or offer opinions on the subject in a particular case.

Examples:

- (1) An application stating that the author is a U.S. citizen will be questioned where the accompanying letter indicates that he has applied for citizenship but has not yet been naturalized.
- (2) An application stating, for instance, that Shostakovich is a Polish citizen will be questioned.

7.1.3 Authors and Proprietors

I. Author's citizenship determinative. In general, it is the citizenship (or domicile) of the "author" of a work, rather than that of the copyright owner, that determines its eligibility for U.S. copyright. The citizenship of the copyright owner, as such, is generally immaterial for this purpose.

Examples:

- (1) A work by a U.S. citizen may be registered even if the copyright is claimed by a citizen of Turkey (with which the U.S. has no copyright relations).
- (2) A composition by Shostakovich, a Russian citizen, first published abroad in a non-U.C.C. country, will not be registered even if copyright is claimed by a U.S. publisher.

7.1.3 Authors and Proprietors (cont'd)

II. Which author. The "author" whose citizenship (or domicile) is determinative in a particular case is the person who created the material covered by the copyright claim.

- a. In the case of a "new version," the citizenship (or domicile) of the author of the copyrightable new matter, rather than that of the author of an earlier version upon which the present work is based, is the deciding factor.

Examples:

- (1) A composition by a Russian composer, edited and arranged by an American citizen, may be registered on the basis of the new matter.
- (2) A translation of "Gone With The Wind" by a Russian citizen may not be registered (unless first published in a foreign U.C.C. country).

- b. In the case of a work made for hire, the citizenship (or domicile) of the employer for hire is the deciding factor.

Examples:

- (1) Registration may be made for a work written by a Russian citizen as employee for hire of an American publisher.
- (2) Registration may be made for a periodical, the publisher of which is an American citizen, regardless of the citizenship of the various contributors, editors, etc.

7.1.3 Authors and Proprietors (cont'd)

III. Posthumous work. In the case of a posthumous work, it is not clear whose citizenship should determine the eligibility for copyright. It is the policy of the Copyright Office in such cases to request the applicant to state not only the citizenship of the deceased author at the time of his death but also the citizenship and (where appropriate) the domicile of the copyright claimant. Registration may be made where either the deceased author or the copyright claimant meets the citizenship and domicile requirements. (See Supplementary Practice No. 39.)

7.1.4 Time as of which Status of Author is Determined. It is the citizenship (or domicile) of the author at the time of first publication of the work that determines its copyrightability; or, if the work is being registered in unpublished form, the citizenship or domicile of the author on the date the application is submitted is the deciding factor. Changes in the author's status occurring after publication are immaterial for this purpose.

Examples:

- (1) When a work was published in 1950 the author was a Venezuelan citizen; the fact that he has now become a U.S. citizen does not make the work registrable.
- (2) A Turkish author was resident in the U.S. while writing a book, but had returned permanently to Turkey by the time it was published; registration cannot be made (unless first publication took place in a foreign U.C.C. country).

Part 7.2 WORKS BY FOREIGN AND STATELESS AUTHORS DOMICILED ABROAD7.2.1 In General

- I. Conditions for U. S. Copyright. A work by an author who is neither a citizen of the U. S. nor domiciled in the U. S. is registrable only if:
  - a. The author is a citizen of a country with which the U.S. has copyright relations; or
  - b. The work was first published in a U.C.C. country (other than the U. S.); or
  - c. The author is stateless.
- II. Citizens of countries with which the U. S. has copyright relations.
  - a. In general, a published or unpublished work by a citizen of a "proclaimed country," or of a country which is a party to the Universal Copyright Convention or the Buenos Aires Copyright Convention of 1910, is eligible for registration, regardless of the domicile of the author or the place of first publication.
  - b. A work whose author is a citizen of a country with which the U. S. has copyright relations only through the U.C.C. and that is first published in the U. S. may be registered under the rule of doubt, assuming the formalities applicable to non-U.C.C. works have been complied with. A cautionary letter should be sent in such cases.
- III. Citizens of countries with which the U. S. has no copyright relations.
  - a. An unpublished work by a citizen of a country that does not have copyright relations with the U. S. cannot be registered if the author is domiciled abroad (unless he is a refugee who has his habitual residence in a state party to Protocol I of the U.C.C.).

7.2.1 In General (cont'd)

III. Citizens of countries with which the U. S. has no copyright relations. (cont'd)

- b. A published work by a citizen of a country which does not have copyright relations with the U. S. cannot be registered if the author is domiciled abroad, (though it can be registered if he is domiciled in the U. S.) unless first publication took place in a country (other than the U. S.) that is a party to the U.C.C.

7.2.2 Stateless Authors

- I. Definition. A stateless author is an author who has renounced or has been deprived of his former citizenship, and who has not yet become a citizen of another country.
- II. Eligibility for U. S. Copyright. A published or unpublished work by a stateless author is eligible for U. S. copyright regardless of the former or prospective citizenship of the author, his domicile, or the place of publication of the work.

Part 7.3 WORKS BY FOREIGN AUTHORS DOMICILED IN THE U.S.

7.3.1 In General. A published work by a foreign author may be eligible for registration if the author is domiciled in the U. S. at the time of first publication, regardless of the existence of international copyright relations.

I. Permanent residence. An author is generally regarded as "domiciled" in the U.S. if he intends to make his permanent residence within its territorial limits.

II. Existence of copyright relations with country of domicile. A work by an author who is a citizen of a country with which the U. S. has no copyright relations will not be eligible for registration by virtue of the author's domicile in any country other than the U.S., even if it is a country with which the U.S. has copyright relations.

7.3.2 Territories. In addition to the United States, including the states of Alaska and Hawaii, domicile in the following territories will be considered domicile in the U. S.:

1. Puerto Rico
2. Panama Canal Zone
3. Virgin Islands
4. Guam

7.3.3 Unpublished Works. It is questionable, under the wording of the statute, whether an unpublished work by a citizen of a country that does not have copyright relations with the U. S. is eligible for registration, even if the author is domiciled in the U. S. In such cases registration is deferred and the applicant is informed of the problem and of the procedure for securing copyright by publication with notice; if registration for the work in unpublished form is still desired, it may be made under the rule of doubt.

Part 7.4 WORKS OF MIXED AUTHORSHIP

7.4.1 Various nationalities. A work written jointly by authors of various nationalities, some of whom are eligible to secure U. S. copyright, will be registered on the basis of the authorship of those who are eligible. "(But see topic 6.2.1, III. B; mixed authorship: foreign language work)."

I. Specific contributions. Ordinarily no effort is made to have the application reflect the specific parts of the work contributed by particular authors, or to require the applicant to disclaim copyright in any portion of the work.

II. Eligible parts proportionately small. However, where the parts of the work that are eligible for registration are so small in proportion to the work as a whole that the entry might otherwise be misleading, the applicant will be requested to specify those portions of the work in which copyright is claimed.

Example:

- (1) A piano concerto by Shostakovich in which the only copyrightable matter consists of dynamics and a brief biographical sketch by an American editor.



Chapter 8

Works First Published Abroad  
(including Ad Interim Copyright)

Outline of Topics

Part 8.1 IN GENERAL

8.1.1 First publication abroad

- I. What constitutes
- II. Simultaneous publication

8.1.2 Copyrightability of works first published abroad

- I. Publication in a U.C.C. Country
- II. Ad Interim copyright

8.1.3 Effect of first publication abroad

- I. General rule
- II. Exceptions
  - a. Unpublished registration
  - b. Ad Interim registration
- III. Requirements for registration
- IV. Registrability of American edition of work first published abroad
  - a. General rule
  - b. Registration for American edition of work registered ad interim

Part 8.2 NOTICE OF COPYRIGHT

8.2.1 General requirement of copyright notice

- I. First publication abroad
  - a. Heim case doctrine
  - b. Works subject to ad interim registration

Part 8.2 NOTICE OF COPYRIGHT (cont'd.)

II. Later publication

- a. U.C.C. requirements
- b. Later publication in United States

III. Copyright Office policy

- a. No retroactive effect
- b. Deposit copies must bear notice
- c. Notice acceptable at face value
- d. Previous publication indicated

8.2.2. Form and position of notice

- I. In general
- II. Name of the copyright proprietor
- III. Date in the notice
- IV. Position of the notice

Part 8.3. REQUIREMENTS FOR REGISTRATION

8.3.1 Necessity for registration

- I. In general
- II. U.C.C. works

8.3.2 Copies and fees

- I. Unpublished works
- II. Published works
  - a. U. S. author
  - b. Foreign or stateless authors
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Part 8.4 AD INTERIM COPYRIGHT

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- II. Cross-references

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- I. Scope of ad interim copyright
- II. U.C.C. exemption
- III. Copyright Office policy concerning ad interim registration

Part 8.4 AD INTERIM COPYRIGHT (cont'd)

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- b. Works exempted under U.C.C.

8.4.3 Requirements for ad interim registration

- I. Time limits
- II. Copy and fee
- III. Works published in installments

8.4.4 Notice of copyright

- I. Notice on copies as first published abroad
- II. Notice on U.S. edition

8.4.5 Importation of copies

- I. In general
- II. Import statement

8.4.6 Extension of ad interim copyright to full term

- I. Statutory provision
- II. Requirements for full term registration
- III. Extension of subsisting ad interim copyrights under U.C.C.



Chapter 8. COPYRIGHT IN WORKS FIRST PUBLISHED  
ABROAD (INCLUDING AD INTERIM COPYRIGHT)

Part 8.1 IN GENERAL

8.1.1 First publication abroad.

- I. What constitutes. For purposes of this chapter of the Compendium, a work is regarded as first published abroad if first publication took place in a foreign country - that is, in a country which is outside the territorial limits of the United States and which is not an incorporated or unincorporated territory of the United States or an organized area under the jurisdiction of the United States.
- II. Simultaneous publication. For purposes of this chapter of the Compendium, though not necessarily for other purposes, publication in the United States and in a foreign country on the same day will generally be regarded as first publication in the United States rather than first publication abroad.

Exceptions:

- a. In the case of an English-language book or periodical manufactured abroad but otherwise eligible for full-term registration under the U.C.C. and the exemptions of § 9(c), simultaneous publication in the United States and in a foreign country will not prevent registration on Form A-B Foreign. A cautionary letter should be sent in such cases.
- b. In the case of an English-language book or periodical, manufactured abroad but otherwise eligible for ad interim copyright, simultaneous publication in the United States and in a foreign country will not prevent ad interim registration. A cautionary letter should also be sent in these cases.

8.1.2 Copyrightability of works first published abroad. Except in the following two cases, the place of publication is immaterial in determining the basic copyrightability of a work:

- I. Publication in a U.C.C. country. Where the author of a work is not a citizen or domiciliary of the United States, the work is copyrightable if first published in a foreign country that is a party to the U.C.C., even if the author is a citizen of a country with which the United States does not have copyright relations.

8.1.2 Copyrightability of works first published abroad. (cont'd)

I. Publication in a U.C.C. country. (cont'd)

Example: A work by a Russian citizen, domiciled in the U.S.S.R., is copyrightable if first published in France.

II. Ad interim copyright. Ad interim copyright is not available for books and periodicals first published in the United States. (See Part 8.4.)

8.1.3 Effect of first publication abroad.

I. General rule. As a rule, copyright in the United States is secured by the act of publication, and endures for a term computed from the date of first publication, whether the work was first published in the United States or abroad.

II. Exceptions.

a. Unpublished registration. Copyright in a work first registered in unpublished form is secured by the act of registration in this Office, and endures for a term computed from the date of registration.

1. The requirements for unpublished registration are the same for works by foreign authors as they are for works by U.S. citizens and domiciliaries. Exception: musical compositions by foreign authors are registered on Form E Foreign, rather than on Form E. (See Chapters 5, 7, and 9.)

2. When a work originally registered in unpublished form is first published, in the United States or abroad, no new copyright is secured in the material for which unpublished registration had been made earlier; the term or scope of protection for that material is not extended by publication or by registration for the published edition.

3. When a work originally registered in unpublished form is published, either in the United States or abroad, it is necessary to make another registration to cover the published version. Exception: Registration for the published version is not required for foreign works protected under the U.C.C. and first published abroad with the copyright notice specified in § 9(c). (See topic 8.3.1.II.)

b. Ad interim registration. In the case of books and periodicals subject to the manufacturing requirements (see Chap. 6), ad interim copyright is secured by ad interim registration within six months of first publication abroad. (See Part 8.4.)

8.1.3 Effect of first publication abroad. (cont'd)

II. Exceptions. (cont'd)

b. Ad interim registration. (cont'd)

1. Ad interim copyright lasts a maximum of five years, and the ad interim term is computed from the date of first publication abroad. (See topic 8.4.3.I.)
2. Ad interim copyright may be extended to the full term if an American edition is manufactured and published during the five-year ad interim period, and if a claim in the American edition is registered. (See item 8.4.6.II.b.) In such case the full copyright term is computed from the date of first publication abroad.

III. Requirements for registration. The application covering a work first published abroad should state the date of first publication abroad, and should be accompanied by a copy or copies of the foreign edition. (See topic 8.4.3.II.)

IV. Registrability of American edition of work first published abroad.

- a. General rule. With the exception of books and periodicals in which a claim to ad interim copyright has been registered, registration for the American edition of a work first published abroad will not be made unless new matter has been added. (See topic 8.4.6.II.)
- b. Registration for American edition of work registered ad interim. When the American edition of an English-language book or periodical is identical in substance to the edition first published abroad, registration will be made only if:
  1. Ad interim registration has been made, and
  2. The American edition has been manufactured and published within five years after the date of first publication abroad.

Part 8.2 NOTICE OF COPYRIGHT

8.2.1 General requirement of copyright notice.

- I. First publication abroad. To secure copyright in the United States, works first published abroad must generally bear the statutory copyright notice at the time of first publication; this is true regardless of whether the author is a citizen or domiciliary of the United States, a citizen of a U.C.C. country or of a country not a party to the U.C.C., or whether the work was first published in a U.C.C. country. (As to notice requirements in general, see Chapter 4; as to publication, see Chapter 3.)
  - a. Heim case doctrine. The majority opinion in the 1946 case of Heim v. Universal Pictures Co. suggested that works by foreign authors might secure copyright in the United States by publication without notice abroad.
    1. On the basis of this opinion the Copyright Office for some time registered works first published abroad without an acceptable notice, under the rule of doubt.
    2. The Copyright Office now takes the position that, whatever validity the Heim case doctrine may have had at one time, the doctrine is no longer effective in view of the U.C.C. and later developments. (37 C.F.R. § 202.2(a)(3).)
  - b. Works subject to ad interim registration. Unlike other works first published abroad, books and periodicals subject to ad interim registration need not bear a notice at the time of first publication. (17 U.S.C., §§ 10, 22; see topic 8.4.)
- II. Later publication.
  - a. U.C.C. requirements. The statute (§ 9(c)) provides that the special exemptions for works protected under the U.C.C. "shall apply only if from the time of first publication all the copies of the work published with the authority of the author or other copyright proprietor shall bear the symbol © accompanied by the name of the copyright proprietor and the year date of first publication placed in such a manner and location as to give reasonable notice of claim of copyright."



8.2.1 General requirement of copyright notice. (cont'd)

- b. Later publication in United States. To maintain copyright in a work first published abroad, it is essential that "each copy thereof published or offered for sale in the United States by authority of the copyright proprietor" bear the statutory copyright notice. (17 U.S.C. § 10.)

III. Copyright Office policy.

- a. No retroactive effect. The Copyright Office's change in policy with respect to registration for works by foreign authors first published abroad without an acceptable copyright notice became effective on June 18, 1959, when new regulations (37 C.F.R § 202.2(a)(3)) were adopted. Works published on or after June 18, 1959 will be governed by the new policy; works published before that date will not be refused registration because the copyright notice was omitted or defective, but a warning letter will be sent.
- b. Deposit copies must bear notice. With the exception of works seeking ad interim registration, the copies of works deposited for registration following publication abroad after June 18, 1959 must bear a notice of copyright in the required form and position. However, in evaluating the acceptability of a notice appearing on a work first published abroad by a foreign author, the Copyright Office will apply liberal standards, in line with the policy underlying the U.C.C. and various judicial decisions.
- c. Notice acceptable at face value. When the copy or copies deposited for registration of a work first published abroad contain an acceptable notice, registration will be made on the assumption that all copies as first published bore the required notice. Except in the case specified in paragraph d, below, no question will be raised as to whether other copies have ever been published without notice under the authority of the copyright owner, either in the United States or abroad.
- d. Previous publication indicated. Where information appearing in the application, copy or copies, or correspondence in connection with a work first published abroad clearly indicates that an earlier edition of the work has been published, registration for the present edition will be made only if it contains new matter which is described on the application. Where registration for the earlier edition is also desired, a copy (or copies) of that edition should be deposited. (See topic 5.2.2.I.h.)

8.2.2. Form and position of notice.

I. In general.

a. As a rule, registration will be made for a work first published abroad if it bears a copyright notice satisfying the ordinary requirements of §§ 19 and 20 of the Code. (See Chapter 4.)

b. Registration will be made for a work eligible for protection under the Universal Copyright Convention (see Part 7.2) if it bears a notice satisfying the U.C.C. requirements specified in § 9(c) -- the symbol ©, accompanied by the name of the copyright proprietor and the year of first publication, placed in such manner and location as to give reasonable notice of claim of copyright.

c. Where registrability of a work depends upon the availability of the U.C.C. exemptions of § 9(c), the copies as first published should bear the special U.C.C. notice (see paragraph b., above). Where the notice in such a case meets the ordinary requirements of § 19 but not the U.C.C. requirements of § 9(c), registration will be made under the rule of doubt, and a cautionary letter will be sent.

Examples:

1. Notice includes "Copyright" or "Copr." instead of ©.
2. Notice on pictorial work does not include year date.

d. Where the notice on a work first published abroad meets neither the requirements of §§ 19 and 20 nor those of § 9(c), full-term copyright registration will be denied. However, if the work is an English-language book or periodical, ad interim registration may be possible.

II. Name of the copyright proprietor.

a. As a general rule, the notice appearing on a work first published abroad should contain the name of the owner of the right to secure U.S. copyright on the date of first publication, and registration should be made in that name.

8.2.2 Form and position of notice. (cont'd)

- b. Where the foreign edition bears one notice, and it agrees with the claimant named in the application, registration will be made in that name, even if the copies refer to someone else as the owner or licensee of U.S. rights.

Examples:

1. Notice reads: "© Xavier Kumquat 1958 -- Wow and Flutter Music Publishers, Exclusive Licensees for all Western Hemisphere Countries." Registration will be made in the name of Kumquat without question.
2. Notice reads: "© Charles Brown Ltd., London, 1959; For U.S.A. and Canada, Brown Music, Inc., New York." Registration will be made in the name of Charles Brown Ltd., without question.

- c. Where the foreign edition bears one notice which agrees with the claimant named in the application but specifically excludes the United States from its effect, registration should be refused.

Example: Notice reads: "© Charles Brown Ltd., 1959, for the entire world (excluding U.S.A. and Canada)."

- d. Where the foreign edition contains two separate copyright notices, and the name in one of the notices agrees with the claimant named in the application, registration will be made, unless the other notice is specifically identified as applying to the U.S. copyright.

Examples:

1. Notices: © Editions Maldemer 1958  
© Drainboard Pub. Co. 1958  
  
An application in either name will be accepted.
2. Notices: © Elaine Fairchild 1958  
© in U.S.A. by Bang and Whimper  
Scientific Publications 1958  
  
An application in the name of Mae Fairchild will be questioned.

8.2.2 Form and position of notice. (cont'd)

II. Name of the copyright proprietor. (cont'd)

3. Notices: © Peter Rabbit Music Co., Ltd.,  
London, 1959, for the entire  
world (excluding U.S.A. and  
Canada)  
© Peter Rabbit Music, Inc., New  
York, 1959, for U.S.A. and Canada

An application in the name of Peter Rabbit  
Music Co., Ltd., London, will be questioned.

e. Where the foreign edition bears a notice that disagrees  
with the claimant named in the application, the vari-  
ance will be questioned.

1. If the person named in the notice was the owner of  
the right to secure U.S. copyright on the date of  
first publication abroad, the Office will request  
that registration be made in his name, and will  
point out the possibility of recording an assign-  
ment.
2. Where the work is an English-language book or peri-  
odical which would have been subject to the manu-  
facturing requirements unless published with the  
U.C.C. notice provided in § 9(c), registration on  
Form A-B Foreign will be made only in the name in  
the notice; recordation of an assignment will be  
suggested where appropriate. In such a case reg-  
istration in the name of someone other than the  
person named in the notice will be considered only  
on Form A-B Ad Interim.

Example: An English-language book by a British  
author is manufactured and first pub-  
lished in the United Kingdom with a  
notice in the name of Colin Outsider;  
an application is submitted in the  
name of The Insider Press, Inc., a  
U.S. publishing firm. Registration  
on Form A-B Foreign will be made only  
in the name of Outsider; if the appli-  
cant wishes registration in the name  
of The Insider Press, Inc., he must  
apply for ad interim registration on  
Form A-B Ad Interim.

3. In cases other than those described in paragraph  
2, above, where the name in the notice was not  
that of the owner of the right to secure U.S.  
copyright on the date of first publication:

8.2.2. Form and position of notice. (cont'd)II. Name of the copyright proprietor. (cont'd)

- (a) Registration in the name in the notice, with the recordation of an assignment or similar document, will be suggested.
  - (b) Registration in the name of the person who owned the right to secure U.S. copyright on the date of first publication will be discouraged, but will not be refused; the application will be annotated to show the name in the notice.
4. Where the U.S. edition of a work originally registered ad interim contains no new matter, registration will be made in the name in the notice on the American edition. If the name is different from that in which ad interim registration was made, and if no assignment has been recorded, a cautionary letter may be sent.

III. Date in the notice.

- a. As a rule, the requirements governing the use of the year date in the notice, as outlined in topic 4.2.4, apply equally to works first published in the United States and those first published abroad.
- b. Where the U.S. edition of a work originally registered ad interim contains no new matter, registration will be refused unless the notice contains a year date not more than one year later than the year date of first publication abroad. (37 C.F.R. § 202.2(6)(iii))

IV. Position of the notice.

- a. A notice that would meet the ordinary position requirements of § 20 (see part 4.3) if the work were first published in the U.S. would be equally acceptable if the work were first published abroad.
- b. Where the author of a work is not a citizen or domiciliary of the U.S., and the author is a citizen of a U.C.C. country or the work was first published in a U.C.C. country, the position requirements are satisfied if the notice is "printed in such manner and location as to give reasonable notice of claim of copyright." Where, in such cases, the notice is a substantial departure from the ordinary requirements of § 20, a cautionary letter may be sent.

## Examples:

- (1) Notice on last page of book; accept as "reasonable" but send cautionary letter.
- (2) Notice on page 213 of 650-page book; reject.

Part 8.3 REQUIREMENTS FOR REGISTRATION

8.3.1 Necessity for registration.

- I. In general. Works first published abroad are generally subject to the same registration requirements as works first published in the U. S. (See Chapters 5 and 9). However, it is not the practice of the Compliance Section to initiate compliance action with respect to foreign publications (see topic 5.4.2.)
- II. U. C. C. Works. Foreign works protected under the Universal Copyright Convention and first published abroad with the copyright notice specified in § 9(c) are exempt from the deposit, demand, and compliance provisions of the statute. (See topic 5.4.2. I.)

8.3.2 Copies and fees. (See Chapters 5 and 9).

- I. Unpublished works. For registration in unpublished form, works of foreign origin must meet the same deposit and fee requirements as those applicable to domestic works. (See topic 5.2.1.)
- II. Published works.
  - a. U. S. author. Where the author of a work is a U. S. citizen or domiciliary the statute requires that, except in the case of ad interim registration, deposit be made of two copies of the work as first published abroad and the ordinary registration fee. For ad interim registration in such cases the statute requires deposit of one copy of the foreign edition and the registration fee of \$6.00. The waiver-of-fee option is not available to works by U. S. citizens or domiciliaries. (See Part 5.2.)
  - b. Foreign or stateless authors.
    1. In general. Where the author of the work is foreign or stateless and not domiciled in the U. S., and first publication took place in a foreign country, the statute ordinarily requires the deposit of "one complete copy of the best edition then published in such foreign country" (§ 13) and the prescribed registration fee (§ 215). See paragraph c, below, concerning the requirements for waiver-of-fee registrations.

8.3.2 Copies and fees. (cont'd)

II. Published works. (cont'd)

b. (cont'd)

2. "Best edition then published." The deposit should generally consist of the best foreign edition in existence. (See topic 5.3.1.)

(a) Deposit of a copy of a later American edition of the work would not be acceptable for registration of a work first published abroad. (But see topic 5.2.2.I.h.)

(b) Where the Office knows of a better foreign edition than the one represented by the copy deposited, registration may be made on the basis of the copies received, and a request for a copy of the better edition may be sent later. (See topic 5.3.1.III and 8.2.1.III.c.)

c. Waiver-of-fee option.

1. Where the author and copyright proprietor of a work first published abroad are neither citizens nor domiciliaries of the U.S., payment of the registration fee may be waived if the following deposits are made in the Copyright Office "within six months from the date of first publication abroad." (Code, § 215).

(a) An application for registration.

(b) Two copies of the work.

(c) A "catalog card in form and content satisfactory to the Register of Copyrights."

2. The waiver-of-fee option is available equally in the case of ad interim registrations and in the case of registrations for other types of works first published abroad. It is not available in any case where the author or copyright proprietor is a U.S. citizen or domiciliary.

8.3.2 Copies and fees. (cont'd)

II. Published works. (cont'd)

c. (cont'd)

3. The receipt of the catalog card is an essential requirement for registration under the waiver-of-fee option, but as long as an effort has been made to fill out the card, registration without fee will not be refused because the card contains errors or omissions.
4. The six-month option period is computed from the date of first publication abroad, and ordinarily expires on the same day of the month as that on which it began.
  - (a) For example, where the date of publication was January 16, 1958, the waiver-of-fee period expired on July 16, 1958.
  - (b) In the case of works first published on December 31, March 31, May 31, August 29, August 30, August 31, and October 31, there is no corresponding day in the month in which the six-month period would normally end. In such cases no fee will be required if the necessary material is received on the following dates, respectively: July 1, October 1, December 1, March 1, (except in leap years), March 2, March 3, and May 1.
5. Where an application, two copies, and a catalog card are received within the six-month period but registration must be postponed because of some minor formal insufficiency in the application (e.g., lack of signature, variance in authorship) an effort will be made to obtain a new application within the option period. However, registration may still be made under the option even if the new application is not received until after the period has expired.



Part 8.4 AD INTERIM COPYRIGHT

8.4.1 In general.

I. Definition. Ad interim copyright is a short-term copyright available to English-language books and periodicals which have been manufactured and first published abroad. It is secured by registration within six months of first publication abroad, and lasts for a maximum of five years from the date of first publication; copyright may be extended to the full term if an American edition is manufactured and published within the five-year period and if a claim to copyright in the American edition is also registered.

II. Cross-references. Many of the requirements and practices affecting ad interim copyright are discussed in other parts of the Compendium in general and this chapter in particular:

- a. As to the manufacturing requirements in general, see Chapter 6.
- b. As to practices concerning books and periodicals partly in English and partly in foreign languages, see topic 6.2.1. III.
- c. As to practices concerning books and periodicals by authors of different nationalities, see topic 6.2.1. III.
- d. As to what constitutes first publication abroad and the effect of simultaneous publication, see topic 8.2.1.
- e. As to the effect of first publication abroad, see topic 8.1.3.II.b.
- f. As to registration for an American edition for a work registered ad interim see topic 8.1.3.IV.b.
- g. As to requirements for a copyright notice, see topics 8.2.1.I.b. and 8.2.1.III.
- h. As to the practices concerning the copyright notice, see topic 8.2.2.
- i. As to practices concerning copies and fees, see topic 8.3.2.

8.4.2 Works subject to ad interim registration.

- I. Scope of ad interim copyright. In general, a work is not eligible for ad interim registration unless it meets the following conditions:
  - a. It must be a "book" (see Part 2.2) or a "periodical" (see Part 2.3), including a contribution to a periodical.
  - b. It must contain some copyrightable English-language text. (see topic 6.2.1).
  - c. It must have been partly or entirely manufactured abroad (see topic 6.2.2).
  - d. It must have been first published abroad (see topic 8.1.1).
- II. U.C.C. exemption. Works of foreign authorship protected under the Universal Copyright Convention (see Part 7.2) are completely exempted from the manufacturing and ad interim requirements if they bear the special U.C.C. notice provided in § 9(c) of the statute (see topic 8.2.2.I.).
- III. Copyright Office policy concerning ad interim registration.
  - a. In general. As a rule, where it is reasonably arguable that the manufacturing and ad interim requirements apply to a work, ad interim registration will not be refused, even though its necessity is doubtful. In appropriate cases the Copyright Office will suggest registration in another class or dual registration (see topic 6.2.1).

Examples:

- (a) A drama published in book form.
- (b) A U.C.C. book published with "Copyright" rather than "©" in the notice.
- (c) A book partly in English and partly in French.
- (d) A book written partly by an American and partly by a non-American U.C.C. author.

8.4.2 Works subject to ad interim registration. (cont'd)

III. Copyright Office policy concerning ad interim registration.  
(cont'd)

- b. Works exempted under U.C.C. Even though a work seems clearly to be exempted from the manufacturing and ad interim requirements under the U.C.C., ad interim registration will not be refused if the applicant desires it. Where it appears that the applicant is not aware of the exemption, the Copyright Office will inform him of it before making registration.

8.4.3 Requirements for ad interim registration.

I. Time limits.

- a. The six-month period is computed from the date of first publication abroad, and ordinarily expires on the same day of the month as that on which it began; for example, where the date of publication was January 16, 1958, the period for ad interim registration expired on July 16, 1958.
- b. In the case of works published on December 31, March 31, May 31, August 29, August 30, August 31, and October 31, there is no corresponding day in the month in which the six-month period would normally end. In such cases ad interim registration will not be refused if the material is received on the following dates respectively: July 1, October 1, December 1, March 1 (except in leap years), March 2, March 3, and May 1.
- c. Where an application, and the necessary copy and fee are received within the six-month period, but ad interim registration must be postponed because of some minor formal insufficiency in the application (e.g., lack of signature, lack of address of claimant, etc.), an effort will be made to obtain a new application within the six-month period. However, ad interim registration may still be made even if the new application is not received until after the period has expired.

II. Copy and fee.

- a. For ad interim registration the statute (§§ 22, 215) requires the deposit of "one complete copy of the foreign edition," and a registration fee of \$6.00.

