

Duration of Copyright

Provisions of the Law Dealing with the Length of Copyright Protection

Scope

This circular provides a general summary of the statutory provisions dealing with duration of copyright under the Copyright Act of 1976, as amended June 26, 1992, and October 27, 1998.

Works Already Under Statutory Protection Before 1978

For works that had already secured statutory copyright protection before January 1, 1978, the 1976 law retains the old system for computing the duration of protection, but with some changes.

Duration Under the Previous Law

Under the law in effect before 1978, copyright was secured either on the date a work was published or on the date of registration if the work was registered in unpublished form. In either case, the copyright lasted for a first term of 28 years from the date it was secured. The copyright was eligible for renewal during the last (28th) year of the first term. If renewed, the copyright was extended for a second term of 28 years.¹ If not renewed, the copyright expired at the end of the first 28-year term. The term of copyright for works published with a year date in the notice that is earlier than the actual date of publication is computed from the year date in the copyright notice.

Effect of the Present Law on Length of Subsisting Copyrights

The old system of computing the duration of protection was carried over into the 1976 statute with one major change: the length of the second term is increased to 67 years.² Thus, the maximum total term of copyright protection for works already protected by federal statute is increased from 56 years (a first term of 28 years plus a renewal term of 28 years) to 95 years (a first term of 28 years plus a renewal term of 67 years).

The specific situation for works copyrighted before 1978 depends on whether the copyright had already been renewed or was still in its first term on December 31, 1977.

Works originally copyrighted before 1950 and renewed before 1978:³ These works have automatically been given a longer copyright term. Copyrights that had already been renewed and were in their second term at any time between December 31, 1976, and December 31, 1977, inclusive, do not need to be renewed again. They have been automatically extended to last for a total term of 95 years (a first term of 28 years plus a renewal term of 67 years) from the end of the year in which they were originally secured. **NOTE:** This extension applies not only to copyrights less than 56 years old but also to older copyrights that had previously been extended in duration under a series of Congressional enactments beginning in 1962. As in the case of all other copyrights subsisting in their second term between December 31, 1976, and December 31, 1977, inclusive, these copyrights will expire at the end of the calendar year in which the 95th anniversary of the original date of copyright occurs.

Works originally copyrighted between January 1, 1950, and December 31, 1963: Copyrights in their first 28-year term on January 1, 1978, still had to be renewed in order to be protected for the second term. If a valid renewal registration was made at the proper time, the second term will last for 67 years. However, if renewal registration for these works was not made within the statutory time limits, a copyright originally secured between 1950 and 1963 expired on December 31st of its 28th year, and protection was lost permanently.

Works originally copyrighted between January 1, 1964, and December 31, 1977: The amendment to the copyright law enacted June 26, 1992, makes renewal registration optional. The copyright is still divided between a 28-year original term and a 67-year renewal term, but a renewal registration is not required to secure the renewal copyright. The renewal vests on behalf of the appropriate renewal claimant upon registration or, if there is no renewal registration, on December 31 of the 28th year.

The benefits to making a renewal registration during the 28th year of the original term of copyright are:

- 1 The renewal copyright vests in the name of the renewal claimant on the effective date of the renewal registration.

For example, if a renewal registration is made in the 28th year and the renewal claimant dies following the renewal registration but before the end of the year, the renewal copyright is secured on behalf of that renewal claimant and the 67 years of renewal copyright becomes a part of that individual's estate.

NOTE: If the renewal registration is not made in the 28th year, the renewal copyright will vest on the first day of the renewal term in the party entitled to claim renewal as of December 31 of the 28th year.

- 2 The renewal certificate constitutes *prima facie* evidence as to the validity of the copyright during the renewed and extended term and of the facts stated in the certificate.
- 3 The right to use the derivative work in the extended term may be affected.

For example, if an author dies before the 28th year of the original term and a statutory renewal claimant registers a renewal within the 28th year, that claimant can terminate an assignment made by the deceased author authorizing the exploitation of a derivative work. If a renewal is not made during the 28th year, a derivative work created during the first term of copyright under a prior grant can continue to be used according to the terms of the grant. Thus, an author or other renewal claimant loses the right to object to the continued use of the derivative work during the second term by failing to make a timely renewal, but any terms in the prior grant concerning payment or use, *e.g.*, a royalty, must continue to be honored. This exception does not apply to a new derivative work which can only be prepared with the consent of the author or other renewal claimant.

A renewal registration made after the 28th year will not confer the benefits mentioned above but will confer other benefits denied to unregistered works. For example, renewal registration establishes a public record of copyright ownership in a work at the time that the renewal was registered. The courts have discretion to determine the evidentiary weight accorded a certificate of renewal registration when registration is made after the 28th year of the copyright term. Renewal registration is a prerequisite to statutory damages and attorney's fees for published works not registered for the original term.

In cases where no original registration or renewal registration is made before the expiration of the 28th year, important benefits can still be secured by filing a renewal registration at any time during the renewal term. These benefits would include, for example, statutory damages and attorney's fees in any infringement suit for infringements occurring after the renewal registration is made. Also, it is a requirement to get into court in certain circumstances under section 411(a), and it creates a public record both to defend against innocent infringers and to facilitate easier licensing of the work.

