

Copyright Registration for Works of the Visual Arts

General Information

Copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship,” including “pictorial, graphic, and sculptural works.” The owner of copyright in a work has the exclusive right to make copies, to prepare derivative works, to sell or distribute copies, and to display the work publicly. Anyone else wishing to use the work in these ways must have the permission of the author or someone who has derived rights through the author.

Copyright Protection Is Automatic

Under the present copyright law, which became effective January 1, 1978, a work is automatically protected by copyright when it is created. A work is created when it is “fixed” in a copy or phonorecord for the first time. Neither registration in the Copyright Office nor publication is required for copyright protection under the present law.

Advantages to Copyright Registration

There are, however, certain advantages to registration, including the establishment of a public record of the copyright claim. Copyright registration must generally be made before an infringement suit can be brought. Timely registration can also provide a broader range of remedies in an infringement suit.

Copyright Notice

Before March 1, 1989, the use of a copyright notice was mandatory on all published works, and any work first published before that date should have carried a notice. For works first published on or after March 1, 1989, use of the copyright notice is optional. For more information about copyright notice, request Circular 3, *Copyright Notice*.

Circular 40

Publication

The copyright law defines “publication” as the distribution of copies of a work to the public by sale or other transfer of ownership or by rental, lease, or lending. Offering to distribute copies to a group of persons for purposes of further distribution or public display also constitutes publication.

A public display does not of itself constitute publication.

A work of art that exists in only one copy, such as a painting or statue, is not regarded as published when the single existing copy is sold or offered for sale in the traditional way, such as through an art dealer, gallery, or auction house. A statue erected in a public place is not necessarily published.

When the work is reproduced in multiple copies, such as reproductions of a painting or castings of a statue, the work is published when the reproductions are publicly distributed or offered to a group for further distribution or public display.

Publication is an important concept in copyright, because, among other reasons, whether a work is published or not may affect the number of copies and the type of material that must be deposited when registering the work. In addition, some works published in the United States become subject to mandatory deposit in the Library of Congress. These requirements are explained elsewhere in this circular.

Works of the Visual Arts

Copyright protects original “pictorial, graphic, and sculptural works,” which include two- and three-dimensional works of fine, graphic, and applied art. The following is a list of examples of such works:¹

- Advertisements, commercial prints, labels
- Artificial flowers and plants
- Artwork applied to clothing or to other useful articles
- Bumper stickers, decals, stickers
- Cartographic works, such as maps, globes, relief models
- Cartoons, comic strips
- Collages
- Dolls, toys
- Drawings, paintings, murals
- Enamel works
- Fabric, floor, and wallcovering designs
- Games, puzzles
- Greeting cards, postcards, stationery
- Holograms, computer and laser artwork
- Jewelry designs

- Models
- Mosaics
- Needlework and craft kits
- Original prints, such as engravings, etchings, serigraphs, silk screen prints, woodblock prints
- Patterns for sewing, knitting, crochet, needlework
- Photographs, photomontages
- Posters
- Record jacket artwork or photography
- Relief and intaglio prints
- Reproductions, such as lithographs, collotypes
- Sculpture, such as carvings, ceramics, figurines, maquettes, molds, relief sculptures
- Stained glass designs
- Stencils, cut-outs
- Technical and mechanical drawings, architectural drawings or plans, blueprints, diagrams
- Weaving designs, lace designs, tapestries

Copyright protection for an original work of authorship does not extend to the following:

- Ideas, concepts, discoveries, principles
- Formulas, processes, systems, methods, procedures
- Words or short phrases, such as names, titles, and slogans
- Familiar symbols or designs
- Mere variations of typographic ornamentation, lettering, or coloring

Useful Articles

A “useful article” is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. Examples are clothing, furniture, machinery, dinnerware, and lighting fixtures. An article that is normally part of a useful article may itself be a useful article, for example, an ornamental wheel cover on a vehicle.

Copyright does not protect the mechanical or utilitarian aspects of such works of craftsmanship. It may, however, protect any pictorial, graphic, or sculptural authorship that can be identified separately from the utilitarian aspects of an object. Thus, a useful article may have both copyrightable and uncopyrightable features. For example, a carving on the back of a chair or a floral relief design on silver flatware could be protected by copyright, but the design of the chair or flatware itself could not.

Some designs of useful articles may qualify for protection under the federal patent law. For further information, visit the Patent and Trademark Office website at www.uspto.gov or call (800) 786-9199.

Copyright in a work that portrays a useful article extends only to the artistic expression of the author of the pictorial, graphic, or sculptural work. It does not extend to the design of the article that is portrayed. For example, a drawing or photograph of an automobile or a dress design may be copyrighted, but that does not give the artist or photographer the exclusive right to make automobiles or dresses of the same design.

Registration Procedures

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

Here are the options for registering your copyright, beginning with the fastest and most cost-effective method.