8.4.3 Requirements for ad interim registration. (cont'd)

II. Copy and fee. (cont'd)

- b. The waiver-of-fee option, permitting registration on the basis of an application, two copies, and a catalog card, applies to ad interim registrations where neither the author nor the copyright proprietor is a U.S. citizen or domiciliary.

III. Works published in installments. Where a work is first published abroad in installments, a separate ad interim registration must be made for each installment. However, where an American edition of the entire work is published before all the foreign installments have been published, only those published abroad before the date of U. S. publication may be registered ad interim.

8.4.4 Notice of copyright. (See Part 8.2 and topic 4.1.3.I.)

I. Notice on copies as first published abroad.

- a. Works subject to ad interim registration need not bear a notice at the time of first publication abroad, and ad interim registration will be made whether the copies bear a good notice, a defective notice, or no notice.
- b. Where the copy or copies deposited for ad interim registration bear no notice, registration will ordinarily be made without correspondence. Where the notice is defective (e.g., year date lacking; initials rather than name used; notice at end of book) registration should be made but a cautionary letter should be sent pointing out the necessity for correcting the notice before any copies are published in the U. S. Where the name in the notice differs from the name given as copyright proprietor in the ad interim application, the variance will be questioned, but registration in a name other than that in the notice will not be refused. (See topic 8.2.2.II.2.)

II. Notice on U. S. edition.

- a. Where the U. S. edition of a work originally registered ad interim contains no new matter, registration will be refused unless the notice contains the year date of first publication abroad. "(See topic 8.2.2.II.e.2)."

8.4.4 Notice of copyright. (See Part 8.2). (cont'd)

II. Notice on U. S. edition. (cont'd)

- b. Where the U. S. edition of a work originally registered ad interim contains no new matter, registration will be made in the name in the notice on the American edition. If the name is different from that in which ad interim registration was made, and if no assignment has been recorded, a cautionary letter may be sent. (See topic 8.2.2.II.)

8.4.5 Importation of copies.

- I. In general. The law (§ 16) permits the importation into the U. S. of not more than 1500 copies of the particular book or periodical covered by an ad interim copyright, provided that ad interim registration has already been made, and that the copies imported bear an acceptable copyright notice. This privilege of importation extends equally to works by foreign and U. S. authors.
- II. Import statement. At the time of ad interim registration, the Copyright Office issues to the copyright claimant (or to the importer indicated on the application form) a statement authorizing the importation of up to 1500 copies; following its use, this statement is returned to the Copyright Office by the customs officials.
  - a. If less than 1,500 copies have been imported the Copyright Office issues another import statement for the remainder. This process is continued until the 1,500-copy quota has been exhausted.
  - b. The 1,500-copy limit on importation does not apply to "a foreign newspaper or magazine" (17 U.S.C. § 107(b)). Since an unlimited number of copies of these works can be imported, the issuance of an import statement limited to 1,500 copies is unnecessary and might be confusing. For this reason, no import statement is issued for "a foreign newspaper or magazine."
    1. The phrase "newspaper or magazine" is not the equivalent of the term "periodical" for this purpose.

8.4.5 Importation of copies. (cont'd)

II.b.1 (cont'd)

It applies to popular works issued periodically to a general readership, but is not considered to apply to scholarly, technical, or professional periodicals issued to a specialized readership. Import statements are issued for this latter type of material.

2. Issuance of import statements is also withheld for contributions to periodicals, but for a different reason. In that case the importation limitations apply, and to issue import statements for several contributions to the same issue of a periodical could result in the importation of considerably more than 1,500 copies.

8.4.6 Extension of ad interim copyright to full term.

I. Statutory provision. "Whenever within the period of such ad interim protection an authorized edition of such books or periodicals shall be published within the United States, in accordance with the manufacturing provisions specified in section 16 of this title, and whenever the provisions of this title as to deposit of copies, registration, filing of affidavits, and the printing of the copyright notice shall have been duly complied with, the copyright shall be extended to endure in such a book or periodical for the term provided in this title." (17 U.S.C. § 23.)

II. Requirements for full-term registration.

- a. Where the first U. S. edition of a work originally registered ad interim contains no copyrightable new matter, registration will be made only if the following four requirements are met:
  1. The U. S. edition was produced in compliance with the manufacturing requirements. (see Chapter 6.)
  2. It was published in the U. S. within the five-year ad interim term, as computed from the date of first publication abroad.
  3. The copies as published bear the required statutory copyright notice, including the year date of first publication abroad. (See Chapter 4.)

8.4.6 Extension of ad interim copyright to full term. (cont'd)

II. Requirements for full-term registration. (cont'd)

4. Deposit is made of an application, two copies of the American edition, and the registration fee.

b. As a rule, registration for the American edition should be made within the five-year ad interim term. However, as long as the edition was manufactured and published in the U.S. within the five-year period, registration will be made after the ad interim term has expired, as a doubtful case. A cautionary letter will be sent in such cases.

III. Extension of subsisting ad interim copyrights under U.C.C.

a. The statute (§ 9(c)) also provides that on the date the U.C.C. comes into effect in a particular country copyright protection for any book or periodical by a citizen of such country, in which an ad interim copyright was subsisting on that date, is automatically extended to the full term.

b. For this purpose, ad interim copyright was subsisting in the work on the effective date of the U.C.C. if a claim to ad interim copyright had actually been registered on or before the effective date. It was not subsisting if the work was published more than six months before the effective date, or was published within six months before the effective date but without the U.C.C. notice. Where a work was published within six months before the effective date and bore a U.C.C. notice, the case will be treated as though an ad interim copyright was subsisting in the work on the effective date, under the rule of doubt.

c. Where a subsisting ad interim copyright has been extended to the full term by virtue of the provisions of the U.C.C. and § 9(c), registration for a later American reprint edition will not be refused if it meets the four requirements specified in topic 8.4.6.II.a., above.





Chapter 11

Renewal Registration

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Chapter 11. RENEWAL REGISTRATION

Part 11.1 DURATION OF ORIGINAL COPYRIGHT TERM

- 11.1.1 Published works. Copyright begins on the date of first publication, as shown by the original application and other office records, and lasts for twenty-eight years from that exact date.
- I. Date of registration. The date of copyright registration is immaterial in determining the duration of copyright in published works.
  - II. Date in notice. If the year date in the copyright notice is earlier than the actual date of publication, the original copyright term is computed from the last day of the year given in the notice.
    - a. The actual date of publication is given in the renewal application, and the Copyright Office adds the annotation "Year date in notice 19\_\_."
    - b. Applications received within the twenty-eighth year as computed from the actual date of publication, but more than twenty-eight years from the last day of the year given in the notice, will be rejected.
- 11.1.2 Unpublished works. Copyright begins on the date of registration in the Copyright Office, and lasts for twenty-eight years from that exact date.
- I. Prior to 1949. Until 1949 the effective date of an unpublished registration was regarded by the Copyright Office as the date the copy was deposited, even though the application and fee may have been received later. Thus, the duration of copyright in an unpublished work registered before 1949 is generally computed from the date of deposit of the copy and this date is given on the renewal application. However, if a renewal application is received more than twenty-eight years from the date of deposit of the copy but less than twenty-eight years from the date when the application or fee was received, registration will be made.

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11.1.2

11.1.2 Unpublished works. (cont'd)

- II. Presumption of new matter. When a work originally registered in unpublished form is later published, the date of publication will not affect the duration of copyright in the unpublished work or the time-limits for renewal registration. However, independent renewal registration for the published version will be made on the irrebuttable presumption that it contains new matter.



Part 11.2 TIME LIMITS FOR RENEWAL

- 11.2.1 Twenty-eighth year. A copyright may be renewed for a second term of twenty-eight years, provided an acceptable application and fee are received in the Copyright Office or the Library of Congress within the twenty-eighth year of the original copyright term.
- I. Informal application. A letter, telephone call, or telegram may be accepted in lieu of a formal application, provided it adequately identifies the work in question and the proper claimant or basis of claim, and provided there is a fee in the Office.
  - II. Details. The physical details of renewal registration need not be completed before the original term expires, if an acceptable application and fee are received before the deadline.
  - III. Amendment after deadline. If an unacceptable application, necessitating correspondence, is received within the proper time-limits, it may be amended and accepted after the deadline if it originally contained a correct statement of either the claimant or the basis of claim. A special effort is made, however, to obtain a fully-acceptable application before the original term expires.
- 11.2.2 Computing term. The renewal year comprises the year ending on the date of expiration of the original copyright term. It includes both the twenty-seventh and twenty-eighth anniversaries of the date on which the copyright began.
- I. Application before renewal year. An application received at any time before the beginning of the renewal year must be rejected, and an entirely new application must be submitted at the proper time.
  - II. Application after renewal year. If an application or fee is received after the renewal year has expired, the claim must be rejected.

11.2.2 Computing term. (cont'd)

## II. (cont'd)

- a. When the office records or original certificate contain an error, omission, or patent ambiguity with respect to the date of publication or registration, which may have misled the renewal applicant, registration is possible after the twenty-eighth year as a doubtful case.
- b. When the office records state a date of publication which has not been questioned or corrected, renewal registration will not be made more than twenty-eight years after that date, even when the renewal applicant asserts that the date was erroneous.

III. Copyright Office receipt. The date of actual receipt in the Copyright Office or Library of Congress determines the acceptability of a renewal application.

- a. The date of deposit in the mails is immaterial for this purpose.
- b. Receipt of a renewal application or fee in the Library of Congress is regarded as equivalent to receipt in the Copyright Office, but misdirecting or misdelivery to another government agency will not permit registration after the deadline.

IV. Week-end or holiday. If the original copyright expires on a Saturday, Sunday, or holiday within the District of Columbia, renewal action may be taken on the next succeeding business day.

Part 11.3 ORIGINAL REGISTRATION

11.3.1 First term claim. A claim to the original term of copyright must be registered before renewal registration can be made.

- I. Simultaneous filing. Original registration must precede renewal registration, but the applications, copies and fees may be submitted simultaneously.
- II. Original claimant and copies. Original registration should be made in the name of the original copyright claimant, and copies of the original edition should be deposited. In special cases, however, where copies of the original edition are not available, photostatic copies or reprints may be accepted for deposit. (See topic 5.2.2-I.b.)

11.3.2 Change of policy. The Copyright Office may register claims to renewal even though it might not under its present policies register the original claim.

I. Examples:

- (1) A work published with no copyright notice for which original registration was made.
- (2) An American reprint published after expiration of the ad interim period.

Exception: This policy will not apply to the special case where the Office knows that the work is the same or similar to one which a court has decided is not entitled to copyright protection.

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11.4.1

Part 11.4 PRESIDENTIAL EXTENSION-OF-TIME PROCLAMATIONS

- 11.4.1 Section 9. When, under the authority of section 9 of the copyright law, the President issues a proclamation extending the time-limits for renewal registration to the benefit of citizens of a certain nation, the Copyright Office will register renewal claims submitted within the times specified in the proclamation.
- 11.4.2 Annotation. The records of these registrations will be annotated to refer to the authority for the entries.
- 11.4.3 Citizenship and domicile of claimant. The citizenship and domicile of a renewal claimant, while immaterial in all other renewal cases, may be considered in determining acceptability under an extension-of-time proclamation.

Part 11. 5 CONTRIBUTIONS TO PERIODICALS AND COMPOSITE WORKS

11.5.1 Separate claims. Claims to renewal copyright in contributions to periodicals and other composite works may be registered, whether or not the individual contributions were separately registered apart from the work in which they first appeared.

- I. Identification of composite work. A renewal application covering a contribution which was not registered separately must clearly identify the periodical or other composite work in which it first appeared.
  - a. The facts of registration and publication date for the periodical or other work must be given on the application.
  - b. All other facts are taken at face value unless a patent error or ambiguity is presented.
- II. Different claimants. A contribution which was published with a separate copyright notice should be separately registered for the original term of copyright before renewal registration is made, if the claimant stated in the notice differs from the claimant given in the notice on the composite work as a whole. The Copyright Office requires original registration as a condition to renewal entry when this fact is known. When the notices on the contribution and the composite work are the same, original registration is optional.
- III. Installments, single entry. When, under a former practice, a number of installments of a serial were registered for copyright under a single entry number, a single renewal application will be accepted.
- IV. Installments, separate entries. When renewal is claimed in a number of installments which were not registered separately, individual renewal applications and fees are required for each installment.

11.5.2 First publication basis. In order to be acceptable, a renewal claim in an individual contribution which was not registered separately must be based on first publication of the work.

Example: an application covering a short story which appeared in BEST SHORT STORIES OF 1923, a reprint anthology, would be rejected.

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11.6.1

Part 11.6 WORKS FIRST PUBLISHED ABROAD IN ENGLISH

- 11.6.1 Law prior to 1949. Renewal registration for works first published abroad in English is governed to some extent by the ad interim provisions of the copyright law as they existed prior to the 1949 amendment.
- I. Time limits. These provided that ad interim registration was possible only within 60 days of first publication abroad, and that the ad interim copyright lasted for four months from the date of registration. It was necessary that a U.S. edition be published during the ad interim period and registered in order to extend the ad interim copyright to the full term.
  - II. Computing term. It is the position of the Copyright Office that, under these provisions, the term of protection is computed from the date of first publication abroad, and not that of ad interim deposit, of United States publication, or of United States registration.
- 11.6.2 Foreign edition never registered. If the foreign edition of a work was never registered ad interim but the later American edition was registered, the Copyright Office will accept a renewal application covering the American edition.
- I. Cautionary letter. If the application is received less than twenty-eight years from the date of foreign publication, a cautionary letter will be sent explaining that the effect of registration is doubtful.
  - II. New matter. If the application is received more than twenty-eight years from the date of foreign publication, a cautionary letter will explain that renewal registration covers only the new matter in the American edition, if any.
- 11.6.3 Both editions registered. If ad interim and full-term registrations were both made within the proper time-limits, renewal registration may be made to cover both editions.
- I. Single renewal application. The present practice of the Copyright Office is to permit the filing of a single renewal application covering both the ad interim and full-term registrations, regardless of whether or not the American edition contained new matter.
    - a. The data of both registrations are included on the single application.

**11.6.3 Both editions registered. (cont'd)****I. (cont'd)**

- b. A single renewal application covering both ad interim and full-term registration is acceptable only during the period between the twenty-seventh anniversary of first publication of the American edition and the twenty-eighth anniversary of first publication of the foreign edition.

**II. Separate applications. If the applicant prefers, he may file separate applications for the ad interim and full-term registrations.**

- a. Each application must be filed within the twenty-eighth year of the term of copyright in the particular edition it covers.
- b. The Copyright Office will annotate each application to refer to the other edition.

**III. Installments. When a work was first published abroad in serial installments and several separate ad interim registrations were made, separate renewal applications are required even though the first American edition was published in a single volume.****IV. Application too late. If the renewal application is received more than twenty-eight years from the date of first publication abroad it must be rejected as too late. The applicant may file a new application covering the American edition alone, provided that edition contained new matter.****11.6.4 Four months exceeded. When the dates of ad interim registration and United States publication are more than four months apart, a single application covering both entries cannot be accepted. The Copyright Office will make separate registrations following correspondence, if the applicant reasserts his claims, and will add an annotation to each application referring to the other registration.****11.6.5 No American edition. When the Copyright Office records indicate that no American edition of a work has ever been registered the Copyright Office will refuse registration for a renewal claim, based on an ad interim registration.**

Part 11.7 RENEWAL CLAIMANTS: AUTHORS AND THEIR HEIRS11.7.1 Authors.

- I. Name. The author, if living, may claim renewal, whether his work was published in his true name, an assumed name, or anonymously.
- a. If the author is still living the renewal application must be filed in his own name, even if he is insane or incompetent.
  - b. If an applicant is claiming renewal as "the author" and his name does not appear in the original records of the registration, he must submit documents substantiating his claim.
    1. The documents are recorded and the application is annotated to refer to the volume and page of the assignment records in which they appear.
    2. Documents need not be submitted when the nature of the work would make the omission of the claimant's name natural.

Examples: works of multiple authorship;  
pictorial reproductions; and  
obviously anonymous works.

- II. Definitions. The term "author," for renewal purposes, refers to the individual who personally wrote or created "renewable matter," in the work.
- a. The term "author" includes editors, compilers, arrangers, translators, illustrators, etc..
  - b. The term "author" does not include employers for hire, publishers, corporations, firms, partnerships, religious orders, fraternal organizations, or any other impersonal entity.

11.7.2 Widows and Children.

- I. Single class. If the author is dead, his widow (widower) and children are entitled to claim renewal. The widow and children are regarded as a single class of renewal claimants, and applications from either or both will be accepted without question.
- II. Definition of "widow." The term "widow" (or "widower") refers to the surviving spouse of the author.



**11.7.2 Widows and children. (cont'd)****II. (cont'd)**

- a. A widow does not lose her renewal rights upon remarriage.
- b. A divorced spouse is not an acceptable renewal claimant, but the Copyright Office will not inquire into the validity of a marriage or a divorce.
- c. The terms "wife of the author" or "wife of the deceased author" are not acceptable bases of claim.

**III. Definition of "children." The term "children" generally refers to the progeny of the author.**

- a. The Copyright Office will register a renewal claim in the name of an illegitimate child, whether acknowledged or not.
- b. Adopted children are acceptable renewal claimants.
- c. Step-children are not entitled to claim renewal.
- d. Grandchildren and other descendants beyond the first degree cannot claim renewal as "the children of the author."
- e. The Copyright Office will request a new application if a child is claiming renewal as the author's "next-of-kin."

**11.7.3 Executors.**

- I. Will. If the author died, leaving a will, and if no widow or children exist at the time the renewal application is filed, the author's executors may claim renewal in their own names.

11.7.3 Executors. (cont'd)

II. Author deceased prior to renewal year. The author need not live into the renewal year in order for his executors to claim.

III. Qualification. In order to be regarded as an "executor," a claimant must have been named in the author's will, and presumably must have been qualified in probate proceedings. However, the Copyright Office will not refuse registration in the name of an executor even if the author's will has not been probated.

IV. Personal right. The right to claim renewal as "executor" is a personal one, and the individual executor must be named in the renewal application.

a. The author's legatees have no right to claim renewal.

b. A renewal claim cannot be registered in the name of "The Estate of John Doe," even if executors have not yet been qualified under the author's will.

V. Intestate. In no case can the administrator of an intestate author's estate claim renewal.

11.7.4 Next of kin.

I. Absence of will. If the author is dead and no widow or children survive him, and if there is "the absence of a will," the author's next of kin are entitled to claim renewal.

II. Definitions. The term "next of kin" refers only to blood relatives of the author.

a. It is not clear whether the term "next of kin" refers only to the living relatives of the nearest degree of consanguinity, or whether it also includes the descendants of dead relatives claiming on the theory of representation.

11.7.4 Next of kin. (cont'd)II. Definitions. (cont'd)

## a. (cont'd)

Example: An author had two brothers, one of whom died leaving two sons; may the nephews claim renewal equally with the surviving brother?

- b. The Copyright Office will register the claim of any blood relative as "next of kin," regardless of the degree of consanguinity.
- c. The statement of the basis of claim on the renewal application must not consist solely of a statement of relationship; examples: sister, mother, niece, etc. The claim itself should be stated as "next of kin of the deceased author, there being no will," although kinship may be specified parenthetically.
- d. Statements such as "heirs" or "representative of heirs" are not acceptable either as claimants or as bases of claim.

III. Will, no executor. If the author left a will but no executors exist at the time for renewal, the proper renewal claimant is unclear.

- a. Except in the situation noted in topic 11.7.4.III.c.2., below, the Copyright Office will accept a claim in the names of the next of kin, on the basis of judicial authority.
- b. If it is unclear whether executors still exist, registration may be made in the names of both the executors and the next of kin, on separate applications and for separate fees.

11.7.4 Next of kin. (cont'd)

III. Will, no executor. (cont'd)

b. (cont'd)

Example: The executor himself is unsure whether or not he was actually discharged.

- c. If the author leaves a will which names no executor, or if the person names cannot or will not act as executor, the court may appoint an "administrator cum testamento annexo" (administrator with the will annexed; administrator c.t.a.) who performs the identical functions of an executor. When the estate has been settled and the executors discharged, or when the executor is removed before the estate is completely administered, the court may appoint an "administrator de bonis non cum testamento annexo" (administrator de bonis non with the will annexed; administrator d.b.n.c.t.a.) to deal with the remaining or after-acquired property under the will.
1. The Copyright Office will register renewal claims in the names of administrators c.t.a. or administrators d.b.n.c.t.a. Except as noted in paragraph 2, below, the Copyright Office will also register renewal claims for the same work in the names of both the next of kin and the administrators c.t.a. or administrators d.b.n.c.t.a., on the basis of separate applications and fees.
  2. Ordinarily, registration will be made in the names of the author's next of kin, even when administrators c.t.a. or administrators d.b.n.c.t.a. exist.

11.7.4 Next of kin. (cont'd)III. Will, no executor. (cont'd)

a. (cont'd)

2. (cont'd)

Exception:

If the author left a will without naming an executor, and an administrator c.t.a. or an administrator d.b.n.c.t.a. is in existence at the time of renewal registration, an application in the name of the next of kin will be refused on the basis of Gibran v. National Committee of Gibran.

Part 11.8 RENEWAL CLAIMANTS: PROPRIETORS11.8.1 Proprietors in general.

- I. Definition. The term "proprietor" refers to the owner of copyright on the date the renewal application is filed.
- II. Derivation of title. In order to claim renewal as "proprietor," the claimant must derive his title directly or indirectly from the original copyright owner.

11.8.2 Posthumous works.

- I. Proper claimant. If a work is "posthumous" within the meaning of the copyright law, the proprietor is the only proper claimant.
  - a. Generally, the author's widow, children, executors, or next of kin have no right to claim renewal in a posthumous work.
  - b. If a work consists of the writings of more than one person, and if one of the authors died before first publication, the work is regarded as partially posthumous, and renewal of copyright in the posthumous material must be claimed by the proprietor.
 

Example: collection of letters by famous author, edited by his widow; widow may claim renewal in her editing as "author," but publisher claims renewal in letters as "proprietor of copyright in a posthumous work."
  - c. There is doubt under the wording of the renewal section as to whether the proprietor of a posthumous work may claim renewal when the work was originally published as a contribution to a periodical and not registered separately. The Copyright Office will accept applications from the proprietor, from the author's executors, widow, children, or next of kin, or from both, provided separate applications and fees are submitted.
- II. Definitions. The term "posthumous work" includes a work first published after the author's death, and registration in such a work is made only in the name of the proprietor. It is unclear whether the following works are "posthumous," and the Copyright Office will accept claims by the proprietors, by the author's beneficiaries, or both:
  - a. Works registered as unpublished after the author's death, but never published.

11.8.2 Posthumous works. (cont'd)II. Definitions. (cont'd)

- b. Works registered as unpublished during the author's life, but published after his death.

11.8.3 Composite works.

I. Proprietor-claimant. The proprietor of a periodic, cyclopedic, or other composite work may claim renewal in the work as a whole.

II. Definitions. Generally, a composite work is an original publication relating to a variety of subjects, to which a number of different authors have contributed distinguishable and separable selections.

- a. To be regarded as "composite" a work must be covered by a single copyright.
- b. A work by a single author, consisting of a collection of his writings, is not a composite work.
- c. A work which is the product of joint authorship and common design, or which consists of elements which have been indistinguishably merged into a single entity, cannot be regarded as composite.

Examples: musical compositions, dramas and dramatico-musical works.

III. Individual contributions. While the proprietor of a composite work may claim renewal in the work as a whole, the author of an individual contribution, or his beneficiaries, may also claim renewal in his contribution.

- a. It is unclear whether the proprietor's claim in the entire work covers everything in the work that is not separately renewed.
- b. If a renewal application covering an individual contribution is received too late for registration, the Copyright Office furnishes the applicant with the facts of renewal registration for the composite work.

11.8.4 Corporate claimant. In the case of a "work copyrighted by a corporate body otherwise than as assignee or licensee of the author" the statute gives the proprietor the right to claim renewal.

- I. Questionable claim. This basis of claim is always questioned unless it has been established by previous correspondence.
- II. When not acceptable. This basis of claim is not acceptable when:
  - a. The original copyright claimant was not a corporation.
  - b. The individual author of an unpublished work transferred his common law literary property, or his right to secure copyright, to a corporation.
    1. The corporation is regarded as the author's assignee.
    2. The fact that the corporation also purchased the author's manuscript does not change its status as assignee.
  - c. The work is posthumous or composite, was made for hire, or is a print or label for which registration was made in the Patent Office.
- III. Special circumstances. In cases other than those listed in item 11.8.4, II, above, registration on this basis will be strongly discouraged and will be made only when the applicant indicates that there were special circumstances under which the claim might conceivably be said to apply.

Examples:

- (1) Works to which the stockholders of a corporation have contributed indistinguishable parts.
- (2) Works written or created by members of a religious order or similar organization, when the individual authors never had a personal property right in the works.
- (3) Works written by an official or major stockholder in a corporation, when the works were written directly for the corporation and the arrangement did not amount to employment for hire.
- (4) Motion pictures, when the applicant asserts that the work was produced under special circumstances and was not copyrighted by an employer for whom the work was made for hire.



11.8.5 Employer for hire. Renewal copyright in works copyrighted by an employer for whom they were made for hire may be claimed by the proprietor.

- I. Employer-claimant. Generally, in order for this basis of claim to be acceptable, the original copyright claimant must have secured the copyright by virtue of his employment of the author, rather than through any transfer of rights after the work was completed.
- II. Definitions. The Copyright Office will make no effort to determine whether or not a particular arrangement constituted employment for hire.
  - a. A renewal claim as "author" will be questioned when the original records of the registration state that the work was made for hire.
  - b. A renewal claim as "proprietor of copyright in a work made for hire" will be questioned when the original copyright claimant was also the only author listed on our records.
    1. The claim will be registered if the individual was listed as "author" by virtue of being an employer for hire.
    2. The claim will be rejected if the person listed as "author" on the original records wrote the work himself, unless an explanation is offered indicating the author was employed for hire, and inadvertently or by agreement with the employer claimed copyright in his own name.
- III. Work made for hire. The law specifies that, in order for this claim to be applicable, the work must have been copyrighted by the employer for whom the work was made for hire.
  - a. No provision is made for the case in which the work was made for hire, but the employer transferred his common law literary property to a third person prior to publication.
  - b. When this situation is presented the Copyright Office will register a claim as "proprietor of copyright in a work made for hire," but will point the difficulty out to the applicant.

11.8.5 Employer for hire. (cont'd)

- IV. More than one author. When more than one author contributed to a work, the renewal claimant need not specify that all of the authors were employed for hire.
- a. If only some of the authors were employed, this fact should appear on the renewal application.
  - b. The Copyright Office will accept claims by authors or their beneficiaries and proprietors of copyright in a work made for hire on the same application, provided no patent inconsistency is presented.
- V. Doubt re. proprietor-claimant. Although there is doubt, under the wording of the renewal section, as to whether the proprietor of copyright in a work made for hire may claim renewal when the work was originally published as a contribution to a periodical and not registered separately, the Copyright Office will accept the claim without question.

11.8.6 Prints and Labels registered in the Patent Office.

- I. Proprietor entitled. The proprietor of copyright in a print or label for which registration was made in the Patent Office prior to July 1, 1940, is entitled to claim renewal.
- II. Author not entitled. The author of such a work has no renewal rights.

Part 11.9 JOINT RENEWAL CLAIMANTS

- 11.9.1 Several claimants, same application. When a number of different persons are entitled to claim renewal in the same work, they may submit their claims on the same application, or they may submit separate applications and fees. It is not necessary that all possible claimants join in applying for registration in order to secure a renewal.
- 11.9.2 Later application, same work. When renewal registration for a work has already been made and a later application covering the same work is received, the Copyright Office will first determine what claims have been registered.
- I. All claims already registered. If all of the claims stated on the later application have already been registered, the application will be rejected.
  - II. Some claims already registered. If any of the claims stated on the later application have not been registered, and are not inconsistent with the earlier claims, the application will be passed without question, even though it may also contain claims which have already been registered.
  - III. Adverse claims stated on the later application are or may be in conflict with a claim or claims which have already been registered, a letter of explanation is requested from the second applicant. The later claim will be registered without further question if the applicant reasserts it.

## Examples of typical adverse claim situations:

- a. Conflicts among second proviso claimants (the author and his beneficiaries).
  1. When an earlier claim was registered in the name of an author's next of kin, and a new application is submitted by an executor, the Office requests information concerning existence of a will.

11.9.2 Later application, same work. (cont'd)

III. Adverse claims (cont'd)

Examples (cont'd):

a. (cont'd)

2. When a claim was registered in the name of an author, and his widow now claims, the Office asks the date of the author's death.

- (a) If the date is earlier than that on which the first application was filed, registration is made without further ado.
- (b) If the author was living when registration was made in his name, the widow's claim may also be registered as a doubtful case, despite the principle that renewal rights vest on the date of a valid registration.

b. Conflicts among first and second proviso claimants (proprietors as against authors and their beneficiaries).

- 1. When a claim was registered in the name of an author, and a new application is submitted as "proprietor of copyright in a work made for hire," the Office requests information concerning the circumstances under which the work was written.
- 2. When a claim was registered in the name of one of several authors, and a new application is submitted as "proprietor of copyright in a work made for hire" without restricting the claim to the work of a particular author or authors, the office asks whether the claim covers the material written by the person in whose name registration has already been made.
  - (a) If so, registration will be made if the applicant reasserts his claim.
  - (b) If not, a new application should be submitted confining the claim to the material written by employees for hire.

Part 11.10 UNACCEPTABLE RENEWAL CLAIMS

11.10.1 Personal right. The right to claim a renewal copyright is a personal right.

I. Living person. A renewal can be claimed only by a living person.

Example: When a claimant dies while his renewal application is in the mails, a new application in the name of a different claimant must be submitted.

II. Claimants must be named. The renewal right accrues to an individual person or firm, and not to a status.

Examples: claims by "The Executors of James Fitzgerald" or "the executors of the author," or by "the next of kin of the author" are not acceptable.

III. Authority to apply; acceptable address. The renewal application should be submitted by the claimant himself, or by someone authorized by him to do so.

- a. The Copyright Office will not question the authority for filing the application.
- b. The claimant's actual address, or the address at which he could be reached, should appear on the application.

Examples:

- (1) "Philadelphia, Pennsylvania," and "London, England" are not acceptable addresses.
- (2) The address may be stated as "in care of" the person or firm filing the application, but the Copyright Office suggests this alternative with caution.

11.10.2 Statutory claimants. The Copyright Office can register renewal claims only in the names of claimants listed as acceptable in the statute.

