

# COPYRIGHT: NOTICE, REGISTRATION, AND DEPOSIT

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**B**ecause copyright exists from the moment a work is fixed in tangible form, an author might well ask why she should bother to register the copyright in her work or to make sure it contains a notice when published. There are several excellent reasons to do so, chief among them are the great advantages the author enjoys if her work is infringed.

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## PUBLICATION WITH COPYRIGHT NOTICE

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As of March 1, 1989, when the United States officially joined the Berne Convention, US copyright law no longer requires a copyright notice to be placed on published works to receive full protection. (Works created before March 1989 are still subject to certain notice requirements.) Most copyright owners, however, continue to publish with copyright notice. Notice warns potential infringers that the work is protected by copyright and thereby precludes the argument that an infringement was innocent. In addition, the Universal Copyright Convention still requires copyright notice and a number of its signatories are not part of the Berne Convention, meaning that full copyright protection in those countries requires published works to contain a proper notice.

### FORM OF COPYRIGHT NOTICE

For purposes of the Universal Copyright Convention, the proper form of copyright notice has three elements: © (the spelled out word “copyright” will not do); the author’s name or an abbreviation by which the name can be recognized (or an alternative designation by which the author is well known), and the year of publication (or the year of creation, if the work is unpublished). The notice should appear in a conspicuous place on a published work, such as the first page of a book. If the United States government primarily created a work, a statement indicating this fact must be included with the copyright notice, or else the work will be treated as if notice had been omitted. Copyright Office Circular 3, *Copyright Notice*, discusses in detail the proper form and placement of copyright notice.

### DEFECTIVE NOTICE

Most works published in the United States before March 1989 without correct copyright notice might have entered the public domain, depending on the circumstances and the date of first publication. Works published without notice before January 1978 are more likely to have forfeited copyright than those published between January 1978 and March 1989.

Under the 1909 Copyright Act, covering pre-1978 works, a missing or defective notice on a published work almost always led to the irrevocable loss of copyright. For example, if the notice gave a year later than the year of first publication, copyright was lost. There are a few exceptions to this harsh rule. The use of a year earlier than the correct year of first publication would reduce the copyright term but would not invalidate the copyright. If notice was omitted from a relatively small number of copies distributed, the copyright would continue to be valid, although an innocent infringer would not be liable for relying on the lack of notice.

Works published between January 1978 and March 1989 did not always forfeit copyright if notice was incorrect or omitted when first published. If the wrong name appeared on the notice, copyright remains and the actual owner may still register it in her own name. If a writer contributed a piece to a collective work such as a magazine but the publisher omitted a copyright notice in the writer’s name, the contribution remained protected if the publisher’s own notice appeared in the front of the magazine. If an earlier date than the actual date of publication appeared on the notice, the term of copyright is computed from the earlier date. (Note that

this penalty affects only copyrights with fixed terms of years, such as those owned by a business entity; if the author is a person the term is measured from the date of the author's death.) If the name or date was omitted from the notice or if the date was more than one year later than the actual date of publication, the work is treated as if notice was completely omitted. In those cases of omission, the copyright is still not forfeited if any one of the following three tests can be met:

Notice was omitted from only a relatively small number of copies distributed to the public; or

Notice was omitted from more than a relatively small number of copies, but copyright then was registered within five years of publication and a "reasonable effort" was made to add notice to the copies distributed in the United States or

Notice was omitted despite the author's written instructions that notice appear on the work.

If none of these conditions apply, then the failure to include notice means the work is in the public domain.

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## REGISTRATION AND DEPOSIT

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All copyrighted works may be registered with the United States Copyright Office, the official repository for copyright registrations, whether or not they have been published. Although book publishers usually contractually agree to register a work in the author's name within three months of publication, authors should consider registering the works they intend to self-publish or otherwise risk that it could be infringed. The right to sue for infringement, evidentiary advantages, and, depending on when the work is registered, attorney's fees and statutory damages all are available only if the owner has registered the work. Registration also allows others to find you or your publisher in the Copyright Office's database. The cost of registering a work is not prohibitive (in most cases, online registration costs \$35), the application process is short and straightforward, and groups of works may be registered together.

