

Perfect and Strengthen Your Copyrights

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Copyright is the law of authorship and grants a body of exclusive rights to visual authors. This paper presents a survey of the meaning, scope and profound validity of copyright, and notes some of the increasing pressures wrought by the digitization of the world's creative works and the rise of anti-copyright advocates. Although proposed orphan works legislation would override the protections afforded by registration, it remains a prudent choice for artists under current law. A brief guide to registering and searching the new eCO (electronic Copyright Office) assists visual authors with the online registration process and monitoring of their public records.

Introduction

Copyright is the law of authorship. It is quite simply a visual author's exclusive right to make copies of his or her work, authorize others to make copies, and stop those who make unauthorized copies. Copyright has also come to mean the body of exclusive rights granted by law to visual authors for protection of their work.

Automatic vesting and protection of exclusive rights

Copyright automatically protects an original work of authorship the moment you fix an idea in a tangible medium of expression. The ownership of that copyright automatically vests with you: an author's right is based upon the act of creation itself. The copyright confers a specific set of *exclusive rights* to you, and to others *authorized* by you, to 1) reproduce the work, 2) prepare derivatives based on the work, 3) distribute the work under your terms, 4) perform the work, or 5) display the work publicly.

An independent voice

Artists rely on copyright for creative control over their works. Copyright's protection of *original authorship* guarantees an artist's independent voice, now and for posterity. Copyright preserves the integrity of your work, prevents corrupt editions, and protects the privacy of your unpublished works and early drafts.

Divisible rights and economic value

Each of the exclusive rights conferred by copyright can be subdivided and each divided right has a value. Artists rely on this divisibility of exclusive rights to earn their livings. A well-constructed license properly subdivides the rights to clearly define the use of the work. For example, the exclusive right of reproduction may be divided and licensed according to the nature of use, distribution format, geographic area, duration of use, and exclusivity or limited use within those parameters. Any rights not specifically transferred in a license belong to the artist, including rights to uses not yet known or invented.

Nevertheless, in some cases licensors have tested the scope of a previously licensed traditional right by attempting to conflate it with a new right to exploit the work in a valuable new market – sometimes even decades later.¹ New subdivisions of exclusive rights will arise to accommodate licensing new uses created by new media and new markets. When the use has value, part of that value belongs to the creator; without the creative work the market—or the demand—would not exist.

In the United States, artists or their agents generally license their primary and secondary rights directly with their users. *Blanket* licensing of secondary rights, such as reprography of published works (for instance, photocopying and digital reprints), are licensed collectively by a copyright collecting society that artists have mandated to administer these rights.² All these divisible rights, whether more broadly stated or fine-tuned with precision, create an orderly marketplace for the licensing of

1. As just two contemporary examples, in *New York Times v Tasini*, 533 U.S. 483 (2001) the Supreme Court found for freelance authors, enforcing that their grants of first North American serial print rights to publish their articles, illustrations or photographs in collective works like newspapers and periodicals did not also confer a future license to publishers to sell those same contributions perpetually through electronic databases without the authors' authorization or compensation. In *Random House v RosettaBooks LLC*, 283 F.3d 490, 62 U.S.P.Q.2d (BNA) 1063 (2d Cir. 2002) Random House sought to enjoin RosettaBooks from electronically publishing eight books for which Rosetta acquired the electronic publishing rights directly from the books' authors. Random House argued that the limited grants it received 20 to 40 years ago to "print, publish and sell in book form" should now be interpreted to include e-books. The 2nd Circuit found for RosettaBooks, and that authors control electronic rights to their works.

visual works and ensure that artists are fairly compensated for the valuable uses of their works.³

Copyright's scope

Copyright never “locks up” ideas, contrary to assertions by free-culture and anti-copyright advocates. Nor does copyright impinge on First Amendment Rights of free speech.⁴ There are two limitations to copyright that guarantee First Amendment Rights: 1) copyright law protects only expression and not the underlying ideas or facts,⁵ known as the idea/expression dichotomy and 2) the fair use doctrine, a limitation on an author's exclusive rights that guarantees access by permitting the expression to be copied for criticism, comment, news reporting, teaching, scholarship, or research.

Copyright is Constitutionally based

Copyright functions as a silent patron of the arts by allowing creators to reap where they have sown. By honoring and protecting the property of the mind it may, in fact, be the greatest creativity engine in the world.⁶ The framers' purpose in embodying the principle of patents and copyrights in the U.S. Constitution was

to benefit society by promoting invention and authorship by granting authors and inventors exclusive rights in their writings and discoveries.⁷ The Constitutional copyright clause was rooted in natural rights and already enjoyed a fruitful history in Europe. The framers understood that when creators can hold onto the value of what they create it encourages them to create new works, and society will benefit from the flow of their sustained efforts.⁸

Authorship categories

The original 1790 U.S. Copyright Act protected only books, maps and navigational charts, and only for 14 years.⁹ Engravings and etchings were protected in 1802. Photographs and negatives were added in 1865. Paintings, drawings and sculpture were added in 1870. Protection for photographs survived a Supreme Court challenge in 1884¹⁰ and commercial illustrations survived a similar challenge in 1903.¹¹ When Congress re-codified copyright with the passage of The Copyright Act of 1909 it protected *all* works of art.

Today, U.S. Copyright law is codified in Title 17 of the United States Code (17 USC).¹² Eight categories of authorship are recognized: pictorial, graphic, and sculptural works;

2. The Artists Rights Society (ARS) is a copyright, licensing, and monitoring organization for fine artists in the United States. ARS represents the intellectual property rights interests of over 50,000 visual artists and estates of visual artists from around the world (painters, sculptors, photographers, architects and others) through bilateral agreements with sister societies in 31 countries. The American Society of Illustrators Partnership (ASIP) is in the nascent stage of creating a copyright society for American illustrators. See Holland, Brad. Spring 2006. First Things About Secondary Rights. *Columbia Journal of Law & the Arts*, Columbia University School of Law.

3. *Caveat Auctor: Let the Author Beware*. The Creative Commons “License” is not a license; it is an irrevocable waiver of the exclusive rights automatically guaranteed to an author by Copyright law. Nor is it necessary for any author who wishes to grant free use to a work – authors can, and do, routinely grant permission for specific, uncompensated economic and non-economic uses according to their personal discretion, without harm or detriment to their exclusive rights.

4. In *Eldred v. Ashcroft*, 537 U.S. 186 (2003), the first of a series of failed cases, Lawrence Lessig challenged the constitutionality of copyright term extension as an abridgement of the First Amendment. Supreme Court Justice Ruth Bader Ginsburg famously remarked to Lessig during oral argument “The First Amendment securely protects the freedom to make – or decline to make – one's own speech; it bears less heavily when speakers assert the right to make other people's speeches.” This quote is often reduced to a reminder that the First Amendment gives you the right to *your* free speech, but not someone else's.

5. 17 USC § 102. Subject matter of copyright: In general (b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

6. Prior to the Constitution, the United States was governed by the Articles of Confederation. In 1783 Congress passed a resolution recommending that each of the thirteen states adopt a copyright law; all did but Delaware. In *The Illustrated Story of Copyright*, author Samuel Edwards writes, “The preambles in some of the state statutes passed under the Articles of Confederation were even more effusive than their later federal counterpart. For example, in Connecticut's 1783 statute, the preamble stated that:

‘it is perfectly agreeable to the principles of natural equity and justice, that every author should be secured in receiving the profits that may arise from the sale of his works, and such security may encourage men of learning and genius to publish their writings; which may do honor to their country, and service to mankind.’