- I. Failure to qualify. If none of the claimants listed in the statute exists or can be identified, registration must be refused.
- II. Successors or representatives. The successors or representatives of a person who could have claimed if still living have no right, as such, to claim renewal.

Example: the executors of the author's widow are unacceptable claimants.

- III. Assignment of renewal interest. Registration must be made in the name of a statutory claimant, even though he has assigned all of his interest in the renewal term.

Examples: registration cannot be made in the names of an "assignee," "proprietor," "attorney-in-fact," or "owner per agreement."

11.10.3 Material covered. A renewal claim in a work can cover only the material which was first published in that particular version of the work.

- I. Later version. The original author of a published work cannot claim renewal in a later version of that work unless he himself contributed to the new matter on which copyright in the later version was claimed.

Example: Where it appears from the record that an author's original composition was published before an arrangement of it by another person, a renewal claim in the arrangement by the author, based on his original composition, is unacceptable.

- II. Revised published version. But where an author's original unpublished work was first published with an arrangement or other new matter by another person, the author's claim to renewal in the published work may be accepted.

Chapter 12

Assignments and Related Documents

Outline of Topics

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- 12.1.2 Copyright Office policy
  - I. Substantive contents
  - II. Any related instrument

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Part 12.3 FORMAL SUFFICIENCY OF THE DOCUMENT (cont'd)

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Part 12.4 DOCUMENTS AMENDING COPYRIGHT OFFICE RECORDS (cont'd)

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- I. Subsequent or additional information
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- I. Preparation under names and titles
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- II. Separate assignments
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- IV. Pages



Chapter 12. ASSIGNMENTS AND RELATED DOCUMENTS

Part 12.1 IN GENERAL

12.1.1 Statutory provisions.

- I. A "copyright . . . may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will." (17 U.S.C. §28).
- II. "Every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded." (17 U.S.C. §30).

12.1.2 Copyright Office policy.

- I. Substantive contents. As a rule, the Copyright Office will not attempt to judge or interpret the substantive contents of an assignment or other document; recordation will be made as long as the formal requirements have been met.
  - a. If the document bears a descriptive heading (e.g., "license," "merger," "abandonment," etc.) this information may be included in the index cards, but this is regarded as transcription rather than interpretation.
  - b. In exceptional cases, where it is clear that the instrument is invalid or does not accomplish what was intended, the Copyright Office will reject the document.

Examples:

- (1) A document purporting to be an assignment which is actually a self-serving declaration signed by the "assignee."

12.1.2 Copyright Office policy. (cont'd)

I. Substantive contents. (cont'd)

h. (cont'd)

Examples: (cont'd)

- (2) A document purporting to be an abandonment of copyright which is signed by someone other than the copyright owner.

II. Any related instrument. Generally, the Copyright Office does not require recordation of a document but will, upon request, record any formally acceptable assignment or related instrument.

- a. Where appropriate, the Copyright Office may point out the assignment provisions of the law and suggest the desirability of recording an instrument.
- b. In certain cases, recordation of an assignment may be required as a condition of registration in the name of an assignee. (See Chapter 4 (Notice), Part 4.2.3, I. g.).

Examples:

- (1) Registration for an unpublished work has been made in the name of the assignor; the work has been published unchanged with a notice in the name of the assignor, but with a reference to the assignment (e.g., "Copyright 1954 John Doe; assigned to Richard Roe").
- (2) Registration of an ad interim claim has been made in the name of the assignor; the U.S. edition has been published unchanged with a notice in the name of the assignor, but with a reference to the assignment (e.g., "Copyright 1954 John Doe, assigned to Richard Roe").

12.1.2 Copyright Office policy. (cont'd)

II. Any related instrument. (cont'd)

- c. In certain cases, recordation of an affidavit or other document may be required as a condition of renewal registration or of annotation of completed records.

Examples:

- (1) Where a particular author's name appears nowhere in our records in connection with an entry, and the omission of his name cannot logically be explained, registration of a renewal claim in his name will be made only if documents supporting his authorship are recorded.
- (2) Records of a registration cannot be changed to correct an applicant's error or to supplement the information given, but may be annotated to refer to a recorded document setting forth the facts.

Part 12.2 THE NATURE OF THE DOCUMENT

12.2.1 Kind of instrument submitted. Although the law speaks only of the recordation of assignments (that is, generally, a transfer of complete ownership of a copyright), the Copyright Office will record any kind of instrument which appears to have some relation to copyright protection.

Examples:

- (1) A license (i.e., an exclusive or non-exclusive grant of permission to use a copyrighted work for certain purposes).
- (2) A mortgage.
- (3) A will.
- (4) A court decree, such as a decree of distribution, etc.
- (5) A statement of abandonment of copyright.
- (6) An affidavit (such as a statement with respect to the authorship of a work).
- (7) An agreement or contract (such as an employment agreement).
- (8) A certificate of change of name or of corporate title.
- (9) A certificate of corporate merger.
- (10) A power of attorney.

12.2.2 Relation to copyright. The document need not have a direct relation to a copyright to be recorded, but may be questioned unless some possible direct or indirect relation can be perceived.

I. Indirect or potential. The relation to a copyright may be indirect or potential.

12.2.2 Relation to copyright. (cont'd)

I. Indirect or potential. (cont'd)

Examples:

- (1) A bill of sale of a business.
- (2) A birth or death certificate.
- (3) A blanket power of attorney.

II. No registration for work referred to. A document may be recorded even if the work to which it refers has not been registered for copyright, but registration in such cases may be suggested or requested.

III. Relationship not clear. Where the relationship between the document to be recorded and copyright is unclear or obscure, recordation may be delayed and the applicant may be asked his purpose in submitting the instrument.

Examples:

- (1) A document consisting of a collection of newspaper clippings referring to a night club performer.
- (2) A bill of lading referring to a shipment of motion picture films.

IV. No purpose served. Where it seems clear that recordation of a document would serve no purpose, recording will be discouraged and, in appropriate cases, refused.

12.2.2 Relation to copyright. (cont'd)

- V. Effort to record what cannot be registered. Where it is clear that the applicant is seeking to substitute recording a document for registering a copyright claim, or to assert by recordation a claim for which registration would be refused, the document will be rejected.
- VI. Submitted in error. Where it seems probable that the document has been submitted to the Copyright Office in error, it may be questioned or, in clear cases, returned without recordation.

Examples:

- (1) An assignment of rights in a trade-mark or patent.
- (2) A document citing a registration number which has no relation to any Copyright Office registration number.



Part 12.3 FORMAL SUFFICIENCY OF THE DOCUMENT

12.3.1 In general. In order to be recorded, a document must generally meet six formal requirements:

1. It must be "an instrument in writing."
2. If it purports to be an assignment, it must be "signed by the proprietor of the copyright."
3. If it purports to be an assignment, it must identify the assignor and assignee.
4. It must adequately identify the copyrighted work or other subject matter with which it deals.
5. If it purports to be an assignment, it must contain words of present conveyance.
6. It must be complete by its own terms.

12.3.2 "An instrument in writing."

- I. No special form. The Copyright Office does not provide, suggest, or require any special form for assignments or other types of documents.
- II. The actual instrument. The document to be recorded should be the actual instrument by which the conveyance or other commitment was made.
  - a. The original copy (or one of the original copies) should be submitted for recordation.
  - b. A typewritten, photostatic, or other copy of the document will be questioned, but may be accepted (with an annotation on the official record) upon the specific request of the sender.
  - c. Where the original of the document in question is on file in a public office, a copy certified by the appropriate official will be accepted.

12.3.2 "An instrument in writing." (cont'd)

II. The actual instrument. (cont'd)

c. (cont'd)

Examples:

- (1) Certificate of corporate merger.
- (2) Petition for change of name.
- (3) Court decree.

III. Handwritten signature. As long as it contains an individual's actual handwritten signature, any type of legible document which meets the other formal requirements will be accepted for recordation.

Examples:

- (1) Handwritten or typewritten original.
- (2) Assignment in the form of a letter.
- (3) Carbon original.
- (4) Mimeographed original.
- (5) Printed original.

IV. Illegible document. An illegible document, or one which could not be reproduced legibly on microfilm, will not be accepted.

12.3.3 "Signed by the proprietor of the copyright."

I. Handwritten signature of transferor. As a rule, the document to be recorded should contain the actual handwritten signature of the person or persons making the transfer, commitment, or declaration.

- a. An unsigned document is returned for signature before recordation.

12.3.3 "Signed by the proprietor of the copyright." (cont'd)I. Handwritten signature of transferor. (cont'd)

- b. If the signature of one of the parties to a two-party agreement is missing, the lack of the signature will be questioned.
- c. If several assignors are identified in the body of the document, and spaces have been provided for all their signatures, the document will be questioned if any of the signatures are missing, unless an additional copy of the document containing the missing signatures is submitted for recordation at the same time. With respect to assignors, each such document is indexed only under the particular signatures it contains.
- d. The signature of the assignee is not a requirement, and lack of the assignee's signature will not be questioned unless the instrument involves mutual undertakings requiring the assignee's signature for its validity.

II. Apparent inconsistency. When there is an apparent inconsistency between the person named as assignor in the body of an instrument and the person whose signature appears on it, the document is questioned.

- a. If the assignor is a corporation or other impersonal legal entity, the capacity of the individual executing the document on behalf of the assignor should be specified.
  1. If the assignor is a corporation, the document will be questioned unless the individual's capacity is specifically stated, but use of the corporate seal on the document is not required.
  2. If the assignor is an impersonal legal entity other than a corporation, the specific capacity should be stated (e.g., THE JEJUNE PUBLISHING CO., P.N. Grata, President). The capacity is not required, however, if it is clear from the document that the individual is signing on behalf of the assignor (e.g., THE DEPLORABLE MUSIC CO., By Mary Hurrah).

12.3.3 "Signed by the proprietor of the copyright." (cont'd)II. Apparent inconsistency. (cont'd)

- b. If the document has been signed by a legal representative (executor, administrator, trustee, etc.) or attorney-in-fact of an individual, the document will be questioned unless the individual's capacity is specifically stated.
- c. Where there is a reconcilable variance between the signature and the assignor given in the body of the document, the instrument will generally be indexed under the form of the name appearing in the signature.
  1. The document will generally not be indexed under the name of an agent or official of a corporation or other impersonal legal entity, although cross-reference cards under his name may be appropriate in certain cases.
  2. Where the document has been signed by a legal representative or attorney-in-fact, it will be indexed under the name of the person whom the signer represents, and cross-reference cards may be made under the name of the signer.
- d. As long as the capacity of the individual signer is stated or indicated, his legal authority to sign on behalf of the copyright proprietor will not be questioned.

III. Authority to sign. The Copyright Office will not conduct searches in order to determine whether a document has been signed by the copyright proprietor as shown in its records, nor will it question the authority of a particular person to sign as copyright proprietor.

- a. In certain cases, where it seems clear from correspondence or other material in the file that the person signing the document is not the copyright proprietor, the Copyright Office may call the discrepancy to the attention of the sender, but will not refuse to record the document if requested.

12.3.3 "Signed by the proprietor of the copyright." (cont'd)

III. Authority to sign. (cont'd)

b. No question will ordinarily be raised in the case of an assignment of copyright in a contribution to a periodical signed in the name of the periodical (e.g., Saturday Evening Post) rather than that of the publisher (e.g., Curtis Publishing Co.).

IV. Signature of individual. As a rule, the signature should be the actual handwritten signature of an individual person, and should give the individual's own name rather than that of the person or organization he may represent.

a. A pencil signature is acceptable.

b. A hand-printed signature is acceptable.

c. A printed, typewritten, rubber-stamp, or facsimile signature will be questioned.

d. An illiterate person's mark is acceptable if accompanied by another person's signature attesting to its authenticity.

e. The signature need not be legible or include the full name of the assignor, as long as the name is sufficiently identified elsewhere in the document, but initials or a monogram would not generally be regarded as a signature.

12.3.4 Identification of parties.

I. Identification of transferee. As a rule any document purporting to transfer a copyright or rights under a copyright (assignments, licenses, mortgages, etc.) should clearly identify the transferee as well as the person making the transfer.

II. Failure to identify necessary parties. Documents which fail to identify the necessary parties will be questioned, but recordation will not be refused.

12.3.4 Identification of parties. (cont'd)

II. Failure to identify necessary parties. (cont'd)

Examples:

- (1) "I, John Schmo, do hereby assign all rights, including copyright, in the work entitled 'How to Burn Toast.'"
- (2) "... copyright is hereby assigned to Cy Pres, as executor of the author ..." (the author not being identified by name).

III. Indexing. When a document which fails to identify the necessary parties is recorded, it will be indexed only under the names it contains; no index cards will be prepared under other names furnished in correspondence or elsewhere.

IV. One-party documents. A document which necessarily involves only one party (e.g., an affidavit, an abandonment, a disclaimer, etc.) will be indexed under the single name involved; where possible, a descriptive phrase characterizing the document will be transcribed on the index card.

12.3.5 Identification of subject matter.

I. Date not required. While the document need not include copyright data or bibliographic information, it should contain a reasonably precise identification of the subject matter with which it deals.

II. Failure to identify subject matter. A document which fails to identify its subject matter will be questioned.

Examples:

- (1) "I hereby assign my copyright to the Mercenary Music Co."
- (2) "...copyright in \_\_\_\_\_ is hereby assigned..." (space left blank through oversight).

12.3.5 Identification of subject matter. (cont'd)

II. Failure to identify subject matter. (cont'd)

Examples: (cont'd)

- (3) "...copyright in OPENING CHORUS is hereby assigned ..." (reference to part of score of an operetta meaningless when document considered by itself).

III. Titles. As long as the subject matter is adequately identified it need not contain the titles under which the works were registered for copyright.

- a. An abbreviated or entirely different title, or a different descriptive phrase, may be employed.

Examples:

- (1) "1957 Sales Manual" instead of "Fabulous Deals for '57."  
(2) "Style No. 173B," instead of "Polka Dots on Parade."

- b. The registration number may be used instead of the title.  
c. A blanket assignment or other transfer, in which no individual titles are given, may be recorded without question.

Example:

- (1) "... copyrights in all the published works of Prolific C. Hack are hereby assigned..."

IV. Outside sources. A document will be indexed solely under the titles or other identifying matter it contains; no information from sources outside the document will be supplied.

12.3.5 Identification of subject matter. (cont'd)

- V. No titles given. When a document in which no titles are specified is recorded, the index cards will contain the notation "No titles given."

12.3.6 Words of present conveyance.

I. Example. A document purporting to be an assignment should contain words to the effect that copyright is presently being conveyed (e.g., "I, Horace C. Rucksack, do hereby assign, sell, transfer, grant, and convey copyright in 'Old Rag, I Love You,' to the Sperryville Literary Society, Inc."

II. Lacking clear words of present conveyance. Where the applicant obviously wishes to have an assignment recorded, a document which lacks clear words of present conveyance will be questioned.

Examples:

- (1) A letter referring to an "understanding that you will have the assignment recorded," accompanied by the certificate of registration.
- (2) A letter addressed to the author giving him "permission to seek another publisher and to take whatever steps are necessary to have the copyright transferred to you."
- (3) A letter from an author indicating that "the publisher has agreed to assign the copyright to me."
- (4) A letter addressed to the Copyright Office, asking the Register of Copyrights to make a transfer of the copyright.

III. Intention manifest. Where the intention to assign the copyright is manifest from a reading of the document as a whole, the fact that it is in the form of a letter or is inexactly or vaguely worded will not preclude its recordation.

12.3.7 Completeness.

- I. In general. In general, a document will not be recorded unless it is complete by its own terms.



12.3.7 Completeness. (cont'd)

II. Attachments. Except as provided in paragraph d, below, a document which refers to specific attachments (e.g., "... as enumerated in Schedule A, which is attached hereto and made a part hereof...") will be recorded only if the attachments are also submitted for recordation.

- a. Except as provided in paragraph d, below, submission of the attachments will be required even if they are irrelevant to the copyright (e.g., tax forms, receipted bill) or if they duplicate information already in the records of the Copyright Office (e.g., the original certificate of copyright registration; a copy of the copyrighted work; another document which has already been recorded).
- b. Except as provided in paragraph d, below, submission of the attachments will be required even if they include a list of titles which would substantially increase the recording fee, and which are irrelevant to the transaction which the applicant is interested in recording.
- c. Submission of the attachments may be avoided by deleting the reference from the body of the documents, and the paper may be returned to the applicant for this purpose. When suggesting this alternative, the Copyright Office will suggest the desirability of having any changes in the executed document initialled by all parties.
- d. In exceptional cases, where the sender asserts that all three of the following factors exist and specifically requests that the document be recorded as submitted, recordation may be made without the attachments (with an annotation of the official record):
  1. The attachment is completely unavailable; and
  2. The attachment is unnecessary to identify the subject matter of the document; and
  3. It would be impossible or wholly impracticable to secure permission from the parties to make any changes in the document.

12.3.7 Completeness. (cont'd)

III. Incorporation by reference. When the terms of another instrument are merely "incorporated by reference" in the document to be recorded, attachment of the other instrument is not required.

Example:

(1) "In accordance with the terms of a mutual undertaking previously entered into between the parties on May 29, 1957, which is incorporated by reference herewith, Floyd C. Willoware hereby transfers ..."

IV. Part of larger document. When a document indicates on its face that it is part of a larger instrument (e.g., where it is marked "Attachment C" or "Exhibit A") the completeness of the document is normally questioned, but recordation will not be refused.

12.3.8 Other formal requirements.

I. Freedom from obvious errors.

- a. As a rule no attempt is made to verify the facts stated in a document submitted for recordation; titles, registration numbers, authors, dates, etc., are transcribed without checking their accuracy.
- b. When an obvious error of a material nature is recognized in the ordinary examination of the document, the paper is returned for correction; in such cases, the Copyright Office will suggest the desirability of having any changes in the executed document initialled by all parties.

Examples:

- (1) A document submitted for recordation in 1957 gives a 1958 date of execution.
  - (2) The names of the assignor and assignee are accidentally reversed.
  - (3) The letter of transmittal refers to one title and the document to an entirely different one.
- c. Names and titles will generally be transcribed on the index cards exactly as they appear in the document; but where there is no question but that a typographical error has been made in the document, the error will be corrected in indexing the document.

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12.3.8 Other formal requirements. (cont'd)

I. Freedom from obvious errors. (cont'd)

c. (cont'd)

Examples:

(1) "Great Russian~~and~~ Short Novels"

(2) "Maçame du Barry"

II. Date of execution.

- a. The document to be recorded need not bear a date although, if it does state a date of execution, this information will be transcribed on the index cards.
- b. While the law provides consequences for failure to record an assignment within three months of its execution (or six months if executed abroad), the Copyright Office will record a document at any time after its execution. However, if the specified recording period is nearing expiration, the Copyright Office may point out the statutory provisions when further correspondence is necessary.

III. Consular certificate of acknowledgment.

a. Section 29 of Title 17 provides:

"Every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgment under the hand and official seal of such consular officer or secretary of legation shall be prima facie evidence of the execution of the instrument."

- b. If a document appears to be an assignment which has been executed abroad, and which does not contain a consular certificate of acknowledgment of the assignor's signature, the document will be

12.3.8 Other formal requirements. (cont'd)

III. Consular certificate of acknowledgment. (cont'd)

b. (cont'd)

held and the provisions of section 29 will be called to the attention of the sender.

1. The document may be returned to the sender, upon request, so that a certificate may be obtained.
  2. The document may be recorded without the certificate (with an annotation on the official record) at the specific request of the sender.
- c. Recordation of foreign documents which are clearly not assignments will be made without reference to section 29, but where the nature of the document is unclear, the provisions of that section may be called to the attention of the sender.
- d. Since the statute refers to acknowledgment of the signature of the assignor, a consular certificate of acknowledgment of the signature of someone other than the assignor will be questioned, and the sender will be given an opportunity to obtain a new certificate.

Example:

- (1) The signature of the assignor has been acknowledged before a notarial officer of the country of execution, and the notary's signature has in turn been certified by a consular officer.

Part 12.4 DOCUMENTS AMENDING COPYRIGHT OFFICE RECORDS

12.4.1 In general.

- I. Regulation §201.5(a). The Regulations of the Copyright Office (37 C.F.R. §201.5(a)) do not permit correction or cancellation of a Copyright Office registration or other record, but provide that "... it shall be within the discretion of the Register of Copyrights to determine if any particular case justifies the placing of an annotation upon any record for the purpose of clarification, explanation, or indication that there exists elsewhere in the records, indexes or correspondence files of the Office, information which has reference to the facts as stated in such record."
- II. Document to correct, amend, or amplify. Where an applicant desires to correct, amend, or amplify a completed Copyright Office record, he may submit for recordation a document giving the pertinent information.

12.4.2 Abandonments.

- I. Statement of abandonment. Although there is no provision in the copyright law for abandoning a copyright, the Copyright Office will record an affidavit or signed statement of abandonment without offering any opinion as to its legal effect.
- II. Conditions. A statement of abandonment should generally meet the following conditions:
  - a. It should be signed by the person in whose name the claim was registered, or by his attorney-in-fact or assignee of record.
  - b. It should contain clear words of present abandonment.
  - c. It should adequately identify the work with which it deals.
  - d. If executed abroad, it should preferably be accompanied by a consular certificate of acknowledgment.

12.4.2 Abandonments. (cont'd)

II. Conditions. (cont'd)

- e. The original certificate of registration should be relinquished to the Copyright Office at the time of recordation.

III. Failure to meet conditions. Where a statement does not meet one or more of these conditions, the sender will be informed concerning them, but recordation will not be refused.

IV. Annotations. Following recordation of a statement of abandonment, annotations referring to the volume and page in which it is recorded will be added to the original record of registration and the catalog cards covering the entry.

12.4.3 Correction of errors.

I. Correction of errors in copyright registration.

- a. Where the record of a copyright registration is alleged to contain an error, not the fault of the Copyright Office, it is possible to record an affidavit or signed statement outlining the error and stating the correct facts.

Examples:

- (1) Incorrect date of publication given.
- (2) Statement of new matter omitted.
- (3) Author's citizenship incorrectly stated.
- (4) Co-author's name omitted.

- b. In certain cases where a Copyright Office action is dependent upon the recordation of such a document (e.g., where renewal registration in the name of a particular author depends upon recordation of a document attesting to his authorship), it is desirable that the document be in the form of an affidavit signed by the person making the claim, and accompanied by supporting documents or affidavits.

12.4.3 Correction of errors. (cont'd)I. Correction of errors in copyright registration.  
(cont'd)

c. Following recordation of a document intended to correct an error in a copyright registration, an annotation referring to the volume and page numbers of the recorded document is added to the entry; the original catalog cards covering the registration are annotated.

II. Correction of errors in recorded document. Where errors in a recorded document are discovered following recordation, no changes in the completed record can be made, but the sender may adopt one of three alternatives:

- a. He may submit a completely new document for recordation.
- b. He may have the original document (which has been recorded and returned to him) corrected and recorded again.
- c. He may submit for recordation an affidavit or signed statement describing the error in the previously-recorded document.

12.4.4 Changes and amplifications.

I. Subsequent or additional information. Where the Copyright Office record in question was not erroneous, but some of the facts have changed, or where the applicant wishes to amplify the facts stated on the record, it is possible to record an affidavit or signed statement describing the change or outlining the additional information.

## Examples:

- (1) Change of title.
- (2) Change of maiden name to married name.
- (3) Addition of a pseudonym.

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12.4.4 Changes and amplifications. (cont'd)

- II. Annotation. In such cases, cross-reference cards referring to the document are added to the general card catalog.



Part 12.5 RECORDATION

- 12.5.1 In general. The recordation process involves initial examination of documents for formal sufficiency, determination of the recording fee, assigning volume and page numbers, preparation of index cards under the appropriate names, titles, numbers, dates, etc., microfilming, checking the completed microfilm record, and mailing the recorded document.
- 12.5.2 Date of recordation. The date of recordation for a particular document is the date the last necessary element (acceptable document and required fee) is received. When a document is returned to the sender for correction, the date it is returned in corrected form is regarded as the date of recordation. When the fee, or part of the fee, is received after receipt of the document, the date of receipt of the amount making up the total fee is the date of recordation.
- 12.5.3 Indexing
- I. Preparation under names and titles. Index cards covering a recorded document are prepared under the names of the parties and the titles listed in the document. (See items 12.1.2, I.a., 12.3.3, I.c., 12.3.3, II.c., 12.3.4, III., 12.3.4, IV., 12.3.5, IV., 12.3.5, V., 12.3.8).
  - II. Date of recordation. The cards will state the date of recordation, the inclusive volume and page numbers, and (where given in the document) may also include the date of execution, the nature of the document, the names of the authors, the registration number and year date of registration, and descriptive matter following the title (e.g., "(in C sharp minor)").

12.5.4 Changes in unrecorded document.

- I. Requests for Copyright Office to change. The Copyright Office will not itself make any changes or corrections in a document submitted for recordation, even when specifically requested or authorized to do so by the copyright owner.

## Examples:

- (1) Sender requests Copyright Office change the year date of execution from "1997" to "1957."
  - (2) Sender requests Copyright Office to determine registration number and add it to a blank space in the document.
  - (3) Sender requests Copyright Office to delete reference to an attachment
- II. Returning document for initials. If the process of recordation has not been started when the request for change or correction is received, the Copyright Office may return the document to the sender, suggesting that amendments should be initialled by the parties.

12.5.5 Recording fees.

- I. Code, sec. 215. Section 215 of 17 U.S.C. prescribes the following recording fees:

"For recording every assignment, agreement, power of attorney, or other paper not exceeding six pages, \$5; for each additional page or less, 50 cents; for each title over one in the paper recorded, 50 cents additional."

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12.5.5 Recording fees. (cont'd)

- II. Separate assignments. A fee is required for each separate assignment or document, even if they appear on the same page.
- III. Titles. In determining the number of titles in a document, the following considerations are observed:
- a. Every title of copyrighted or copyrightable works listed in the document is included, but not designations referring to uncopyrightable matter (trademarks, patents, etc.)
  - b. The term "title" for this purpose generally denotes "appellation" or "denomination" rather than "registration," "work," or "copyright."
1. Where the same title is repeated more than once in the same document, it is counted as only one title, unless the document is too long or complex to make finding of duplicates feasible.
    - (a) Duplicate titles are counted as a single "title" for purposes of computing the fee, even when different registration numbers or dates are indicated. The same is true in the case of various issues, volumes, chapters, installments, etc., even when listed separately under different numbers and dates.

Examples of one "title":

- (1) --"Ferlin Husky Fan Club News," vol. 1, no. 3, June, 1957  
--"Ferlin Husky Fan Club News," vol. 1, no. 4, July, 1957
- (2) --"Trapped in the Snack Bar,"  
Installment I  
--"Trapped in the Snack Bar,"  
Installment II

12.5.5 Recording fees. (cont'd)

III. Titles. (cont'd)

b. (cont'd)

1. (cont'd)

- (b) Where the same title is repeated more than once in the same document, but is followed by different descriptive matter, subtitles, names of authors, etc., separate fees will be charged.

Examples:

- (1) --RONDO (Massenet)  
    --RONDO (Respighi)
- (2) --"Combination Waffle Iron and  
    Pants Presser"  
    --"Combination Waffle Iron and  
    Pants Presser (side view)"
- (3) --"The Romance of Searching"  
    --"The Romance of Searching," a  
    fantasy by D. F. Queens

- (c) Where a work is listed under alternative titles, or where both old and new titles are indicated, separate fees will be charged.

Examples:

- (1) "Money Isn't Everything," also known as "Who Wants to be a Seven"
- (2) "Jimmie's Cafe," formerly known as "Draw One"
- (d) Where a work is listed under two titles, but the second title is merely a descriptive subtitle or translation of the first, only one fee will be charged.

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12.5.5 Recording fees. (cont'd)

III. Titles. (cont'd)

b. (cont'd)

1. (cont'd)

(d) (cont'd)

Examples:

(1) "How to Get Ahead in the Government, or Ten Ways to Get Rid of Your Supervisor"

(2) "On the Water (Auf Dem Wasser)"

(e) In cases where, despite separate listings of the title, only one fee would normally be charged, the Copyright Office will make separate index cards under the various listings, upon the specific request of the sender and payment of separate fifty-cent fees.

IV. Pages.

a. In determining the number of pages in a document, each side of a leaf bearing textual matter is regarded as a "page."

b. A rider is not considered a "page" unless it is more than half the size of the other sheets in the document.



Chapter 13

Notices of Use

Outline of Topics

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- I. Exclusive rights and the "compulsory license"
- II. The "notice of use" requirement
- III. The "notice of intention to use" requirement

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Part 13.4 NOTICES OF INTENTION TO USE

13.4.1 Definition

13.4.2 Processing of Notices of Intention to Use



Chapter 13. NOTICES OF USE

Part 13.1 IN GENERAL

13.1.1 Statutory provisions.

I. Exclusive rights and the "compulsory license."

- a. In the case of a copyrighted musical composition, the copyright owner has an exclusive right to record the work on mechanical instruments such as phonograph records, up to the time he himself records the composition or licenses someone else to record it.
- b. Once the copyright owner has recorded the copyrighted musical composition on mechanical instruments, or licensed someone else to record it, he must file a "notice of use" in the Copyright Office in order to collect royalties from others who record the composition.
- c. When the copyright owner has filed a "notice of use" in the Copyright Office, showing that he has recorded his copyrighted musical composition or licensed it for recording, others who wish to record it must either:
  1. Obtain a license from the copyright owner, or
  2. Record the composition without the copyright owner's permission, relying on the "compulsory license" provided in the statute.
- d. The "compulsory license" provision operates as follows: when a copyrighted musical composition has been recorded under the copyright owner's authority and a notice of use has been filed in the Copyright Office, anyone may record the composition without the owner's permission if he: (1) sends the copyright owner a "notice of intention to use," and sends a duplicate of this notice to the Copyright Office; (2) pays the copyright owner a fee of 2 cents for each **part** manufactured; and (3) makes the required reports to the copyright proprietor of the number of records he manufactures.

13.1.1 Statutory provisions. (cont'd)

- II. The "notice of use" requirement. "It shall be the duty of the copyright owner, if he uses the musical composition himself for the manufacture of parts of instruments serving to reproduce mechanically the musical work, or licenses others to do so, to file notice thereof, accompanied by a recording fee, in the Copyright Office, and any failure to file such notice shall be a complete defense to any suit, action, or proceeding for any infringement of such copyright." (17 U.S.C. § 1(e),)
- III. The "notice of intention to use" requirement. "Whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this title, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the Copyright Office, sending to the Copyright Office a duplicate of such notice;..." (17 U.S.C. § 101(e).)