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## ADVANTAGES OF REGISTRATION

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If your work is infringed, you must register the copyright before you may file a lawsuit in the United States for infringement. The only exception to

this requirement is when the infringed work is protected under the Berne Convention and its country of origin is not the United States.<sup>15</sup> Your certificate of registration, if issued within five years of first publication, is presumptive proof in court of the validity of the copyright and the facts stated on the certificate. If you have registered your work within three months of publication or before it is infringed, you are eligible (if you win your suit) to receive from the infringer your attorneys' fees and "statutory" damages (a special kind of damages that an author may elect to receive in lieu of proving any actual loss). Registration also cuts off any defense that an infringement was innocent because of a defective or missing copyright notice.

The 1976 Act and subsequent amendments have made renewal of the registration of pre-1978 works optional, but the same legal advantages that avail new registrations also apply to renewal registrations. As shown on the renewal form, it may be possible to renew a group of works belonging to one owner if they expire in the same year. Circular 15, *Renewal of Copyright*, offers additional information about copyright renewal and Circular 15t, *Extension of Copyright Terms*, discusses the extended terms of copyrights for pre-1978 works, whether the copyright was in its first 28-year term or in its renewal term.

## HOW TO REGISTER A COPYRIGHT

Registering a copyright essentially requires a claimant to submit to the Copyright Office relevant information about the nature of the work, who owns it, and when it was created and/or published. It requires the registrant to complete a form, pay a fee, and, if the work has been published, send in the "best copy" for deposit in the Library of Congress. There are two ways to register: electronically and through the mail using a form tailored to the type of work. In 2009 the Copyright Office instituted the electronic registration option. The so-called "eCO" (for "electronic Copyright Office") system makes it easier, cheaper, and faster to register copyright than through the mail. See [www.copyright.gov/eco](http://www.copyright.gov/eco) for a tuto-

<sup>15</sup> Although authors of foreign works originating in a Berne Convention country other than the United States do not have to register before suing for infringement here, they should consider the other advantages of timely registration.

rial, FAQs, and fee information. If you use eCO, you don't have to choose among various forms, you can pay by credit or debit card or Automated Clearing House, and the fee is \$35 versus \$65 for using a mail-in form. Processing time is also reduced, from an average of five to eight months for mailed registrations, three to four and one-half months for eCO as of this writing. If your work is unpublished, you may upload a digital deposit copy at the time you register. If the work is published, eCO allows you to print a shipping slip to include with the work.

To register by mail, you must first choose the correct form (available at [www.copyright.gov/forms](http://www.copyright.gov/forms)) based on the kind of work you are registering. Form TX (for "text") is used for all nondramatic literary works, including books, poetry, articles and other contributions to collective works, and short stories. Periodicals or serial issues (not to be confused with contributions to periodicals) are registered with Form SE. Works meant to be performed, such as songs, scripts, and plays, use Form PA. Each form has corresponding step-by-step instructions. Along with the completed form, the filing fee of \$65 and deposit copies of the work must be mailed in one package to the Copyright Office. In the event of litigation, it is important that the work deposited with the Copyright Office show all of the features for which the copyright is claimed. Also, make sure that the deposit copies are not likely to fade or alter with time. Review Circular 1c, *Make Sure Your Application Will Be Acceptable*.

Upon processing, the Copyright Office will mail you the official copyright certificate. Although it might take several months to a year or more to receive the certificate, the official registration dates back to when the Copyright Office received the application, deposit copy, and fee. Because the date of registration might determine whether a claimant can win statutory damages and attorneys' fees from an infringer, it is prudent to send a mailed registration by certified mail and request a return receipt.