The Massachusetts statute of the same year served also as a model for New Hampshire and Rhode Island:

‘[T]he improvement of knowledge, the progress of civilization, the public weal of the community, and the advancement of human happiness, greatly depend on the efforts of learned and ingenious persons in the various arts and sciences: As the principal encouragement such persons can have to make great and beneficial exertions of this nature, must exist in the legal security of the fruits of their study and industry to themselves; and as such security is one of the natural rights of all men, there being no property more peculiarly a man's own than that which is produced by the labour of his mind.’”

Samuels, Edward. 2000. *The Illustrated Story of Copyright*. Thomas Dunne Books, St. Martin's Press.

7. Article I, Section 8, Clause 8 of the US Constitution empowers Congress “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Adopted September 17, 1787.

8. Unfortunately, the U.S. protected only U.S. works and actively pirated the works of European authors. Charles Dickens' works were enormously popular in the US and pirated editions were published nearly simultaneously with their release in England, without the consent or payment of royalties to Dickens. This situation also affected American writers like Edgar Allan Poe whose works were published in England without his consent or any payment. Dickens passionately campaigned for international copyright during his first American visit in 1842. An English-American copyright law would not be enacted until 1891.

9. The Constitutional emphasis on copyright protection for original maps and navigational charts may be explained by the materials ordered by the Library of Congress once it was funded in 1800; Congress wanted dated proof of all land claims and borders as North America was explored and settled.

motion pictures and other audiovisual works; literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; sound recordings; and architectural works.

Copyright terms

A work created on or after January 1, 1978,¹³ 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. Known as the "life-plus-seventy" system, it was already in effect in most other countries before being adopted in the U.S.¹⁴

Limitations on exclusive rights

The set of exclusive rights are limited by compulsory licenses, special rights for preservation exemptions granted to libraries and archives, and the fair use doctrine. Noncommercial educational broadcast stations are permitted a compulsory license to

broadcast visual works.¹⁵ Libraries and archives are permitted to reproduce one to three copies of your work for archival and preservation purposes provided that there is no direct or indirect commercial advantage, the collections are publicly available, and the reproduction includes a notice of copyright.¹⁶ Libraries and archives are also granted exemption from exclusive rights protection during the last 20 years of any term of copyright protection.¹⁷ The fair use doctrine permits usage without permission for purposes of criticism, comment, news reporting, teaching, scholarship, or research, determined by considering four factors.¹⁸

Copyright assignment or transfer

A copyright is an asset that may also be sold—a process known as copyright assignment or transfer. However, it is generally better for you to maintain ownership of your copyrights and to license specified rights, as you deem appropriate. Before transferring ownership of your copyright you should carefully consider the effects of the sale. You are surrendering all future possible revenue

10. The landmark *Burrow-Giles Lithographic Company v. Sarony* Supreme Court case (1884) was about sales of unauthorized copies of New York photographer Napoleon Sarony's portrait of Irish poet Oscar Wilde. Sarony photographed Wilde in his lecturing costume while Wilde was in New York on a grand US lecture tour. Burrow-Giles then sold about 85,000 copies of Sarony's portrait during Wilde's tour without Sarony's permission, and Sarony sued. As a defense, Burrow-Giles' challenged the constitutionality of the Copyright Act of 1870 which extended copyright protection to photographs. They argued that a photograph was a mechanical reproduction devoid of originality and therefore undeserving of copyright. The Supreme Court found that Sarony's contributions were original and considerable, including lighting, composition, evoking a mood, etc., and finding that, in effect, a photograph is the "writing" of a photographer.

11. Another landmark Supreme Court case, *Bleistein v. Donaldson Lithographing Company* (1903) affirmed copyright for commercial illustration. The Courier Lithographing Co. created several circus posters advertising The Great Wallace Shows. Donaldson Lithographing Co. later made unauthorized copies of three of Courier's works for advertising use by Wallace, and Courier sued. The Supreme Court recognized and affirmed Courier's artistic and creative effort, reversing the lower court decisions that advertisements were not "useful" or "meritorious" and therefore unworthy of protection. Justice Holmes' remarked "A picture is none the less a picture, and none the less the subject of copyright, that it is used for an advertisement."

12. Two reliable sources to access 17 USC online are <http://www.copyright.gov/title17/> and <http://www4.law.cornell.edu/uscode/17/>.

13. The Copyright Term Extension Act (CTEA) of 1998 extended copyright terms in the United States by 20 years. Although contentiously trivialized by copyright opponents as Walt Disney Company's "Mickey Mouse Protection Act," to provide unnecessary "corporate welfare," Congress was in fact harmonizing US Copyright law to that of the European Union to ensure adequate copyright protection for American works in foreign nations. Artists' estates and their heirs benefited. The Act did not restore copyright protection to any works that were in the public domain, nor did it extend critical protection of Mickey Mouse. Mickey is a trademarked character and therefore protected in perpetuity as long it continues to be used commercially by its owner, regardless of when copyright protection expires on the cartoons. It has long been recognized that the public often does not pay less when copyrights expire and works become "royalty-free" as they fall into the public domain. Publishers and other exploiters continue to profit, and with a windfall benefit, because they no longer have to pay authors.

105 years ago, Mark Twain (Samuel Clemens) testified before Congress and remarked about the fairness of terminating an author's copyrights. "I am quite unable to guess why there should be a limit at all to the possession of the product of a man's labor. There is no limit to real estate . . . What is the excuse? It is that the author who produced that book has had the profit of it long enough, and therefore the Government takes a profit which does not belong to it and generously gives it to the 88,000,000 of people. But it doesn't do anything of the kind. It merely takes the author's property, takes his children's bread, and gives the publisher double profit." Arguments Before the Committees on Patents on S. 6330 and H.R. 19853, 59th Cong. 116 (1906) (statement of Samuel L. Clemens, author).

Three years ago, acclaimed author and journalist Mark Helprin wrote in the *New York Times*, "'Freeing' a literary work into the public domain is less a public benefit than a transfer of wealth from the families of American writers to the executives and stockholders of various businesses who will continue to profit . . . Would it not be just and fair for those who try to extract a living from the uncertain arts of writing and composing to be freed from a form of confiscation not visited upon anyone else? The answer is obvious, and transcends even justice. No good case exists for the inequality of real and intellectual property, because no good case can exist for treating with special disfavor the work of the spirit and the mind." A Great Idea Lives Forever. Shouldn't Its Copyright? Mark Helprin, May 20, 2007, *New York Times*, <http://www.nytimes.com/2007/05/20/opinion/20helprin.html>. Within a week the *New York Times* received over 750,000 caustic messages from anti-copyright advocates vilifying Helprin and denouncing the "notion" of independent authorship. Helprin answered by writing his book *Digital Barbarism*, Harper, 2009.

