

§§ 202.13–202.15

(iii) *Works embodied solely in machine-readable format.* For works embodied only in machine-readable formats, the deposit requirements are as follows:

(A) One machine-readable copy and a descriptive statement of the work; or

(B) Representative excerpts of the work, such as printouts; or, if the claim extends to audiovisual elements in the work, a videotape of what appears on the screen.

(iv) *Pictorial, graphic and sculptural works.* With the exception of 3-dimensional works of art, the general deposit preferences specified under paragraph (c)(4)(i) of this section shall govern. For 3-dimensional works of art, the preferred deposit is one or more photographs of the work, preferably in color.

(v) *Special relief.* An applicant who is unable to submit any of the preferred deposits may seek an alternative deposit under special relief (37 CFR 202.20(d)). In such a case, the applicant should indicate in writing why the deposit preferences cannot be met, and submit alternative identifying materials clearly showing some portion of the copyrightable contents of the restored work which is the subject of registration.

(vi) *Motion pictures.* If the deposit is a film print (16 or 35 mm), the applicant should contact the Performing Arts Division of the Registration and Recordation Program for delivery instructions. The telephone number is: (202) 707-6040; the telefax number is: (202) 707-1236.

(d) *Works excluded.* Works which are not copyrightable subject matter under title 17 of the U.S. Code, other than sound recordings fixed before February 15, 1972, shall not be registered as restored copyrights.

[60 FR 50422, Sept. 29, 1995, as amended at 64 FR 12902, Mar. 16, 1999; 64 FR 29522, June 1, 1999; 71 FR 31092, June 1, 2006; 72 FR 36888, July 6, 2007; 73 FR 37839, July 2, 2008]

§§ 202.13–202.15 [Reserved]**§ 202.16 Preregistration of copyrights.**

(a) *General.* This section prescribes rules pertaining to the preregistration of copyright claims in works eligible for preregistration under Section 408(f) of 17 U.S.C.

(b) *Definitions.* For the purposes of this section—

37 CFR Ch. II (7-1-10 Edition)

(1) A work is in a class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release if it falls within one of the following classes of works:

(i) Motion pictures;

(ii) Sound recordings;

(iii) Musical compositions;

(iv) Literary works being prepared for publication in book form;

(v) Computer programs (including videogames); or

(vi) Advertising or marketing photographs.

(2) A work is being prepared for commercial distribution if:

(i) The claimant, in a statement certified by the authorized preregistering party, has a reasonable expectation that the work will be commercially distributed to the public; and

(ii) Preparation of the work has commenced and at least some portion of the work has been fixed in a tangible medium of expression, as follows:

(A) For a motion picture, filming of the motion picture must have commenced;

(B) For a sound recording, recording of the sounds must have commenced;

(C) For a musical composition, at least some of the musical composition must have been fixed either in the form of musical notation or in a copy or phonorecord embodying a performance of some or all of the work;

(D) For a literary work being prepared for publication in book form, the actual writing of the text of the work must have commenced;

(E) For a computer program, at least some of the computer code (either source code or object code) must have been fixed; and

(F) For an advertising or marketing photograph, the photograph (or, in the case of a group of photographs intended for simultaneous publication, at least one of the photographs) must have been taken.

(3) A work eligible for preregistration is a work that is:

(i) Unpublished;

(ii) Being prepared for commercial distribution; and

(iii) In a class of works that the Register of Copyrights has determined has

Copyright Office, Library of Congress

§ 202.16

had a history of infringement prior to authorized commercial release.

(c) *Preregistration*—(1) *General*. A work eligible for preregistration may be preregistered by submitting an application and fee to the Copyright Office pursuant to the requirements set forth in this section.

(2) *Works excluded*. Works that are not copyrightable subject matter under title 17 of the U.S. Code may not be preregistered in the Copyright Office.

(3) *Application form*. An application for preregistration is made using Electronic Form PRE. The application must be submitted electronically on the Copyright Office website at: <http://www.copyright.gov>.

