



# ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559

## FINAL REGULATION

### RENEWAL COPYRIGHT REGISTRATION

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#### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Parts 201 and 202

[Docket No. 92-5]

#### Renewal Copyright Registration

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final regulation.

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**SUMMARY:** This notice is issued to advise the public that the Copyright Office of the Library of Congress is amending the regulations governing renewal registration practices and procedures under section 304(a) of the Copyright Act of 1976, title 17 of the United States Code, as amended by the Copyright Amendments Act of 1992, Public Law 102-307, 106 Stat. 264. The Act provides for automatic renewal of copyrights secured between January 1, 1964, and December 31, 1977, if renewal registration is not made during the twenty-eighth year of the original term of copyright. The Act also permits renewal registration during the twenty-eighth year of the first term of copyright or anytime during the renewal term. These final regulations will implement the changes in section 304(a) of the Copyright Act.

**EFFECTIVE DATE:** December 21, 1992

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540; Telephone: (202) 707-8380.

#### SUPPLEMENTARY INFORMATION:

##### 1. Background

Section 304(a) of the Copyright Act of 1976, title 17 of the United States Code, establishes the duration of copyright for works in which copyright already subsisted on January 1, 1978, the effective date of the 1976 Copyright Act. As enacted, the section provided generally that copyright, the first term of which is subsisting on January 1, 1978, endures for 28 years from the date it was originally secured, and that a second term of copyright lasting 47 years, can be secured by certain designated claimants if an acceptable application for renewal is made to the Copyright Office during the last year of the original term of copyright.

##### 2. Automatic Renewal Act

The Copyright Amendments Act of 1992, Public Law 102-307, 106 Stat. 264 (Act of June 26, 1992) (hereafter "Automatic Renewal Act") amends section 304(a) to provide for the automatic renewal of copyright for works originally copyrighted between January 1, 1964, and December 31, 1977. The Automatic Renewal Act also permits renewal registration to be made during the last year of the original term of copyright or at anytime during the renewal term, whether or not original term registration was made. Original term registration can only be made before the expiration of the original twenty-eight year term of copyright. Renewal registration is not a condition of the renewal and extension of the copyright.

If a claim to the renewal term is made within one year before expiration of the original term of copyright and the claim is registered, the renewal term vests in the person or entity entitled to make the renewal claim on the effective date of registration. If no such claim is made and registered, the

renewal term vests in the person or entity entitled to claim the renewal term on the last day of the original term of copyright.

The Automatic Renewal Act makes no change in the statutory renewal claimants or in their order of priority.

Renewal registration may be made at anytime during the renewed and extended term whether or not registration was made for the original term of copyright. If no original term registration is made, the Register is authorized to request information with respect to the existence, ownership, or duration of the copyright for the original term.

If renewal registration is made during the last year of the original term, registration vests the legal ownership of the second term in the statutory renewal claimant who is living on the date of registration. The subsequent death of the author-renewal claimant, for example, during the last year of the original term would have no effect on ownership of the second term.

If renewal registration is made during the last year of the original term of copyright, the certificate of such renewal registration constitutes prima facie evidence as to the validity of the copyright during the renewal term and of the facts stated in the certificate. The evidentiary weight accorded to the certificate of a registration entered during the renewal term is at the discretion of the court.

If a renewal registration is not made within one year before expiration of the original term of copyright, a first-term derivative work prepared under authority of a grant of a transfer or license of copyright may continue to be used under the terms of the grant during the renewal term without infringing the copyright, but no new derivative works may be made under the grant.

Statutory damages and attorney's fees are withheld for unregistered works, that is, if neither original term nor renewal registration

is made. All of the remedies are available with respect to infringements occurring after registration is made.

### 3. Renewal Registration Changes

The Copyright Office is amending its renewal registration regulation, 37 CFR 202.17, to provide the conditions and requirements for registration of renewal claims during the last year of the original term of copyright or during the renewal term and to provide for the information and deposit material which must be submitted with a renewal registration claim in those cases where no original registration is made.

These regulations make clear that renewal registration is optional for works originally copyrighted between January 1, 1964, and December 31, 1977, but that, although the copyright may be renewed automatically, different legal consequences follow from the fact of registration or the time when registration is made. The regulations generally require timely registration in the last year of the original term in order to vest the renewal copyright by registration. If renewal registration is not made in the last year of the original term, the copyright is renewed automatically by law. In that case, renewal registration may be made at any time during the already renewed term of copyright.