14. The copyright term for a work prepared by two or more authors who did not work for hire lasts for 70 years after the last surviving author's death. For works made for hire the copyright term is 95 years from first publication or 120 years from creation, whichever is shorter. The 95-year term also applies to anonymous and pseudonymous works, unless the author's identity is revealed in Copyright Office records.

15. 17 USC § 118. Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting.

16. 17 USC § 108. Limitations on exclusive rights: Reproduction by libraries and archives.

17. 17 USC § 108(h)(1)(2000). Added by the Copyright Term Extension Act (CTEA) Pub. L. 105-298, 105 Cong. 2d sess. (1998) "Sonny Bono Copyright Term Extension Act".

from any other use; the new owner becomes the sole owner and beneficiary of the renewable wealth of your intellectual property. You are also surrendering creative control; the new owner can modify your art without regard to the integrity of your work or your reputation. You may forfeit the right to be identified as the author of your own work. The new owner can create derivative works from your work including combining your art with another artist's work; these derivative works become the property of the new copyright owner. Your work and any derivatives made from it may compete against you if the new copyright owner licenses the work. If you create a derivative based upon art for which you have transferred copyright, you are infringing your own work.

Copyright reversion

Congress realized that many important writers, musicians and artists had signed away their copyrights for little or no money early in their careers. To protect these authors from permanent loss as the result of an inequitable deal they entered into when they had little negotiating skill or leverage, Congress offered authors and their heirs another opportunity to negotiate a better deal, or control the work themselves. An artist can recapture a transferred copyright after one of two specified periods of time. If an artist sold the copyright before 1978 they, or their heirs, can reclaim it after 56 years.¹⁹ If the artist sold the copyright during or after 1978, they, or their heirs, can reclaim it after 35 years.²⁰

Jerry Siegel and Joe Schuster (creators of *Superman* for DC Comics), and the estates of Truman Capote, Norman Rockwell, and Lorenz Hart (of Broadway's Rodgers and Hart) are examples of authors and estates that have exercised these valuable rights. Recapturing copyrights is complex and subject to many different rules depending on how the assignment occurred.²¹ Some copyright experts believe a disruption in publishing and music may begin in 2013 when the first reversions from the 1978 Act take effect.

Two methods of copyright title transfers

There are essentially two methods of copyright title transfers. One is equitable to the artist, and the other is rarely so. With the first, the buyer understands the long-term value of the copyright and wishes to have ownership and control of the image for

corporate or proprietary needs; the artist and the buyer arrange for a copyright assignment at a rate that fairly compensates the artist for the entire value. Copyright assignment must be in writing. The new owner should record the transfer with the Copyright Office within a month. Today, a copyright assignment terminates after 35 years.

The second method of copyright transfer is via the technical exception in copyright law under the *second* statutory definition of "works made for hire."²² This exception *deprives* an artist of authorship if the parties expressly agree in writing. The commissioning party is considered the creator and copyright is automatically vested with that party. The artist becomes an employee *only* for the purposes of forfeiting copyright but receives no benefits of employment. These contracts are often presented as non-negotiable.²³

It is not uncommon to encounter contracts stipulating work-for-hire for commissions outside the nine categories listed in the second statutory definition. However, "a work can be a work made for hire only if *both* of the following conditions are met: (1) it comes within one of the nine categories of works listed in part 2 of the definition and (2) there is a written agreement between the parties specifying that the work is a work made for hire."²⁴

Under work-for-hire an artist can only sell a service for a fee. That fee seldom reflects the present and future value of the forfeited copyright. If an artist does enough work-for-hire, that artist creates a body of work that functions as an alter ego to compete against him or her. Creating derivatives, sometimes even just creating in the artist's own style, might infringe upon the copyrights of the forfeited work.²⁵ Because the exception calls for the very authorship to be technically vested with the commissioning party, the artist is not considered the creator. *The termination of the copyright is complete. There is no recapture right.*

A sustainable livelihood depends upon an artist's ability to build a reputation by creating a body of works, by being associated with those works, and by the ability to keep, manage and license the copyrights within a marketplace that supports fair negotiations.

18. "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work." 17 USC § 107. Limitations on exclusive rights: Fair use.

19. USC 17, § 304. Duration of copyright: Subsisting copyrights (Enacted under The Copyright Act of 1909).

20. USC 17, § 203. (a)(3) (2009). Termination of transfers and licenses granted by the author. (Enacted under The Copyright Act of 1976. The changes of The Copyright Act of 1976 went into effect January 1, 1978).

21. The Code of Federal Regulation §210.10(b)(2) lays out in detail the contents of the termination notice.

22. USC 17, § 101, Definitions. "A "work made for hire" is:

(1) a work prepared by an employee within the scope of his or her employment;

or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

23. *Caveat Auctor: Let the Author Beware*. A contract of adhesion that does not allow for negotiation (i.e., take it or leave it) is often entered into between unequal bargaining partners. *Adhesion contracts* are often *unconscionable* (also known as unconscientious dealings) under contract law because the consideration offered is so obviously inadequate.

24. United States Copyright Office Circular 9, *Works Made for Hire Under the 1976 Copyright Act*, Rev. 11/2004, copyright.gov.

Registration

Registration benefits

Most visual authors create dramatically more works than authors of other creative works. Registration for visual authors is expensive and time-consuming, and many artists do not have the time or resources to register their works as they create them. Furthermore, two bouts of proposed “orphan works”²⁶ legislation, with its deconstruction of copyright protection imposed on registered and unregistered works alike, have discouraged many artists from continued investment in registration.

Since current law still provides advantages to artists who register, registration remains a prudent choice. Although registration with the U.S. Copyright Office is not required as a condition of copyright protection or ownership, copyright law provides inducements to encourage authors to comply with the legal formality²⁷ of registration:

- Registration establishes a public record.
- Registration is a necessary prerequisite to pursuing infringement in court.
- Registration made prior to, or within five years of, publication establishes “prima facie” evidence of a copyright’s validity by recording a particular work’s existence and its creation date. The courts accept a registration as self-evident unless it is later shown to be false. Prima facie evidence of a copyright can be especially important if an infringed artist needs to obtain a preliminary injunction against an infringer, for example to stop distribution or production of unauthorized reproductions.
- Registration made within three months after publication provides an easier method to establish monetary loss caused by infringement, known as statutory damages,²⁸ and may allow the copyright owner to recover attorneys’ fees at the court’s discretion.²⁹ Registration at a later time

only permits an award of actual damages and profits, which can be difficult or even impossible to prove to the court’s satisfaction. In many instances legal fees and expenses to pursue infringement exceed actual damages, forcing artists to accept the loss.

- A copyright owner can record a registration with the U.S. Customs Service for protection against importation of infringing copies.
- Perhaps most importantly, because infringement lawsuits are so costly and time-consuming, the greatest benefit of a timely registered copyright may lie in leverage to quickly and effectively stop infringement and reach a satisfactory settlement of losses by sending the infringer a “cease and desist letter.” The letter should contain proof of registration demonstrating the certainty that 1) as an infringed artist you are able to immediately file a lawsuit, 2) the validity of originality and ownership will be presumed, 3) statutory damages may be awarded, and 4) legal costs and attorneys’ fees may be recovered.