(4) *Preregistration as a single work*. For the purpose of preregistration on a single application and upon payment of a single preregistration fee, all copyrightable elements that are otherwise recognizable as self-contained works, that are to be included and first published in a single unit of publication, and in which the copyright claimant is the same, shall be considered a single work eligible for preregistration.

(5) *Fee*—(i) *Amount*. The filing fee for preregistration is prescribed in § 201.3(c).

(ii) *Method of payment*. (A) Copyright Office deposit account. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services and for those who file applications electronically. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits in that account. Deposit Account holders can charge preregistration fees against the balance in their accounts instead of using credit cards for each request of service. For information on Deposit Accounts, please download a copy of Circular 5, “How to Open and Maintain a Deposit Account in the Copyright Office,” or write the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559.

(B) Credit cards, debit cards and electronic funds transfer. The online preregistration filing system will provide options for payment by means of credit or debit cards and by means of electronic funds transfers. Applicants

will be redirected to the Department of Treasury’s Pay.gov website to make payments with credit or debit cards, or directly from their bank accounts by means of ACH debit transactions.

(C) No refunds. The preregistration filing fee is not refundable.

(6) *Description*. No deposit of the work being preregistered should be submitted with an application for preregistration. The preregistration applicant should submit a detailed description, of not more than 2,000 characters (approximately 330 words), of the work as part of the application. The description should be based on information available at the time of the application sufficient to reasonably identify the work. Generally, the Copyright Office will not review descriptions for adequacy, but in an action for infringement of a preregistered work, the court may evaluate the adequacy of the description to determine whether the preregistration actually describes the work that is alleged to be infringed, taking into account the information available to the applicant at the time of preregistration and taking into account the legitimate interest of the applicant in protecting confidential information.

(i) For motion pictures, such a description should include the following information to the extent known at the time of filing: the subject matter, a summary or outline, the director, the primary actors, the principal location of filming, and any other information that would assist in identifying the particular work being preregistered.

(ii) For sound recordings, the identifying description should include the following information to the extent known at the time of filing: the subject matter of the work or works recorded, the performer or performing group, the genre of the work recorded (e.g., classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz), the titles of the musical compositions being recorded, the principal recording location, the composer(s) of the recorded musical compositions embodied on the sound recording, and any other information that would assist in identifying the particular work being preregistered.

§ 202.16

37 CFR Ch. II (7-1-10 Edition)

(iii) For musical compositions, the identifying description should include the following information to the extent known at the time of filing: the subject matter of the lyrics, if any, the genre of the work (for example, classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz), the performer, principal recording location, record label, motion picture, or other information relating to any sound recordings or motion pictures that are being prepared for commercial distribution and will include the musical composition, and any other detail or characteristic that may assist in identifying the particular musical composition.

(iv) For literary works in book form, the identifying description should include to the extent known at the time of filing: the genre of the book, e.g., biography, novel, history, etc., and should include a brief summary of the work including, the subject matter (e.g., a biography of President Bush, a history of the war in Iraq, a fantasy novel); a description (where applicable) of the plot, primary characters, events, or other key elements of the content of the work; and any other salient characteristics of the book, e.g., whether it is a later edition or revision of a previous work, as well as any other detail which may assist in identifying the literary work in book form.

(v) For computer programs (including videogames), the identifying description should include to the extent known at the time of filing, the nature, purpose and function of the computer program, including the programming language in which it is written, any particular organization or structure in which the program has been created; the form in which it is expected to be published, e.g. as an online-only product; whether there have been previous versions (and identification of such previous versions); the identities of persons involved in the creation of the computer program; and, if the work is a videogame, also describe the subject matter of the videogame and the overall object, goal or purpose of the game, its characters, if any, and the general setting and surrounding found in the game.

(vi) For advertising or marketing photographs, the description should include the subject matter depicted in the photograph or photographs, including information such as the particular product, event, public figure, or other item or occurrence which the photograph is intended to advertise or market. To the extent possible and applicable, the description for photographs should give additional details which will assist in identifying the particular photographs, such as the party for whom such advertising photographs are taken; the approximate time periods during which the photographs are taken; the approximate number of photos which may be included in the grouping; any events associated with the photographs; and the location and physical setting or surrounding depicted in the photographs. The description may also explain the general presentation, e.g., the lighting, background scenery, positioning of elements of the subject matter as it is seen in the photographs, and should provide any locations and events, if applicable, associated with the photographs.