The regulations no longer require original term registration as a pre-condition of renewal registration, although original term registration is encouraged before expiration of the original term. Once the original term expires, it is no longer possible to make original term registration.

If original term registration is not made, the regulations prescribe a new procedure, which is based on a modification of the Universal Copyright Convention Affidavit procedure of the former regulations. The renewal application Form RE must be accompanied by an Addendum and an appropriate deposit of the work in accordance with the requirements of 37 CFR 202.20 and 202.21. The information in the Addendum to Form RE is necessary to establish to the satisfaction of the Examiner that copyright subsists in the original term which is capable of renewal. The deposit copy facilitates the examination of the claim to copyright which is submitted for renewal, and is available for accession by the Library of Congress to its collections for the benefit of the Nation.

Since these final regulations make technical adjustments in registration practices reflecting the Automatic Renewal Act and since the adjustments benefit the public by making renewal registration easier, the regulations are issued in final form and take effect upon publication.

### 4. The Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which

is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, of U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.<sup>1</sup>

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

### List of Subjects in 37 CFR Parts 201 and 202

Copyright registration.

### Final Rules

In consideration of the foregoing, 37 CFR parts 201 and 202 are amended in the manner set forth below.

### PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows.

**Authority:** Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; § 201.7 is also issued under 17 U.S.C. 408, 409, and 410; § 210.16 is also issued under 17 U.S.C. 116. § 201.24 is also issued under Public Law 101-650, 104 Stat. 5089, 5134. § 201.6 is also issued under 17 U.S.C. 708; § 201.17 is also issued under 17 U.S.C. 111; § 201.19 is also issued under 17 U.S.C. 115.

2. Section 201.5(b)(2)(iv) is revised to read as follows:

### § 201.5 Corrections and amplifications of copyright registrations; applications for supplementary registration.

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(b) \* \* \*

(2) \* \* \*

(iv) Where a basic renewal registration has been made for a work during the last year of the relevant first-term copyright, supplementary registration to correct the renewal claimant or basis of claim or to add a renewal claimant is ordinarily possible only if the application for supplementary registration and fee are received in the Copyright Office within the last year of the relevant first-term copyright. If the error or omission in a basic renewal registration is

<sup>1</sup>The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all" actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

extremely minor, and does not involve the identity of the renewal claimant or the legal basis of the claim, supplementary registration<sup>2</sup> may be made at any time. In an exceptional case, however, supplementary registration may be made to correct the name of the renewal claimant and the legal basis of the claim at any time if clear, convincing, objective documentation is submitted to the Copyright Office which proves that an inadvertent error was made in failing to designate the correct living statutory renewal claimant in the basic renewal registration.

### PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

3. The authority citation for part 202 continues to read as follows:

**Authority:** Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §§ 202.3, 202.19, 202.20, 202.21, and 202.22 are also issued under 17 U.S.C. 407 and 408.

4. Section 202.17 is amended by revising paragraphs (a) through (f) in their entirety and by adding new paragraphs (g) through (h) as follows:

### § 202.17 Renewals.

(a) *General.* This section prescribes rules pertaining to the application for renewal copyright under section 304(a) of title 17 of the United States Code, as amended by Public Law 102-307.

(b) *Definition.* For purposes of this section, the term *posthumous work* means a work that was unpublished on the date of the death of the author and with respect to which no copyright assignment or other contract for exploitation of the work occurred during the author's lifetime.

(c) *Renewal registration optional.* For works originally copyrighted between January 1, 1964 and December 31, 1977 renewal registration is optional and not a condition for securing copyright for the new and extended forty-seven year second term. As provided in Public Law 102-307, 106 Stat. 264 (Act of June 26, 1992), however, renewal of copyright by registration during the last year of the original term and renewal registration during the forty-seven year extended term of a copyright renewed without registration by operation of Public Law 102-307 differ in legal effect. Among other effects, renewal of copyright by registration during the last year of the original term vests the renewal copyright in the statutory renewal claimant(s) living on the date of registration.

(d) *Original term registration.* (1) Registration of a claim to copyright in the original twenty-eight year term is not a pre-condition for making a renewal registration, provided the renewal application is accompanied by an Addendum to Form RE and the deposit copy, phonorecord, or identifying material specified in paragraph (h) of this section.

(2) Original term registration can only be made before the expiration of the original term of copyright in the work.