Step-by-step instructions for registering your work with the U.S. Copyright Office may be found in Appendix I

Your Copyright Registration Records

65 million records

The Copyright Office is required by law to maintain public records of copyright registrations and to make them available for inspection. The copyright card catalog and the electronic online files of the Copyright Office (eCO) combine to create an index to copyright registrations in the United States from 1870 to the present. The copyright card catalog contains approximately 45 million cards covering the period 1870 through 1977. The eCO is a searchable, integrated online database³⁰ containing approximately

25. A famous example is *Fogerty v. Fantasy, Inc.* 510 US 517 (1994). John Fogerty of Creedence Clearwater Revival created music published by Fantasy Records under a work-for-hire contract. After the contract ended Fogerty’s new music was published by Warner Brothers. In 1985, Fantasy sued Fogerty for self-plagiarism, claiming one of his new songs infringed the exclusive rights Fantasy held to the Creedence Clearwater Revival Library. The jury found for Fogerty. Fogerty moved to be awarded his legal fees as provided under the 1976 Copyright Act, but the District court denied. Fogerty appealed, and the Ninth Circuit also denied. The U.S. Supreme Court agreed to review because other courts of appeal did not apply a dual standard of awarding legal fees only to successful *plaintiffs*. The high court found for Fogerty, with Chief Justice Rehnquist delivering the opinion that “the Copyright Act’s primary objective is to encourage the production of original literary, artistic, and musical expression for the public good; and plaintiffs, as well as defendants, can run the gamut from corporate behemoths to starving artists ... a defendant seeking to advance meritorious copyright defenses should be encouraged to litigate them to the same extent that plaintiffs are encouraged to litigate meritorious infringement claims.”

26. HR 5439, 109 Cong., 2d sess. (2006), “Orphan Works Act of 2006”. HR 5889, 110 Cong., 2d sess. (2008), The Orphan Works Act of 2008. S 2913, 110 Cong., 2d sess. (2008) The Shawn Bentley Orphan Works Act of 2008.

27. The United States is the **only** country that requires the legal formality of registration as a prerequisite to access full copyright protection, even though the U.S. became a signatory to The Berne Convention for the Protection of Literary and Artistic Works on March 1, 1989. Berne *prohibits formalities* in Article 5 (2) “The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work.” <http://www.law.cornell.edu/treaties/berne/5.html>

28. 17 USC § 504. Remedies for infringement: Damages and profits.

29. *Caveat Auctor: Let the Author Beware*. Initiating an action for copyright infringement is not to be undertaken lightly. Failure to prove a bona fide infringement in the court environment subject to arcane technicalities and rules can subject the infringed artist to further dramatic losses under § 505. “In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any **party** other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney’s fee to the **prevailing party** as part of the costs.” (Emphasis in the original.) 17 USC § 505. Remedies for infringement: Costs and attorney’s fees. Established by *Fogerty v. Fantasy, Inc.* 510 US 517 (1994).

30. <http://www.copyright.gov/records/>

20 million records of registered works and recorded documents from January 1, 1978 to the present.³¹

Onsite search

Onsite searches of copyright records at the Library of Congress permit viewing of image deposits but are not open to the public. To search deposits, you must have an appointment to inspect the work, you will be supervised, and no verbatim copying or verbatim sketches are allowed. Alternatively, the Copyright Office offers a search service for a fee of \$165 per hour with a two-hour minimum per search. *In order to research the copyright status of a work of visual art onsite at the Copyright Office the searcher must know the identity of the artist in advance.*³²

eCO online copyright records are not searchable by image

Even though deposits of registered images have always been required for registration, and the Copyright Office preserves and maintain deposits,^{33,34} image deposits have not been digitized for online records. Even current electronic registrations that deliver digital image deposits to the Copyright Office will be excluded from online records. “The Copyright Office would be violating copyright law by displaying the work on the website because it would be violating the exclusive rights of the owner.”³⁵ Visual works registration records are searchable online *only* by author name, title, keyword, registration number, document number and certain command keywords.

Proposed Orphan Works legislation would place an unrealistic burden on artists to be identifiable and locatable by both their name and by their images. It is common knowledge that artists *cannot*

prevent the “orphaning” of their works: there is no mandatory attribution required of publishers or those who post casually online to prevent orphans from being manufactured; images are frequently removed from their context containing nearby credit lines; metadata can be stripped or changed by anyone; and metadata is frequently and indiscriminately removed by the act of uploading and by ISPs and online aggregators.

Currently, there is no way to match an unmarked image with its owner. There is much that one cannot know about an unmarked image. One cannot determine the age of the image, the nationality of the creator, the rights currently under license, or the agreements, contracts and releases surrounding the rights, including contracts of *exclusivity*. Confidentiality and non-disclosure are common trade practice in some art licensing. Yet proposed orphan works legislation would permit the use of visual works that have not been “registered” in some (highly imperfect and not yet reliable) technological fashion that permits digital fingerprinting to trace it back to its owner.

Conclusion

It is increasingly difficult to protect visual art from infringement today. Timely registration may help strengthen your ability to protect your authorship.

The U.S. Copyright Act requires authors to register their works as a condition of full protection through access to infringement remedies.³⁶ The Act mandates the U.S. Copyright Office *to administer the mandatory deposit* provisions to fulfill its mission “**[t]o promote creativity by administering and sustaining an effective national copyright system.**”³⁷ It is the *only* depository,

31. This author notes that her online registration records are spotty and incomplete at the present time. Reliance on the online investigation of the copyright status of her works at the United States Copyright Office would be inconclusive, or inaccurate.

32. For detailed information consult US Copyright Office Circular 22, *How to Investigate the Copyright Status of a Work*, Rev: 08/2009 and Circular 23, *The Copyright Card Catalog and the Online Files of the Copyright Office*, Rev: 05/2009, copyright.gov.

33. Functions of the Copyright Office, (4) Providing information services to the public. ³The Copyright Office § preserves, maintains, and services copyright-related records, including the deposits registered.² <http://www.copyright.gov/circs/circ1a.html>

34. 17 USC § 704. Retention and disposition of articles deposited in Copyright Office.

(c) The Register of Copyrights is authorized, for specific or general categories of works, to make a facsimile reproduction of all or any part of the material deposited under section 408, and to make such reproduction a part of the Copyright Office records of the registration, before transferring such material to the Library of Congress as provided by subsection (b), or before destroying or otherwise disposing of such material as provided by subsection (d).

(d) Deposits not selected by the Library under subsection (b), or identifying portions or reproductions of them, shall be retained under the control of the Copyright Office, including retention in Government storage facilities, for the longest period considered practicable and desirable by the Register of Copyrights and the Librarian of Congress. After that period it is within the joint discretion of the Register and the Librarian to order their destruction or other disposition; but, in the case of unpublished works, no deposit shall be knowingly or intentionally destroyed or otherwise disposed of during its term of copyright unless a facsimile reproduction of the entire deposit has been made a part of the Copyright Office records as provided by subsection (c).