After receipt of your registration, the office will assign an examiner to process your registration. If the examiner finds problems with the registration, the Copyright Office will contact you. Depending on the nature of the problem and your response to it, the official registration date will likely date back to the Copyright Office's original receipt of the application. To correct a mistake or amplify information contained in a completed registration, you should use Form CA for supplementary registration, but only after the office has issued a registration certificate. This could take many

months, so take care that your registration is as comprehensive and correct as you can make it.

## GROUP REGISTRATION

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Unpublished and published works may each be registered in groups, which can save significant time and money. The rules are different for published and for unpublished works.

### *UNPUBLISHED WORKS*

Authors may register an unlimited number of unpublished pieces as a single work, even if they are unrelated. Doing so saves significant time and money compared to registering each work in the collection individually. To qualify for group registration for an unpublished collection, the following conditions must be met:

The deposit materials are assembled in an orderly form;

The collection bears a single title identifying the whole, such as “Collected Writing of Jane Doe, January, 2013”;

The person claiming copyright in each work forming part of the collection is also the person claiming copyright in the entire collection; and

All the works in the collection are by the same person or, if by different persons, at least one of them has contributed copyrightable material to each work in the collection.

A work registered when unpublished need not be registered again when it is published (although if it adds substantial new material or is substantially different, it should be registered when published to protect it fully).

### *PUBLISHED WORKS*

Freelance contributors should register their published contributions even if their publishers register the periodical as a collective work. Registering the collective work does not confer the benefits of registration on each individual contribution to it. A writer may register as a group all contributions to any number of collective works published within a twelve-month period, as long as each contribution has the same copyright claimant (and, if published before March 1, 1989, had a proper copyright notice). Currently, group registration for published contributions can only be made on paper and through the mail, so the fee is \$65. The registrant completes both the basic

application form (Form TX for literary works) and Form GR/CP. Form GR/CP and its instructions are available at the Copyright Office website.

Although a writer may register an entire year's works at one time, it is better to register collectively every three months in order to qualify for attorneys' fees and statutory damages in case of infringement. At \$65 for each group registration, the total cost to register a year's work on a quarterly basis is \$260. If any of your work is infringed, that investment could pay off many times over. Chapter 5 describes the rules and procedures of an infringement lawsuit.

### DEPOSIT COPIES

Along with the registration form and fee, a registrant must "deposit" (i.e., deliver) one complete copy of an unpublished work or two copies of the "best edition" of a published work to the Copyright Office. If editions of differing quality have been published, Copyright Office guidelines explain which edition is considered the "best" (Circular 7b). For works first published outside the United States, only one complete copy of the work must be deposited. If a work is published simultaneously in the United States and abroad, it is treated as if first published in the United States.

For a group registration of published contributions to periodicals, the deposit materials can be one copy of any of the following:

One complete copy of each periodical or section of a newspaper in which the work appeared; or

The entire page(s) containing the contribution; or

The contribution clipped from the collective work; or

One photocopy of the contribution as published.

For a multimedia work first published in the United States, the registrant must deposit one complete copy of the best edition. Circular 55, *Copyright Registration for Multimedia Works*, discusses the deposit requirements and the forms for the different combinations of works that might comprise a multimedia work.

The deposit for works fixed in CD-ROM is one complete copy, including one copy of the disk, one copy of any accompanying operating software and instructional manual, and, if the work is in print as well as on CD-ROM, one printed version of the work.

*ALTERNATE DEPOSIT*

In certain cases, such as registration of limited editions or fine printings, a registrant might be able to make an alternate deposit instead of a valuable copy of the work. The registrant must make a special request to the Copyright Office for permission to submit “identifying material” rather than full copies of the work. The Copyright Office rules on requests for this “special relief” on a case-by-case basis. Generally, whether a work is published or unpublished, only one set of alternate deposit materials must be sent.