(7) *Review of preregistration information.* The Copyright Office will conduct a limited review of applications for preregistration, in order to ascertain whether the application describes a work that is in a class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release. However, a work will not be preregistered unless an applicant has provided all of the information requested on the application and has certified that all of the information provided on the application is correct to the best of the applicant's knowledge.

(8) *Certification.* The person submitting an application for preregistration must certify on the application that he or she is the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights, of the work submitted for this preregistration; that the information given in this application is correct to the best of his or her knowledge; that the work is being prepared for commercial distribution; and that he or she has a reasonable expectation that the

Copyright Office, Library of Congress**§ 202.17**

work will be commercially distributed to the public.

(9) *Effective date of preregistration.* The effective date of a preregistration is the day on which an application and fee for preregistration of a work, which the Copyright Office later notifies the claimant has been preregistered or which a court of competent jurisdiction has concluded was acceptable for preregistration, have been received in the Copyright Office.

(10) *Notification of preregistration.* Upon completion of the preregistration, the Copyright Office will provide the claimant official notification by email of the preregistration.

(11) *Certification of preregistration.* A certified copy of the official notification may be obtained in physical form from the Records Research and Certification Section of the Information and Records Division at the address stated in § 201.1(a)(3) of this chapter.

(12) *Public record of preregistration.* The preregistration record will also be available to the public on the Copyright Office website, <http://www.copyright.gov>.

(13) *Effect of preregistration.* Preregistration of a work offers certain advantages to a copyright owner pursuant to 17 U.S.C. 408(f), 411 and 412. However, preregistration of a work does not constitute *prima facie* evidence of the validity of the copyright or of the facts stated in the application for preregistration or in the preregistration record. The fact that a work has been preregistered does not create any presumption that the Copyright Office will register the work upon submission of an application for registration.

(14) *Petition for recognition of a new class of works.* At any time an interested party may petition the Register of Copyrights for a determination as to whether a particular class of works has had a history of copyright infringement prior to authorized release that would justify inclusion of that class of works among the classes of works eligible for preregistration.

[70 FR 61906, Oct. 27, 2005, as amended at 71 FR 31092, June 1, 2006; 73 FR 37839, July 2, 2008]

§ 202.17 Renewals

(a) *General.* (1) This section concerns renewal for copyrights originally secured from January 1, 1964, through December 31, 1977, either by publication with the required copyright notice or by registration as an unpublished work. Renewal registration for these works is optional. As provided in Pub. L. No. 102-307, 106 Stat. 264, enacted June 26, 1992, renewal registration made during the last year of the original 28-year term of copyright differs in legal effect from renewal registration made during the 67-year extended renewal term. In the latter instance, the copyright is renewed automatically at the expiration of the original 28-year term. In the former instance, renewal by registration during the last year of the original 28-year term vested the renewal copyright in the statutory claimant living on the date of registration.

(2) Works for which copyright was secured before 1964 are governed by the provisions of 17 U.S.C. 304(a) in effect prior to the 1992 date of enactment of Pub. L. No. 102-307. The copyrights in such works could have been renewed by registration only within the last calendar year of the original 28-year term of copyright protection. If renewal registration was not made during that period of time, copyright protection was lost when the original term of copyright expired and cannot be regained.

(3) Works restored to copyright by the Uruguay Round Agreements Act are governed in their copyright term of protection by Pub. L. No. 103-465, 108 Stat. 4809, 4976 (December 8, 1994). Under 17 U.S.C. 104A(a)(1)(A) and (B), as amended, any work in which copyright is restored subsists for the remainder of the term of copyright that the work would have been otherwise granted in the United States. Such term includes the remainder of any applicable renewal term.

(4) Automatic restoration of copyright in certain foreign works that were in the public domain in the United States may have occurred under the Uruguay Round Agreements Act and may be protected by copyright or neighboring rights in their "source country," as defined at 17 U.S.C. 104A(h)(8).