Historical and Revision Notes, House Report no. 941476. Retention and Disposition of Deposited Articles. A recurring problem in the administration of the copyright law has been the need to reconcile the storage limitations of the Copyright Office with the continued value of deposits in identifying copyrighted works. Aside from its indisputable utility to future historians and scholars, a substantially complete collection of both published and unpublished deposits, other than those selected by the Library of Congress, would avoid the many difficulties encountered when copies needed for identification in connection with litigation or other purposes have been destroyed. The basic policy behind section 704 is that copyright deposits should be retained as long as possible, but that the Register of Copyrights and the Librarian of Congress should be empowered to dispose of them under appropriate safeguards when they decide that it has become necessary to do so. http://www.law.cornell.edu/uscode/search/display.html?terms=deposit%20retention&url=/uscode/html/uscode17/usc_sup_01_17_10_7notes.html

35. Re-confirmed to author by telephone interview with a Visual Arts Examiner, US Copyright Office, Library of Congress, March 19, 2010.

36. *Ibid*, Footnote 27

37. <http://www.copyright.gov/about.html>

and it is mandated to protect the privacy, sanctity and security of these valuable deposits. It is also required to make the records public.

If the Copyright Office is to remain viable it must continue to implement technological access and solutions to match any future registration compliance imposed upon creators by any U.S. Copyright Act amendments. Prior to the enactment of any legislation requiring that artists be identified and located when sourced by their unmarked images, or suffer breach of contracts and loss of rights, the Copyright Office is both fiducially and statutorily obligated to uphold the *guarantees to authors of registered works*³⁸ by creating a public interface that will permit a searcher to upload an unmarked image to the Copyright Office catalog and search its recorded provenance in a manner that does not violate the exclusive rights of the owner. Failure, or inability, of the United States Copyright Office to comply with the new law for works held in its Catalog would result in the invalidation³⁹ of millions of registered copyrights under its stewardship.⁴⁰

The Copyright Office is also mandated to expertly advise and assist Congress on copyright policy, legislation and the United States' compliance with multilateral agreements, including the Berne Convention for the Protection of Literary and Artistic Works. If the Copyright Office is no longer able to fulfill its mission under future legislation, then registration should by necessity be eliminated, and finally bring U.S. creators into the full protection afforded by Berne, which guarantees "that the enjoyment and exercise of these rights"—*which include unmarked and unregistered works*—"shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work."

38. Registration guarantees: § 410. Registration of claim and issuance of certificate (c) **prima facie evidence**; § 411. Registration and civil infringement actions. (b) **no civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made...**; § 412. Registration as prerequisite to certain remedies for infringement, Historical and Revision Notes, House Report No. 94-1476, (2) ...owner has, by registration, made a **public record** of his copyright claim; § 502. Remedies for infringement: **Injunctions**; § 503. Remedies for infringement: **Impounding and disposition of infringing articles**; § 504 Remedies for infringement: Damages and profits (c) **Statutory Damages**; § 505. Remedies for infringement: **Costs and attorney's fees**; § 602. Infringing importation or exportation of copies or phonorecords.

39. *Proposed orphan works amendment* 17 USC "§ 514. Limitation on remedies in cases involving orphan works."

40. Title of the Bill is Not Descriptive . . . [N]either the Copyright Act, regulations, nor this bill define the term "orphans". Under this bill, a single copyrighted work could be accorded orphan status in one legal proceeding, but not accorded orphan status in another. Moreover, while the use of the word "orphan" in this bill is a metaphor that suggests the death of parents, or metaphorically, of authors, **the bill would result in Section 514 status being extended by courts to works that were infringed immediately upon creation, where the author is alive, in business, and licensing the work.** In particular, there is no minimum age for a work to be accorded Section 514 status. Carney, David, May 22, 2006. *The Tech Law Journal*. <http://www.techlawjournal.com/topstories/2006/20060522.asp>

Author

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Appendix 1: Copyright Registration Procedure in the United States

Registration Procedure

A copyright registration application has three components. You must fill out the appropriate **form**, pay the registration **fee**, and make a **deposit** – a copy – of the work with the Copyright Office. Registration can be done at any time during the work's copyright term. A copyright registration is effective on the date the Copyright Office receives all required elements in acceptable form, regardless of how long the examiner takes to process the application and mail the certificate.

Paper Form Availability And Phase-Outs

To encourage electronic filing the Copyright Office no longer provides downloadable paper application forms for Form VA (for a work of Visual Art) or other forms for which you can now register online. These paper forms must be obtained by mail, by special request from the web site.¹ Paper forms not yet available for electronic filing can still be downloaded from the web site.² The fee to file a paper Form VA has been raised to \$65 from \$45 and it may take up to 22 months to receive certificates. The Copyright Office intends to phase out all paper forms to lower costs and increase efficiency. Moreover, post 9-11 security requires off-site screening prior to arrival on Capitol Hill, adding several more days to processing time and sometimes subjecting certain deposits to damage.³

eCO (electronic Copyright Office)

The new eCO has two parts: **eCO Service**⁴ for registering copyright information online and **eCO Search**⁵ for searching Copyright Office records online.

eCO Online Registration Benefits

The eCO online registration system has several advantages:

- Lowest basic registration fee (\$35)⁶
- Fastest processing time (about nine months)
- Online status tracking
- Secure online payment
- Ability to upload certain deposits
- 24/7 availability⁷
- Most works are eligible^{8,9}

eCO Online Registration Alternative: New Form CO

As an alternative to navigating the menus and screens of an online registration application, you may instead elect to use the new fill-in, 2D barcoded Form CO, which replaces Forms TX, VA, PA, SE, and SR. You complete Form CO on your personal computer and print it out. Be sure to inspect your printed form to confirm that the 2D barcodes on the form print clearly, and then mail the completed Form CO with a check or money order and your deposit to the Copyright Office.¹⁰ The Copyright Office can process Form CO submissions using 2D barcode scanning technology more efficiently than older non-barcode paper forms. The cost is \$50.

1. <http://www.copyright.gov/forms/formrequest.html>

2. <http://www.copyright.gov/forms/index.html#group>

3. "To avoid damage to your deposit due to Capitol Hill security measures, the Copyright Office advises that you package the following items in boxes rather than envelopes for mailing:

- *Electronic media such as audiocassettes, videocassettes, CDs, and DVDs*
- *Microform*
- *Photographs*
- *Slick advertisements, color photocopies, and other print items that are rubber- and vegetable-based*

CDs/DVDs packaged in standard full-sized jewel boxes are more likely to survive the mail radiation process than those packaged in slim-line case."

<http://www.copyright.gov/mail.html>

4. <http://www.copyright.gov/eCO/>

5. <http://www.copyright.gov/records/>

6. The fee for Special Handling of a claim is an additional \$760. The fee for a Preregistration is \$115

7. Except for scheduled maintenance every weekend, 10:00 PM Saturday until 6:00 AM Sunday (Eastern).

8. Groups of contributions to periodicals are not currently available for electronic filing.

9. Because eCO is new, please check the site for ongoing alterations, improvements and changing instructions. There have been 4 major upgrades in the last six months, all expanding service to the user.

