

Copyright Registration for Works of the Visual Arts

Copyright is a form of protection provided by U.S. law to 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, prepare derivative works, sell or distribute copies, and 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.

A work is automatically protected by copyright when it is created, that is, “fixed” in a copy or phonorecord for the first time. Neither registration in the Copyright Office nor publication is required for copyright protection. There are, however, certain advantages to registration, including establishment of a public record of the copyright claim. See the heading “Effective Date of Registration” below for more details.

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 a copyright notice is optional. For more information about copyright notice, see Circular 3, *Copyright Notice*, available on the Copyright Office website at www.copyright.gov.

Publication

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 people for purposes of further distribution or public display also constitutes publication. A public display does not in itself constitute publication.

A work of art that exists in only one copy, such as a painting or a 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 in 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.

Circular 40

Publication is an important concept in copyright. Whether a work is published or not can 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.¹ Examples of such works include

- 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 wall-covering 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

- 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—an ornamental wheel cover on a vehicle, for example.

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 information, visit the U.S. 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.

There are two ways to apply for copyright 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; the fastest processing time; online status tracking; secure payment by credit or debit card, electronic check, or Copyright Office deposit account; and the ability to upload certain categories of deposits directly into eCO as electronic files. To access eCO, go to the Copyright Office website and click on *electronic Copyright Office*.

You can also apply using paper forms. To access fill-in versions of Form VA (visual arts works) and Form CON (continuation sheet for paper applications), go to the Copyright Office website and click on *Forms*. Complete the form(s) on your personal computer, print them out, and mail them with a check or money order and a deposit. Blank forms can also be printed out and completed by hand or requested by postal mail (limit two copies of any one form by mail).

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.

Effective Date of Registration

When the Copyright Office issues a registration certificate, it assigns as the effective date of registration the date it received all required elements—an application, a nonrefundable filing fee, and a nonreturnable deposit—in acceptable form, regardless of how long it took to process the application and mail the certificate.

You do not have to receive your certificate before you publish or produce your work, nor do you need permission from the Copyright Office to place a copyright notice on your work. However, the Copyright Office must have acted on your application before you can file a suit for copyright infringement, and certain remedies, such as statutory damages and attorney’s fees, are available only for acts of infringement that occurred after the effective date of registration. If a published work was infringed before the effective

date of registration, those remedies may also be available if the effective date of registration is no later than three months after the first publication of the work.

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, 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 express mail. If you want to know the date that the Copyright Office receives your paper application or your 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*, is a guide to material that should be sent when registering a claim. Circular 40A also defines terms such as “complete copy,” “best edition,” and “identifying material.” The following is an 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 can 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 can 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 more information on what is permitted or required for registration of certain kinds of visual arts works, see the Copyright Office's deposit regulations, found in sections 202.19, 20, and 21 of the *Code of Federal Regulations* (www.copyright.gov/title37/202/index.html).

Deposits cannot be returned.

Registration of Two or More Works

Two or more individual works can be registered on one application with a single filing fee under certain circumstances.

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 can 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 can be made for a group of published photographs if all the following conditions are met.

- The same photographer took all the photographs (if an employer for hire is named as author, only one photographer's work can be included).
- All the photographs were first published in the same calendar year.
- All the photographs have the same copyright claimant(s).

To register groups of published photographs, you can use Form GR/PPh/CON, available on the Copyright Office website under *Forms*. You can complete the form on your personal computer and print it out or print out a blank copy and complete it using black ink. Mail the completed form 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 under certain conditions. Examples of potentially eligible works include cartoon strips, newspaper columns, horoscopes, photographs, drawings, and illustrations. To be eligible, all the following conditions must be met.

- All the works must have the same copyright claimant.
- All the works must be by the same author.
- The author of each work must be an individual, not an employer or other person for whom the work was made for hire.
- Each work must have been first published as a contribution to a periodical (including newspapers) within a 12-month period.

- The application must identify 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.

To register groups of contributions to periodicals, you can use Form GR/CP, available on the Copyright Office website under *Forms*. You can complete the form on your personal computer and print it out or print out a blank copy and complete it using black ink. Mail the completed form to the Copyright Office with the appropriate fee and deposit.

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, as described above under “Published Works” and “Group Registration of Contributions to Periodicals,” certain group registrations can be made with one application and fee.

Mandatory Deposit

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 of the work. 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 more 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 can record statements in the registry. For more information, see Visual Arts Registry, *Code of Federal Regulations*, section 201.25 at www.copyright.gov/title37/201/37cfr201-25.html.

For Further Information

By Internet

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

By Telephone

For general information about copyright, call the Copyright Public Information Office at (202) 707-3000 or 1-877-476-0778 (toll free). Staff members are on duty from 8:30 AM to 5:00 PM, eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day. To request paper application forms or circulars, call (202) 707-9100 or 1-877-476-0778 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. For details, see Circular 41, *Copyright Claims in Architectural Works*.