13.1.2 Copyright Office policy.

- I. The function the Copyright Office performs in recording notices of use is similar to its function in recording assignments and related documents. (See Chapter 12.)
- a. As a rule the Copyright Office makes no effort to evaluate the accuracy of the statements given in a notice of use, but merely records and indexes any notice of use that meets the minimum formal requirements. (See part 13.3.)
- b. In exceptional cases, where it seems clear from the notice of use itself, or from accompanying correspondence, that the notice has been filed under a misconception of the law, the Copyright Office will write, pointing out the possible difficulty.

Examples of common misconceptions concerning notices of use:

- (1) That a notice of use may be filed instead of registering a claim to copyright.

13.1.2 Copyright Office policy. (cont'd)

I. (cont'd)

b. (cont'd)

Examples of common misconceptions concerning notices of use: (cont'd)

- (2) That filing a notice of use secures copyright protection for the performance recorded, or for the recording as such.
  - (3) That filing a notice of use offers protection for the title or idea for a song or a recording.
  - (4) That filing a notice of use is required for non-musical material (stories, poems, lectures, etc.) reproduced on sound recordings.
  - (5) That filing a notice of use offers protection for a phonograph label, or for the name or trademark of a recording company.
- II. Ordinarily the Copyright Office makes no effort to search its records to determine whether the musical compositions listed on a notice of use have been registered for copyright, or whether the titles are correctly stated. However, where it appears that the notice of use may have been filed under a misconception, a limited search may be undertaken in order to spot-check the information given on the notice.
- III. There are no circumstances in which the Copyright Office will require the recordation of a notice of use. Where appropriate, however, the Office may point out the "compulsory license" provisions of the law and suggest the desirability of recording a notice of use.
- IV. Where it is not altogether clear whether the filing of a notice of use is appropriate in a particular case, the Copyright Office will not discourage recordation. The Office will point out the statutory provisions to the person filing the notice, and will proceed with recordation if requested.

Part 13.2 APPROPRIATENESS OF A NOTICE OF USE

13.2.1 In General. Generally, the following four circumstances should all exist in order for the recordation of a notice of use to be appropriate:

- I. All works listed in the notice should be copyrighted.
- II. All works listed in the notice should be musical compositions.
- III. All works listed in the notice should either have been recorded or licensed for recording by the copyright owner.
- IV. The notice should be filed under the authority and in the name of the present owner of copyright in all compositions it lists.

13.2.2 Works listed should be copyrighted.

- I. As a rule, where it is apparent that the works listed on a notice of use have not yet been copyrighted, or are now in the public domain, the desirability of recording the notice will be questioned.

Examples:

- (1) Title listed as: "Rock, Caterpillar, Rock (no copyright filed as yet)."
  - (2) Title listed as: "Beethoven's Symphony No. 7."
- II. Where a notice of use is accompanied by an application for registration covering the same composition as that listed on the notice, no question will be raised concerning the fact that the composition has not yet been copyrighted.
    - a. This is true even where the title given on the notice is followed by a statement such as "copyright pending" or "submitted herewith."
    - b. Where an application and notice of use covering the same unpublished composition are filed concurrently,

13.2.2 Works listed should be copyrighted. (cont'd)

II. (cont'd)

b. (cont'd)

and action on the application must be deferred because of some defect, action on the notice of use should not be deferred unless there is reason to doubt that registration for the work will be completed.

Examples:

- (1) Where the defect is lack of signature, the notice of use should be recorded without waiting for the new application.
- (2) Where there is a question as to the ownership of the copyright, the notice of use should not be recorded until entry has been made.

III. Where it is clear or probable that the compositions listed on a notice of use have been published with a copyright notice, the fact that claims to copyright have never been registered will not affect the recordability of the notice. In appropriate cases, however, the necessity for registering a claim may be pointed out to the person submitting the notice, and the case may be referred to the Compliance Section for possible action.

13.2.3 Works listed should be musical compositions.

I. Recordation of a notice of use should be discouraged where it seems clear that the works listed on the notice are neither musical compositions nor copyrightable works containing music.

Examples:

- (1) Title on notice: "The Poems of Dylan Milkweed, Vol. II".
- (2) Title on notice: "Mario Lasagna Sings! (a Concert Hall Recording, NaXL-7777)."

13.2.3 Works listed should be musical compositions. (cont'd)

- II. A notice of use will not be questioned where it seems clear that the works listed are musical compositions, even though registration for them, or for larger works containing them, has been made in a class other than Class E.

Examples:

- (1) Title on notice: "The Miraculous Minotaur, a dramatic cantata by Bela Earayk (Du-12345, January 13, 1949)".
- (2) Title on notice: "Sing, You Sibling!" words and music by Ziggy Miltown from "Songs are Better than Tranquilizers" by Dr. Josiah Rank (A-12345, January 13, 1949).
- (3) Title on notice: "Main title and score of Blood of the Son of Dracula (Lp-12345, January 13, 1949)."

13.2.4 Works listed should be recorded or licensed for recording.

- I. The Copyright Office ordinarily will not inquire as to whether or not a work has been recorded or licensed for recording at the time a notice of use covering it is filed. However, if it is clear from the correspondence or other circumstances that there has been no recording or license, or that the notice of use has been filed under a misconception, the notice should be questioned.
- II. For a notice of use to be appropriate, it is necessary that the composition be used, or licensed for use, "for the manufacture of parts of instruments serving to reproduce mechanically the musical work."
- a. Since the law makes no distinction between test or audition records and commercial records, the Copyright Office will not question a notice even when it is clear that only audition records have been made.
  - b. For a notice of use to be appropriate, the recording need not necessarily have been reproduced on disks;

13.2.4 Works listed should be recorded or licensed for recording. (cont'd)

II. (cont'd)

b. (cont'd)

no question will be raised as to the method of reproduction as long as it involves any form of sound recording--tape, wire, perforated rolls, motion picture sound tracks, etc.

13.2.5 Notice should be filed by copyright owner.

I. A notice of use should be filed by or under the authority of the owner of copyright in all the compositions listed in the notice, and should list his name as copyright owner. A notice filed in the name of a record producer, licensee, performer, etc., should be questioned if it appears that the person listed is not now the copyright owner.

II. The copyright owner listed in a notice of use should be the present owner of the copyright, even though copyright was secured in the name of an earlier owner.

a. The notice should be recorded in the name of the present owner, even though this name appears nowhere in the Copyright Office records in connection with the copyrighted work.

b. In appropriate cases, the Copyright Office may suggest the desirability of recording an assignment.

13.2.6 Other cases where a notice may or should be filed.

I. When a new copyrighted arrangement or other copyrighted new version of a musical composition is recorded, a new notice should be filed, even though notices have already been filed for the original version of the work, or for earlier arrangements.

a. The notice in such cases should be recorded in the name of the present owner of copyright in the arrangement or new version, rather than the owner of copyright in the basic composition.

b. A notice in such cases may be recorded even when the new matter in the revised version of the composition consists of non-musical elements.

13.2.6 Other cases where a notice may or should be filed. (cont'd)

I. (cont'd)

b. (cont'd)

Examples:

- (1) New words for an old song.
  - (2) A medley consisting of a compilation of old songs.
  - (3) A new abridgement of Handel's "Messiah."
- II. Where a notice of use has been recorded for a composition during the first term of copyright, it is doubtful whether a new notice need be recorded when the copyright is renewed, but the recording of a notice will not be discouraged in such a case.
- III. Where a notice of use has been recorded for a composition in the name of the owner of copyright at that time, it is doubtful whether a new notice need be recorded when the copyright is transferred to a new owner, but the recording of a notice will not be discouraged in such a case.
- IV. A new notice of use may be filed to correct an error in a previously recorded notice.



Part 13.3 FORMAL SUFFICIENCY AND RECORDATION OF A NOTICE OF USE

13.3.1 Form. A notice of use should be filed on Form U. The second half of the form, which is a duplicate of the first half, is returned to the sender as an acknowledgment that his notice has been recorded.

13.3.2 Copyright owner.

I. Line 1 of the notice of use should contain only the name and address of the present owner of the copyrights in all the compositions listed on the notice.

a. Where the compositions are owned jointly or in common by two or more owners, who are the same for all the compositions listed, the names and addresses of all joint or co-owners should be given in line 1.

b. Where all the compositions are owned jointly or in common by two or more owners, who are the same for the compositions listed, a notice filed in the name of only one or part of the owners will be recorded without question.

II. Where two or more owners and two or more titles are given in the notice, the Copyright Office records may be spot-checked to determine whether all the owners listed actually own copyright in all the compositions listed. Where different owners are involved, separate notices of use should be filed.

13.3.3 Title.

I. As a rule, the notice of use should list the title of each separate copyrighted musical composition that has been recorded.

II. The title given should ordinarily be that under which the recordings were made, even though it differs from the title under which a copyright claim in the work was registered. It is desirable that the title under which registration was made should also be given, for clear identification of the copyrighted work in question.

Examples:

- (1) Title on notice: "Bye Bye Blues by Buddy Bomb (registered as So Long Blues, Eu-12345, June 30, 1956)".

13.3.3 Title. (cont'd)

II. (cont'd)

Examples:

(2) Title on notice: "My Heart's a Wanderer by James Schovill, in Pardon My Past (Ep-123456, June 30, 1956)".

III. A notice will be accepted if it contains a title sufficient to identify the musical composition in question. As further means of identification, however, it is desirable that the title be followed by the names of the authors, the registration number, and the copyright year date.

IV. The notice of use should not contain information concerning the performers who have recorded the works, or concerning the recordings themselves. Where this information has been given, and it appears that there may be a misunderstanding concerning the notice of use requirements or the purpose of a notice of use, a new notice should be requested omitting this information.

13.3.4 Date of recordation.

- I. The date of recordation for a notice of use is the date the last necessary element (acceptable notice and required fee) is received.
- a. When it is necessary to request a new notice because of some defect in the earlier one filed, the date the new notice is received is regarded as the date of recordation.
  - b. When the fee, or part of the fee, is received after receipt of the notice, the date of receipt of the amount making up the total fee is the date of recordation.

13.3.4 Date of recordation. (cont'd)

- II. Where the fee is to be charged to a Deposit Account, and the Deposit Account does not contain funds sufficient to record the notice, recordation is deferred pending replenishment of the Deposit Account or receipt of a separate recording fee. However, it is the date the notice was received, rather than the date sufficient funds are received, that is regarded as the date of recordation in such cases.

13.3.5 Recording fee.

- I. Statutory provision. Section 215 of the Code prescribes the following recording fees: "For recording a notice of use, \$3, for each notice of not more than five titles; and 50 cents for each additional title."
- II. Number of titles.
- a. Generally, in determining the number of titles in a notice of use, the same considerations as those applicable to assignments and related documents are observed. (See item 12.5.5.III.)
- b. Where a notice lists the general title of a collective work, together with the titles of two or more compositions included in the work, it may be necessary to ask the sender how he wishes the notice indexed, in order to determine the recording fee. (Example: Title given as "Some of My Best Friends are Children Folio, containing Finder's Keepers, The Woodchuck, Allee in the Tree, and Kick the Can Willy.")
1. If the sender wishes the notice of use indexed only under the collective title, the Copyright Office will write and request a new notice of use giving only the collective title and charge for only one title.
  2. If the sender wishes the notice of use indexed under both the individual titles and the

13.3.5 Recording fee. (cont'd)

II. Number of titles. (cont'd)

b. (cont'd)

2. (cont'd)

collective title, he will be requested to file a new notice listing them all on separate lines.

3. If the sender wishes the notice of use indexed under the individual titles but not the collective title, a new notice should be filed listing the individual titles separately, each followed by the title of the collective work.

Example: "Finder's Keepers, in Some of My Best Friends are Children Folio."

Part 13.4 NOTICES OF INTENTION TO USE

13.4.1 Definition. A "notice of intention to use" is a notice given to the copyright owner by someone who intends to record the copyrighted work on mechanical instruments without a specific license, under the "compulsory licensing provisions." (See item 13.1.1.) The notice of intention to use is sent to the copyright owner by registered mail, and a copy is sent to the Copyright Office. No special form is required.

13.4.2 Processing of Notices of Intention to Use.

- I. When a notice of intention to use is received in the Copyright Office it is given a number, which is written in the upper right hand corner of the notice itself. Index cards are prepared under the titles listed in the notice, and the notice is then filed by number. The fee required for recording a notice of intention to use is the same as that required for a notice of use.
- II. When the Copyright Office receives a letter or other document which appears to have been sent in an effort to comply with the "notice of intention to use" requirements, but which clearly does not meet these requirements, the Copyright Office will write to the sender pointing out the provisions of the law.



Chapter 15

Certificates and Certifications

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Chapter 15. CERTIFICATES AND CERTIFICATIONS

Part 15.1 CERTIFICATES OF REGISTRATION

15.1.1 Statutory provisions.

- I. When registration has been made "the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office, . . . " (17 U.S.C. §209)
- II. The certificate shall contain the name and address of the claimant, the citizenship of the author, the place of domicile of an alien author domiciled in the United States, the author's name "(when the records of the copyright office shall show the same)," the title, "the date of publication if the work has been reproduced in copies for sale, or publicly distributed," and "such marks as to class designation and entry number as shall fully identify the entry." A certificate of book registration shall also state the receipt of the affidavit, and "the date of the completion of the printing, or the date of publication of the book." (17 U.S.C. §209)
- III. "The Register of Copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for in the case of all registrations made after July 1, 1909, and in the case of all previous registrations so far as the copyright office record books shall show such facts, which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same." (17 U.S.C. §209)
- IV. "Said certificate shall be admitted in any court as prima facie evidence of the facts stated therein." (17 U.S.C. §209)

15.1.1 Statutory provisions. (cont'd)

- V. "The seal used in the copyright office on July 1, 1909, shall be the seal of the copyright office, and by it all papers issued from the copyright office requiring authentication shall be authenticated." (17 U.S.C. §206)

15.1.2 Preparation of original certificates.

- I. As a rule, the body of the certificate is prepared by the applicant himself, as a duplicate of his application. This document becomes the certificate of registration when the signature of the Register of Copyrights and the seal of the Copyright Office have been affixed.
- II. It is not essential that the applicant himself prepare the body of the certificate. As long as the necessary information has been provided, the Copyright Office may prepare the certificate in appropriate cases.

15.1.3 Mailing of original certificates.

- I. As a rule, original certificates are mailed in window envelopes, to the address the applicant has indicated in the "return address" box on the certificate itself.
  - a. The date the certificate is mailed is recorded on a mailing sheet.
  - b. No separate record is made of the addressee, since this information appears in the "return address" box of the application covering the same entry.
- II. If the "return address" box in the certificate to be mailed contains an insufficient address, but a complete address can be found from other sources, a special mailing envelope will be typed.

**15.1.3 Mailing of original certificates. (cont'd)**

III. If the "return address" box is blank, the certificate will be mailed to the first copyright claimant listed in the body of the certificate. Exception: if the "return address" box is blank on a renewal certificate, the certificate should be returned to the examiner for correction.

IV. The following are special circumstances under which a certificate may be mailed:

- a. If the Office is instructed to mail the certificate to an address other than that given in the "return address" box, the examiner will attach a slip containing the correct mailing address to the certificate when he passes the application. This address will be recorded on the mailing sheet.
- b. If the certificate is to be mailed as an enclosure to a letter, the person signing the letter shall inform the clerk in charge of mailing certificates of the date his letter is mailed, so that this can be recorded on the mailing sheet.
- c. If an import statement is to be mailed with an ad interim certificate, this fact will be recorded on the mailing sheet. If the import statement is to be sent to an addressee other than that of the certificate, the mailing sheet should show the address to which the statement was sent.
- d. If the applicant sends postage or a stamped envelope for the return of his certificate, it should be used for that purpose.

**15.1.4 Certificates returned by Post Office.**

- I. When a certificate is returned as undeliverable, this fact should be indicated on the mailing sheet.

15.1.4 Certificates returned by Post Office. (cont'd)

II. In certain cases, the certificate may be re-mailed to a new address:

a. If the certificate contains the name and address of a claimant, other than that indicated in the "return address" box, it will be re-mailed to the new address.

b. In certain cases, the undelivered certificate may be re-mailed to an author or specified co-author, even if he is not a copyright claimant.

III. If no alternate address can be found, the registration number and date of return will be indicated on the mailing envelope, and both the certificate and envelope will be filed by number in a special file, to await inquiries from the applicant.

IV. In re-mailing a certificate returned by the Post Office, the certificate shall be left in the original envelope and both shall be mailed in another envelope. The date of re-mailing should be recorded on the mailing sheet.

15.1.5 Re-mailing of returned certificates. When a certificate that has been returned to the Copyright Office for some reason other than merely because it was undeliverable, and is ready to be re-mailed, it should be referred to the examiner who will attach a slip indicating the circumstances of the case; if the certificate is to accompany a letter, the examiner will give the slip, together with the date of mailing, to the clerk in charge of mailing certificates. The following are the most usual circumstances of this type:

- 1) Certificate re-mailed without change
- 2) New certificate for same registration mailed
- 3) Corrected certificate mailed

Part 15.2 CERTIFICATIONS IN GENERAL15.2.1 Certifying officer.

I. Statutory provision. "There shall be appointed by the Librarian of Congress a Register of Copyrights, and one Assistant Register of Copyrights, who shall have authority during the absence of the Register of Copyrights to attach the copyright office seal to all papers issued from the said office and to sign such certificates and other papers as may be necessary." (17 U.S.C. § 202)

- II. Certification by the Register of Copyrights. Except during his "absence," all papers bearing the seal of the Copyright Office will be issued in the name of the Register of Copyrights.
- a. As a rule, certified documents issued in his name will bear a facsimile signature of the Register, affixed along with the Copyright Office seal by a person to whom the Register has delegated this authority.
  - b. Specially-drawn certifications will bear the typewritten name and title of the Register, followed by the handwritten signature and typewritten name and title of the Assistant Register of Copyrights.
    1. If the Assistant Register is not available to sign such a certification, the document will be drawn for the personal signature of the Register.
    2. If neither the Register nor the Assistant Register is available to sign such a certification, the appropriate official to whom the Register has delegated this authority will do so.

15.2.1 Certifying officer. (cont'd)

III. "The absence of the Register."

- a. The "absence" of the Register, in this sense, refers to an indefinite or protracted period during which circumstances such as a serious illness or a special appointment to another job have actually left the position vacant. It does not refer to cases such as those where the Register is still occupying the position but is on leave or is representing the government at an international conference.
- b. The Librarian of Congress will determine whether a particular situation constitutes "the absence of the Register" and will provide for the certification of documents during such a period.

15.2.2. Nature and kinds of certified documents.

I. Nature of a certified document. A certified document is an official paper attesting to one or more facts, bearing the seal of the Copyright Office and issued in the name of the Register of Copyrights or other authorized certifying officer. (See topic 15.2.1.) A document that lacks either the name or the seal is not properly certified.

II. Kinds of certified documents.

- a. Original certificates. Certain certified documents are issued as a matter of course, with no separate fee for certification:
  1. Original certificates of registration; see Part 15.1.
  2. Assignments and other recorded documents, which are returned to the sender with a certificate of recordation.

15.2.2 Nature and kinds of certified documents. (cont'd)II. Kinds of certified documents. (cont'd)

- b. Additional certificates. Additional certificates of registration are, "upon payment of the prescribed fee, . . . given to any person making application for the same" (17 U.S.C. §209). (See topic 15.3.1)
1. Additional certificates are typewritten, certified copies of the record of a registration, and have the same legal effect as the original certificate.
  2. Additional certificates are generally typed on printed forms from information taken from the official records of the Copyright Office. Sometimes an additional certificate may be a substantial duplicate of the original certificate, but this is frequently not the case because of the many changes in the size, format, or wording of the printed certificate forms over the years.
- c. Certified copies of official records. Upon payment of certification and photoduplication fees, certified copies may be furnished of official records of the Copyright Office. (See topic 15.3.2)
1. Examples of official records: entries in the record books, numbered applications, indexes to registration, recorded assignments and related documents, notices of use, and notices of intention to use.
  2. The Copyright Office Regulations provide that such copies may be made "of completed records and indexes relating to a registration or a recorded document . . . at such times as will not result in interference with or delay in the work of the Copyright Office." (37 C.F.R. § 201.2(b))

15.2.2 Nature and kinds of certified documents. (cont'd)

II. Kinds of certified documents. (cont'd)

- d. Certified copies of correspondence. Upon payment of certification and photoduplication fees, certified copies may be furnished of "official correspondence, including preliminary applications, between copyright claimants or their agents and the Copyright Office, and directly relating to a completed registration or to a recorded document." (37 C.F.R. §201.2(c). See topic 15.3.3.)
  1. Requests for correspondence "shall identify the specific material desired and shall contain a statement enabling the Copyright Office to determine if the writer is properly and directly concerned." (37 C.F.R. §201.2(d)(3))
  2. Copies may not be furnished of "correspondence, memoranda, reports, opinions, and similar material relating to internal matters of personnel and procedures, office administration, security matters, and internal consideration of policy and decisional matters, including the work product of an attorney." (37 C.F.R. §201.2(c)(3))
  3. In the case of "correspondence, application forms and any accompanying material forming a part of a pending or rejected application," inspection and the making of copies are permitted only "upon presentation of written authorization of the claimant or his agent, or upon submission to the Register of Copyrights . . . of a written request which is deemed by him to show good cause for such access and which establishes that the person making the request is one properly and directly concerned." (37 C.F.R. §201.2(c)(2))



15.2.2 Nature and kinds of certified documents. (cont'd)

II. Kinds of certified documents. (cont'd)

- e. Certified copies of copyright deposits, etc.  
Upon payment of certification and photoduplication fees, certified copies may be furnished of copies, manuscripts, photographs, drawings, and other material deposited in connection with a copyright registration. Such copies will be furnished only upon the authorization of the copyright owner or his agent, upon a court order, or when requested by an attorney in connection with actual or prospective litigation. (37 C.F.R. §201.2(d)(2). See topic 15.3.4)
- f. Other certifications. Upon payment of certification and any necessary search fees, the Office may furnish a certified statement attesting to any fact within its official knowledge and competence. (See topic 15.3.5)

Examples:

- (1) Certified search reports;
- (2) Certification attesting to the fact that jurisdiction over registration for commercial prints and labels was transferred to the Copyright Office in 1940;
- (3) Certification of an old office circular.

15.2.3 Determination of whether a certified document can or should be furnished.

- I. In general. In fulfilling a request for a certified document, two questions must be decided:
  - (1) What document does the applicant want?
  - (2) Is the applicant qualified or entitled to receive this document?

15.2.3 Determination of whether a certified document can or should be furnished. (cont'd)

I. In general. (cont'd)

In correspondence concerning these questions it is appropriate to explain the various documents available and the requirements for obtaining them, but the Office cannot offer advice as to what kind of documents may be needed in litigation or for other purposes.

II. What does the applicant want?

- a. Some letters requesting certified documents are ambiguous and cannot be taken literally.
  1. Where the meaning of the request seems clear in context, it may be appropriate to furnish the document without further correspondence; for example, a request for "a certified photostat of my certificate," accompanied by a fee of \$2.00, can be answered by sending an additional certificate of registration.
  2. Where the meaning of the request is not clear, the Office should write for further instructions; for example, a request for "a photostat of Registration No. EU-22779" could refer equally to an additional certificate, a copy of the application, or a copy of the manuscript deposited.
- b. Where a letter requesting photostatic copies of material in the Copyright Office fails to specify whether or not the copies should be certified, the case should be carefully considered on its merits.
  1. If there is nothing whatever in the case to suggest that the applicant wishes the document certified, the case may be treated as a request for photoduplication.

15.2.3 Determination of whether a certified document can or should be furnished. (cont'd)

II. What does the applicant want? (cont'd)

b. (cont'd)

1. (cont'd)

Example: The applicant says he has lost the only copy of his song, and wishes another.

2. If there is any suggestion or implication in the case that certification is desired, the Copyright Office should write for further instructions before referring the material to the Photoduplication Service. In particular, if it appears that the material is desired as evidence in connection with any sort of legal or administrative proceeding, it should not be furnished without first inquiring whether certification is desired.

c. Many letters do not fully identify the registration for which they wish an additional certificate or other certified document.

1. If the letter gives at least the registration number and the title, the document can usually be furnished by going directly to the record book, without the need of searching in the catalogs.
2. If the letter gives no registration number, but contains other information (e.g., title, author, claimant, etc.) from which the registration could be identified, the request should be forwarded to the Reference Search Section for searching. The same is true if the registration number and title (or other information given) do not coincide.

15.2.3 Determination of whether a certified document can or should be furnished. (cont'd)

II. What does the applicant want? (cont'd)

c. (cont'd)

2. (cont'd)

- (a) No charge is made for routine searches of this type.
- (b) If enough searching time is consumed, a search fee may be requested in appropriate cases.

- 3. If the applicant's letter does not furnish sufficient information to permit a search, the Office should write to the applicant, requesting more information. For example, where the applicant merely requests "an additional certificate of A-74510," the Office will point out that entry numbers are repeated several times in the records, and that a title, year date, author, or other additional identification is needed.
- 4. The Copyright Office should not place unqualified reliance on information furnished by the applicant, since it may not always be correct. The Office should not write to the applicant indicating that it can furnish a particular document until it has been determined, either by checking the record book or by searching, that the registration in question exists, and that it agrees with the facts furnished by the applicant.

III. Is the applicant entitled to receive the document?

Some certified documents can be furnished only if certain conditions or requirements have been met. (See topics 15.3.3, 15.3.4)

15.2.3 Determination of whether a certified document can or should be furnished. (cont'd)

III. Is the applicant entitled to receive the document? (cont'd)

- a. The authority or responsibility for determining whether or not the applicant is entitled to receive the document varies depending upon the type of document involved. (See topics 15.3.3.II, 15.3.4.I.c., 15.3.5)
- b. Anyone in the Copyright Office corresponding about certified documents of this type should be careful not to imply that they will be furnished as a matter of course, but instead should explain the conditions necessary for obtaining them.

15.2.4 Preparation and handling of certified documents.

I. Certified documents must be prepared under Copyright Office direction and control.

- a. In their preparation, certified documents are of two types:
  1. Documents such as additional certificates, certified search reports, etc.
  2. Photocopies of Copyright Office records, correspondence, or deposits certified by the Copyright Office.
- b. In preparing photocopies for Copyright Office certification, the Photoduplication Service acts at the direction of the Copyright Office.
  1. The Office must furnish the material and clearly specify exactly what is to be copied.

15.2.4 Preparation and handling of certified documents. (cont'd)

I. Certified documents must be prepared under Copyright Office direction and control. (cont'd)

b. (cont'd)

2. In furnishing material to the Photoduplication Service for photocopying, the Copyright Office must clearly specify whether it is to be returned to the Office for certification.

c. The Copyright Office will not certify any material prepared outside its control.

1. The Office will not certify copies of works, photostats, photographs, additional certificate forms, or other material sent in for this purpose; this is in accordance with the Office's general policy not to undertake comparisons of material.

2. Once an uncertified photocopy of Copyright Office records, correspondence, or deposits has left the Library, it cannot be returned later for certification; this is because of the possibility that the material may be altered in the interval. Exception: If the material was not certified because of an error on the part of the Copyright Office or the Photoduplication Service, it can be returned for certification.

II. Need for speed and accuracy. Many certified documents are requested for use as evidence in proceedings before courts or administrative agencies.

a. Certified documents should therefore be prepared without delay, and in some cases the utmost speed is necessary. If correspondence is needed, it should likewise be handled with dispatch.

**15.2.4 Preparation and handling of certified documents. (cont'd)****II. Need for speed and accuracy. (cont'd)**

- b. When the records needed to prepare a certified document are in the process of being bound, a letter should be sent to the applicant immediately, informing him that a delay will be unavoidable.
- c. The need for accuracy is even more important than the need for speed in preparing certified documents.
  - 1. The facts contained in a certified document can often affect the outcome of a case in court, or can even be the turning point in the case. Any error, even a seemingly minor one, can have drastic consequences; in any case, it reflects upon the efficiency of the Office.
  - 2. Certified documents should not only be prepared with the utmost care and accuracy; every document must also be reviewed with equal care. In reviewing a certification of material received from the Photoduplication Service, it is especially necessary to check the photocopies against the material copied, to determine whether they are complete and in the right order.

**III. Use in foreign proceedings.** The Office is occasionally called upon to furnish certified documents for use in litigation or other proceedings in a foreign country. Usually the applicant wishes the certificate authenticated by the Authentication Office of the Department of State, or certified by a consular officer of the country involved, or both. While the Office will cooperate to some extent in facilitating the obtaining of these additional documents, it will not advance fees or provide messenger service for this purpose.

15.2.4 Preparation and handling of certified documents. (cont'd)

- IV. Mailing of certified documents. Unless special correspondence is necessary, certified documents are mailed to the applicant with a printed form letter which indicates the amount received, the fee charged, and the amount refunded. The registration numbers covered by the certified documents are indicated in the enclosures at the bottom of this letter.



Part 15.3 TYPES OF CERTIFICATIONS15.3.1 Additional certificates (See topic 15.2.2.II.(b))I. Requests for additional certificates.

a. Additional certificates are requested under a wide variety of names, of which the following are some of the most common:

1. "Duplicate certificate"
2. "Copy of record," or "certified copy of record"
3. "Copy of registration" or "certified copy of registration"
4. "Copy of copyright" or "certified copy of copyright"
5. "Photostat of certificate," "certified photostat of your record" or "certified photostat of registration"
6. "Copyright" (as in "I have lost my copyright and would like to obtain another")

b. Where it is clear that what the applicant wants is an official document proving the existence of a particular copyright and showing the facts appearing in the record of copyright registration, it is generally safe to send him an additional certificate.

1. This is true even when the terminology used in the request is highly ambiguous, or refers to a "photostat" or "photocopy."
2. A certified copy of an application does not have the same evidentiary value as an additional certificate. It should not be sent unless the applicant clearly wants it, and does not want an additional certificate instead.

15.3.1 Additional certificates (cont'd)

I. Requests for additional certificates. (cont'd)

- c. An additional certificate is not necessarily a "duplicate" of the original certificate, since the forms used in preparing certificates have varied widely in size, format, and wording over the years. However, the facts contained in the additional certificate are taken from the official record of the registration, and are therefore presumably the same as those appearing on the original certificate.
  1. Many old certificates were issued on 3" x 5" cards, and applicants occasionally specify that they wish this form in requesting an additional certificate. This form has been abandoned, however, and can no longer be furnished.
  2. An additional certificate reflects only those facts appearing on the official record of that registration.
- d. When the registration for which an additional certificate is desired cannot be located:
  1. The applicant should be told that the registration cannot be found on the basis of the information he has provided. If he can furnish additional information, together with a search fee, a further search can be undertaken.
  2. If the applicant appears to own the literary property in the work, it may be appropriate to suggest that registration be made, and to send instructions concerning registration.