10. "The mailing address for applications filed on paper and for hard-copy deposits is:

Library of Congress
US Copyright Office
101 Independence Avenue SE
Washington, DC 20559-****

To expedite the processing of your claim, use the address above with the zip code extension for your type of work

- 6211 for visual arts work
- 6238 for motion picture or other audiovisual work
- 6222 for literary work
- 6237 for sound recording
- 6233 for performing arts work
- 6226 for single serial issue

United States Copyright Office Circular 1, *Copyright Basics*, Rev: 07/2008, copyright.gov.

eCO Online Registration: Security and Privacy

When you first enter the eCO site you will receive a security assurance and a privacy warning. Your required personal contact information¹¹ on the registration application becomes part of the public record and will be viewable in the Copyright Office's new online Internet databases. Consequently, your records are now being accessed and distributed by third-party aggregators and search engines. Many copyright registration records are now appearing on search engines such as Google. You are admonished not to provide additional, non-requested personal information like your social security number or driver's license.

User Login

Registered users may login and new users may register and create a profile. The Welcome Screen will remind you that before you get started you need to disable your browser's pop-up blocker, prompt you to view a tutorial¹² on how to register a new claim, print a copy of eCO tips¹³ to use as a reference and provide you with a FAQ reference.¹⁴ When ready to begin, click **Copyright Services: Register a New Claim** on the left side of the page. You then will register a claim in three steps and in the following order:

- Step 1: Complete an application
- Step 2: Make payment
- Step 3: Submit your work

Clicking on each of the step buttons provides a detailed registration process overview. In addition, as you progress through the registration process you will find that the registration application is generously stocked with links to explanatory screens of detailed information to help guide you. When you are ready to begin the registration process click on **Start Registration**.

Step 1: Complete an Application

There are two necessary caveats to ensure your smooth and successful online application experience: 1) You must disable your browser's pop-up blocker or you will not be able to upload your deposit and 2) Do not use your *browser's* back button; use only the back button within the Copyright Office interface. The

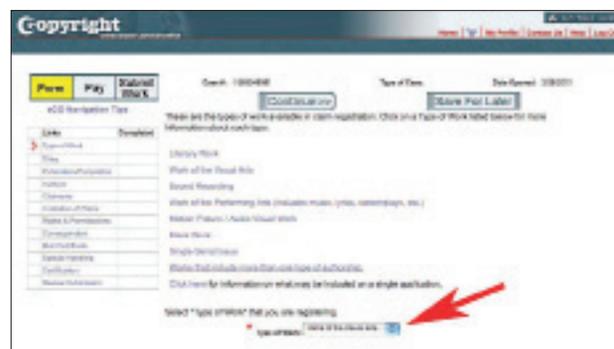


Figure 1. As each screen is satisfactorily completed a blue checkmark will appear in a table to track your progress.

Copyright Office has other browser tips that may apply to you.¹⁵

You will progress through the following screens for **Step 1: Complete an application**. As each screen is satisfactorily completed a blue checkmark will appear in a table to track your progress. (Figure 1)

Type of Work: Identify your category of authorship from the dropdown menu.

Titles: Fill in your self-determined title(s) of the work(s). Give each title exactly as it appears on the work. If there is no title, give an identifying phrase, or state "untitled." To enter the title, click **New**. After you enter the title, click **Save**. You are able to edit an entry by clicking on its pencil icon.

Special considerations to reduce costs

To register a single visual work online is \$35 and by paper \$65. You can use **Collection** registration strategies to reduce costs. You can register as few as two works in a collection.

Collection of Unpublished Works: Registration of Multiple Unpublished Works as a Single Claim

It is not always possible to register before publication, but immediate availability of electronic filing makes that effort a little more cost-effective by eliminating overnight courier charges. Some artists may be able

11. "Privacy Act Notice: Sections 408-410 of title 17 of the United States Code authorize the Copyright Office to collect the personally identifying information requested on this form in order to process the application for copyright registration. By providing this information you are agreeing to routine uses of the information that include publication to give legal notice of your copyright claim as required by 17 USC § 705. It will appear in the Office's online catalog. If you do not provide the information requested, registration may be refused or delayed, and you may not be entitled to certain relief, remedies, and benefits under the copyright law." https://eco.copyright.gov/eService_enu/start.swe

12. <http://www.copyright.gov/eco/eco-tutorial.pps>

13. <http://www.copyright.gov/eco/tips.pdf>

14. <http://www.copyright.gov/eco/faq.html>

15. "The eCO system is designed to work with Microsoft Internet Explorer 6.0 and Netscape Navigator 7.02. Firefox 2.0 users must adjust the Tabs setting to "New pages should be opened in: a new window." The Tabs setting is under Tools/Options for Firefox for PCs and under Preferences for Firefox for Macs. The Safari and Google Chrome browser are not currently certified for use with the eCO system. Other browsers such as Opera and Konqueror may work with the eCO system.

1. Disable your browser's pop-up blocker.

2. Disable any 3rd party toolbars (e.g., Google or Yahoo Toolbar).

3. Set your security and privacy settings to medium." <http://www.copyright.gov/eco/faq.html>



Figure 2. To register a collection, in the title table choose **Title of Work Being Registered** from the dropdown menu and type in a name of your choice in the name box. This will effectively acts as a “folder” for the collection of works. This author recommends a distinct naming convention that catalogs well as you accumulate registrations, e.g. “Unpublished works by [Your Name] May 1-7, 2010.”

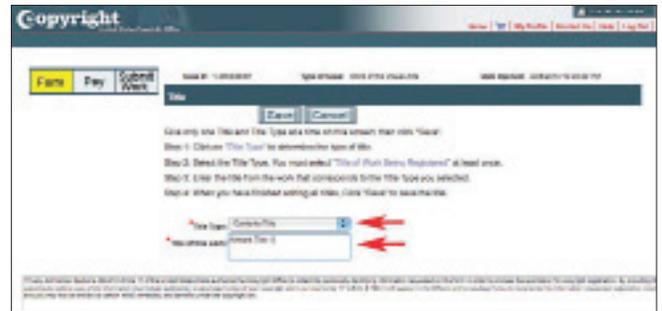


Figure 4. This time, choose **Contents Title** instead from the dropdown menu. Type the title of the first work in your collection into the name box.



Figure 3. Click **Save**, and now you will see the Title appear in the table.

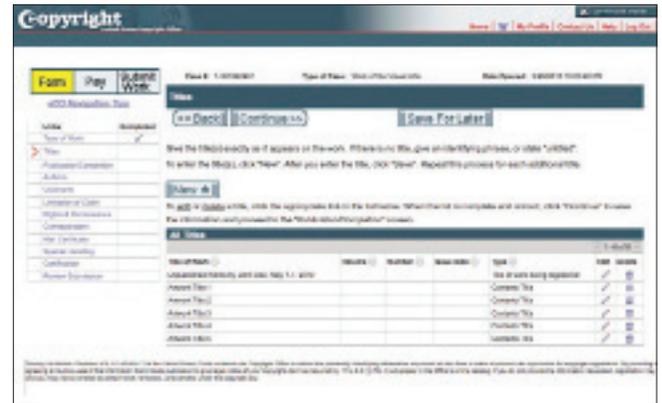


Figure 5. Click **Save** and repeat this process until you have entered each title of the works. Then click **Continue**.

to time some registration and publication dates to maximize registration of unpublished collections, and reduce the bite of a \$35 registration fee per work.

To register a number of unpublished works with a single application and single \$35 fee, they must be grouped as a collection under a **Collection Title**, at least one author must have contributed to every work and the ownership of every work in the collection must be the same.