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

Option 1: Online Registration

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

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

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

Basic claims include (1) a single work; (2) multiple unpublished works if they are all by the same author(s) and owned by the same claimant; and (3) multiple published works if they are all first published together in the same publication on the same date and owned by the same claimant.

To access eCO, go to the Copyright Office website at www.copyright.gov and click on *electronic Copyright Office*.

Option 2: Registration with Fill-In Form CO

The next best option for registering basic claims is the new fill-in Form CO. Using 2-D barcode scanning technology, the Office can process these forms much faster and more efficiently than paper forms completed manually. Simply complete Form CO on your personal computer, print it out, and mail it along with a check or money order and your deposit. To access Form CO, go the Copyright Office website and click on *Forms*.

Option 3: Registration with Paper Forms

Paper versions of Form VA (visual arts works) and Form CON (continuation sheet for paper applications) are still available on paper. These paper forms are not accessible on the Copyright Office website; however, staff will send them to you by postal mail upon request. Remember that online registration through eCO and fill-in Form CO (see above) can be used for visual arts works.

Effective Date of Registration

A copyright registration is effective on the date the Copyright Office receives all the required elements in acceptable form. The time the Copyright Office requires to process an application varies, depending on the amount of material the Office is receiving and the method of application.

If you apply online for copyright registration, you will receive an email notification when your application is received.

If you apply on a paper form, you will not receive an acknowledgment of your application (the Office receives more than 600,000 applications annually), but you can expect:

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

The Copyright Office cannot honor requests to make certificates available for pickup or to send them by Federal Express or another express mail service. If you want to know the date that the Copyright Office receives your paper application or hard-copy deposit, use registered or certified mail and request a return receipt.

Deposit Requirements

Circular 40A, *Deposit Requirements for Registration of Claims to Copyright in Visual Arts Material*, provides a basic guide about material that should be sent when registering a claim. Circular 40A also defines basic terms such as “complete copy,” “best edition,” and “identifying material.” The following is a general outline of the deposit requirements.

Two-Dimensional Works

If unpublished, send one complete copy or identifying material.

If first published in the United States *on or after January 1, 1978*, generally send two complete copies of the best edition.

If first published in the United States *before January 1, 1978*, send two complete copies of the best edition as first published. Where identifying material is permitted or required, the identifying material must represent the work as first published.

If first published outside the United States *before March 1, 1989*, send one complete copy of the work as first published. Where identifying material is permitted or required, the identifying material must represent the work as first published.

If first published outside the United States *after March 1, 1989*, send one complete copy of either the first published edition or the best edition of the work.

Three-Dimensional Works and Two-Dimensional Works Applied to Three-Dimensional Objects

For published and unpublished works, send identifying material, such as photographs. *Do not* send the three-dimensional work.

Special Provisions

For some works first published in the United States, only *one* copy is required instead of two. These include:

- Greeting cards, picture postcards, stationery, business cards
- Games
- Pictorial matter or text on a box or container (where the contents of the container are not claimed)

- Contributions to collective works. The deposit may be one of the following: one complete copy of the best edition of the entire collective work, the complete section containing the contribution, the contribution cut from the collective work in which it appeared, or a photocopy of the contribution itself as it was published in the collective work.

For some works, identifying material is permitted, not required. For example, either identifying material or actual copies may be deposited for some unpublished works and for limited editions of posters or prints with certain qualifying conditions.

For all works that exceed 96 inches in any dimension, identifying material is required.

For additional information on what is permitted or required for registration of certain kinds of visual arts works, see the *Code of Federal Regulations*, sections 202.19, 20, and 21, which contains the deposit regulations of the Copyright Office (www.copyright.gov/title37/202/index.html).

Deposits cannot be returned.

Registration for Two or More Works with One Application and Fee

Two or more individual works may be registered with one application and fee as follows.

Unpublished Works

A group of unpublished works can be registered as a collection if *all* the following conditions are met.

- The elements of the collection are assembled in an orderly form.
- The combined elements bear a single title identifying the collection as a whole.
- The copyright claimant or claimants for each element in the collection are the same.
- All the elements are by the same author or, if they are by different authors, at least one author has contributed copyrightable authorship to each element.

NOTE: Works registered as an unpublished collection will be listed in the records of the Copyright Office only under the collection title.

Published Works

All copyrightable elements that are included in a single unit of publication and in which the copyright claimant is

the same may be considered a single work for registration purposes. An example is a game consisting of playing pieces, a game board, and game instructions.

Group Registration of Published Photographs

A single registration for a group of published photographs can be made if:

- All the photographs were taken by the same photographer, regardless of whether the author is an individual or an employer for hire.
- All the photographs were first published in the same calendar year.
- All the photographs have the same copyright claimant(s).

Use Form GR/PPh/CON, available on the Copyright Office website, to register groups of published photographs. This form must be completed on paper and mailed to the Copyright Office with the appropriate fee and deposit.