15.3.1 Additional certificates (cont'd)I. Requests for additional certificates. (cont'd)

- e. With respect to certificates relating to copyrights that have been renewed or are eligible for renewal:
  - 1. If the applicant clearly specifies that he wishes an additional certificate for a particular registration number, the certificate may be furnished without calling his attention to the fact that the copyright has been renewed or is eligible for renewal. However, if the copyright is eligible for renewal and no renewal registration has been made, it may be appropriate to inform the applicant of the renewal time limits, or call the case to the attention of the renewal examiners.
  - 2. If the applicant requests an additional certificate covering a particular work, without specifying whether he wishes a certificate of original or renewal registration, he will be informed of the alternatives available. The same is true where the applicant states that he wishes a certificate of renewal registration, and several renewal registrations covering the work are found.

15.3.1 Additional certificates (cont'd)

II. Form and contents of additional certificates.

- a. With the exception of certificates of Patent Office print and label registrations, all additional certificates are prepared by typing the facts of registration from the official records onto printed certificate forms.
  1. A great number and variety of forms are used, dating back to 1870.
  2. The correct form to use in a particular case depends upon the date when the registration was made.
- b. Registrations made under the law in effect before July 1, 1909 were not always accompanied by the deposit of copies; in many cases registration was made on the deposit of a title page, and the copies were deposited later. In some instances, the deposit of copies was noted on the record of registration, but in many instances this was not done.
  1. If the copies were credited on the record of registration, this fact should also be indicated on an additional certificate, together with the date of deposit.
  2. If the copies were received but not credited, no mention of the copies should be made on the additional certificate. In such cases the applicant should be informed that he can also obtain a "certificate of date of deposit of copies." A special form is provided for this certificate, and the regular certification fee of \$3.00 is charged for it.

15.3.1 Additional certificates (cont'd)II. Form and contents of additional certificates. (cont'd)

- c. For registration beginning in 1946, for which the combined application-certificate forms were used, the body of the original certificate was substantially identical with the body of the applications, which became the record of the entry. However, these application-certificate forms have gone through several revisions, and the present certificate forms may require some adaptation or amendment to be used as additional certificates of earlier registrations.
- d. The following practices should be followed with respect to annotations appearing on the record of a registration:
  1. Annotations including the Letter "C" or the abbreviation "Cert." in parentheses also appeared on the original certificate, and should be included on all additional certificates.
  2. Annotations including the letter "A" or the abbreviation "Appl." in parentheses appeared on the application only, and should not be included on an additional certificate.
  3. Pencil annotations, initials, and similar internal markings should not be reproduced on additional certificates. The same is true of renewal registration numbers.

15.3.1 Additional certificates (cont'd)

II. Form and contents of additional certificates. (cont'd)

d. (cont'd)

4. When a typewritten or "red ink" annotation does not contain the letters "(A)" or "(C)," or the abbreviations "Appl." or "Cert.," consideration must be given as to whether to include it on an additional certificate or not. Generally, the annotation should be included if it seems likely that it also appeared on the original certificate.
  5. In reproducing an annotation, abbreviations such as "C.O." and "appl." should generally be written out. Annotations should be preceded by the statement "Copyright Office Note:", unless they can be put in the "annotation box" included on certificate forms in use since 1955.
- e. The cash number, date, and amount were not included on any certificate for an unpublished work until April 3, 1950, or for a published work until July 1, 1950. Thus, additional certificates covering registrations made before those dates should omit the information, and those for registrations made after those dates should include it.
- f. An additional certificate of copyright registration for a print or label registered in the Patent Office before July 1, 1940 consists of a photocopy of a carbon copy of the Patent Office's certificate of registration (which was bound in series as a record of the entry), together with the Copyright Office's certification of the photocopy (Certification E).

15.3.1 Additional certificates (cont'd)II. Form and contents of additional certificates. (cont'd)

## f. (cont'd)

1. Upon receiving a request for such a document, the Copyright Office will supply a photocopy at its own expense.
2. The applicant is charged the regular fee of \$2.00 for such an additional certificate.

III. Preparation and handling of additional certificates.

- a. In preparing additional certificates, everything added to the printed certificate form (other than the signature of the Register) should be typewritten, whether the material on the original record is handwritten, typewritten, or stamped. This includes not only the material in the body of the certificate, but also the registration number, the cash number, date, and amount, the dates of receipt, and any annotations.
- b. Every additional certificate covering a registration made after July 1, 1909 (except Patent Office registrations) is stamped to identify it as an additional certificate.
- c. When the applicant requests the Office to issue an additional certificate at the same time it issues the original certificate, and includes a fee for this purpose:
  1. The Examiner should attach the letter of request (or a photocopy) to the original certificate, at the time he clears the case.

15.3.1 Additional certificates (cont'd)

III. Preparation and handling of additional certificates. (cont'd)

c. (cont'd)

2. The additional certificate should be prepared before the original is mailed.

15.3.2 Certified copies of official records (See topic 15.2.2.II.c)

- I. The Copyright Office will furnish a certified copy of any paper that can be regarded as an official record of the Office (see Chapter 14 and 37 C.F.R. §201.2.(b)). Such papers will ordinarily be furnished without question, as a matter of course.
- II. The following printed certification forms are provided for four common types of certified copies of official records:
  - a. Certification B: assignments and related documents
  - b. Certification C: Applications, including pre-1909 applications but not Patent Office applications
  - c. Certification G: Patent Office applications
  - d. Certification I: Notices of use
- III. Special typewritten certifications must be drawn up for other copies of official records. These certifications include:
  - a. Copy of entry from Catalog of Copyright Entries



15.3.2 Certified copies of official records (cont'd)III. Special typewritten certifications (cont'd)

- b. Copy of card from Copyright Card Catalog
- c. Copy of notice of intention to use
- d. Photocopy of the entry in the record book

## IV. The following are special points to bear in mind:

- a. Although the form for filing a notice of use (Form U) is similar to the application forms, it is different in effect (see Chapter 13). No registration is made, and no certificate is issued. An acknowledgment, similar to a certificate but not under seal, is sent at the time the notice of use is recorded, but there is no provision for furnishing an "additional acknowledgment." A certified (or uncertified) photocopy of the notice itself can be provided, however.
- b. For a period of some time after the white application-certificate forms were introduced in 1945-1946, the Office adopted the practice of itself transferring the information from the small pink or blue card applications to the new white forms. The applicant's own application was retained in a special file, and the Office noted the transfer on the white application, which became the record of the entry.
  - 1. When the Office receives a request for a certified copy of an application in such a case, it should provide a copy of the applicant's own application, rather than the application prepared in this Office.

15.3.2 Certified copies of official records (cont'd)

IV. (cont'd)

b. (cont'd)

2. This necessitates withdrawing the application from file, and having it stamped with the registration number.
- c. The Patent Office records of print and label registrations were transferred to the Copyright Office in 1940, but it was found impossible to transfer the records of assignments and related documents, since they were inseparably combined with the records of patent assignments. Thus, anyone wishing a certified copy of an assignment or related document covering a print or label registered in the Patent Office before 1940 should be referred to the Patent Office.

15.3.3 Certified copies of correspondence (See topic 15.2.2.II.d.)

- I. Copies of correspondence (certified or not) can be furnished only under the following circumstances:
  - a. The material to be copied must consist of "official correspondence, including preliminary applications, between copyright claimants or their agents and the Copyright Office" (37 C.F.R. §201.2(c)). Such material includes anything (other than deposit copies) that the applicant sent to the Copyright Office and that became a part of the correspondence file—including unregistered applications—and the file copies of the Office's letters to the applicant. It also includes any mailing wrappers preserved in the correspondence file, and return receipts or similar material furnished by the Post Office or Western Union in

15.3.3 Certified copies of correspondence (cont'd)

## I. (cont'd)

## a. (cont'd)

connection with the correspondence. It does not include examiners' recommendations, etc.

b. The correspondence must generally relate directly to a completed registration or to a recorded document.

1. Where a particular letter concerns more than one subject, only that part relating directly to a registration or recordation will be copied.
2. Correspondence dealing with a pending or rejected application will be furnished only when authorized by the claimant or his agent, or when a written request shows "good cause" for opening the file and "establishes that the person making the request is one properly and directly concerned." (37 C.F.R. § 201.2(c)(2)(ii)).

c. Any request for copies of correspondence must contain a statement from which the Office can determine that the writer is a person "properly and directly concerned," and must identify the specific material desired (37 C.F.R. § 201.2(d)(3)).

II. The task of determining what correspondence can be copied is entrusted to the Chief of the Reference Division. He has the responsibility of determining what pieces of correspondence the applicant wishes copied and, of those, which he is entitled to have copied.

15.3.3 Certified copies of correspondence (cont'd)

II. (cont'd)

- a. Only those pieces of correspondence which are to be copied will be sent to the Photoduplication Service.
- b. In appropriate cases the Chief of the Reference Division may consult with the Chief of the Examining Division in determining the availability of certain correspondence for copying.

III. Every certification covering correspondence must be specially drawn. If the various pieces of correspondence all relate to the same registration, or group of related registrations, they may all be included under one certification, but each item copied must be separately identified in the certification.

15.3.4 Certified copies of copyright deposits, etc. (See topic 15.2.2.II.e.)

I. Circumstances under which copies of deposits may be made and certified.

- a. The Copyright Office Regulations (37 C.F.R. §201.2(d)) provide the following as the only circumstances under which the Office will permit the copying of copyright deposits:
  1. When authorized in writing by the copyright owner or his designated agent;
  2. When required in connection with actual or prospective litigation in which the copyrighted work is involved, if the attorney for either side gives the

15.3.4 Certified copies of copyright deposits, etc. (cont'd)I. Circumstances under which copies of deposits may be made and certified. (cont'd)

## a. (cont'd)

## 2. (cont'd)

following information in writing (preferably on a special form provided for this purpose):

- (a) The names of the parties and the nature of the controversy;
- (b) The name of the court where the action is pending or, if the action is prospective, a full statement of the facts of the controversy;
- (c) Satisfactory assurances that the requested copy will be used only in connection with the specified litigation.

3. When an order to have the copy made is issued by a court in a case where the copy is needed as evidence.

b. In order for the Copyright Office to certify a copy of a deposit, the deposit must generally be under the jurisdiction of the Office. The Office will generally not certify a copy of a deposit that has been transferred to the Library of Congress, even if the deposit is still physically in the Copyright Office.

1. It may be possible for the Library to certify the copy in certain cases, if the deposit has been retained in its collections.

2. When the Copyright Office receives a request for a certified copy of a deposit that has been transferred to the Library,

15.3.4 Certified copies of copyright deposits, etc. (cont'd)

I. Circumstances under which copies of deposits may be made and certified. (cont'd)

b. (cont'd)

2. (cont'd)

it will write to the applicant explaining the situation, and will send the request on to the Library for whatever action is possible. The request will ordinarily be routed to the Photoduplication Service.

c. Responsibility for determining whether a deposit can be copied in a particular case is shared by the Copyright Office and the Photoduplication Service.

1. When a request for uncertified copies goes directly to the Photoduplication Service, which in turn requests the Office to provide the deposit for copying, no question as to authority will be raised, on the assumption that the conditions have been met to the satisfaction of the Photoduplication Service.

2. When a request for certified copies is received in the Copyright Office, the Office will evaluate the request and correspond about it if, in the Office's opinion, it does not fulfill the conditions specified in the Copyright Office Regulations.

(a) Responsibility for deciding whether the conditions have been met in a particular case rests with the Chief of the Reference Division, who may consult the General Counsel concerning doubtful cases.

15.3.4 Certified copies of copyright deposits, etc. (cont'd)

## I. (cont'd)

## c. (cont'd)

## 2. (cont'd)

- (b) When copies of less than an entire deposit are to be certified, it shall also be the responsibility of the Copyright Office to determine what parts of the deposit are to be copied, and to provide this information to the Photoduplication Service.

II. Form and contents of certified copies of deposits (other than Patent Office deposits).

- a. As a rule, certified copies of copyright deposits consist of one or more photocopies or photographs, accompanied by a printed certification form (Certification D).
  - 1. Photocopies prepared by processes other than photography are provided for most flat material. Black-and-white photographs are usually provided for three-dimensional deposits and for flat items requiring special lighting or composition for a proper reproduction. Color prints and transparencies have occasionally been furnished.
  - 2. A special certification must be drawn and typed if the material copied is less than the entire deposit, or if it is not the actual deposit copy (e.g., a photograph deposited in lieu of a copy).
- b. In any case where the Copyright Office is certifying a copy of a deposit, the material certified must include a copy of the page or surface bearing the registration number and date of deposit.

15.3.4 Certified copies of copyright deposits, etc. (cont'd)

II. Form and contents of certified copies of deposits  
(other than Patent Office deposits). (cont'd)

b. (cont'd)

1. This frequently means making an extra copy, and it is the responsibility of the Copyright Office to give the Photo-duplication Service clear instructions on this point.
2. Where the material is being photographed, it is permissible for the Office to type the number and date on a slip of paper which can be placed next to the object and photographed with it, thus avoiding the necessity of making another expensive photograph.

c. When requested, it is permissible to copy and certify only certain pages or portions of a work. A special certification clearly identifying the material certified must be drawn and typed in such cases, and the material copied and certified must include the page or surface bearing the registration number and date of deposit.

d. In Classes G, H, I, K, and KK, before August 11, 1956, photographs were sometimes deposited in addition to, or instead of, three-dimensional copies, although their legal status was unclear.

1. Copies of these photographs may be certified, but not as actual deposits; special certifications must be typed, referring to them as "deposited in connection with . . ." a particular registration.
2. Copies of these photographs are not to be provided when the applicant requests copies of the deposit; they are supplied only when specifically requested.



15.3.4 Certified copies of copyright deposits, etc. (cont'd)II. Form and contents of certified copies of deposits (other than Patent Office deposits). (cont'd)

- e. As of August 11, 1956 the statute (17 U.S.C. §13) and the Regulations (37 C.F.R. §202.16) permit the deposit of photographs or other identifying reproductions in lieu of copies under certain conditions (see topic 5.2.2.I.i.)
  - 1. In such cases a special certification, identifying the material as "photographs or identifying reproductions deposited in the Copyright Office in lieu of copies as provided by Section 13 of Title 17, U.S. Code, . . . ," should be drawn and typed.
  - 2. In such cases all of the photographs or reproductions in a set should be reproduced unless the request specified that only certain ones are to be copied.

III. Certified copies of prints and labels deposited in the Patent Office.

- a. When the Copyright Office receives a request for a certified copy of a print or label deposited in the Patent Office before July 1, 1940:
  - 1. It will add the registration number and date of receipt to one of the copies in the Patent Office file wrapper.
  - 2. It will have the copy photocopied.
  - 3. It will certify the photocopy by attaching a special printed form (Certification F).
- b. Ten copies of a print or label were required for a Patent Office registration. Since

15.3.4 Certified copies of copyright deposits, etc. (cont'd)

III. Certified copies of prints and labels deposited in the Patent Office. (cont'd)

b. (cont'd)

only two copies are needed for copyright purposes, the Office will furnish the extra copies in excess of two without charge, one at a time, if they are to be certified.

1. A special printed form (Certification H) is provided for this purpose.
2. If the special printed form is used, it is not necessary to add the registration number and date of deposit to the copy.

15.3.5 Other certifications (See topic 15.2.2.II.f.)

Aside from certified search reports which are drawn and typed by the Reference Search Section, other certifications are generally unique and require careful consideration in drafting. Preparation of such certifications should be undertaken in conjunction with the Chief of the Examining Division, the General Counsel, or the Chief of the Reference Division, depending upon the nature of the statement or material to be certified.

Part 15.4 FEES15.4.1 Statutory provisions and regulations.

- I. "The Register of Copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees:

. . .

"For every additional certificate of registration, \$2.

"For certifying a copy of an application for registration of copyright, and for all other certifications, \$3." (17 U.S.C. §215)

- II. "Requests for additional certificates of registration should be sent to the Copyright Office, and the accompanying fees should be made payable to the Register of Copyrights." (37 C.F.R. § 201.2(d)(1))

15.4.2 Handling of fees for photoduplication and certification.

- I. When writing about the fees for certified photocopies, separate remittances should be requested.
  - a. If the total fee is included in a single remittance made payable to the Register of Copyrights, it is possible to have the photoduplication fee transferred to the Photoduplication Service.
  - b. It is possible but preferable not to transfer funds from a Copyright Office deposit account to the Photoduplication Service. Before writing for a photoduplication fee, however, the Office should determine whether the applicant also maintains a deposit account in the Photoduplication Service.

15.4.2 Handling of fees for photoduplication and certification. (cont'd)

I. (cont'd)

c. When there is any doubt as to the correct photoduplication fee the material should be referred to the Photoduplication Service for an estimate.

II. Before writing for a fee for a certified photocopy, the Office should examine the material to be copied and estimate the photoduplication fee as accurately as possible.

a. A current schedule of Photoduplication Service fees is available for use as an enclosure to Copyright Office letters.

b. In quoting photoduplication fees, it should be borne in mind that the Photoduplication Service charges an additional fee for postage and handling, but that this fee is not charged if the material is certified by the Copyright Office.

c. In appropriate cases, the Copyright Office will obtain an estimate from the Photoduplication Service before communicating with the applicant.

III. No charge is made for certified documents prepared at the request of another government agency if needed for official purposes.

IV. In exceptional cases, where the material is needed immediately for use in court or for similar purposes, it may be possible to supply certified documents before the required fee has been received. The applicant will be billed for the material in such cases.

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No. 1

COMMERCIAL PRINTS AND LABELS

- I. Commercial prints and labels must contain copyrightable literary or artistic matter to be registrable. [May 1952]
  
- II. Prints and labels which may also be trade-marks. The Office will make no investigation to determine whether the copyrightable matter in a print or label may also be or become a trade-mark. A print or label containing copyrightable literary or artistic matter may be registered, under the rule of doubt, even though the copyrightable matter may also be or become a trade-mark.

One of the requirements for trade-mark registration is that the trade-mark must have been used before its registration. Hence, where the deposit copies of a print or label bear a notice of trade-mark registration which indicates that the registered trade-mark includes all the copyrightable matter, the Office will question whether the deposit copies are copies of the work as first published. In such cases, in order to determine whether the copies first published bore a copyright notice, we will ask the applicant to submit copies of the work as first published.

The deposit copies need not be questioned where the notice of trade-mark registration indicates that the registered trade-mark includes only a part of the copyrightable matter. [March 1953]



### III. Commercial Prints: Single-Page Works.

- (1) A single-page print advertising articles of merchandise should be registered on Form KK. If Form A is submitted, the Office will try to secure Form KK.
- (2) A single-page advertisement of services or of an institution (rather than of particular articles of merchandise) may be registered on either Form KK or Form A.
- (3) A single-page advertisement consisting of text only may be registered on either Form KK or Form A. [July 1953]

### IV. Commercial Prints: Multi-Page Works.

- (1) For a multi-page collection of commercial prints (e.g., a merchandise catalog), the Office will recommend the full form of notice in book position and registration on Form A.
- (2) A multi-page work with the full form of notice in book position should be registered on Form A. If Form KK is submitted, the Office will write and suggest Form A.
- (3) Where a multi-page work has an abbreviated notice, or where the notice is not in book position but does appear at the front or back of the work where it is readily seen, a KK application may be accepted under the rule of doubt, with a cautionary letter. If Form A is submitted, the Office will reject it but mention the possibility (with a note of caution) of registration on Form KK.
- (4) A multi-page work in which the notice is not readily seen (e.g., on page 25 of a 50-page work) will not be registered. [July 1953]

- V. Extra copies of commercial prints and labels. When the Patent Office was registering commercial prints and labels (Prior to July 1, 1940) it required the deposit of extra copies which are now held by the Copyright Office. The Office will use the extra deposit copies (those in excess of two) in fulfilling requests for a copy of the print or label. Such extra copies may be furnished to anyone upon written request. A copy of the written request or letter of transmittal will be placed in the print or label folder. [July 1952]

## No. 2

## PATENT APPLICATIONS

Patent applications. Under the Patent Law, the material contained in a patent application goes into the public domain when a patent is issued; and a patent application must be filed in the Patent Office within one year after the invention has been described in any printed publication.

A copyright claim in the text description or in the drawings or photographs in a patent application will not be registered after the patent has been issued.

Before a patent application has been filed or while it is pending in the Patent Office, a copyright claim in the text description or in the drawings or photographs may be registered for copyright; but we will warn the applicant (1) that copyright will not protect the idea or invention, (2) if the patent application has not been filed, that the time for filing it in the Patent Office may expire one year after publication or (if the work has not been published) one year after registration, and (3) that if he obtains a patent, copyright on the material in the patent application may cease when the patent is issued.

When a patent application has been rejected by the Patent Office, a copyright claim in the material in the application may be registered. The filing of the application in the Patent Office will not be considered publication in the copyright sense. [December 1952]

## UNPUBLISHED COLLECTIONS

Unpublished collections. An unpublished collection of works copyrightable under section 12 of the Copyright Law may be registered on one application when all the following conditions are met:

- (1) The collection is assembled in an orderly arrangement;
  - (2) The collection bears a single title identifying the collection as a whole;
  - (3) The collection as a whole is the subject of a single claim of copyright;
  - (4) All the component works are by the same author, or (if the component works are by different authors) the collection as a whole represents the work of a single author in its compilation; and
  - (5) The component works are all of the same class, or the component works are principally of the class in which the collection is to be registered.
- [March 1953]

No. 4

## INSIGNIA

Insignia. The Office will not attempt to determine whether an emblem appearing in a deposited work is one which some person or organization other than the applicant has the exclusive right to use. However, where the emblem is readily recognized as the well-known emblem authorized by Federal statute for exclusive use by a particular organization (e.g., the Red Cross or Smokey Bear), the Office may make inquiry as to the applicant's right to use it in the deposited work. [July 1953]

SINGLE APPLICATION FOR SEVERAL VERSIONS  
OF THE SAME WORK

Single Application for Several Versions of the Same Work.

Where several versions of the same work (e.g., different arrangements of the same song; or English, French, and Spanish versions of the same book) are separately bound but are submitted with one application:

1. If the applicant states, or if we have other reason to believe, that the several versions were published together as a single work, they may be registered together on the one application.
2. If there is nothing (other than the single date of publication given in the application) to indicate that the several versions were published together as a single work, we will inquire whether such was the case.
3. If we are informed that the several versions were published separately, we will ask for separate applications. [July 1954]

No. 6

## OBSCENE WORKS

Obscene Works.

a. The Office will not ordinarily attempt to examine a work to determine whether it contains material that might be considered obscene.

b. If the examiner believes, upon an ordinary examination, that a work is obscene, the Chief of the Examining Division will determine whether the work should be referred to the Department of Justice for possible prosecution. If the work is not so referred, the copyright claim may be registered.

c. When a work is referred to the Department of Justice, registration will be held up pending action by that Department. [September 1954]

CONFIDENTIAL MATERIAL

Confidential Material.

a. Classified security material. If a work appears likely to contain material classified by the Government as security information (usually identified by the marking "Top Secret," "Secret," or "Confidential", and sometimes bearing a notation that the material contains information affecting the national defense), the copies should immediately be turned over to the Security Officer, and we will ask the applicant to explain the confidential character of the material. A work containing classified security information will not be registered.

b. Other confidential material. When an applicant requests that the deposit copies be withheld from inspection by the public, we will inform him that registration cannot be made with such a restriction.  
[September 1954]



No. 8

WORKS OF ART

(pp. S-11 through S-15)

Withdrawn as Supplemental Practice and  
incorporated in Chapter 2, July 1973.

[July 1973]

## GOVERNMENT PUBLICATIONS

- I. Basic Rule. Publications of the United States Government are not copyrightable (17 U.S.C. § 8).
- II. Authorship as Criterion.
  - a. Government authorship.
    1. A work authored by a U.S. Government agency (i.e., by its officers or employees as a part of their official duties), regardless of whether it is published or unpublished, is a U.S. Government publication and is not copyrightable.  
  
**Examples:**
      - (1) Acts of Congress.
      - (2) Executive orders or proclamations.
      - (3) Agency rules and regulations, bulletins, reports, forms, circulars.
      - (4) Federal court decisions.  
**Exceptions:**
      - (1) Under Section 8, Title 17, U.S.C. the Postmaster General is authorized to secure copyright on behalf of the United States in black and white illustrations of U.S. postage stamps, together with such descriptive, historical, and philatelic information with regard to the stamps as the Postmaster General deems suitable.
      - (2) Under Section 6 of the Standard Reference Data Act, 82 Stat. 340, the Secretary of Commerce may secure copyright on behalf of the United States as author or proprietor of any standard reference data that he prepares or makes available under the Act.
    2. A copyright claim by a private person in a reprint of a Government publication is not registrable (unless it contains copyrightable new matter.)

3. An appropriate disclaimer should be given on the application where a work contains a substantial amount of Government material as well as material privately authored. However, where the Government material is very minor no disclaimer is necessary provided the work is not a collective work. (For the practice as to collective works, see item II.b.6). If the examiner has a doubt as to whether the Government material is "very minor," he should write for a disclaimer. In no case should the examiner accept an application which lists a Government officer or employee as an author of Government material no matter how minor that material may be.
4. If the Office has information indicating that a work printed and distributed privately with a copyright notice was authored by a U.S. Government agency, we will inquire as to the Government's authorship of the work.

**Examples:**

- (1) A Government agency is named as the claimant or author.
- (2) A Government officer in his official capacity is named as the claimant or author.
- (3) The work appears to be an official report of the U.S. Government.

**b. Private authorship.**

1. A work whose author is a Government officer or employee who had prepared the material on his own time as his own personal work and not as a part of his official duties, is not a Government publication and may be considered for registration.
2. A work prepared under a Government grant or contract, or sponsored by a Government agency, may be considered for registration without correspondence.

**Example:**

A work in which the copies bear the legend: "This report prepared by Arthur Little Company under U.S. Defense Department Contract LF-1330" and the Little Company is named as claimant and author on the application.

3. The work of a private author, though printed and distributed by the Government for its use, is not necessarily a Government publication. A copyright claim by the private author may be registrable.

**Example:**

A scientific treatise by a private author who permits the Defense Department to print and distribute copies to Army personnel with a copyright notice in the author's name.

4. When an individual is named as author in the application but the work bears the indicia of a Government publication, we will inquire as to the facts of Government or private authorship of the work.

**Examples:**

- (1) A Government agency is the claimant.
  - (2) The work appears to be an official Government report.
  - (3) The work was printed by the Government Printing Office.
5. In the case of works otherwise registrable without disclaimer which contain incidental material such as for example a short preface, foreword, introductory statement or epilogue, registration may be considered without the necessity of a disclaimer, even though the incidental material was written by a Congressman, Senator, or other Government employee.
  6. If the author of one or more of the contributions to a collective work (other than a periodical) is a Government employee, we should inquire whether his portion was written as a part of his official duties.
  7. Where a claim is based on new matter of private authorship but the work contains Government material, if it seems appropriate in order to clearly indicate the basis of the claim, we may request the new matter statement be accompanied by a disclaimer.

**III. Government Printing.**

The fact that a work was printed by the U.S. Government is an indication that it may be a Government publication, but is not conclusive. If an individual or private organization is named as the author or claimant, we will inquire as to the facts of Government or private authorship. (See items II.b.3) and 4 above.)

**IV. Claim by or on Behalf of the United States Government.**

- a. Except as specified in item II.a.1. above, a claim of copyright by a particular agency of the U.S. Government, or by an officer of the U.S. Government in his official capacity, or by an individual "on behalf of" or "in trust for" the U.S. Government, will be treated as a claim of copyright by the Government.

- b. A claim of copyright by the U.S. Government in a published work is an indication that the work is a Government publication, but is not conclusive. If there is an indication of non-Government authorship, we will inquire as to the facts of authorship and the acquisition of the copyright by the Government.
- c. Where a work of private authorship was first published with notice of copyright in the name of a private person and was later acquired by the Government, registration may be considered in the name of the original claimant and we will suggest recordation of the assignment to the Government.

V. Governments Other Than the United States.

a. State governments.

Publications of State governments or of their local subdivisions (counties, cities, school boards, housing authorities, etc.) do not fall within the prohibition of § 8. It should be noted, however, that public ordinances, court decisions and similar official legal documents of State and local governments are not considered copyrightable for reasons of public policy.

b. District of Columbia.

Publications of the government of the District of Columbia will be treated as publications of the U.S. Government.

c. Territories of the United States.

1. Incorporated territories.

The governments of incorporated territories of the U.S. (e.g., Puerto Rico) may be comparable with State governments, though this is a matter of doubt. Their publications may be accepted for registration with a cautionary letter.

2. Unincorporated territories.

Publications of the governments of unincorporated territories of the U.S. (Guam, Panama Canal Zone, Virgin Islands, Samoa) will be treated as publications of the U.S. Government.

V. Governments Other Than the United States (cont'd)

d. Foreign governments.

Publications of the governments of foreign countries with which we have copyright relations are acceptable for registration.

Exception: Registration will not be made for statutes, court opinions, and similar official documents which are inherently uncopyrightable in the United States.

e. International governmental organizations.

Publications of international governmental organizations (e.g., the United Nations and its specialized agencies such as UNESCO, ECOSOC, FAO, WHO, or ILO or the Organization of American States) are acceptable for registration.

VI. Periodicals.

A disclaimer is not requested for a periodical despite the presence of some Government material in it. However, where an entire periodical appears to be an official publication of a Government agency, it will be questioned.

No. 10

MECHANICAL REPRODUCTION OF TEXT MATTER

A claim to copyright in the mere mechanical reproduction of text and allied matter is not registrable. The Office will, therefore, reject applications where it is apparent that a photograph, microfilm or similar reproduction of text and allied matter, was produced by a mere mechanical procedure, and that no intellectual labor was involved in the composition.

The present practice of accepting photographs which are not mere mechanical reproductions of existing texts or allied matter remains unaffected.  
[November 1956]

No. 11

PRACTICES CONCERNING "REFERRALS"

I. In General.

A. Definition. A "referral" is a case in which registration has been made and, thereafter, an apparent error or inconsistency is discovered which cannot be resolved without returning the case to the Examining Division or the Service Division for action.