To register a collection, in the title table choose **Title of Work Being Registered** from the dropdown menu and type in a name of your choice in the name box. This will effectively act as a “folder” for the collection of works. This author recommends a distinct naming convention that catalogs well as you accumulate registrations, e.g. “Unpublished works by [Your Name] May 1-7, 2010.” (Figure 2) Click **Save**, and it will appear in the table, then click **New** again. (Figure 3) This time, choose **Contents Title** instead from the dropdown menu. (Figure 4) Type the title of the first work in your collection into the name box. Click **Save** and repeat this process until you have

entered each title of the works. Then click **Continue**. (Figure 5)

Collection of Published Works: Registration of Multiple Individual Works Contained in the Same Published Work

To register multiple individual works contained in the same publication with a single application, the publication must represent first publication of all the works included in the registration, the registration must exclude any previously published work and ownership of every work included in the registration must be the same.

Collections of Unpublished Works and Collections of Published Works may be registered by eco, Form CO, or by Paper Form VA.^{16 17}

Publication/Completion Date: If the work is already published, you will need to provide the year of creation,

16. Photographers have a special form for **Group Registration of Published Photographs** that allows up to 750 photographs to be registered for a single filing fee using Form CO or Form VA. Refer to Copyright Office Publication FL-124 at copyright.gov for requirements and instructions.

17. As noted previously, **Groups of Contributions to Periodicals** are not currently available for electronic filing. Paper form filing of Form GR/CP allows illustrations published in newspapers or magazines during a twelve-month period to be made on one form provided all illustrations are created by one author, the author is not an employer for hire, all works were published in the same 12-month period as contributions to newspapers or magazines and the author is the copyright claimant. An unlimited number of works may be registered on this form for the paper filing fee of \$65.

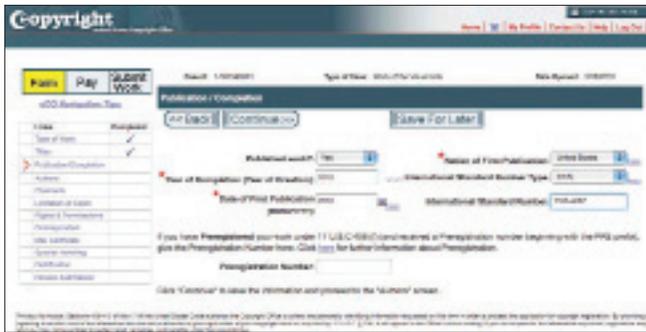


Figure 6. If the work is published you will need to provide the year of creation, date of first publication, nation of first publication, the International Standard Number Type (ISBN for a book, ISSN for a periodical like a newspaper, magazine or journal, or ISRC for sound recordings and music video recordings) and the International Standard Number.

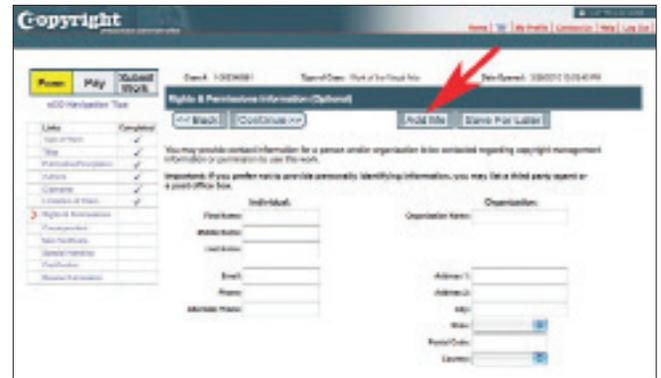


Figure 8. There is an *Add Me* button to designate yourself as claimant.

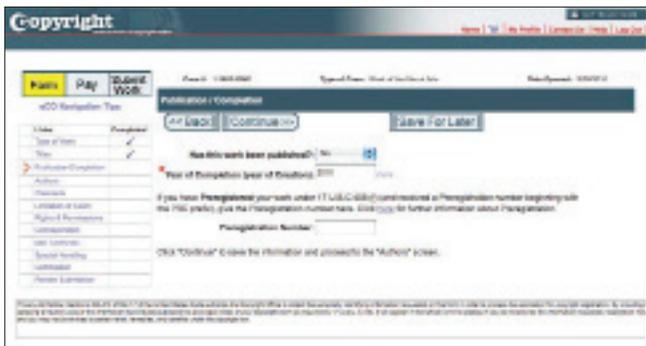


Figure 7. If the work is unpublished you provide the year of creation.

date of first publication, nation of first publication, the International Standard Number Type (ISBN for a book, ISSN for a periodical like a newspaper, magazine or journal, or ISRC for sound recordings and music video recordings) and the International Standard Number. (Figure 6) If the work is unpublished you provide the year of creation. (Figure 7)

Author(s): As the creator, you identify your name, citizenship and domicile, whether the work was anonymous, whether the work was pseudonymous and if so provide your pseudonym, and your year of birth. You are asked for your “Doing Business As” (DBA) name, if applicable. You must also designate whether the work was made for hire, in which case the employer is the author, and the name and identifying information must be of the organization.

Claimants: The author is the original copyright claimant. There is an *Add Me* button to designate yourself as claimant. (Figure 8) (The claimant may also be a person or organization to whom copyright has officially been transferred by law.)

Limitation of Claim: You must limit your claim if your work contains or is based on your previously registered material or previously published material. Here you will identify what is excluded and identify your registration numbers for the underlying work. You must also exclude material from the public domain or material not owned by you that is in the work. If your work does not contain any preexisting material, click *Continue* to skip this part.

Rights & Permissions: Provide your contact information as the person who manages the copyright and permissions to use this work. Again, there is a convenient *Add Me* button to designate yourself and automatically populate the fields with the identifying information you have previously provided. If you prefer not to provide personal identifying information, here you may list a third party agent or a post office box.

Correspondent: Provide the contact information for whom the Copyright Office will contact if it has questions about this application. Completion of the name, email address and correspondence address is mandatory. An *Add Me* button is available.

Mail Certificate: Provide the name and address to which the registration certificate should be mailed. An *Add Me* button is available. Completion of a name and address is mandatory.

Special Handling: If you require expedited processing of your application for registration of a claim to copyright due to pending or prospective litigation, customs issues, or contract or publishing deadlines that necessitate the expedited issuance of a certificate this is how you notify the Copyright Office.¹⁸ The Copyright Office will attempt to process the claim within five working days, but does not guarantee it. The Copyright Office will also notify you of any defects in your claim as expeditiously as possible. The special handling fee for a single claim is \$750. If special handling is not applicable click *Continue* to skip this part.

18. United States Copyright Office Circular10, *Special Handling*, Rev: 01/2008, copyright.gov.

Certification: You must certify that you are the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights of this work and that the information given in your application is correct to the best of your knowledge.

Review Submission: All the information gathered from you on previous screens will be presented in one form for your final review. Everything is editable by returning to the appropriate data entry screen to make the revision. (Remember you must use the back button within the Copyright Office application and *not* your browser's back button. If you use the browser back button you may lose all your work.) When the entire submission is correct, click the **Add to Cart** button. Once you submit your application you will not be able to make changes to it.