Group Registration of Contributions to Periodicals

A single registration can be made for a group of contributions to periodicals if *all* the following conditions are met.

- All the works have the same copyright claimant.
- All the works are by the same author.
- The author of each work is an individual, not an employer or other person for whom the work was made for hire.
- Each work was first published as a contribution to a periodical (including newspapers) within a 12-month period.
- The application identifies each contribution separately, including the periodical containing it and the date of its first publication.

In addition to the above conditions, if first published before March 1, 1989, a contribution as first published must have borne a separate copyright notice, and the name of the owner of copyright in the work (or an abbreviation or alternative designation of the owner) must have been the same in each notice.

Use Form GR/CP, available on the Copyright Office website, to register groups of contributions to periodicals. This form must be completed on paper and mailed to the Copyright Office with the appropriate fee and deposit. At this time, group registration of contributions to periodicals is not available through online registration (eCO) or on Form CO. Examples of works eligible for such a group registration include cartoon strips, newspaper columns, horoscopes, photographs, drawings, and illustrations.

No Blanket Protection

Registration covers only the particular work deposited for the registration. It does not give any sort of “blanket” protection to other works in the same series. For example, registration of a single cartoon or comic strip drawing does not cover any earlier or later drawings. Each copyrightable version or issue must be registered to gain the advantages of registration for the new material it contains. However, under the conditions described above under “Published Works” and “Group Registration of Contributions to Periodicals,” certain group registrations may be made with one application and fee.

Mandatory Deposit for Works Published in the United States

Although a copyright registration is not required, the 1976 Copyright Act establishes a mandatory deposit requirement for works published in the United States. In general, the owner of copyright or the owner of the exclusive right of publication in the work has a legal obligation to deposit in the Copyright Office within three months of publication in the United States *two* complete copies or phonorecords of the best edition. It is the responsibility of the owner of copyright or the owner of the right of first publication in the work to fulfill this mandatory deposit requirement. Failure to make the deposit can result in fines and other penalties but does not affect copyright protection.

Some categories of pictorial, graphic, and sculptural works are exempt from this requirement, and the obligation is reduced for other categories. The following works are *exempt* from the mandatory deposit requirement:

- Scientific and technical drawings and models
- Greeting cards, picture postcards, and stationery
- Three-dimensional sculptural works, except for globes, relief models, and similar cartographic works
- Works published only as reproduced in or on jewelry, toys, games, textiles, packaging material, and any useful article
- Advertising material published in connection with articles of merchandise, works of authorship, or services
- Works first published as individual contributions to collective works (but not the collective work as a whole)
- Works first published outside the United States and later published without change in the United States, under certain conditions (see the *Code of Federal Regulations*, sections 202.19, 20, and 21 at www.copyright.gov/title37/202/index.html)

Copies deposited for the Library of Congress under the mandatory deposit provision can also be used to register the claim to copyright but only if they are accompanied by the prescribed application and fee for registration. For further information about mandatory deposit, see Circular 7D, *Mandatory Deposit of Copies or Phonorecords for the Library of Congress*.

Moral Rights for Visual Artists

For certain one-of-a-kind visual art and numbered limited editions of 200 or fewer copies, authors are accorded rights of attribution and integrity. The right of attribution ensures that artists are correctly identified with the works of art they create and that they are not identified with works created by others. The right of integrity allows artists to protect their works against modifications and destructions that are prejudicial to the artists' honor or reputation. These rights may not be transferred by the author, but they may be waived in a written instrument. Transfer of the physical copy of a work of visual art or of the copyright does not affect the moral rights accorded to the author.

For works of visual art incorporated in a building, special rules apply. If the owner of a building desires to remove such a work from the building and removal is possible without destruction, the owner is required to accord the author the opportunity to make the removal him or herself. A registry is established within the Copyright Office to record information relevant to this obligation. Both owners of buildings and authors of visual art incorporated in buildings may record statements in the registry. For further information, see Visual Arts Registry, (37 C.F.R. §201.25) at www.copyright.gov/title37/201/37cfr201-25.html.

Mailing Address for Visual Arts Applications Filed on Paper

*Library of Congress
U.S. Copyright Office
101 Independence Avenue, SE
Washington, DC 20559-6211*

For Further Information

By Internet

Circulars, announcements, regulations, certain application forms, and other materials are available from the Copyright Office website at www.copyright.gov.

By Telephone

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

By Regular Mail

Write to

*Library of Congress
Copyright Office—COPUBS
101 Independence Avenue, SE
Washington, DC 20559-6304*

Note

- 1 Copyright protection extends to the design of a building created for the use of human beings. Architectural works created on or after December 1, 1990, or that on December 1, 1990, were either unconstructed or embodied only in unpublished plans or drawings are eligible. See Circular 41, *Copyright Claims in Architectural Works*, for more information.