B. General Policy.

1. As a rule, a case should be handled as a referral only under the following circumstances:
  - a. When an essential item of information has been omitted entirely from the application.
  - b. When the information given on the application is in such basic conflict with the information appearing on the copies (or, in the case of renewals, on our original records) that there is real doubt as to the identity of the claimant, author, or work in question.
  - c. When the Copyright Office itself has made an error substantially affecting the registration.
  - d. When the copies are so mutilated or incomplete as to be unacceptable for registration.
2. As a rule, a case should not be handled as a referral when there is no real question as to the legal validity of the registration, even if the examiner has failed to note a discrepancy, error, or minor omission that may cause cataloging problems.
  - a. In such cases, the catalogers should resolve, reflect, or overlook the variance, without referring the case to the Examining Division.



b. The existence of a double standard should be observed in these cases: The fact that the Examining Division should have written about a problem before registration is completed does not necessarily mean that the case will be handled as a referral after registration. On the other hand, the fact that a problem is not sufficiently serious to cause a referral should not be regarded by the examiner as a license to ignore the problem in the first instance. If the Cataloging Division notes that a particular error is being ignored consistently, it should call this fact to the attention of the Head of the Examining Division Section involved.

3. The Cataloging Division does not reexamine applications in an effort to seek out errors. If, in the ordinary course of cataloging, a cataloger notes an error, discrepancy, or omission that affects the validity of the registration, he should treat the case as a referral. This is true even if the problem is one that does not present any cataloging difficulties.

C. Procedure for Handling Referrals.

1. In general, referrals should be handled in the manner outlined in the memorandum issued for this purpose entitled PROCEDURE FOR HANDLING NUMBERED APPLICATIONS ("Referrals").

2. The numbered certificate should generally be recalled in every referral case; as a rule, every change in a numbered application should also be reflected in the certificate.

a. Exception: Where registration was made for a work bearing a postdated notice but published within the year immediately preceding the year in the notice, the application may be annotated without recalling the certificate.

- b. Any other case where it seems necessary to change the application without making a corresponding change in the certificate should be referred to the Chief or Assistant Chief of the Examining Division for approval.

Example: A case where attempts to recall the certificate have proved futile.

3. In some cases the examiner may note a typographical error or discrepancy but decide it is too minor even to annotate. When this happens he should add a small, light pencil check to the appropriate space on the application to show the cataloger that the problem had been noted and that no referral is necessary.

Examples:

- a. Author on copy: Julius Lambert  
Author on application: Juluis Lambert
- b. Claimant's address omitted from line 1 of application, but included elsewhere; examiner should check line 1 to show that the problem has been resolved.

## II. Specific Practices for Applications other than Form R.

### A. Claimant.

#### 1. Name of claimant.

- a. A case should be referred where the name of the claimant has been omitted from the application.
- b. A case should be referred where there is real doubt as to whether the identity of the claimant named in the application for a published work is the same as that of the claimant named in the notice, unless the variance has been resolved by annotation.

## Examples of cases that should be referred:

- 1) In notice: Ardmore & Wynn Music  
Publishers  
In application: Ardmore & Wynn Record Co.
  - 2) In notice: Rosetta Stone  
In application: Rosetta Stone, Inc.
  - 3) In notice: Grace Bancroft  
In application: Mrs. Stanton Bancroft
  - 4) In notice: The Meretricious Music Co.  
In application: The Meretricious Music  
Co., John Singleton  
Buckley
- c. A case should be referred where more claimants are named in the application than appear in the notice, or vice versa, unless the variance has been resolved by annotation.
- d. A case should not be referred where, on the face of the application, there is no real doubt that the names in the application and notice identify the same claimant.

## Examples of cases that should not be referred:

- 1) In notice: The Snyder-Gray Co.  
In application: Snyder-Gray Sashweight  
Co., Inc.
  - 2) In notice: Charles B. Dickens  
In application: C. B. Dickens
  - 3) In notice: John Curtis Durant  
In application: John Curtis Durrant
  - 4) In notice: H. C. Enderby  
In application: H. C. Enderby, d.b.a.  
Acme Publishing Co.
- e. No referral should be made in cases involving variances in claim where the work in question is unpublished.

## 2. Address of Claimant.

- a. The law (17 U.S.C. 209) requires that the certificate include the address of the copyright claimant, but it is the practice of the Examining Division to accept an application in which the address has been omitted from the claimant line, as long as it appears elsewhere on the form (e.g., in the authorship line or in the return address box).
  - 1) The fact that no address is given in line 1 of an application does not necessarily call for a referral, and the cataloger should not reexamine the application to determine if the address has been given elsewhere.
  - 2) If, in the ordinary course of cataloging, the cataloger notes that the claimant's address has been omitted from the application altogether, the case should be referred.
- b. If the claimant's address is missing from line 1 but appears elsewhere on the form, the examiner will make a small pencil check in the appropriate space in line 1, to show the cataloger that the omission has been noted.

## 3. Citizenship of Claimant (Form A-B Ad Interim).

- a. The law (17 U.S.C. 22) requires that the citizenship of the claimant be given on an application for ad interim registration.
- b. Cases where citizenship has been omitted from line 1 of Form A-B Ad Interim should be referred unless the author and claimant are the same and his citizenship appears in the authorship line; in that case the examiner should place a pencil check in line 1 to show that the omission has been noted.

B. Title.

1. A case should be referred where the title of the work has been omitted from the application.
2. A case should be referred where registration has been made as a periodical and neither the volume number, issue number, nor issue date has been given on Form A-B Ad Interim, Form A-B Foreign, or Form B. The presence of one or more of these elements is sufficient to prevent referral, if the issue in question is clearly identified.
3. A case should be referred where the title given on the application is so different from that appearing on the copies that there is real doubt as to whether the application actually refers to the copies attached to it.

Examples of cases that should be referred:

- a. Title on copies: THE ROMANCE OF NAME SEARCHING  
Title on application: FAMOUS CATALOGERS I HAVE KNOWN
  - b. Title on copies: LET'S ALL SING A SONG  
Title on application: LET'S ALL STRING ALONG
  - c. Title on copies: SLUMBER TIME SONNETS NO. 11  
Title on application: SLUMBER TIME SONNETS NO. 21
4. A case should not be referred where there is no real doubt that the title given on the application refers to the copies attached to it, even if the title lacks specificity, varies from the title given on the copies, or contains errors or omissions.

Examples:

- a. Title on copies: THE LIFE AND WORK OF JOHN SMYTH  
Title on application: JOHN SMYTH, HIS LIFE AND WORK

- b. Title on copies: LOSE UGLY POUNDS IN  
MINUTES . . . USE BLASTO  
Title on application: BLASTO REDUCING PILLS
- c. Title on copies: HOW COME I HATE YOU  
Title on application: THAT'S HOW COME I  
HATE YOU
- d. Title on copies: NO. ZT 721B SUMMER STORM  
Title on application: NECKLACE

C. "Nature of Work" or "Nature of Merchandise"

- 1. As far as referrals are concerned, the cataloger may ignore this line on Forms G, H, I, K, and KK.
- 2. On Form L-M, a case should be referred if neither of the boxes (indicating whether the work is a photoplay or not) has been checked, but not if the spaces concerning description of copies or number of prints have been left blank or contain discrepancies.

D. Optional Deposit.

- 1. As a rule, the cataloger should not attempt to evaluate the sufficiency of an optional deposit (i.e., where photographs or drawings have been deposited instead of three-dimensional copies of a published work). If, in the ordinary course of cataloging, he notes a discrepancy that actually throws doubt on the basic validity of the registration, the case should be referred.
- 2. A case should be referred where, for a published three-dimensional work, photographs or drawings have been deposited instead of actual copies and none of the spaces in the optional deposit line have been completed.
- 3. A case should be referred where the option has been chosen for a domestic work but only one set of photographs or drawings has been deposited. Referral should also be made where the two sets

contain different photographs or drawings, even though they show the same work. Referral should not be made where, although the two sets are not completely identical, they differ only in relatively minor respects.

4. A case should be referred where the cataloger notes that:
  - a. None of the photographs or drawings in the set show the copyright notice;
  - b. None of the photographs or drawings in the set contain the title of the work;
  - c. None of the photographs or drawings in a set indicate a dimension of the work, unless this information is given on the application.
5. A case should not be referred because of doubt as to the sufficiency of the reason given for choosing the option (weight, size, fragility, or monetary value), or because of questions as to the size, number, or clarity of the photographs or drawings in a set.

#### E. Authorship

1. In General. A case should be referred if the authorship line has been left completely blank.
2. Name of Author.
  - a. As a rule, a case should be referred where:
    - 1) There is a clear variance between the authorship given on an application and that appearing on the copies, and
    - 2) This variance raises doubts as to whether the correct copies are connected with the application, and
    - 3) The problem has not been resolved by annotation or pencil check.
  - b. An apparent variance in authorship may not be one in fact, since the work may have been written for hire; the copies may contain the name of the actual

individual who wrote the work, while the application is correct if it gives only the name of the employer for hire. There is no legal requirement that the variance be resolved on the application in such cases.

c. As a rule, the following cases should be referred:

- 1) Author's name omitted entirely
- 2) Author's name misspelled or incomplete
- 3) Application gives only part of authors listed on copies
- 4) Author given on application entirely different from author indicated on copy, but variance could logically be explained by use of pseudonym or employment-for-hire relationship.

Examples:

- a) On copies: By Conrad Van Damm  
Author on application: Committee on Historical Continuity, Inc.  
Action: Do not refer
- b) On copies: By Cunningham Macomber  
Author on application: Martin Maguire (Cunningham Macomber)  
Action: Do not refer
- c) On copies: By Ernest Hemingway  
Author on application: Anna Livia Plurabelle  
Action: Refer

d. In any of the cases listed in subsection c, above, if the examiner notes the omission, error, or variance and decides that no annotation is necessary, he should check the appropriate space on the application form to show that the problem has been resolved as far as examining is concerned.

### 3. Citizenship of Author

- a. The law (17 U.S.C. 209) requires that the certificate include the citizenship of at least one of the authors, whether or not any of the authors' names are given.



- b. If, in the ordinary course of cataloging, the cataloger notes that the citizenship of the author is completely missing from the application, he should return the case as a referral.
  - c. The cataloger should make no effort to determine whether or not the citizenship included on the application is acceptable for purposes of registration.
4. Domicile and Address of the Author. These factors may be ignored by the cataloger.
5. "Author of . . ." (Forms E and E Foreign)
- a. A case should not be referred where a statement of the nature of authorship (e.g., words, music, arrangement, etc.) has been omitted altogether, or where there is no direct and irreconcilable conflict between the application and copies.

Examples:

- 1) On copies: Words and music by Donald L. Dixon and Henry Horner  
On application: Words by Donald L. Dixon and music by Henry Horner  
Action: Do not refer
  - 2) On copies: By Maria LaPiana  
On application: Arrangement by Mildred F. Thomas  
Action: Do not refer
- b. A case should be referred where there is a direct and irreconcilable conflict between the nature of authorship indicated on the copies and that given in the application.

Examples:

- 1) On copies: Words by Catarina Cataldo,  
music by Maria Baldini  
On application: Words by Maria Baldini  
music by Catarina Cataldo  
Action: Refer

- 2) On copies: Words and music by William Stein;  
Arranged by Stanley L. Bernheim  
On application: Words, music, and arrangement  
by Stanley L. Bernheim  
Action: Refer, except where work is obviously  
adapted from or based on the original  
composer's work.

6. "Author of Original Work which has been Reproduced" (Form H)

A case should not be referred even if this space has  
been left blank or is in apparent conflict with the copies.

F. Publication and Manufacture

1. Date of Publication

- a. A case should be referred if the application for a  
work registered as published does not include a  
full statement (month, day, and year) of the date  
of publication.
- b. A case should be referred if the year in the copy-  
right notice is either earlier or later than the date  
of publication given in the application, unless:
- 1) The variance has been reflected on the application  
(by annotation or otherwise); or
  - 2) The variance is explained by the fact that the  
work now being registered is the first publication  
of a work previously registered in unpublished  
form, or the first U.S. edition of a work  
originally registered ad interim.
- c. A case should be referred if, when it reaches the  
cataloger, the application states a date of publica-  
tion that is still in the future. It should not be  
referred when the date is in the past, even though  
the application stated an advanced date when it was  
originally received in the Copyright Office.

Examples:

- 1) Application stating publication date of August 1  
received in the Copyright Office on July 25 and  
reaches cataloger on August 5; do not refer.

- 2) Application stating publication date of August 1 received in Copyright Office on July 15 and reaches cataloger on July 25; refer.
  - d. A case involving daily newspapers should be referred if the date of publication given in the application is later than the date of issue appearing on the copies. If the date of publication precedes the date of issue on the copies by two or more days, a referral should be made.
2. Place of Publication.

A case submitted on Form A-B Interim should be referred if the country of publication is stated as U.S.A.
  3. Periodical in which Work First Published.
    - a. A case submitted on Form BB should be referred unless the application adequately identifies the particular issue of the periodical in which the contribution was first published, but it is not necessary that the information in this space be complete or entirely accurate.
    - b. A case submitted on Form KK should be referred under the same circumstances as those described in Item a, above, if the copies accompanying the application are clearly taken from a periodical.
  4. Manufacture. The country of manufacture may be ignored by the cataloger.
- G. Previous Registration or Publication, and New Matter. Statements appearing in this line should be ignored as far as referrals are concerned. This is true even when a statement such as "none" appears in the new matter line. (But see Item II. F. 1. b.(2), above, concerning antedated notices). Similarly, the mere absence of a new matter statement should not be cause for referral. However, if the copy states it is a "reprint," a referral should be made.
  - H. U.S. Edition of Foreign Work (Forms A and BB). Statements appearing in this line may be ignored as far as referrals are concerned. (But see Item II. F. 1. b.(2) above, concerning antedated notices.)
  - I. Deposit Account, Correspondence, and Return Address. These lines may be ignored as far as referrals are concerned.

J. Signature. This line may be ignored as far as referrals are concerned.

K. Affidavit (Form A).

1. The law (Title 17, U.S.C., Section 17) requires that an affidavit of manufacture accompany the application for registration of a domestic book.
2. The cataloger should make no effort to reexamine the affidavit. If, in the ordinary course of cataloging, he notes that the affidavit is completely blank, he should refer the case.

L. Date and Fee Boxes and Registration Number.

1. The cataloger should make no special effort to check the date and fee boxes to determine their completeness and accuracy. If, in the ordinary course of cataloging, he notes a clear error or omission in these spaces, he should refer the case.
2. As a rule, the cataloger should make no effort to evaluate the classification of a work in a particular case.
  - a. If he notes a clear error in numbering, the case should be referred.

Examples:

- 1) A work numbered as Eu with a publication date on the application.
  - 2) A work numbered in Class F with an application submitted on Form C.
  - 3) A work numbered in Class M with the "photoplay" box checked on Form L-M.
- b. Referrals may be made in certain cases involving classification as between "books" and "periodicals." A case should be referred if:

- 1) Registration has been made in Class A, the copies bear a series title, an issue number, and a date including a month and previous registrations have been made in Class B.
- 2) Registration has been made in Class B and the copies bear no indication whatever of serial publication made under the same general title, or that they are serial publications regularly registered in Class A.

M. Examiner's Initials.

1. The cataloger need not check for the presence of the examiner's initials on the application, and should normally refer to them only when it is necessary to determine whether a case has been numbered without any examination.
2. If the cataloger notes any consistent failure to initial applications, he should call the matter to the attention of the appropriate Examining Division Section Head.

N. Deposit Copies.

1. A case should be referred if the deposit copies are so incomplete, mutilated, or non-identical that the validity of the registration is open to doubt.
2. Minor discrepancies or differences between the copies should not call for a referral, and a case should not be referred when the only difference between the copies is in color.
3. A case should not be referred because the cataloger knows of the existence of a better edition of the work, unless there was also clear reason, on the face of the application or copies, for the examiner to know of its existence at the time of registration.

### III. Specific Practices for Form U.

- A. In General. By nature a notice of use is an entirely different type of legal instrument from an application for original or renewal registration. It is generally recorded without any effort on the part of the Copyright Office to check the facts it states, and the cataloger should ordinarily not refer a notice of use even if he recognizes or discovers an error in the information included in it.
- B. Name of Copyright Owner. A notice of use should be referred where it is apparent on the face of the notice that the ownership of copyright in some of the compositions listed is different from that of others.
- C. Omission of Date of Receipt, Title, or Claimant. A notice of use should be referred where the date of receipt in the Copyright Office, title, or name of the copyright claimant has been omitted.

### IV. Specific Practices for Form R.

#### A. Claimant

##### 1. Name of Claimant

- a. A case should be referred where the name of the renewal claimant has been omitted from the application.
- b. A case should be referred where the renewal claimant is identified so inadequately that it would be very difficult or impossible to single him out as an individual.

##### Examples:

- 1) Mr. de Rais, claiming as widower of the author.
- 2) The Sperryville Literary Society, claiming as authors.
- 3) Lord Shootingstick, claiming as next-of-kin.

c. A case should not be referred where the application apparently contains an adequate statement of a renewal claimant and there is no obvious conflict between this statement and the facts appearing on the face of that particular application.

- 1) A case should not be referred even though the statement of the claimant's name may contain errors in spelling or may vary in some detail from the authorship statement appearing elsewhere on the form.

Examples where referrals should not be made:

- a) Mrs. Peter C. Ormsbie, claiming as widow of "Peter C. Ormsby."
  - b) Claimant stated as: Thomas Lane Boone  
Author of Renewable Matter stated as:  
Kentucky Boone.
  - c) Teddy Otterback, claiming as next-of-kin of William Otterbuck.
- 2) A case should not be referred even though the cataloger may note that the claimant's name is in conflict with other renewal applications submitted earlier or at the same time, or may have reason to believe that the claimant named is dead or no longer in existence.
  - 3) Where the examiner notes a discrepancy in the name of the renewal claimant which he feels is not sufficiently important to correspond about, he should add a light pencil check to the appropriate space on the form, to show that the difficulty has been noted.

2. Address of Claimant. See Item II. A. 2., above.

3. Basis of Renewal Claim.

- a. A case should be referred where the renewal application states any renewal claimant without indicating the basis of the claim.
- b. A case should be referred where the statement of the basis of claim is a substantial or complete departure from the acceptable statements listed on page 4 of Form R.
  - 1) Examples of cases that should be referred:
    - a) Executor of the widow of the author.
    - b) Proprietor per agreement.
    - c) Wife of the author.
    - d) Nephew of the author.
    - e) Administrator.
    - f) Heir.
  - 2) In addition to the statements listed on page 4 of Form R, the following bases of claim are acceptable:
    - a) Administrator cum testamento annexo (or administrator c.t.a.).
    - b) Administrator with the will annexed.
    - c) Administrator de bonis non cum testamento annexo (or administrator d.b.n.c.t.a.).
    - d) Administrator de bonis non with the will annexed.
- c. A case should not be referred where the statement of the basis of claim contains the substance of one of the claims stated on page 4 of Form R.



**Examples:**

- 1) Next-of-kin of the author.
  - 2) Executor of the estate of Edwin Arlington Brunswick.
  - 3) Son of the author.
  - 4) Proprietor of a work made for hire.
  - 5) Arranger.
- d. Ordinarily the cataloger should make no effort to evaluate the legal validity of a renewal claim as stated on the application. If, in the ordinary course of cataloging, he notes a clear and irreconcilable conflict, he should refer the case.

**Examples of cases where referrals should be made:**

- 1) U.S. Steel Corporation, claiming as widow of the author.
- 2) James T. Franklin, Jr., claiming as next-of-kin of James Thayer Franklin.
- 3) A renewal claim as "proprietor of copyright in a composite work" in a work identified as a "play in three acts."

**B. Title**

1. A case should be referred where the title of the work has been omitted from the renewal application.
2. A case should be referred where, in the ordinary course of cataloging, the cataloger notes that the title given in the renewal application is so different from that appearing in the original office records that there is doubt as to the work the renewal claim covers.

## Examples:

- a) On application: Son of The Wolf Man, I Love You  
On original records: The North Dakota Waltz.
  - b) On application: Sperryville, Va., Northwest  
Quarter  
On original records: Sperryville, Va.,  
North Quarter
  - c) On application: 101 Things a Boy Can Do with  
Wrecked Cars  
On original records: Life Along The Shirley  
Highway.
3. A case should not be referred where there is no real doubt that the title given on the renewal application refers to the same work as that covered by the original entry, even if the title lacks specificity, varies from the title given in the original records, or contains errors or omissions.

## Examples:

- a) On application: The Islands of Langerhans  
On original records: Through the Islands of Langerhans with Gun and Camera.
  - b) On application: Rondo Capprichisio  
On original records: Rondo Capriccioso.
4. Where the examiner notes a discrepancy between the title given on the renewal application and that appearing in the original records of the entry, he will attempt to reflect the title of record on the application by means of pencil notations.
- C. Renewal Matter. This factor may be ignored by the cataloger as far as referrals are concerned.
- D. Contribution to Periodical or Composite Work.
- 1. When, from the face of the renewal application, it is clear that the work in question is a separate contribution to a periodical or other composite work, the

case should be referred unless the application adequately identifies the periodical or composite work. In the case of a periodical, referral should be made unless the particular issue in which the contribution was first published is identified.

2. It is not necessary that the information in this space be complete or entirely accurate.

**E. Authors of Renewable Matter.**

1. Where renewal is claimed in the name of an author's widow, children, executors, or next of kin, referral should be made if the renewal application does not state the name of at least one author of renewable matter, although this name need not necessarily appear in the space provided for it. The case should also be referred where more than one author of renewable matter is indicated, and it is impossible to determine on whose authorship the claim is based.
2. A case should be referred where, in the ordinary course of cataloging, a conflict or clear inconsistency is noted between the renewal claim stated on an application and the statement of the "authors of renewable matter" appearing on the same application.

**Examples:**

- a) Renewal Claimant: Manny Baldwin as author of words  
Author of Renewable Matter: Manny Baldwin as author of music.
  - b) Renewal Claimant: Samuel Shadwell as arranger  
Author of Renewable Matter: Samuel Shadwell as author of words and music
3. As a rule, the following cases should not be referred:
    - a) Author's name misspelled or incomplete.
    - b) Application gives only part of authors listed on original records.

F. Facts of Original Registration.

1. A case should be referred where the original registration number, or either the date of publication or date of registration, have been omitted from the renewal application. A case should not be referred because of omission of the name of the original copyright claimant.
2. Where, in the ordinary course of cataloging, the cataloger notes a discrepancy or obvious error in the number or date given in the renewal application, he should refer the case. A case should not be referred for discrepancies involving the name of the original copyright claimant.
3. A case should be referred where the spaces for both the date of publication and date of registration have been filled in or where the date obviously appears in the wrong line.

G. Deposit Account, Correspondence, Return Address and Signature.  
These lines may be ignored as far as referrals are concerned.

H. Date and Fee Boxes.

1. The cataloger should make no special effort to determine whether the renewal application has been filed within the statutory time limits.
2. If the cataloger in the ordinary course of cataloging, notes a clear error or omission in the date and fee boxes, or notes that the application has been received too early or too late for renewal registration, he should refer the case.

I. Examiner's Initials. See Item II. M., above.

No. 12

PRACTICES: VARIANCE IN CLAIM INVOLVING  
FOREIGN BUSINESS ORGANIZATION TERMINOLOGY

Note: The Compendium of Copyright Practices, Chapter 4, Parts 4.2.3.I and II should be applied equally to foreign proprietor-claimants. The following examples will illustrate the application of these principles in the foreign area.

A. In General.

1. Where the variance is sufficient to raise questions as to whether the same legal person is named in the notice and application, correspondence is necessary.
2. Where the variance is not sufficient to require correspondence, it is generally desirable to annotate the application. This is especially true where the fuller form of the name appears in the notice.
3. An annotation need not be made where it is clear that the variant form is not part of the firm name and is mere surplus descriptive matter.

B. Variant Forms of Same Name.

1. Real person in both application and notice.

Example:

In notice: Johann Bost, Verleger  
In application: Johann Bost  
Practice: Annotate  
Reason: Not altogether clear whether  
variant term merely descriptive.

2. Firm name in both application and notice.

Example:

In notice: Kreuz-Verlag GmbH  
In application: Kreuz-Verlag  
Practice: Annotate  
Reason: Although foreign laws may require the use of certain designations as a part of the firm name, the Copyright Office will not question the name in the notice as long as it is sufficient to identify the copyright proprietor.

3. Firm name in notice and firm name plus name of real person in application, and the reverse.

Examples:

- a. In notice: Melodie Ton Verlag  
In application: Melodie Ton Verlag,  
Alleininhaber:  
Gretchen Schmidt  
Practice: Annotate in this and the reverse situation  
Reason: Relationship between firm and individual clearly shown.
- b. In notice: Posaune Musikverlag  
In application: Posaune Musikverlag/  
Hermann Tillema  
Practice: Question the variance in this and the reverse situation  
Reason: Relationship between firm and individual not clear.

C. Different Claimants.

1. Firm name in notice and real person in application, and the reverse.

Example:

In notice: Librairie Gallimard  
In application: Felix Gallimard  
Practice: Question the variance

2. Different firm names in notice and application.

Examples:

- a. In notice: Springer Verlag OHG  
In application: Springer Verlag GmbH  
Practice: Question the variance
  
- b. In notice: Etablissements Casterman  
S.A.  
In application: Etablissements Casterman  
S.r.l.  
Practice: Question the variance

## No. 13

REFERRAL OF CERTAIN CASES INVOLVING  
PUBLISHED WORKS FROM THE EXAMINING  
DIVISION TO THE COMPLIANCE SECTION,  
REFERENCE DIVISION

- I. In general. The compliance provision of the copyright law is essentially a criminal provision, and should not be used indiscriminately. As a general rule, a case should be referred to the Compliance Section, Reference Division, only when:
  - a. It is clear that a valid copyright has been secured;
  - b. Examining Division correspondence has failed to resolve the difficulty, and it seems clear that further correspondence along the same lines would be fruitless; and
  - c. It is impossible or undesirable to make registration on the basis of the material at hand.
  
- II. Cases where no compliance action is appropriate. The following cases should not be referred to the Compliance Section, but should ordinarily be closed after there has been no response to the letters of the Office:
  - a. The work is unpublished or there is a real question as to whether or not publication has taken place;
  - b. The work is by a foreign author and was first published abroad;
  - c. There is any real doubt as to the registrability of the work. Examples:



1. Questionable notice
  2. Questionable copyrightability
  3. Possible violation of manufacturing clause
  4. Questionable citizenship of author.
- d. A work is referred to as an "ornamental design of a useful article." Examples:
1. Jewelry
  2. Textiles
  3. Lace
  4. Toys
  5. Placemats, paper tablecloths, etc.
  6. Dinnerware
  7. Household articles
  8. Wallpaper
  9. Shoe ornaments
  10. Silver flatware
- e. A scientific or technical drawing.

III. Time for referral to Compliance Section. The Examining Division may refer a case to the Compliance Section at any point in the correspondence cycle, if the applicant flatly refuses to comply with the registration requirements. This is a rather rare type of case, however. Where the applicant writes us the equivalent of "let's forget the whole thing," the case should ordinarily not be referred to the Compliance Section until after the Examining Division has written once more, pointing out the obligation to register in general terms.

## No. 14

## MUSIC EXAMINING: NEW MATTER MINIMAL OR NOT CLEARLY STATED

The following practices apply to all cases involving the registration of claims to copyright in new versions or new editions of previously registered or published material, but especially to claims based on musical editing and new versions of "folk songs."

1) Where the new matter is stated simply as "editing" or "arrangement," and the copy clearly shows the presence of substantial editing or arrangement and its nature, registration should be made without further question.

2) Where the new matter is stated simply as "editing" or "arrangement" and it is not clear from the copy whether any substantial and original editing or arrangement is present, or what it consists of, the Examining Division should request a clearer statement of new matter. If it seems clear that no such editing or arrangement is, in fact, present, or if a satisfactory statement cannot be obtained, the claim may be rejected for lack of new matter.

3) In all cases where it is clear that the basic musical composition is in the public domain, registration should be made only if an acceptable statement of new matter appears in the space provided for that purpose on the application. Moreover, it is not sufficient for the new matter merely to be suggested indirectly in the statement of authorship on the application.

4) Where it is clear to the examiner from the face of the copy that no new copyrightable words or music are present, but the application appears to assert a claim in the words and music (either alone or in combination with arrangement or editing) the claim should be rejected or a new application should be requested in which the basis of claim is clearly stated.

a. In cases of this sort the words and music of the song should be so well-known and familiar that an average examiner should be reasonably certain of the lack of new words and music from the face of the copy. The fact that a musicologist or folklorist would recognize the words and music as old is not in itself sufficient to justify questioning the claim, and under ordinary circumstances an examiner is not justified in undertaking research to confirm his suspicions.

## No. 15

## CANCELLATION CASES

I. What is a "cancellation case"?A. Definition.

1. A "cancellation case" is one in which the number assigned to a completed registration will not be used for that particular work, and an accounting action is therefore necessary. The case may involve either:
  - a) Complete elimination of any registration for the work in question; or
  - b) A new registration for the work under a different class and number.
2. Examples:
  - a) Where it is discovered only after registration that the notice for a published work is fatally defective, the fee is refunded or recredited.
  - b) Where a renewal claim was erroneously registered after the first term of copyright has expired, the registration is cancelled and the fee refunded or recredited.
  - c) Where the check in payment of the registration fee bounces, and efforts to obtain a new remittance fail, the entry is cancelled.
  - d) Where, through an Office error, an unpublished work was incorrectly registered as published, the published entry will be cancelled and a new registration made under an unpublished number.

e) Where registration of a claim in a foreign book is based upon the deposit of one copy and a fee under Option A ("Af" series), but a registration number in the "Afo" series is assigned which would have been appropriate only if the registration were based upon the deposit of two copies and a catalog card in lieu of the registration fee.

B. "Substitution" distinguished from "cancellation." A "substitution" is a case where a new application covering the same work is substituted for an erroneous application; the same registration number is used, and no accounting action is required.

## II. Mechanics of cancellation.

A. Time to cancel. The mechanics of cancellation will not be started until the certificate of registration has been returned, but in special cases, where it seems impossible to obtain the return of the certificate, the entry may be cancelled without the certificate.

B. Processing of previously numbered applications. Cancelled registration numbers will not be reused, and the previously numbered application (or a substitute) will be annotated, marked "Cancelled," and remain in the bound records of the Copyright Office.

1. Under no circumstances will the Office issue an additional certificate for a cancelled registration. However, since the cancelled application is part of the records of the Copyright Office, its existence may be reported in search reports, and photocopies may be prepared and furnished to the public. Certificates of such photocopies, if requested, may be furnished, but should be specifically drawn, and should be furnished and charged for separately from certifications of correspondence in the case.