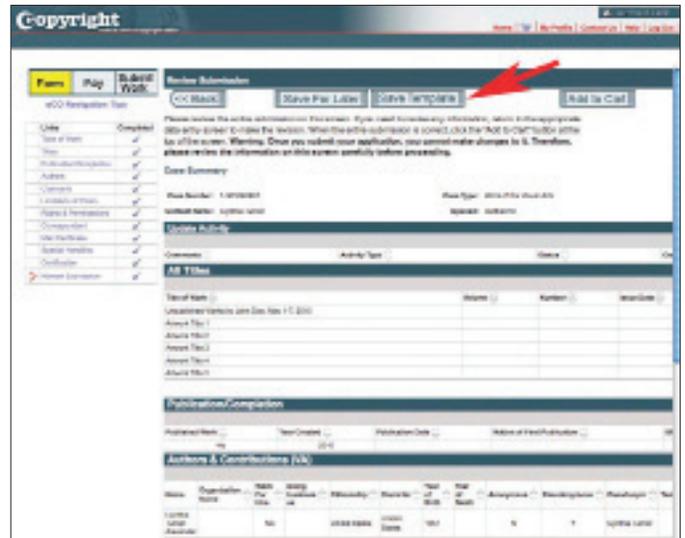


Figure 9. At the Review Submission screen you will have the opportunity to **Save Template**. This is very convenient for authors who tend to routinely register works in a similar manner, and/or register for other authors.

Save Template Feature

At the Review Submission screen you will have the opportunity to **Save Template**. This is very convenient for authors who tend to routinely register works in a similar manner, and/or register for other authors. If you save a complete application as a template you will be able to access the template the next time you log-in. You can save multiple templates of your various frequently used registration forms pre-filled with your personal, standard information. Templates are editable. (Figure 9)

Step 2: Make Payment

You will be automatically redirected to Pay.gov, the online system that permits you to make payments to government agencies. You can choose to pay by direct withdrawal from your bank account, by credit card, debit card, or by withdrawal from an established deposit account.

Step 3: Submit Your Work

Option 1- Upload Deposit

Once your payment is complete you will see the Payment Successful screen. Click on the **Next** button. Click the **Upload Deposit** link in the Deposit Submission table. The **Electronic Deposit Upload** window will appear. *Your pop-up blocker must be disabled or you will not see this window.* The eCO system has a 60-minute upload time-out that limits the size of files that can be uploaded in one session. The maximum file size that you can upload within 60 minutes will vary depending on the method and speed of your connection to the Internet (ranging roughly from 11 MB on 56 kbps modem to 170 MB on a fiber optic cable).

A thumbnail that is approximately 600 x 600 pixels is often adequate. The key is that your deposit *must be recognizable*, so use your judgment to deposit the best copy of each of your individual works. As a best practice, it is also recommended that

you *embed the registration number or date of registration* into your digital file. You can compress the file(s) by zipping them, breaking large files into two or more smaller files so that the total is less than the maximum size for uploading, or upload multiple deposit files in more than one session by closing the **Upload** window after submitting the first batch, then again clicking the **Upload Deposit** link for the same case in the **Deposit Submission** table to select and upload more files.

eCO accepts these image files:

- .bmp (Bitmap Image)
- .dwg (AutoCAD Drawing)
- .dxf (Autodesk Design)
- .fdr (Final Draft)
- .gif, .giff (Graphics Interchange Format)
- .jpg, .jpeg, .jif (Joint Photographic Experts Group)
- .pdf (Portable Document Format)
- .pic, .pict (Picture File)
- .png (Portable Network Graphic)
- .psd (Photoshop Document)
- .pub (Microsoft Publisher)
- .tga (Targa Graphic)
- .tif, .tiff (Tagged Image File Format)
- .wmf (Windows Metafile)

eCO accepts these video files:

- .aif, .aiff (Audio Interchange File Format)
- .au (Audio File)
- .mid, .midi, .rmi (Musical Instrument Digital Interface)
- .mp3 (MP3 Audio File or Layer 3 Audio Compression)
- .ra, .ram (Real Audio File)***)
- .rmi (Resource Interchangeable File Format)
- .wav (Windows Wave Sound File)
- .wma (Windows Media Audio File)

Text, presentation, compressed and audio files acceptable for uploading to the eCO system are listed at <http://www.copyright.gov/eco/help-file-types.html>.

Option 2 – Send by Mail

If your deposit is not digital, or you prefer not to electronically upload your deposit, then you have the option to send your deposit by mail. In that case click **Create Shipping Slip** instead. A **Shipping Slip** link will appear in the **Attachments** column. Click the **Shipping Slip** link and print out and attach the shipping slip to your deposit. You must mail the deposit within 30 days to the Copyright Office.

Managing Your Public Records Outdated Author Contact Information

If a searcher *knows* your work belongs to you and is trying to locate you, your registration records may help provide your contact information. Because of this, you may consider filing a change of address or name, if appropriate. The cost ranges are considerable. You can change contact information on a completed registration in one of two ways:

1. Expensive address and/or name change

You can record a document listing all your registered works by title and registration number, along with your new address. Your current address will then be included in the Copyright Office records and will be available to those who search the document file. The original registration records are not changed. There is a \$105 fee for recording a document covering no more than one title. An additional charge of \$30 is made for each group of ten or fewer additional titles. For example, to change the address on 500 titles would cost \$1,605. A collection of published works or a collection of unpublished works counts as one title, not the number of titled works that are contained within the collection.¹⁹

2. More economical address and/or name change

You can file a supplementary registration on Form CA to amend a completed registration to indicate a new address. The filing fee for Form CA is \$100 per registration. If you have multiple registrations, filing a Form CA only on the *most recent* registration will effectively get your new address on record. The Copyright Office advises that filing your next registration for a new work in the future will *also* effectively do this, if you continue to create *and* register.²⁰

Appendix 2: Protections Added Under the Digital Millennium Copyright Act (DMCA)

In 1998 the U.S. implemented two WIPO (World Intellectual Property Organization) treaties and amended the 1976 Copyright Act by passing the Digital Millennium Copyright Act (DMCA). The DMCA provides important protections for artist metadata and provides for online infringement enforcement.

Takedown Notices

Under DMCA, if you find your images infringed online you can force the Internet Service Provider hosting that site to remove or disable the site. To do this, you need to send a “takedown” notice to the ISP. *The statute rules are precise.*¹ You must follow them carefully, or risk exposing yourself to perjury charges or claims for damages. The Copyright Office provides detailed advice at <http://www.copyright.gov/online/p/>.

Metadata Protection

The DMCA² provides other important protections for artists, including making it a criminal offense to *remove, alter or falsify authorial metadata*, including intentionally *distributing* works with removed, altered or falsified authorial information.

19. See US Copyright Office Circular 12, *Recordation of Transfers and Other Documents*, Rev: 02/2009, copyright.gov for further information.

20. See US Copyright Office Circular 8, *Supplementary Copyright Registration*, Rev: 07/2009, copyright.gov and the instructions for Form CA for further information.

Appendix 2

1. 17 USC § 512(c)(3). Limitations on liability relating to material online, Elements of notification. <http://www.copyright.gov/title17/92chap5.html#512>
2. 17 USC § 1202 Copyright Protection and Management Systems, Integrity of copyright management information.