

Copyright Laws and Regulations

405 as in effect on the day before the effective date of the Berne Convention Implementation Act of 1988

(*Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2578; Pub. L. 100-568, Sec. 7(f), Oct. 31, 1988, 102 Stat. 2858.*)

17 U.S.C. 407 Deposit of copies or phonorecords for Library of Congress

(a) Except as provided by subsection (c), and subject to the provisions of subsection (e), the owner of copyright or of the exclusive right of publication in a work published in the United States shall deposit, within three months after the date of such publication -

- (1) two complete copies of the best edition; or
- (2) if the work is a sound recording, two complete phonorecords of the best edition, together with any printed or other visually perceptible material published with such phonorecords. Neither the deposit requirements of this subsection nor the acquisition provisions of subsection (e) are conditions of copyright protection.

(b) The required copies or phonorecords shall be deposited in the Copyright Office for the use or disposition of the Library of Congress. The Register of Copyrights shall, when requested by the depositor and upon payment of the fee prescribed by section 708, issue a receipt for the deposit.

(c) The Register of Copyrights may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories. Such regulations shall provide either for complete exemption from the deposit requirements of this section, or for alternative forms of deposit aimed at providing a satisfactory archival record of a work without imposing practical or financial hardships on the depositor, where the individual author is the owner of copyright in a pictorial, graphic, or sculptural work and

- (i) less than five copies of the work have been published, or
- (ii) the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies of the best edition of the work burdensome, unfair, or unreasonable.

(d) At any time after publication of a work as provided by subsection (a), the Register of Copyrights may make written demand for the required deposit on any of the persons obligated to make the deposit under subsection (a). Unless deposit is made within three months after the demand is received, the person or persons on whom the demand was made are liable -

- (1) to a fine of not more than \$250 for each work; and
- (2) to pay into a specially designated fund in the Library of Congress the total retail price of the copies or phonorecords demanded, or, if no retail price has been fixed, the reasonable cost of the Library of Congress of acquiring them; and
- (3) to pay a fine of \$2,500, in addition to any fine or liability imposed under clauses (1) and (2), if such person willfully or repeatedly fails or refuses to comply with such a demand.

(e) With respect to transmission programs that have been fixed and transmitted to the public in the United States but have not been published, the Register of Copyrights shall, after consulting with the Librarian of Congress and other interested organizations and officials, establish regulations governing the acquisition, through deposit or otherwise, of copies or phonorecords of such programs for the collections of the Library of Congress.

- (1) The Librarian of Congress shall be permitted, under the standards and conditions set forth in such regulations, to make a fixation of a transmission program directly from a transmission to the public, and to reproduce one copy or phonorecord from such fixation for archival purposes.
- (2) Such regulations shall also provide standards and procedures by which the Register of Copyrights may make written demand, upon the owner of the right of transmission in the United States, for the deposit of a copy or phonorecord of a

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specific transmission program. Such deposit may, at the option of the owner of the right of transmission in the United States, be accomplished by gift, by loan for purposes of reproduction, or by sale at a price not to exceed the cost of reproducing and supplying the copy or phonorecord. The regulations established under this clause shall provide reasonable periods of not less than three months for compliance with a demand, and shall allow for extensions of such periods and adjustments in the scope of the demand or the methods for fulfilling it, as reasonably warranted by the circumstances. Willful failure or refusal to comply with the conditions prescribed by such regulations shall subject the owner of the right of transmission in the United States to liability for an amount, not to exceed the cost of reproducing and supplying the copy or phonorecord in question, to be paid into a specially designated fund in the Library of Congress.

- (3) Nothing in this subsection shall be construed to require the making or retention, for purposes of deposit, of any copy or phonorecord of an unpublished transmission program, the transmission of which occurs before the receipt of a specific written demand as provided by clause (2).
- (4) No activity undertaken in compliance with regulations prescribed under clauses (1) or (2) of this subsection shall result in liability if intended solely to assist in the acquisition of copies or phonorecords under this subsection.

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2579; Pub. L. 100-568, Sec. 8, Oct. 31, 1988, 102 Stat. 2859.)

17 U.S.C. 408 Copyright registration in general

(a) **Registration Permissive.** - At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured before January 1, 1978, and during the subsistence of any copyright secured on or after that date, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the Copyright Office the deposit specified by this section, together with the application and fee specified by sections 409 and 708. Such registration is not a condition of copyright protection.

(b) **Deposit for Copyright Registration.** - Except as provided by subsection (c), the material deposited for registration shall include -

- (1) in the case of an unpublished work, one complete copy or phonorecord;
- (2) in the case of a published work, two complete copies or phonorecords of the best edition;
- (3) in the case of a work first published outside the United States, one complete copy or phonorecord as so published;
- (4) in the case of a contribution to a collective work, one complete copy or phonorecord of the best edition of the collective work. Copies or phonorecords deposited for the Library of Congress under section 407 may be used to satisfy the deposit provisions of this section, if they are accompanied by the prescribed application and fee, and by any additional identifying material that the Register may, by regulation, require. The Register shall also prescribe regulations establishing requirements under which copies or phonorecords acquired for the Library of Congress under subsection (e) of section 407, otherwise than by deposit, may be used to satisfy the deposit provisions of this section.

(c) **Administrative Classification and Optional Deposit.** -

- (1) The Register of Copyrights is authorized to specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration, and the nature of the copies or phonorecords to be deposited in the various classes specified. The regulations may require or permit, for particular classes, the deposit of identifying material instead of copies or phonorecords, the deposit of only one copy or phonorecord where two would normally be required, or a single registration for a group of related works. This administrative classification of works has no

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significance with respect to the subject matter of copyright or the exclusive rights provided by this title.