## No. 16

DETERMINATION OF EFFECTIVE DATE OF  
REGISTRATION FOR UNPUBLISHED WORKS  
WHERE THE MATERIAL SUBMITTED FOR  
REGISTRATION CONTAINED A CLEAR DIS-  
CREPANCY WHICH THE COPYRIGHT OFFICE  
SHOULD HAVE OBSERVED BEFORE COMPLETING  
THE ENTRY

1. The following hypothetical case illustrates the problem: an application Form E, registration fee, and one copy of an unpublished musical work are received in the Copyright Office on May 15, 1967. Registration of the claim is made and a registration number assigned to the work on May 22, 1967. On May 26th an error is discovered substantially affecting the registration which the Copyright Office should have observed prior to making the entry on May 22nd. The Copyright Office requests a new application Form E which is received on June 5, 1967, and which bears the latter date of receipt. The effective date of registration for an unpublished work is the date on which the last of the three elements required for registration, that is, the application, copy, and fee, is received in acceptable form in the Copyright Office.

2. In cases of this kind involving unpublished works, the date of registration should ordinarily be the date which would have been used if the registration had not involved an error which the Copyright Office should have observed prior to making the entry. In the above mentioned example, the effective date of the registration would be May 15, 1967. Accordingly, the later date of receipt would be removed from the new application Form E and replaced by the earlier date, namely, May 15, 1967.

3. In cases where the error necessitates requesting a new copy of an unpublished work, determination of the effective date of registration will depend upon the nature of the new copy. Thus, for example, assuming the same sequence of dates given in the first paragraph of this memorandum:

- a. If the new copy is the same as the earlier copy in content, but differs only in information about the author, copyright owner, title, and the like, the new copy should be given the earlier date of May 15, 1967.
  - b. If the copyrightable contents of the new copy are in any way different from the contents of the earlier copy, the new copy should be given the later date, that is, the date of its actual receipt in the Office, namely, June 5, 1967.
4. In any post registration case involving deposit of a new copy, the dates of receipt appearing on the new copy and in the "copy received" box on the application must be made to correspond.
5. The above mentioned procedures are not applicable to published works because the term of copyright protection for published works is computed from the date of first publication rather than from the effective date of registration.

S-52  
through  
S-72

No. 17

UNITED STATES COPYRIGHT RELATIONS  
AND ACCEPTABLE STATEMENTS OF CITIZENSHIP

(pp. S-52 through S-72)

Withdrawn as Supplemental Practice  
July 1973.

[July 1973]

## No. 18

NOTICE CONTAINING THE YEAR DATE IN WHICH  
COPYRIGHT WAS SECURED PLUS AN EARLIER DATE  
OR DATES NOT APPLICABLE TO THE WORK

This memorandum concerns our procedure in cases where there are two or more year dates in the copyright notice and we have ascertained that the earlier date or dates do not refer to anything. In this situation, copyright in the entire work has been secured in the last year named in the notice, and there is no previous registration or publication to which the earlier dates might refer. The question raised by such a notice, of course, is whether the earlier dates have any effect on the term of copyright.

Since this question has apparently not been decided by the courts, no "antedated notice" warning letter or circular should be sent. On the other hand, the question is not wholly free from doubt. Therefore, the application and certificate should be annotated in all such cases to show the dates in the notice.



## No. 19

ANNOTATION IN ANTEDATED NOTICE CASES  
WHERE THERE IS MORE THAN ONE YEAR DATE  
IN THE NOTICE

Frequently we have antedated notice cases where there is more than one date in the notice. For example, a work published in 1966 with new matter may bear a notice containing a 1961 and 1965 year date. The 1961 year date refers to a previous unpublished registration or to an earlier published edition and the 1965 year date is intended to cover the version published with new matter in 1966. The question then arises whether the antedated notice annotation should read "In notice: 1961, 1965" or "In notice: 1965."

It is our general policy to include all of the year dates in the annotation. The inclusion of only one of the year dates when several are in the notice creates a false picture of the notice and under certain circumstances could have serious consequences.

In cases where the notice contains many dates so that it would be impractical to show them all in the annotation, the following legend may be used, "In notice: series of \_\_\_\_\_ year dates from \_\_\_\_\_ through \_\_\_\_\_."

## No. 20

## REVISED PROCEDURE FOR APPEAL CASES

A. What is an "appeal"? An appeal, in Copyright Office terminology, is a request for reconsideration following the taking of some final action. The final action involved is usually a "rejection" (that is, the refusal to register a claim on grounds of uncopyrightability or failure to meet statutory requirements). A request for reconsideration of an action such as refusal to record a document in a particular form, refusal to register a renewal claim in a particular class, etc., is not considered an appeal until the applicant has refused to accept the alternative suggested by the Office and the case has been closed.

B. Correspondence in appeal cases.

1. First appeal. The first letter of appeal is referred to the member of the Examining Division staff who was responsible for approving the "final action" mentioned in Section A above. The letter of reply is typed for the personal signature of the Head (or Assistant Head) of the Section.

a. In the event the "final action" being appealed was taken by the Section Head in a letter bearing his personal signature, the letter of reply is typed for the personal signature of the Assistant Chief, Examining Division.

2. Second appeal. An appeal from a second rejection or other final action taken on the first appeal is referred to the person who was responsible for approving the action in question. Ordinarily, the letter of reply is typed for the personal signature of the Assistant Chief of the Division.

a. In cases where the answer to the first appeal was signed personally by the Assistant Chief, the letter of reply is typed for the personal signature of the Chief, Examining Division.

3. Third and later appeals. All appeals after the second go directly to the Chief, Examining Division, for decision. Unless a fourth and subsequent appeal presents new grounds for reversing the decision, the Chief of the Division may deny them without extended consideration.

C. Personal contacts in appeal cases.

1. As a rule, efforts should be made to discourage personal discussions in appeal cases until a written letter of appeal has been filed. However, there may be circumstances (e.g., where an attorney has made a special trip from another city without first requesting an appointment) where it would be impolite not to listen to the applicant's arguments and to try to clarify the Copyright Office's reasons for its action. No commitments of any kind may be made in such a discussion, and the applicant should be requested to put his arguments in writing before any further action can be taken.

2. Once a letter of appeal has been received, the Copyright Office will neither encourage nor discourage personal discussions of the case. In such discussions the Copyright Office should be represented by the person who has responsibility for acting on the appeal--the Section Head (or Assistant Head) in first appeals, the Assistant Chief in second appeals, and the Chief of the Examining Division in subsequent appeals. He may call in others to attend the conference or to represent him, if appropriate. In certain very unusual or important cases, the Register of Copyrights may represent the Office in the discussion of an appeal.

3. It is usually the purpose of the discussion of an appeal merely to elicit information and clarify positions, rather than to settle the case once and for all. However, where facts are brought out in the discussion which completely change the complexion of a case (e.g., a work by a Turkish citizen is found to have been first published in a U.C.C. country), it may be appropriate to indicate what action the Office may take. In any case, a brief written report of the conference should be added to the correspondence file, and the final action of the Office should be stated or confirmed in a letter to the applicant.

## No. 21

PRACTICE CONCERNING THE FEE TO BE CHARGED  
IN CASES PENDING IN THE COPYRIGHT OFFICE  
ON THE EFFECTIVE DATE OF THE FEE INCREASE  
[November 26, 1965]

A. Public Law 89-297, 89th Cong., 1st Sess., which provides for increases in most fees for copyright registrations and other services, was approved on October 27, 1965. Section 3 provides that "this Act shall take effect 30 days after its enactment." Under this provision, a copyright claim may be registered at the lower rate if properly filed in the Copyright Office on or before November 26, 1965, but the new higher fee will be charged for registration of claims submitted thereafter.

B. With respect to cases pending in the Copyright Office at the time of the fee increase, the following practices will be adopted:

1. In registration cases, whether registration can be made for the lower fee will ordinarily depend upon whether a claim to copyright was presented to the Copyright Office on or before November 26, 1965. The lower fee will be charged if, on or before that date, the Copyright Office has received:

a. The full fee at the lower rate, either as a separate remittance or as part of a deposit account. In deposit account cases there is no requirement that the examiner check to make certain that the account had funds sufficient to cover a particular registration on or before November 26.

b. An application (or equivalent information in a letter, for example) sufficient to identify the work and to state that a claim in it exists, even if the information is incomplete or incorrect.

(1) In the case of published works, registration at the lower fee should not be made for any work published after November 26, 1965.

(2) In the case of renewals, registration at the \$2.00 fee should not be made unless the application is timely and states either the correct claimant or basis of claim.

c. The required number of copies of the particular work, even if not the copy or copies eventually used for the registration. For example, the copies may be incomplete, defective, or editions of different quality, but should not be entirely different versions containing substantially different copyrightable material.

2. In cases of recording assignments, etc., notices of use, or notices of intention to use, the lower fee will be charged if, on or before November 26, 1965, the Copyright Office has received:

a. The basic fee at the lower rate (\$3.00 for assignments, etc., \$2.00 for notices of use, or nothing for a notice of intention), either as a separate remittance or as part of a deposit account, even if a higher fee is eventually required because of extra pages or titles. However, if extra titles are later added to a pending notice of intention, the full new fee should be required.

b. In the case of assignments, etc., and notices of intention to use, a copy of the particular document to be recorded, even if another, non-identical copy is later substituted for purposes of recordation. In the case of notices of use, a copy of the notice containing the name of the copyright claimant and at least one of the titles in the notice as eventually recorded. For example, if before November 27, 1965, the only notice of use received contained the names of different copyright claimants for several different compositions, the fee for the notices of use eventually recorded should be computed at the new rate.

C. Where, before November 27, 1965, we find that the higher fee will be necessary unless there is a satisfactory compliance before that date, we will call attention to the fee increase in the correspondence in a manner calculated to avoid the necessity of writing later for an additional fee.

D. Where the applicant, at his own initiative, indicates that he prefers to pay the higher fee for a registration in a case that was pending in the Copyright Office at the time of the fee increase, the higher fee will not be refused even though the circumstances would not make it mandatory.

No. 22

**DATES OF RECEIPT APPEARING ON THE  
APPLICATION AND COPIES OR COPY**

It is not uncommon for an application to have acquired several dates of receipt by the time it is ready to be passed for registration. The same is true for the copies or copy and the dates in the boxes indicating the receipt of copies or copy. In order to standardize the practice in the Examining Division the following practices will be adopted in all Sections with the exception of the Renewal and Assignment Section. In the latter Section the date of receipt of the application usually determines the vesting date of the renewal. The rigid adherence to these practices by the Renewal and Assignment Section could frequently result in the loss of rights.

**A. Date of Receipt of the Application.**

- I. If registration is being made on the basis of the original application and there has been no correspondence, or if registration is being made on the basis of a new application received after correspondence, only the one date of receipt of that application should appear in the "Application received" box.
- II. If the original application was returned for the addition of certain information and it is resubmitted with the information added, two dates will appear in the "Application received" box when it reaches the Examining Division. In such cases, the examiner will add the later date of receipt to the certificate so the information on the application and certificate will be uniform. If the work is unpublished, the examiner will lightly cross through the earlier date on both the application and certificate in red pencil, thus:

There is no necessity for crossing through the earlier date in the case of published works.



B. Date of Receipt of the Copies or Copy.

- I. In the case of published works, if each of two complete copies is received on a different date, stamp the date of receipt of each copy in the "Two copies received" box. Thus:

1 c rec'd (first date)

1 c rec'd (later date)

- II. In the case of either an unpublished or a published work, if one or both of the copies received is incomplete, the examiner will write for a complete copy or copies. In some cases it will be sufficient for the applicant to deposit the missing material, resulting in parts of one or both copies bearing different dates of receipt. The date of receipt of a particular copy in such cases will be the date the material making the copy complete was received in the Copyright Office. All earlier dates that appear on either the copy or in the "Copy received" or "Copies received" box should be crossed through lightly in red pencil.

For example, an application on Form E for an unpublished work may indicate that the claim is in both words and music, but only the music has been deposited. The copy is not complete until the words have been received. The date of receipt of the words, therefore, will be stamped on the application and certificate, and the date the music only was received will be crossed through lightly in red pencil on the application, certificate, and copy.

- III. It sometimes happens in the case of unpublished works that the copy originally deposited is returned for correction, and is resubmitted at a

later date. Where this occurs the later date should be stamped on the application, certificate, and copy, with the earlier date being lightly crossed through in red pencil on the application, certificate, and copy.

NOTE: In each of the situations described in this memorandum where it is necessary to cross through an earlier date, it is important that it is done in such a way that the date will remain legible.

## No. 23

RETURN OF DEPOSIT COPIES IN CASES WHERE  
NO REPLY HAS BEEN RECEIVED TO COPYRIGHT  
OFFICE CORRESPONDENCE

As a general rule, when no reply is received to Copyright Office correspondence and the case is closed, the deposit copies will be retained in the Copyright Office files. This rule applies to both published and unpublished material.

If the applicant later requests the return of his published copy or copies and we have two copies in our file, one copy will be returned. The applicant will be advised that the second copy has been retained as a part of the Copyright Office file in the case in accordance with our usual practice. If there is only one copy in our files, we will not return that copy unless it reasonably appears that the work may not have been published, or the Section Head or Assistant Section Head approves its return after considering all of the circumstances.

In the case of unpublished material, the deposit copy will be returned if the applicant requests it.

## RIDERS TO APPLICATIONS

The following outline of procedures should be followed when an application with a rider attachment is received for registration and the application is otherwise acceptable.

I. Riders in General.

- A. What are Riders. Riders are extra slips or pages submitted by applicants containing information which continues or supplements the information included in their applications. Most commonly riders list additional authors whose names do not appear in the authorship line, or they contain statements of new matter that are too detailed or elaborate to be included in the new matter line on the application.
- B. Policy. An application accompanied by a rider will not be passed for registration.

II. When to Annotate for a Rider.

- A. When the information on the rider is of a quantity that can be transferred to the application in a neat, legible manner, we will annotate.
- B. When the information on the rider is too voluminous to be accommodated on the application, but can be abbreviated in the applicant's language and without any appreciable loss of meaning or content, we may annotate.
- C. When transfer or abbreviation of the information is not feasible, we will request a new application. The following are examples of how typical cases should be handled when the rider is such that it cannot be transferred or abbreviated and we are writing for a new application:

1. Where the rider relates to the title (e.g., where the individual titles in a collective work are listed) a new application listing only the general title will be requested.
2. Where the rider relates to authorship (e.g., where a number of authors are listed) a new application listing only the number of authors called for on the form will be requested. In such cases, we may suggest that the applicant add "and others" after the last author listed.
3. Where the rider consists of a long explanatory statement (concerning new matter, manufacture, reasons for depositing photographs, etc.) a new application containing a brief, general statement of the information will be requested.
4. Where the rider consists of extraneous information not called for by the application, a new application omitting any reference to the rider will be requested.

INQUIRIES CONCERNING THE COPYRIGHT  
OFFICE AND OTHER DEPARTMENTS OF  
THE LIBRARY

Occasionally we receive a letter of inquiry asking questions concerning both copyright matters and matters which might refer to other departments of the Library, such as, for example, processing of catalog cards, dissemination of the copyright deposits once they have reached the shelves of the Library, etc. We, of course, should not attempt to answer any inquiries pertaining to the operating procedure in other than our own Division. However, steps must be taken to see that the other inquiries are answered.

Where a letter of inquiry relates to matters not entirely within the jurisdiction of the Copyright Office, our replies will be directed solely to the copyright matters, and the writer of the letter of inquiry will be told that his other inquiries have been referred to the appropriate department in the Library for reply.

## No. 26

## CORRESPONDENCE IN CASES INVOLVING REPRINT MATERIAL

Two related problems involving reprint material arise quite frequently.

In both cases it is clear that the work contains material that has been published or copyrighted previously. Likewise, in both cases, the copyright notice contains only the later date of publication of this edition, and does not include any date covering the earlier material. The year date appearing in the notice is more than one year later than the year in which copyright in the earlier material was secured.

In the first situation, there is a question as to whether there is sufficient new matter to support a new registration, and we must write to find this out. It has sometimes been our practice merely to pose the question, without explaining the possible consequences--that unless there is new matter, registration cannot be made and copyright has doubtless been lost. In this case, and in all cases where the copyright status of a work hinges on an applicant's answer to our question, an explanation of the possible consequences should be included in our letter.

In the second situation, it is clear that there is no new matter, and that the work is a mere reprint. In many of our rejection letters, we have gone no further than to explain that registration must be refused because there is not enough new matter to support a new entry. If this is true, however, the copyright may have been lost by use of a postdated notice. We will point this out to the applicant to avoid telling him only half of the story and leaving him with a wrong impression as to future publications. This should be pointed out only as a possibility or as a general proposition; we cannot decide this question in an individual case.

These problems usually arise with respect to the year date. However, it should be noted that the same situation can arise when the name in the copyright notice is changed on a reprint without first recording the assignment.

No. 27

## USE OF PSEUDONYMS IN THE COPYRIGHT NOTICE

One of the essential elements of the required statutory notice on a published work is the name of the copyright owner or proprietor, that is, the name of the person or organization legally entitled to the copyright at the time of first publication. Generally, unless the name in the notice identifies someone who is entitled to secure the copyright, registration of the claim to copyright would not be authorized.

Whether the use of a pseudonym in the notice satisfies the statutory requirements is not altogether clear. The problem arises from the fact that one of the principal purposes of the copyright notice is to identify the copyright owner to the public, whereas a pseudonym may be used to conceal that identity. Since it is desirable that our actions be consistent throughout the Division, the following practices will be adopted.

1) If the work is unpublished and bears a copyright notice containing a pseudonym or other fictitious name, the use of such a notice at the time of publication will be discouraged unless the pseudonym actually discloses the identity of the person or organization legally entitled to claim copyright. Since one of the principal purposes of the notice is to identify the copyright owner to the general public, a name associated with the owner in the mind of the public is always desirable.

2) If the work has been published with a pseudonym or other fictitious name in the copyright notice, our action will depend upon whether the name in the notice is capable of identifying the copyright proprietor to the public.

a) Where the owner's identity is well known under the pseudonym or other fictitious name the application will not be questioned, even though the relationship between the two names is not disclosed on the application.



However, if the relationship between the two names is not disclosed on the application, the name of the copyright claimant given in the application must agree with the name appearing in the copyright notice. Example: in the case of a work copyrighted by Mark Twain, the application will not be questioned merely because it names Mark Twain as copyright claimant and author, since the author was as well known under his pseudonym as by his real name, Samuel Clemens.

- b) Where the pseudonym or other fictitious name is incapable of identifying the copyright proprietor to the public, the claim will be rejected. Examples: John Doe, pseudonym of \_\_\_\_\_; or, Any Man, U.S.A., pseudonym of \_\_\_\_\_.
- c) In all other cases where we have knowledge that the name in the copyright notice is pseudonymous or fictitious, we will inquire whether the name in the notice is capable of identifying the copyright proprietor to the public. Our letter should inform the applicant of the desirability of using the owner's real name in the notice since the use of a pseudonymous or fictitious name may create some doubt affecting the validity of the copyright claim. Ordinarily, we will not question an applicant's assertion that the public associates the pseudonym or other fictitious name with the true copyright owner.

3) When the copyright notice contains a pseudonym or other fictitious name, except for those cases described under 2)a) above, the relationship between the pseudonym or the fictitious name and the recognized name of the person or organization legally entitled to claim the copyright should be disclosed on the application. The disclosure should be explicit, and may

appear in connection with the name of the copyright claimant or the name of the author shown on the application, or, preferably, both. For example, assuming that the name in the notice contains the pseudonym "WELLS DREIGH," the claimant should be identified on the application as follows: "WELLS, DREIGH, pseudonym of Eli Winthrop." The name of the author on the application should be accompanied by his pseudonym within parentheses: "Eli Winthrop (WELLS DREIGH)." Whenever there is a difference between the name in the notice on the copies and the name of the copyright claimant given on the application, the discrepancy may be resolved by adding an annotation to both the application and certificate, provided, of course, the relationship between the two names is explicitly disclosed elsewhere on the application.

**NOTE:** It is clear that nothing in the law prevents the author from writing under a pseudonym or remaining anonymous. No problem arises unless the pseudonym or fictitious name appears in the copyright notice. When an author wishes to conceal his identity, he may wish to arrange with his publisher so that at the time of first publication his publisher (or another) will be "the person or organization legally entitled to the copyright."

## No. 28

**SINGLE APPLICATION SUBMITTED FOR SEVERAL  
VERSIONS OF THE SAME PUBLISHED OR UN-  
PUBLISHED WORK**

- I. Published Works. Where several versions of the same published work (e.g., different arrangements of the same song; or English, French, and Spanish versions of the same book) are separately bound but are submitted with one application, the following practices apply.
- A. Unitary Publication. Where the applicant states, or we have other reason to believe, that the several versions were first published together as a single work, i.e., as a unit, they may be registered together on the one application.
- Example:** Both versions contain the same series title; also, there is a single sale price.
- B. Unitary Publication Questionable. Where there is nothing (other than the single date of publication given in the application) to indicate that the several versions were published together as a single unitary work, we will inquire whether such was the case.
- Example:** Each version bears a different price and/or series number
- C. Separate Publications. Where we are informed that even though published on the same day the several versions were published separately, the following practices apply:
1. Versions are substantially different. Where several versions of a single work are published separately on the same day and each version contains sufficient different copyrightable

material to support a copyright on its own, we will ask for separate applications. It is always preferable to include, in the space provided for the title on the application, words which will identify the particular version in question.

For example, the title could read:  
 ARRANGEMENTS FOR PIANO SOLO AND SATB  
 (English and French translations of  
 a German Book)

2. Differences Are Uncopyrightable. Where several versions of a single work are published separately on the same day and the only differences between the versions are minor or involve uncopyrightable elements, we will register only one of the versions, whichever version the remitter wishes. Line 2 of the application should preferably identify the particular version after the title.

Examples: Arrangements for Horn Quartet and Trombone Quartet where the only difference is the transposition

Editions for High, Medium and Low Voices where the only difference is the transposition

Catalogs where the only differences are in the names of the localities where they are published

Advertising brochures with the same pictorial and text matter but in different colors

3. One Version More Complete. Where several versions of a single work are published separately on the same day, and one version is more complete than

the other (e.g., one version contains all the copyrightable material in the other one, plus additional copyrightable material), we will register only the more complete version. The application should contain a title which will identify the particular version involved in the registration.

**Example:** One book containing the words to a Kiwanis Song Book, the other containing the same words plus the music.

Teacher's edition and student's edition of a book, the former containing the latter plus other text.

**II. Unpublished Works.** Where several versions of the same unpublished works are submitted with a single application, the following practices apply.

**A. Versions are substantially different.** Where each version contains sufficient different copyrightable material to support a copyright on its own, we will encourage the remitter to make separate registrations. However, a single registration may be considered if the applicant insists provided the authorship of each version is the same, and a single identifying title is given.

**Examples:** Arrangements of a composition for piano solo and for dance orchestra

Two versions of a script for a TV commercial for Luzianne Coffee, one 30-seconds and the other 60-seconds

A play with alternate endings

English, French and Spanish versions of a popular song, with different lyrics and minor changes in tempo and phrasing

- B. Differences are Uncopyrightable. Where the differences between the versions are minor or involve uncopyrightable elements, the versions may be registered together on a single application.

Examples: The same music in different keys

The same drawing in black and white and in color

## No. 29

## SINGLE PAGE RULE FOR COPYRIGHT NOTICES

The following practices should be observed in examining claims to copyright in single page works.

A copyright notice appearing anywhere on a single folded sheet may be accepted in Classes A, B, D, E, and F through K. This rule applies only if the folded sheet may, unopposed by any mechanical device (such as stitching, stapling, etc.), be opened out into one single sheet.

The basis for this rule is that in many cases involving folded material the "faces" or "pages" are not paginated and the folds are such that it may be difficult to ascertain which portion of the folded sheet is the title page, the page immediately following the title page, or the first page of text, etc. Thus, the Office considers that the title page can be ascertained only when the sheet is entirely unfolded. If it then appears that an adequate notice is on one side or the other of the unfolded single sheet, registration will not be denied on the grounds of a misplaced notice.

Where registrations are being made on this basis in Classes A, D, and F through K, it will not be necessary to write a warning letter. The rationale here is that since the notice for a book or a dramatic work should appear either "upon its title page or the page immediately following," a notice either on the side of the single sheet containing the title or on the other side would meet this requirement. In the case of works registrable in Classes F through K, the law does not specify any exact position for the notice; consequently, a notice on any accessible portion of the work is acceptable.

However, where registrations are being made in Classes B and E, it may be necessary in certain cases to send a warning letter. The law provides that the notice for a periodical shall appear "either upon the title page or upon the first page of text of each separate number, or under the title heading." Thus, if when the folded sheet is opened out, the notice does not appear on the side of the sheet containing the title, we should send a warning letter since we could not be sure that the other side would be regarded as "the first page of text of each separate number." In the case of a musical composition, the law provides that the notice shall appear "either upon its title page or the first page of music." If, when the folded sheet is opened out, the title page and the first page of music appear together on the same side of the folded sheet and the notice appears on the other side, we should send a warning letter.



No. 30

## REFUNDING OF EXCESS FEES

According to the Regulations of the Copyright Office excess fees in the amount of \$1.00 or less will not be returned unless specifically requested by the remitter. If a refund is requested, the amount will be refunded by postage stamps.

Excess fees in the amount of \$1.01 or more will be refunded by check.

[1973]

No. 31

REQUEST FOR CORRECTION IN, ADDITION TO,  
OR CANCELLATION OF A COMPLETED RECORD

PART I

Basic procedures for handling requests for corrections in, additions to, or cancellation of, our completed records

I. Initial procedures

- A. Letter, application or copy. Generally, a letter or application describing a possible mistake in a completed record, or a copy sent to be attached to or substituted for the original deposit copy, should be referred to the appropriate section in the Examining Division which will be responsible for determining whether the error actually exists in our records.
  - 1. If an error is found, the case will be handled in accordance with the instructions in Section II below.
  - 2. If no error is found, or if the error is so minor that any additional action would be futile or confusing, the applicant should be advised that no further action is necessary.
- B. Formal document. Formal documents that describe errors and are specifically submitted for recordation should be referred initially to the Renewal and Assignment Section, regardless of the class in which the registration was made.

I. Initial procedures (cont'd)B. Formal document (cont'd)

1. If, upon searching, they find anything indicating either that "referral" action should be taken, or that a "corrective entry" or entirely new registration should be made in lieu of recordation of a document, they will refer the case to the appropriate Examining Division section.
2. If they find no such action is in order, they will proceed to have the document examined for recordation purposes.

II. Responsibility for Error. Where it is determined that an error exists in our records, the appropriate course of action depends initially upon whether or not the Examining Division should have discovered the error at the time of registration.A. Examining Division Error.

1. Referrals. If the error is one that the Examining Division should have discovered at the time of registration and cancellation is not required, the case should be handled by the procedure prescribed for numbered applications.
2. Cancellations. If the error is one that the Examining Division should have discovered at the time of registration and cancellation is required, the case should be handled by the procedure prescribed for cancellation cases.

II. Responsibility for Error (cont'd)

B. No Examining Division Error.

1. Error Made by Applicant in Application or Copy at the Time of Registration. If no Examining Division error was made, but the applicant himself made a mistake on the application or copy (either one of commission or omission) and he feels that the error is important enough to correct, the case should be handled in accordance with the procedures set forth in Part II of this memorandum.
2. Change since registration. If no Examining Division error was made, and some fact correctly stated on the original record has simply changed since registration, (e.g., change in title, woman author has married, author's citizenship or claimant's address has changed, etc.) and the applicant wishes our records to show this change, the case should be handled by the procedure prescribed for a change in title or other facts after registration.
3. Errata sheets. If no Examining Division error was made, but the applicant voluntarily sends us errata sheets or similar inserts to be attached to his published deposit copies after registration has been completed, the sheets or inserts should be referred (with a copy of the covering letter) to the Records Section, Service Division.

NOTE: Where the insert or other copy is to be substituted for or added to the deposit copy of an unpublished work, and the changes could constitute copyrightable new matter, the case should be referred to the appropriate section to be handled as a possible new registration for a revised version.

II. Responsibility for Error (cont'd)B. No Examining Division Error (cont'd)

4. Two Registrations Made for the Same Work. If no Examining Division error was made, but through an oversight or misunderstanding, two registrations have been made for the same unpublished or published work, and we are asked to cancel one of the registrations, the case should be handled in accordance with the procedures set forth in Part IV of this memorandum.
5. Abandonment of Copyright Claim. If no Examining Division error was made, but the applicant wishes to "withdraw" or "abandon" the copyright claim (NOT the copyright itself), the case should be referred to the Renewal and Assignment Section.

Example: A claim was registered in a new version of a previously copyrighted work without the permission of the copyright owner of the original work.

6. Abandonment of Copyright. If no Examining Division error was made, but the applicant wishes to abandon his copyright, the case should be referred to the Renewal and Assignment Section.

Example: The copyright owner wishes to abandon his ad interim copyright so that he may import into the United States more than the allotted 1500 copies of the work.

## PART II

## Error Made by Applicant in Application or Copy at Time of Registration

This part outlines the procedures which should be followed in handling cases where the applicant himself made a mistake on the application or copy at the time of registration which he feels is important enough to correct. The mistake is such that the examiner could not be held responsible for failing to note the error. The following are examples of this type of mistake: incorrect date of publication; incorrect or incomplete authorship given; incorrect citizenship; incorrect affidavit information; error in spelling of author's name.

These procedures are not appropriate where some fact on the original application has changed since registration was completed, or where the error is one that the Examining Division should have discovered at the time of registration.

- I. General Rule. Where it is determined that the applicant has made a mistake in the application or copy at the time of registration and the mistake is one which does not involve an Examining Division error, the appropriate course of action initially depends upon whether the registration in question covers a published or unpublished work.
- II. Published works. If no Examining Division error is involved and the registration in question covers a PUBLISHED WORK, the appropriate course of action further depends upon whether the original publication was authorized or unauthorized.
  - A. Authorized publication. If it seems likely that the original publication was authorized by the author or his assignee, but the application contains an error,

II. Published works (cont'd)A. Authorized publication (cont'd)

the action to be taken depends upon the nature of the error.

1. Error in copyright ownership. Where the error involves the name in the copyright notice, i.e., copyright ownership, the appropriate course of action depends upon the seriousness of the error and whether or not it appeared on the bulk of the published edition or only on a few copies.

a. Error in notice appeared on all or the bulk of the published copies.

(1) If the error is so serious that registration would not have been made in what is now alleged to be the correct name, and if it seems likely a valid copyright was secured in the name in the notice, recordation of a document of assignment should be suggested.

Example: Name in notice on deposit copies and original application is Random House Publishers whereas correct name of copyright owner is Larchmont Press, a subsidiary.