Forms for renewal registration (Form RE) are available from:

Library of Congress
 Copyright Office
 Publications Section, LM-455
 101 Independence Avenue, S.E.
 Washington, D.C. 20559-6000

To speak to an information specialist, call (202) 707-3000 (TTY: (202) 707-6737), Monday to Friday, 8:30 a.m. to 5:00 p.m., eastern time, excluding federal holidays. Recorded information is available 24 hours a day. Order forms and other publications from:

Library of Congress
 Copyright Office
 Publications Section, LM-455
 101 Independence Avenue, S.E.
 Washington, D.C. 20559-6000

or call the Forms and Publications Hotline 24 hours a day at (202) 707-9100. Most circulars (but not forms) are available via fax. Call (202) 707-2600 from a touchtone phone and follow the prompts. Access and download circulars, forms, and other information from the Copyright Office website at www.copyright.gov.

For further information about the time limits and other requirements for renewal registration, write or call and request Circular 15, *Renewal of Copyright*. For specific information about the extension of copyright terms for works already under statutory protection before 1978, request Circular 15T, *Extension of Copyright Terms*.

Works Originally Created on and after January 1, 1978

For works that are created and fixed in a tangible medium of expression for the first time on and after January 1, 1978, the Copyright Act of 1976 as amended in 1998 establishes a single copyright term and different methods for computing the duration of a copyright. Works of this sort fall into two categories:

Works created on or after January 1, 1978: For works created after its effective date, the U.S. copyright law adopts the basic “life-plus-seventy” system already in effect in most other countries. A work that is created (fixed in tangible form for the first time) after January 1, 1978, is automatically protected from the moment of its creation and is given a term lasting for the author’s life, plus an additional 70 years after the author’s death. In the case of “a joint work prepared by two or more authors who did not work for hire,” the term lasts for 70 years after the last surviving author’s death. For works

made for hire, and for anonymous and pseudonymous works (unless the author’s identity is revealed in Copyright Office records), the duration of copyright will be 95 years from first publication or 120 years from creation, whichever is shorter.

Works in existence but not published or copyrighted on

January 1, 1978: Works that had been created before the current law came into effect but had neither been published nor registered for copyright before January 1, 1978, automatically are given federal copyright protection. The duration of copyright in these works will generally be computed in the same way as for new works: the life-plus-70 or 95/120-year terms will apply to them as well. However, all works in this category are guaranteed at least 25 years of statutory protection. The law specifies that in no case will copyright in a work of this sort expire before December 31, 2002, and if the work is published before that date the term will extend another 45 years, through the end of 2047.

Year-End Expiration of Copyright Terms

The law provides that all terms of copyright will run through the end of the calendar year in which they would otherwise expire. This affects the duration of all copyrights, including those subsisting in either their first or second term on January 1, 1978. For works eligible for renewal, the renewal filing period begins on December 31st of the 27th year of the copyright term.

Termination of Grants

As explained above, for works already under statutory protection before 1978, the length of the renewal term has been increased to 67 years. This means that, in most cases, 39 years have been added to the end of a renewal copyright. The statute allows an author or specified heirs of the author to file a notice terminating any grant of rights made by the author and covering any part of that added period. This right to reclaim ownership of all or part of the extended term is optional; it can be exercised only by certain specified persons in accordance with prescribed conditions and within strict time limits.

It is possible to serve notice for copyrights that are nearly 76 years old. See 37CFR201.10, Notices of Termination (www.copyright.gov/title37/201/37cfr201-10.html) for further information.

Special Points to Remember

- *Works Published or Copyrighted Before January 1, 1964:* Works published with notice of copyright or registered in unpublished form prior to January 1, 1964, had to be renewed during the 28th year of their first term of copyright to maintain protection for a full 95-year term.
- *Works Originally Copyrighted Between January 1, 1964, and December 31, 1977:* These works are protected by copyright for the 28-year original term and the 67-year renewal term without the need of a first term or a renewal registration.
- *Copyrights in their second term on January 1, 1978,* were automatically extended up to a maximum of 95 years, without the need for further renewal.
- *Works already in the public domain* cannot be protected under the 1976 law or under the amendments of 1992 and 1998. The Act provides no procedure for restoring protection for works in which copyright has been lost for any reason.

NOTE: Copyrights in certain foreign works whose U.S. copyright protection had been lost because of noncompliance with formalities of U.S. law were restored as of January 1, 1996, under the provisions of the Uruguay Round Agreements Act (URAA). Such works may be registered using Form GATT. For more information, request Circular 38B, *Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA-GATT)*.

Endnotes

1. For a number of copyrights, the second term was extended beyond 28 years by special legislation.
2. Enactment of Public Law 105-298 extended the second 47-year term an additional 20 years.
3. A special transitional situation arose with respect to first-term copyrights that were originally secured in 1950 and that became eligible for renewal during the calendar year 1977. If renewal registration was made before January 1, 1978, the duration of the copyright was extended to the full period of 75 years without the need for further renewal. However, even if renewal registration was not made before January 1, 1978, renewal for the second 47-year term could be made under the 1976 law at any time between January 1, 1978, and December 31, 1978.