- (2) Without prejudice to the general authority provided under clause (1), the Register of Copyrights shall establish regulations specifically permitting a single registration for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, within a twelve-month period, on the basis of a single deposit, application, and registration fee, under the following conditions:
- (A) if the deposit consists of one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution was first published; and
- (B) if the application identifies each work separately, including the periodical containing it and its date of first publication.
- (3) As an alternative to separate renewal registrations under subsection (a) of section 304, a single renewal registration may be made for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, upon the filing of a single application and fee, under all of the following conditions:
- (A) the renewal claimant or claimants, and the basis of claim or claims under section 304(a), is the same for each of the works; and
- (B) the works were all copyrighted upon their first publication, either through separate copyright notice and registration or by virtue of a general copyright notice in the periodical issue as a whole; and
- (C) the renewal application and fee are received not more than twenty-eight or less than twenty-seven years after the thirty-first day of December of the calendar year in which all of the works were first published; and
- (D) the renewal application identifies each work separately, including the periodical containing it and its date of first publication.

(d) **Corrections and Amplifications.** - The Register may also establish, by regulation, formal procedures for the filing of an application for supplementary registration, to correct an error in a copyright registration or to amplify the information given in a registration. Such application shall be accompanied by the fee provided by section 708, and shall clearly identify the registration to be corrected or amplified. The information contained in a supplementary registration augments but does not supersede that contained in the earlier registration.

(e) **Published Edition of Previously Registered Work.** - Registration for the first published edition of a work previously registered in unpublished form may be made even though the work as published is substantially the same as the unpublished version.

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2580; Pub. L. 100-568, Sec. 9(a), Oct. 31, 1988, 102 Stat. 2859; Pub. L. 102-307, title I, Sec. 102(e), June 26, 1992, 106 Stat. 266.)

17 U.S.C. 409 Application for copyright registration

The application for copyright registration shall be made on a form prescribed by the Register of Copyrights and shall include -

- (1) the name and address of the copyright claimant;
- (2) in the case of a work other than an anonymous or pseudonymous work, the name and nationality or domicile of the author or authors, and, if one or more of the authors is dead, the dates of their deaths;
- (3) if the work is anonymous or pseudonymous, the nationality or domicile of the author or authors;
- (4) in the case of a work made for hire, a statement to this effect;

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- (5) if the copyright claimant is not the author, a brief statement of how the claimant obtained ownership of the copyright;
- (6) the title of the work, together with any previous or alternative titles under which the work can be identified;
- (7) the year in which creation of the work was completed;
- (8) if the work has been published, the date and nation of its first publication;
- (9) in the case of a compilation or derivative work, an identification of any preexisting work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered;
- (10) in the case of a published work containing material of which copies are required by section 601 to be manufactured in the United States, the names of the persons or organizations who performed the processes specified by subsection (c) of section 601 with respect to that material, and the places where those processes were performed; and
- (11) any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright. If an application is submitted for the renewed and extended term provided for in section 304(a)(3)(A) and an original term registration has not been made, the Register may request information with respect to the existence, ownership, or duration of the copyright for the original term.

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2582; Pub. L. 102-307, title I, Sec. 102(b)(1), June 26, 1992, 106 Stat. 266.)

17 U.S.C. 410 Registration of claim and issuance of certificate

(a) When, after examination, the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. The certificate shall contain the information given in the application, together with the number and effective date of the registration.

(b) In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal.

(c) In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.

(d) The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office.

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2582.)

17 U.S.C. 411 Registration and infringement actions

(a) Except for actions for infringement of copyright in Berne Convention works whose country of origin is not the United States and an action brought for a violation of the rights of the author under section 106A(a), and subject to the provisions of subsection (b), no action for infringement of the copyright in any work shall be instituted until registration of the copyright claim has been made in accordance with this title. In any case, however, where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused, the applicant is entitled to institute an action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights. The Register may, at his or her option,

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become a party to the action with respect to the issue of registrability of the copyright claim by entering an appearance within sixty days after such service, but the Register's failure to become a party shall not deprive the court of jurisdiction to determine that issue.

(b) In the case of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, the copyright owner may, either before or after such fixation takes place, institute an action for infringement under section 501, fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the copyright owner -

- (1) serves notice upon the infringer, not less than ten or more than thirty days before such fixation, identifying the work and the specific time and of its first transmission, and declaring an intention to secure copyright in the work; and
- (2) makes registration for the work, if required by subsection (a), within three months after its first transmission.

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2583; Pub. L. 100-568, Sec. 9(b)(1), Oct. 31, 1988, 102 Stat. 2859; Pub. L. 101-650, title VI, Sec. 606(c)(1), Dec. 1, 1990, 104 Stat. 5131.)

17 U.S.C. 412 Registration as prerequisite to certain remedies for infringement

In any action under this title, other than an action brought for a violation of the rights of the author under section 106A(a) or an action instituted under section 411(b), no award of statutory damages or of attorney's fees, as provided by sections 504 and 505, shall be made for -

- (1) any infringement of copyright in an unpublished work commenced before the effective date of its registration; or
- (2) any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after the first publication of the work.

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2583; Pub. L. 101-650, title VI, Sec. 606(c)(2), Dec. 1, 1990, 104 Stat. 5131.)