(2) If the error is not so serious that registration would have been refused if the original application had reflected the true facts at the time it was submitted, the applicant may apply for a completely new registration, or he may, either as an addition or as an alternative to a new registration, submit a formal, signed statement or affidavit for recordation in the permanent, official records of the Copyright Office.

II. Published works (cont'd)

A. Authorized publication (cont'd)

1. Error in copyright ownership (cont'd)

a. (cont'd)

(2) (cont'd)

Example: Name in notice on deposit copies and in original application is "David Rose Music Publishing Co." whereas the correct name of the proprietor is "David Rose Publishing Co."

If a corrective entry is made, see Part III of this memorandum.

b. Error in notice appeared on the application and on only a few copies as first published, i.e., if the copies deposited originally containing the error are not identical with the bulk of the first published edition, a "corrective entry" should be suggested.

Example: Name in notice on deposit copies and in original application is Artmore Publishing Co., whereas name in notice on bulk of published edition is Beechnut Publishing Co. (Both firms are owned by the same parent corporation, but one is an ASCAP firm, the other a BMI firm).

See Part III.



II. Published works (cont'd)

A. Authorized publication (cont'd)

2. Change in authorship. Where the error involves a change in authorship, the appropriate action depends upon whether or not the error appeared on the bulk of the published copies or only on a few.

a. If the error appeared either (1) on the application only (e.g., no authorship statement at all appeared on the copies) or (2) on the application and all or the bulk of copies as first published, the applicant should be advised by letter of the alternatives available to him. (See Part II, Section II.A.1. a.(2), above).

- Examples:
- (a) Application names Sidney Streeter as author; no authorship on copies. Correct author is Sy Manner.
  - (b) Application and all copies name Rebecca Waters as author. Should be Rebecca Waters and Charles Oston.
  - (c) Application and all copies names Jules Meredith as author. Should be Western Publishing Co., employer for hire of Jules Meredith.

b. If the error appeared on the application and on only a few copies as first published, i.e., if the copies deposited originally containing the error are not identical with the bulk of the first published edition, a "corrective entry" registration should be suggested.

Example: Application and deposit copies name John Kerry as author of words and music whereas on the

II. Published works (cont'd)

A. Authorized publication (cont'd)

2. Change in authorship (cont'd)

b. (cont'd)

Example (cont'd)

bulk of the published edition  
he is named as author of  
music only.

Part III

3. Other errors. Where the error involves any fact other than the name in the copyright notice or a change in authorship, e.g., error in date of publication, error in affidavit, error in new matter statement, the applicant should be advised by letter of the alternatives available to him. (See Part II, Section II.A.1.a.(2), above).

B. Unauthorized Publication. If it seems likely that the original publication was not authorized by the author or his assignee, then regardless of the nature of the error and regardless of where the error appears - on the application and/or copies - an entirely new registration, not a "corrective entry," may be made by the author or his assignee after an authorized publication has taken place. No reference should be made on the new application to the earlier registration or publication.

III. Unpublished works. If no Examining Division error is involved and the registration in question covers an UNPUBLISHED WORK, the course of action depends upon whether the original registration was authorized or unauthorized.

A. Authorized registration. If the original registration was authorized (i.e., if the remitter was authorized by the author or the author's assignee to apply for registration) but the application contains an error, there are four possible courses of action depending upon the nature of the error:

Part II

III. Unpublished works (cont'd)

## A. Authorized registration (cont'd)

1. Error in copyright ownership, but valid copyright secured. If an error was made in naming the copyright owner(s), but it seems clear that a valid copyright was secured, recordation of a document of assignment should generally be suggested.

## Examples:

- a. Line 1 either omitted the name of a co-claimant, included a co-claimant in error, or gave the name of a co-claimant incorrectly; however, at least one name given was the author or assignee of the author.

Line 1 names A as claimant - should be A and B.

Line 1 names A and B as co-claimants - should be A only.

Line 1 names A and B as co-claimants - should be A and C.

- b. Line 1 contains the name of someone who was not the author or the assignee of the author, but it is clear that there is privity between the claimant named in line 1 and the copyright owner.

The claimant given in line 1 may be a subsidiary of the copyright owner.

The author's agent gave his own name in line 1 instead of the author's name.

III. Unpublished works (cont'd)

A. Authorized registration (cont'd)

2. Error in copyright ownership, and not clear if valid copyright secured. If an error was made in naming the copyright owner(s) and it is not clear whether or not a valid copyright was secured, either recordation of an assignment or application for a corrective registration should generally be suggested, depending upon the facts.

Examples:

- a. Line 1 contains the name of someone who was not the author or the assignee of the author, and the relationship between the claimant named in line 1 and the copyright owner is unclear.

A publisher erroneously lists as the claimant for one work, the claimant for another unrelated work in his catalog, e.g.

Marco Music Co. should be Zenia  
Publishing Co.

- b. Line 1 contains the name of a company that was non-existent at the time of registration.

An author planned to do business under the name Saxton Music Publishing Co. and registered his claim under that name only to find out later that BMI would not clear the name because it was being used by someone else.

Line 1 contains the name of a company which it develops was not legally recognized by the state in which the company was operating because of the failure of the company owner to comply with state statutes.

III. Unpublished works (cont'd)A. Authorized registration (cont'd)

3. Change in authorship. If the error involves a change in authorship, a formal, signed statement or affidavit may be submitted for recordation in the permanent, official records of the Copyright Office.

Examples:

- a. The application names Wendy Brown as author of the music when the composer was actually Sam Grundy.
  - b. The application names 4 individuals as authors when in fact only 3 of them contributed copyrightable authorship.
  - c. "Employer for hire" statement omitted or given in error.
  - d. Nature of authorship incomplete or incorrect.
4. Other changes. If the error is one that does not involve either an actual change in ownership or a change in authorship, recordation of an affidavit explaining the error should generally be suggested.

Examples:

- a. Line 1 contains a minor error in the name of the claimant but the claimant is unmistakably identified and there is only one legal entity involved.

Irving Berlin Music Co. should be Irving Berlin Music Publishing Co.

Saxony Music should be Saxony Music, Inc.

Mormax Music Corp. should be Momax Music Co.

III. Unpublished works (cont'd)

A. Authorized registration (cont'd)

4. Other changes (cont'd)

Examples (cont'd)

a. (cont'd)

Oakland Publishing Co. should be Oakland Publishing, Inc.

Barnaby Music Inc. should be Barnaby Music Corp.

John Nicklaus should be John Micklaus

Mary Stern should be Mary Stein

b. Line 2 contains an error in the title. (Do not confuse with a change of title made AFTER registration has been completed.)

Two works deposited together and the titles were criss-crossed on the application and copies.

The wrong title was given on the application and copy and this title actually identifies a different work.

c. The incorrect citizenship, domicile or address of the author or claimant given.

d. The work was registered as "published" in error (date of publication given is date of recording or printing) and publication still has not occurred.

e. New matter statement given in error or statement of new matter omitted when needed.

f. Error made in stating the facts of previous registration or previous publication (e.g., registration number or date).

III. Unpublished works (cont'd)

- B. Unauthorized registration. If the registration was unauthorized (i.e., the remitter had no authority from the author or his assignee to apply for the registration at all), a complete new registration, not a "corrective entry," may be made by the author or his assignee. No reference should be made on the new application to the earlier registration.

Examples:

Author sent work to publisher for possible sale or recording purposes, and publisher makes registration either in his name or the name of the author, but without author's consent or authority.

Author registers claim in his name, and lists himself as author; "publisher" later asserts that work was made for hire, and publisher is author and claimant.

## Part III

## Corrective Entries

I. What is a "corrective entry"?

- A. Definition. A "corrective entry" is an entirely new registration which may be made in certain instances to correct an error in some fact stated by the applicant in the original, completed registration. These cases involve a mistake (or omission or ambiguity) in the original application and/or copy which the examiner could not be held responsible for failing to observe.

NOTE: A "corrective entry" is not appropriate to correct an error appearing in the copyrightable content of the original deposit copy or copies. In such cases, if the corrections involve substantial, new, copyrightable authorship, a new registration may be considered on the basis of the new matter. If the corrections or changes are not substantial, and the work is published, the corrected copy should be treated as an errata sheet (See Part I, Section II.B.3). If the work is unpublished, no further action is necessary.

- B. "Substitute Entry" distinguished from "Corrective Entry!"  
A "substitute entry" is a case involving an error on the original record which the examiner should have noted at the time of registration. To correct the error, a new application and/or copy covering the same work is substituted for the erroneous application and/or copy; a new certificate is issued without the necessity of filing an additional fee; the same registration number is used and no accounting action is required.



I. What is a "corrective entry"? (cont'd)

- C. Changes made after registration distinguished from changes justifying "Corrective Entry." "Corrective Entry" cases involve a mistake on the original record and should not be confused with cases where some fact on the original record has changed since registration (e.g., change in title, woman author has married, author's citizenship or claimant's address has changed, etc.), and the applicant wishes our records to show this change.

II. When may a "corrective entry" be made?

A. Unpublished works.

1. The term of copyright in an unpublished work is computed from the date of registration in the Copyright Office. A later registration for the same work in unpublished form could create difficulties because of the uncertainty as to the duration of copyright protection. Therefore, the reviser should carefully evaluate the applicant's letter or application, etc. to determine whether he merely wishes to correct an error that does not go to the validity of the registration, or whether he believes that the earlier registration was actually invalid. The possibility of making a "corrective entry" should be suggested only if the error to be "corrected" goes to the validity of the registration, i.e., the original entry was clearly invalid.

Example: where the wrong claimant was given

2. For specific instructions, refer to Part II of this memorandum.

B. Published works.

1. Since the term of copyright in a published work is computed from the date of publication, regardless of when registration is completed, the presence of two registrations in our records covering the same published work does not raise problems as to the length

Part III

II. When may a "corrective entry" be made? (cont'd)B. Published works (cont'd)

## 1. (cont'd)

of the term. However, the possibility of making a "corrective entry" should not be suggested indiscriminately.

2. For specific instructions refer to Part II of this memorandum.

III. Processing of Corrective EntriesA. Preliminary correspondence.

1. Request for materials. Where it is determined that a "corrective entry" may be made to correct the error on our records, the applicant should be advised that the copyright owner or his authorized agent may apply for a completely new "corrective" registration by submitting a new application, the same number of copies required for the original registration and the required fee of \$6.00.
2. Request for explanatory statement. An explanatory statement reading "This is to correct Registration Number \_\_\_\_\_" should appear on the new application, either in the top margin or in the line designated for "new matter."

B. Examining procedures.

1. Comparison of applications and copies. "Corrective entry" material should be fully examined as a new case. In addition, it is essential that the "corrective" application and the original application agree in all respects except the one point in issue. If possible, the new copy or copies should be identical with the original deposit. (But see Section IV below).

### III. Processing of Corrective Entries (cont'd)

#### B. Examining procedures (cont'd)

2. Original published copies not available. In exceptional cases, where the applicant states that it is impossible to obtain copies of the original work as first published, photostat or microfilm copies will be accepted. Reprints will be accepted only where the applicant states that it is impossible to secure copies or to make copies of the original edition. In such cases, the application and certificate will be annotated to show the nature of the copies deposited.
3. Original certificate returned. The original certificate of registration should not be submitted, and it will be returned where it is sent to the Copyright Office.

### IV. Special Procedures Where the Corrective Entry Registration Involves Errors in Copies of Published Works

- A. Error on Original Deposit Copies. Occasionally, the applicant will discover that the copies originally deposited in support of a published registration contain an error, and he will file "corrected" copies in addition to a corrected application.
- B. Acceptance of "Corrected" Copies. Since the copies deposited for registration of a published work must be in the form as first published, whether or not we can accept the corrected copies depends upon the facts of first publication. (See Part II, Section II. A.)
  1. Authorized publication. If the original publication was authorized by the author or his assignee, then the proper course of action depends upon how many incorrect copies were published.

IV. Special Procedures Where the Corrective Entry Registration Involves Errors in Copies of Published Works (cont'd)

B. Acceptance of "Corrected" Copies (cont'd)

1. Authorized Publication (cont'd)

- a. Error appeared on only a few published copies.  
Where we receive the applicant's assurance that the copies deposited originally were not identical with the bulk of the published edition and that at most, only a very few of the incorrect copies were published, the corrected copies representing the bulk of those actually first published could be accepted. The new application would also give the correct information with regard to the error appearing on the original application. The original date of publication should be retained.
- b. Error appeared on the bulk of the published edition.  
Where it seems clear that more than a few of the incorrect copies were published, the corrected copies cannot be used. Copies of the original edition containing the error should be used, but the new application should give the correct information. The original date of publication should be retained. Both the application and certificate should be annotated to show what appears on the copies, and to show that the application contains the correct information.

2. Unauthorized publication. IMPORTANT: If the original publication was not authorized by the author or his assignee, a corrective entry should NOT be suggested. Rather, an entirely new registration should be made by the author or his assignee after an authorized publication has taken place. No reference should be made on the new application to the earlier registration or publication.

## PART IV

**Two Registrations Made for the Same Unpublished or Published Work**

Occasionally a remitter will inform us that, through error, two registrations were made for the same unpublished or published work, and he will ask that we "disregard" or "cancel" the later registration or "change our records so that only the original registration will be on file." Sometimes he asks that we cancel the original registration. In any case, we now have on record two registrations for the same work. The situation may arise where the applicant himself has erroneously made two registrations (e.g., he may have lost his original certificate and as a result forgotten that he already registered the claim). Or it may happen that the publisher applies for registration not knowing that the author has already registered a claim in the work.

In either type situation, since the registrations were made at different times, there would, ordinarily, be no way for the Office to know that a second registration was being made for the same work. Consequently, no Office error is involved, and we cannot cancel either registration. However, the presence in our records of two registrations for the same work can raise questions, particularly if the work involved is an unpublished work.

When we are informed that two registrations have been made for the same work, the following procedures should be followed:

1. Preliminary searching. Before taking any action, a search should be conducted to establish that the two registrations mentioned are actually on record and that the facts are as the applicant states.
2. Duplicate Registrations. Where two registrations are on record and they

2. Duplicate Registrations (cont'd)

are exact duplicates, the possibility of making a correction in the Copyright Office records will ordinarily depend upon whether the work is published or unpublished. In any case where the original numbered certificate is enclosed with the remitter's letter, the certificate should be returned.

Example: The author (or publisher) inadvertently applies for two registrations of a particular work at different times, and the facts listed on each registration are identical.

3. Registrations Which Are Not Duplicates in Every Respect. Where two registrations have been made for the same work, but they are not duplicate registrations, the point at which the two registrations differ should be analysed.

- a. If the two registrations differ only with respect to the remitter and/or the person to whom the certificate is to be mailed, the case should be treated as if it were a duplicate registration.

Example: The author submits an application for his unpublished work listing himself as author and claimant and giving his name in lines 7, 8 and 9 of the application. Later his publisher sends in an application for the unpublished work listing the author as author and claimant, but giving the publisher's own name in lines 7, 8 and 9.

3. Registrations Which Are Not Duplicates  
in Every Respect (cont'd)

- b. Where the two registrations differ in any other way (e.g., the facts of ownership, authorship, date of publication, etc.) the differences should be called to the applicant's attention and the possibility raised that one registration was actually intended to correct the other. If this is the case, then in addition to suggesting the applicant record a document explaining the presence of the second registration and stating which registration contains the correct facts, it may also be appropriate, in certain instances and depending upon the fact in issue, to suggest one of the procedures listed in Part II of this memorandum.

Example: The author registers a claim in his unpublished work in his own name, not realizing that his contract with his publisher calls for the publisher to secure the copyright in the publisher's name. Later, in accordance with the terms of the contract, the publisher submits an application in its name. (It is possible that, in such a case, the publisher would take the position that, on the basis of the contract, the author's registration was not authorized and therefore invalid, and that nothing more need be done. On the other hand, the publisher may prefer to ratify the author's registration in his name, and record a document of assignment from the author to them in order to have our records reflect the true facts of present ownership.)

No. 32

ORAL DELIVERY OPINIONS  
CONCERNING REGISTRABILITY

Occasionally members of the public seek oral advice concerning the registrability of their works in advance of filing an application for registration. Such opinions are ordinarily solicited in the course of a visit to the Public Information Office of the Copyright Office. As a general rule, unless registration is unquestionably impossible, we will advise that an application should be filed to enable us to give the case thorough consideration. Usually visitors are seen by Section Heads, Assistant Section Heads, or Senior Examiners. These persons should refrain from giving opinions either for or against registration and should not commit the Office to a certain course of action, particularly where registrability is unclear or doubtful for any reason.

Occasionally, the visitor may inadvertently bypass the Public Information Office and may come directly to the Division work area for oral opinions. Such visitors should be referred to the appropriate Section Head, Assistant Section Head or a Senior Examiner and the above policy concerning visits to the Public Information Office should be followed. Examiners other than Senior Examiners should not discuss the registrability of a work, nor take any other action with respect to it, before an application has been filed for registration of the claim to copyright. For this purpose an application is not considered to have been filed until it has been deposited in the custody of authorized personnel in the Service Division or in the Public Information Office. Examining Division personnel should ask members of the public to take applications to the Public Information Office for filing.

[November 1967]



No. 33

**RECORDATION OF DOCUMENTS SUBMITTED BY GOVERNMENT  
AGENCIES WITHOUT PAYMENT OF THE STATUTORY FEE**

According to an opinion of the Comptroller General dated July 18, 1951 (90 USPQ 194), there is no legal objection to the recordation of an assignment submitted by an agency of the United States government without requiring that agency to pay the statutory fee.

However, if a fee is received with a document, it will be applied toward the recordation.

[April 1968]

No. 34

PROPER "APPLICATION RECEIVED" DATE  
ON APPLICATIONS FOR UNPUBLISHED WORKS

It is important to have accurate dates stamped in the boxes on pages 2 and 4 of the application for the registration of a claim in an unpublished work since they play a vital role in computing the term of copyright.

When an application lacks necessary information but is otherwise acceptable, we usually return it for amendment and re-filing. The date we receive the application again with the added statement is stamped on it. Sometimes, we request a completely new application with the additional information instead of returning the original application for amendment. In response to this request, we may receive a new application with the requested information but the application may be otherwise unacceptable. For example, the wrong form may have been submitted. Depending upon the circumstances and in accordance with established practices, we may transfer the new information from the second application to the original application with an annotation. The following practice should govern the proper "application received" date in these cases:

- A. If the original application lacked necessary information which we added to it on the basis of a statement received in a later application, we should add the date of receipt of that later application to the "application received" boxes of the original application. The original application, including the certificate portion, should be annotated as follows:

\*Added from new application received on \_\_\_\_\_  
and filed with correspondence.

- B. If the new application submitted at our request is unsigned but otherwise correct, we should return the new application for signature.
- C. If the applicant responds to our request for additional information by telephone or in a covering letter, we should treat the new information received in this manner as if it were information given on a new application. We should add to the "application received" boxes

the date of the telephone call or the date the covering letter was received. This procedure should be followed because the claim was not acceptable until we received the missing information. The application and certificate should be annotated as follows:

\*Added as per telephone call from \_\_\_\_\_  
received on \_\_\_\_\_. See correspondence  
file.

or:

\*Added from letter signed by \_\_\_\_\_  
received on \_\_\_\_\_ and filed with  
correspondence.

Cases where necessary information is missing from the application should be distinguished from those where there is an ambiguity which is later clarified by correspondence and annotation. For example, instead of sending a new application clarifying an authorship variance, the applicant may state in a letter that the person listed at the authorship line is an employer for hire of the person named on the copy. We may add this clarification to the application. The annotation will usually show the date of receipt of the letter. We should not, however, add this date to the "application received" boxes because the application was correct and contained all the required information when it was first filed.

For further information on the problem of applying dates see Supplementary Practices No. 22: DATES OF RECEIPT APPEARING ON THE APPLICATION AND COPIES OR COPY.

[May 1968]

No. 35

POSITION OF THE COPYRIGHT NOTICE ON COMPUTER PROGRAMS  
OF DOMESTIC ORIGIN FIRST PUBLISHED IN THE FORM OF  
MACHINE READABLE TAPE OR MACHINE PUNCHED CARDS

In accordance with a decision made in April 1964, the Copyright Office will accept computer programs for registration as "books" in Class A, provided they contain the requisite amount of authorship and meet the other registration requirements.

Where a program is first published in the form of punched cards or on magnetic tape, the work does not have "pages;" this raises the question of compliance with the requirement that the notice on a "book" appear either on the title page or the page immediately following the title page. While this provision cannot be ignored, it should not be given an unreasonably strict construction. The following general guidelines should govern these cases.

Our present practice requires a print-out of the entire program to accompany the deposit copies where first publication was in a form that cannot be perceived visually or read by humans. As a general rule, the position of the notice should be considered acceptable if it appears on the same page or fold of the print-out as the title of the work. If the notice appears on a page or fold other than that on which the title appears, the nature of the material intervening between the title and the notice should be taken into consideration in determining whether the position of the notice is acceptable. If all, or a part of the substantive body of the work intervenes so that it would be unreasonable to conclude that the notice appeared "on the title page immediately following," registration should be refused.

Where the deposit copies consist of a set of machine punched cards that also bear printed material, a single copyright notice located in an acceptable position will suffice to permit registration of the set. A single card contains only a few words and should not necessarily be equated with a "page." Consequently, registration should not be refused if the copyright notice does not appear on the same card or the card immediately following the one bearing the title. Where several cards intervene between the title card and the card containing the notice, again the nature of the material reproduced on the intervening cards

should be taken into consideration in determining whether the position of the notice is acceptable. If all, or a part of the substantive body of the work is reproduced on the intervening cards so that it would be unreasonable to conclude that the notice appeared "on the title page of the page immediately following," registration should be refused.

Where a work is reproduced on machine punched cards that are packaged in a box or other container intended as a permanent receptacle for the cards, a notice located on the box or other container may suffice if the title also appears on the box or container, notwithstanding the fact that none of the cards themselves bear a notice [See Copyright Office Regulations § 202.2(b)(10)].

[August 1968]

## No. 36

REFLECTION IN THE COPYRIGHT OFFICE RECORDS  
OF LIMITING STATEMENTS APPEARING  
NEAR THE COPYRIGHT NOTICE

The Office of Education has adopted a regulation which contemplates that, for some works prepared under its contracts, the contractor will be permitted to claim copyright for a limited time only. The Office of Education will require the contractor in such cases to add to the copyright notice a statement that copyright is claimed only until a certain time, after which the work will be in the public domain, according to the contractual agreement.

In this context, we have considered the question whether statements appearing near the copyright notice that limit the rights that the copyright claimant is asserting should be required to be reflected in the application and referred to in the Catalog of Copyright Entries. Examples of such statements would be those that permit certain uses of the work, or, as in the cases under the Office of Education regulation, limit the duration of the copyright claim. The following policy has been formulated:

1. Limiting statements appearing with the copyright notice, but not on the applications, are so numerous and so various in nature that it would not be practical as a general rule for the Office either to require that they be included in the application or to annotate the application.
2. If such limiting statements are not reflected on the application, the Office should not undertake to reflect them in its catalog entries.
3. If a limitation is stated in the application, it should also be reflected in the catalog entry.
4. The only instances known to us of an official requirement that a copyright notice be accompanied by a limiting statement is the Office of Education regulation. We may not know in any particular case

whether a work containing such limiting statement is one subject to the Office of Education regulation and we should not undertake to inquire in every such case.

We have informed the Office of Education that:

- (a) If, in cases where it requires the limiting statement to accompany the notice, it wishes to have that statement reflected in our registration records, it should instruct the copyright claimant to state the limitation in the application for registration.
- (b) If no such statement appears in the application, the limitation accompanying the notice will not be reflected in our registration records.

If in the future we learn of any other governmental regulation requiring a limitation, we will give the same information to the agency concerned.

The above policy does not concern disclaimers, i.e., statements of exclusion or limitation which indicate that some portions of the work are not covered by the claim of copyright. The present practices of the Office in this regard are not being changed.

[November 1968]





No. 37

THE USE OF A SURNAME ONLY  
IN THE COPYRIGHT NOTICE

Generally the presence of only the surname of the copyright owner in the notice of copyright is sufficient for registration purposes, unless the names of one or more other individuals with the same surname appear in a position on the copy that might mislead the public as to the identity of the copyright proprietor.

In those instances where the general practice is followed and registration is made, a cautionary letter should be sent to the applicant explaining that while registration is being made, one purpose of the copyright notice is to identify the copyright proprietor, and that the use of the surname only in the notice may be of doubtful validity.

The following hypothetical cases illustrate this general rule, and set out the practices to be followed in each case.

1. Where the copyright notice contains only the proprietor's surname and the copies do not bear the full name of any individual with that surname placed in such a position that it might mislead the public as to the identity of the copyright proprietor, we should register the claim with a warning letter and an annotation showing that only the surname appears in the notice.

In notice: Smith

On copy : No full name with the surname Smith

In appl. : Claimed by John Smith

Practice : Register with a warning letter and an annotation showing that only the surname appears in the notice. Where it is necessary that we request an application, our letter should instruct the applicant to state the relationship

between the surname and the claimant's name given at line 1. For example, line 1 could read: "Smith, surname of John Smith." An annotation should not be placed on an application showing the relationship at line 1.

2. Where the copyright notice contains only the proprietor's surname and the copies do not bear the full name of any individual with that surname placed in such a position that it might mislead the public as to the identity of the copyright proprietor, and line 1 of the application lists two or more individuals with the same surname as proprietors, we should register the claim with a warning letter and an annotation showing that only the surname appears in the notice.

In notice: Smith

On copy : No full name with the surname Smith

In appl. : Claimed by John Smith and Jean Smith

Practice : Same as example 1.

3. Where the copyright notice contains only the proprietor's surname and his full name appears on the copies we should register the claim provided the copies do not bear the full name of any other individual with that surname placed in such a position that it might mislead the public as to the identity of the copyright proprietor.

In notice: Smith

On copy : John P. Smith

In appl. : Claimed by John P. Smith

Practice : Same as example 1, except where registration is being made in Classes F-K. Because of the statutory notice provisions for works in Classes F-K, registration should be made without either a warning letter or an annotation.

4. Where the copyright notice contains only the proprietor's surname and his full name appears on the copies, but the full name of another individual with the same surname who is not included as a copyright proprietor on line 1 of the application also appears on the copies in such a position that it might mislead the public as to the identity of the copyright proprietor, we should correspond to ascertain whether the name of the other individual is entitled to be listed on line 1 of the application as a copyright proprietor. If the correspondence reveals that the other individual is also entitled to claim copyright in the work, a new application should be requested with the appropriate explanatory statement given on line 1. In the event the other individual whose name appears on the copy is not entitled to claim copyright in the work, with the exception of works falling in Classes F-K, registration must be refused on the ground that use of the surname alone in the notice under these circumstances fails to adequately identify the copyright proprietor. Registration with a warning letter may be made under these circumstances for works falling in Classes F-K.

In notice: Smith

On copy : Jean Smith and John Smith

In appl. : Claimed by John Smith

Practice : Correspond to ascertain whether Jean Smith is also entitled to claim copyright in the work, in which case a new application should be filed with the statement "Smith, surname of John Smith and Jean Smith" appearing on line 1. If correspondence reveals that "Jean Smith" is not entitled to claim copyright in the work, registration must be refused in classes other than F-K on the ground that use of the surname alone in the notice under these circumstances fails to adequately identify the copyright proprietor. If the work falls in Classes F-K and correspondence has revealed that "Jean Smith" is not entitled to claim copyright in the work, registration should be made with a warning letter.

No. 38

STANDARD REFERENCE DATA ACT  
CLAIMS BY THE U.S. GOVERNMENT:  
REGISTRATION WITHOUT A FEE

The Standard Reference Data Act, Public Law 90-396 (15 U.S.C. 290), provides that the Secretary of Commerce may secure copyright and renewal thereof on behalf of the United States as author or proprietor in standard reference data prepared or made available under the Act.

This Office has concluded that the registration fee will be waived for works submitted in accordance with the Standard Reference Data Act.

In registering works under the Standard Reference Data Act without a registration fee two annotations should be made on both the application and the certificate.

The first annotation involves placing an asterisk at both lines 1 and 3, generally. The asterisk should be placed at both lines 1 and 3 of the application and certificate to indicate that registration of the claim is authorized on the basis of the Standard Reference Data Act, even though the Government is the proprietor and author, and the asterisk should be keyed to the comment in the annotation box. If the Government is the proprietor, but not the author, the asterisk should be placed at line 1 only.

Example:

The statement on the application would read:

\* Claim registered under the Standard Reference Data Act, P.L. 90-396 (15 U.S.C. 290). (Cert.)

The statement on the certificate would read:

\* Claim registered under the Standard Reference Data Act, P.L. 90-396 (15 U.S.C. 290).

[1973]

The second annotation involves placing two asterisks in the fee box on both the application and certificate, and the two asterisks should be keyed to the comment in the annotation box. The fee box must be annotated in order to indicate that in this particular case the fee is being waived.

Example:

The statement on the application would read:  
\*\* Fee waived (Cert.)

The statement on the certificate would read:  
\*\* Fee waived

CITIZENSHIP OF CLAIMANT IN  
POSTHUMOUS WORKS

Topic 7.1.3.III of the Compendium states the basic policy with respect to posthumous works, which is to request the citizenship of the deceased author and the citizenship of the copyright claimant. It is our position that the law is unclear whether the citizenship of the deceased author or of the claimant controls in posthumous work cases. The Compendium contains no exceptions for cases where the name of the deceased author appears in the notice and registration is made with either "Estate of X" or "Y, executor of the estate of X" given in the claimant line on the application. In this situation, as well as where the estate or the executor is named as the copyright owner in the notice, we should ask for the citizenship of the copyright claimant, if the work is posthumous. This practice applies in all cases except where the work is eligible under the Universal Copyright Convention by virtue of the place of publication.

Please note that we are not taking the position that an "estate" as such necessarily has a citizenship. There are doubts about the propriety of using "Estate of X" in the notice (or at the claimant line of the application) since the estate per se is not usually regarded as a legal entity capable of holding property. Consequently, we should not literally ask for the "citizenship of the Estate of X;" we should ask for the citizenship of the claimant. The true legal holder of the literary property interest (who is presumably represented by the phrase "Estate of X") does have a citizenship, and this is the information needed at line 1. Title to personalty such as copyright usually vests in the personal representative of the deceased author in the case of a will. In case of intestacy the court would usually appoint an administrator (depending upon the size of the estate).

Since eligibility to claim copyright is one of the fundamental requirements of our law, the citizenship of the claimant, as well as that of the deceased author, is required in the posthumous work situation to assure a complete legal record, except where the work is eligible under the U.C.C. because of first publication in a U.C.C. country other than the United States.

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