(e) *Renewal time limits.* (1) For works originally copyrighted between January 1, 1964, and December 31, 1977, claims to renewal copyright may be registered within the last year of the original term, which begins on December 31 of the 27th year of the copyright, and runs through December 31 of the 28th year of the copyright, or at anytime during the extended forty-seven year second term, if the second term is renewed by operation of Public Law 102-307, 106 Stat. 264. The original copyright term for a published work is computed from the date of first publication; the term for a work originally registered in unpublished form is computed from the date of registration in the Copyright Office. To vest the renewal copyright by registration, the required renewal application, fee, and, if original term registration has not been made, the Addendum specified in paragraph (h) of this section must be received in the Copyright Office during the prescribed period before the first term of copyright expires. The Copyright Office has no discretion to extend the renewal time limits for vesting of the renewal copyright by registration.

(2) The provisions of paragraph (e)(1) of this section are subject to the following qualification: In order to vest the renewal copyright by registration in any case where the year date in the notice on copies distributed by authority of the copyright owner is earlier than the year of first publication, claims to renewal copyright must be registered within the last year of the original copyright term, which begins on December 31 of the 27th year from the year contained in the notice, and runs through December 31 of the 28th year from the year contained in the notice.

(3) Whenever a renewal applicant has cause to believe that a formal application for renewal, which is intended to vest the renewal copyright by registration, and any accompanying Addendum relating to subsistence of first-term copyright, if sent to the Copyright Office by mail, might not be received in the Copyright Office before expiration of the time limits provided by 17 U.S.C. 304(a) for vesting of the renewal copyright by registration, he or she may apply for renewal registration by telegraphic, telefacsimile, or similar written communication. An application made by this method will be accepted only if:

(i) The message is received in the Copyright Office within the specified time limits for vesting by registration;

(ii) The applicant adequately identifies the work involved, the date of first publication or original registration, the name and address of the renewal claimant, and the statutory basis of the renewal claim;

(iii) The fee for renewal registration, if not already on deposit, is received in the Copyright Office before the time for renewal registration has expired; and

(iv) A formal application for renewal (Form RE) (or a fax copy) and in the case of works under paragraph (h) of this section, an accompanying Addendum relating to the subsistence of first-term copyright are also received in the Copyright Office before April 1 of the following year.

(f) *Renewal claimants.* (1) Except as otherwise provided by paragraphs (f)(2) and (3) of this section, renewal claims may be registered only in the name(s) of the eligible person(s) falling within one of the following classes of renewal claimants specified in section 304(a) of the copyright law. If the work was a new version of a previous work, renewal may be claimed only in the new matter. If the renewal claim is submitted during the last year of the original term of copyright, the renewal must be made in the name(s) of the statutory claimant(s) entitled to claim the renewal on the date the renewal claim is submitted to the Copyright Office for registration. If the renewal claim is submitted during the forty-seven year renewal term, the renewal claim can only be registered in the name(s) of the statutory claimant(s) entitled to claim the renewal on the last day (December 31st) of the original term of copyright.

(i) In the case of any posthumous work or of any periodical, encyclopedia, or other composite work upon which the copyright was originally secured by the proprietor thereof, the renewal claim may be registered in the name of the proprietor;

(ii) In the case of any work copyrighted by a corporate body (otherwise than as assignees or licensees of the individual author) or by an employer for whom such work is made for hire, the renewal claim may be registered in the name of the proprietor; and

(iii) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the renewal claim may be registered in the name(s) of the following person(s) in descending order of eligibility:

(A) The author of the work, if still living;

(B) The widow, widower, or children of the author, if the author is not living;

(C) The author's executors, if there is a will and neither the author nor any widow, widower, or child of the author is living;

(D) The author's next of kin, in the absence of a will and if neither the author nor any widow, widower, or child of the author is living.

(2) The provisions of paragraph (f)(1) are subject to the following qualification: Notwithstanding the definition of "posthumous work" in paragraph (b) of this section, a renewal claim may be registered in the name of the proprietor of the work, as well as in the name of the appropriate claimant under paragraph (f)(1)(iii), in any case where a contract for exploitation of the work but no copyright assignment in the work has occurred during the author's

lifetime. However, registration by the Copyright Office in this case should not be interpreted as evidencing the validity of the claim.

(3) The provisions of paragraphs (f)(1)(iii)(C) and (D) of this section are subject to the following qualifications:

(i) In any case where:

(A) The author has left a will which names no executor;

(B) The author has left a will which names an executor who cannot or will not serve in that capacity; or

(C) The author has left a will which names an executor who has been discharged upon settlement of the estate or removed before the estate has been completely administered, the renewal claim may be registered either in the name of an administrator cum testamento annexo (administrator c.t.a.) or an administrator de bonis non cum testamento annexo (administrator d.b.n.c.t.a.) so appointed by a court of competent jurisdiction.