*DEPOSIT FOR THE LIBRARY OF CONGRESS*

In addition to depositing copies for registration, copies of works published in the United States must be deposited with the Library of Congress. (Certain kinds of works are exempt from the Library of Congress deposit requirement, including contributions to collective works; lectures, speeches, and addresses when published individually and not as a collection, among others.) Delivery of the correct number of deposit copies for registration within three months of publication will satisfy the deposit requirement. If an author registered her work before publication, then within three months of publication two copies of the best edition of the work must be deposited with the Copyright Office for the Library of Congress. The Library of Congress deposit requirement does not affect copyright protection. For example, if a writer registered a work before it was published and failed to deposit two copies upon publication, the Copyright Office might request copies from the writer or publisher, and failure to do so could subject the author to a fine, but the copyright would remain valid.

*FILLING OUT THE COPYRIGHT FORMS*

The application forms come with directions. Several of the mail-in paper forms are reproduced here. The eCO is the preferred and much faster filing method, but this section is included to present additional filing options in the absence of electronic communication.

1. **Unpublished nondramatic literary work—Form TX**

**Space 1**—Fill in the title of the work and the nature of the work, such as fiction, nonfiction, poetry, textbook, advertising copy, or computer program.

**Space 2**—State the author’s name and indicate [if accurate] that the work is not a work-for-hire. Give the date of the



author's birth nation of citizenship or permanent residence, and indicate [if accurate] that the work is neither anonymous nor written under a pseudonym. Where it asks "Nature of Authorship," briefly explain the author's particular contribution (e.g., "entire text").

**Space 3**—For an unpublished work, give the year the work was finished; leave blank the date and nation of first publication.

**Space 4**—The writer's name and address should be shown for the copyright claimant. A claimant is either the writer or the owner of *all* rights who obtained rights from the writer; it is *not* a licensee or an owner of *some* exclusive rights.

**Space 5**—Answer no, if the writer did not previously register the work, or yes, if the author is registering new material to a work that had been previously registered.

**Space 6**—If the writer has added new material to a previously registered work, explain what material was added to the prior work to make a derivative work (e.g., "new text" or "revisions"). The registration will cover the new elements of the derivative work.

**Space 7**—Fill in the information about a deposit account, if the author has one. Give the author's name and address for correspondence purposes.

**Space 8**—Check the box for author, sign, and then print or type the name.

**Space 9**—Enter the author's name and address for mailing of the certificate of registration.

2. **Group registration for unpublished nondramatic literary works—Form TX**

Fill out Form TX as you would for an unpublished nondramatic literary work, except for the following changes:

**Space 1**—The collection must have its own title; use it here.

**Space 3**—The year in which creation of the work was completed is the year in which the most recently completed work in the collection was completed.

3. **Published nondramatic literary works—Form TX**

Fill out the form as you would for an unpublished nondramatic literary work, except for the following changes:

**Space 3**—In addition to the date of creation, give the date and nation of first publication of the work.

4. **Group registration of published contributions to periodicals—Form TX**

Use Form TX if the contributions are nondramatic literary works, along with the adjunct Form GR/CP. Form TX is filled out as for a published nondramatic literary work, except for the following changes:

**Space 1**—In the space for the title, write “See Form GR/CP, attached” and leave the other parts of Space 1 blank.

**Space 3**—Give the year of creation of the last work completed and leave blank the date and nation of first publication. Next, fill out **Form GR/CP**. **Space A**—Mark Form TX as the basic application and give the name(s) as both writer and copyright claimant.

**Space B**—For each box, fill in the requested information about the title of each contribution, the title of and other information about the periodical, and the date and nation of first publication. Mail Form GR/CP together with Form TX, the deposit copies, and the filing fee of \$65.

5. **Unpublished works in the performing arts—Use Form PA**

Includes works intended to be performed for an audience that is physically present at the performance and also works delivered indirectly to an audience by means of a device or process. This form is filled out in essentially the same way as for an unpublished nondramatic work.

6. **Published works of the performing arts—Use Form PA**

This form is filled out essentially the same way as for a published nondramatic literary work.