(ii) In any case described in paragraph (f)(3)(i) of this section, except in the case where the author has left a will without naming an executor and a court appointed administrator c.t.a. or administrator d.b.n.c.t.a. is in existence at the time of renewal registration, the renewal claim also may be registered in the name of the author's next of kin. However, registration by the Copyright Office of the conflicting renewal claims in these cases should not be interpreted as evidencing the validity of either claim.

(g) *Application for renewal registration.*

(1) Each application for renewal registration shall be submitted on Form RE. Copies of Form RE, and if applicable, the Addendum to Form RE, are available free upon request to the Public Information Office, United States Copyright Office, Library of Congress, Washington, DC 20559.

(2)(i) An application for renewal registration may be submitted by any eligible statutory renewal claimant as specified in paragraph (f) of this section or by the duty<sup>3</sup> authorized agent of any such claimant.

(ii) An application for renewal registration shall be accompanied by a fee of \$20. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of:

(A) A designation of whether the applicant is the renewal claimant, or the duly authorized agent of such claimant (whose identity shall also be given);

(B) The handwritten signature of such claimant or agent, accompanied by the typewritten or printed name of that person;

(C) A declaration that the statements made in the application are correct to the best of that person's knowledge; and

(D) The date of certification.

(iii) In the case of an application for renewal registration of a work for which no original registration was made, the application

shall be accompanied by an Addendum and deposit material in accordance with paragraph (h) of this section.

(3) Once a renewal registration has been made, the Copyright Office will not accept a duplicate application for renewal registration on behalf of the same renewal claimant.

(h) *Addendum for an unregistered work--*

(1) *Content.* If original term registration is not timely made for a work, the renewal application Form RE must be accompanied by an Addendum to Form RE which must contain the following information:

- (i) The title of the work;
- (ii) The name of the author(s);
- (iii) The date of first publication of the work;
- (iv) The place of first publication of the work;
- (v) The citizenship of the author(s) on the date of first publication of the work;
- (vi) The domicile of the author(s) on the date of first publication of the work;
- (vii) An averment that, at the time of first publication, all the copies of the work published under the authority of the author or other copyright proprietor bore the copyright notice required by the Copyright Act of 1909, title 17 of the United States Code in effect on December 31, 1977, and that United States copyright subsists in the work; and
- (viii) For works of United States origin which were subject to the manufacturing provisions of section 16 of the Copyright Act

of 1909 as it existed at the time the work was published, the Addendum must also contain information about the country of manufacture and the manufacturing processes.

(2) *Signature.* The Addendum must contain the handwritten signature of the renewal claimant or the duly authorized agent of the renewal claimant. The signature shall (i) be accompanied by the printed typewritten name of the person signing the Addendum and by the date of the signature; and (ii) shall be immediately preceded by the following printed or typewritten statement in accordance with section 1746 of title 28 of the United States Code: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

(3) *Deposit requirement for an unregistered work.* In addition to the Addendum to Form RE, an application for renewal registration of a work for which no original term registration is made must be accompanied by one copy or phonorecord or identifying material of the work as first published in accordance with the deposit requirements set out in sections 202.20 and 202.21 of the Copyright Office regulations for basic registration.

(4) *Waiver of the deposit requirement.* In a case where the renewal applicant asserts that it is either physically impossible or otherwise an undue hardship to satisfy the deposit requirements of §§ 202.20 and 202.21,

the Copyright Office, at its discretion, may, upon receipt of an acceptable explanation of the inability to submit such copy or identifying material, permit the deposit of the following in the descending order of preference:

(i) A reprint, photocopy, or identifying reproduction of the work as first published; or

(ii)(A) A photocopy of the title page of the work as first published;

(B) A photocopy of the page of the work as first published bearing the copyright notice;

(C) A specification as to the location, relative to each other, of the title and notice pages of the work as first published, if the pages are different; and

(D) A brief description of the copyrightable content of the work, which is sufficient to enable the Copyright Office to examine the work. The Examining Division of the Copyright Office may request deposit of additional descriptive material if the original submission is inadequate.

Dated: November 24, 1992.

**Ralph Oman,**  
*Register of Copyrights.*

Approved by:  
**James H. Billington,**  
*The Librarian of Congress.*