



301:Software Copyrighting 101

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Faculty Biographies

Wendi E. Okun

Wendi E. Okun is senior corporate counsel in the corporate law department of LSI Logic Corporation, located in Milipitas, California. Her primary responsibilities include drafting and negotiating a variety of sales and business development agreements for hardware and software.


Prior to joining LSI, Ms. Okun was assistant general counsel for Liberate Technologies in San Carlos, California where her practice included software licensing, business development agreements, mergers and acquisitions, and employment law issues. Prior to Liberate, Ms. Okun was senior corporate counsel for Wind River Systems, Inc. in Alameda, California, where her duties included software licensing, SEC compliance, and mergers and acquisitions. Before law school, Ms. Okun worked in Paris at the Organization for Economic Cooperation and Development.

She is the immediate past president of the board of governors of the University of San Francisco School of Law, and serves as secretary for ACC's San Francisco Bay Area Chapter.

Ms. Okun received a BA from the American University of Paris and is a graduate of the University of San Francisco School of Law.

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Copyrighting Software 101 Session #301

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- Scope of Copyright Protection
- What Does Copyright Ownership Mean
- Why Register?
- How To Register
- Enforcement

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Scope Of Protection - What Is And Is Not Protected By Your Software Copyright?

A. U.S. Copyright law – certain basics:

- *Purpose*: The purpose is not to reward authors, nor hard work, but is to promote the progress of science and the arts (for the public good) -- by rewarding personal endeavors in those areas. [Art. I, sec. 8 of U.S. Constitution.; U.S.S.Ct. in *Feist*.]
 - Copyright applies to original, creative expression of ideas, information.
 - It applies to the particular WAY we communicate, not WHAT we seek to communicate.
 - Thus, ideas, facts, methods, systems, etc. are not protected by a copyright – only original expression of such notions is protected.
- 17 U.S.C. 102(b): In no case does copyright protection . . . extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery . . .

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- Ideas are *not* protectable
 - Example: a boy and his dog
- Expression *is* protectable
 - Examples:



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Scope Of Protection

- Copyright Act's definition of software: a set of statements or instructions to be used directly or indirectly in a computer to bring about a certain result. [17 U.S.C. 101]
- Five (5) Exclusive Rights.
If a copyright applies to a work, the copyright owner has five (5) exclusive rights regarding that work:
 - to reproduce the work,
 - to make derivatives of the work,
 - to distribute the work to the public,
 - to publicly display the work, and
 - to publicly perform the work.


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Scope Of Protection

- But the 5 exclusive rights safeguard only the work's protectable expression from appropriation and not to the appropriation of any elements of the work that do not constitute protectable expression.
- Thus, in determining if copyright infringement has occurred – or if one simply wishes to know the extent to which his/her copyright provides protection to the work – normally one must first identify what elements of the work are and/or are not protected expression.
- (More to come on this later.)

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Scope Of Protection


Copyright Commencement.
As soon as **fixed** in a *tangible medium of expression*, the copyright exists!

But, to be protectable, the expression must meet tests of **originality** and (at least more than *di minimis*) **creativity**.

And the scope of a copyright's protection is further limited by certain *affirmative defenses*, such as --

- fair use;
- merger doctrine; and
- *scenes a faire* doctrine.

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Scope Of Protection

- A Note on International Protection:
 - Copyright is more similar than different from country to country. (Treaties such as the Berne Convention help a great deal – as does industry-driven international lobbying.) Yet copyright rights nevertheless are *national* in nature. Thus, to stop wrongful copying in Italy, for example, you must depend on the copyright laws of Italy for your rights.
 - Source code and object code are protected against literal copying in most countries.
 - But protection of certain *non-literal* elements (including the **structure, sequence, organization** and “**look and feel**” of a program) have generally *not* been embraced overseas as they have (somewhat) in the U.S.

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Scope Of Protection

B. Applying the legal basics

- 1. So, what's the "**expression**" implicit in a computer program that a U.S. copyright generally will protect?

(a) Title, or name of the software program	No
(b) Facts/Data	No
(c) Ideas	No
(d) Methods	No
(e) Functionality – functions and features	No

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Scope Of Protection

(f) Program elements deemed to result from reasons other than author creativity . . . i.e., dictated by considerations of efficiency and/or ease of use (recall *merger* doctrine), or by the function to be performed (*merger* doctrine again), or by external factors (insufficient creativity or *scenes a faire* doctrine).* **No**

* Examples of external factor (Note *scenes a faire* doctrine):

- Operating system or hardware-device compatibility
- Standard programming techniques
- Standard program features
- Industry demands

(g) Algorithms **No**

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Scope Of Protection

(h) The program's numerous step-by-step instructions/statements **Yes** (protectable)

CODE PROTECTED AGAINST LITERAL COPYING:

- Object code (0's and 1's) (machine readable expression)
- Source code (human readable expression)
- Other code types (e.g., script)

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Scope Of Protection

(i) The program's *Look and Feel* **Yes** (*somewhat*)

L+F – User interfaces
Probably the total, over-all arrangement, selection, layout of user interfaces (e.g., screen displays, keyboard schema) will be protectable . . .
. . . But, frequently, not too far down into the details or component parts . . .
. . . And GUI much more than keyboard interfaces.

L+F – Screens / Screen displays
Copyright in a computer program will include screens generated by the code even if printouts of the screens are not submitted to the Copyright Office.
But, it's far from settled that screens may be separately protected.

L+F -- Menu structures
Menu structures have been held to be not capable of copyright protection (Lotus and Borland)

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Scope Of Protection

(j) The program's *structure* or *design** **Yes (somewhat)**
 . . . This area of protection is well recognized but vulnerable.
 * (a/k/a: Logic, Flow, SSO – structure, sequence, organization)

(k) Reports generated by the software **Probably**
 . . . Degree/depth of protection is thin
 . . . and watch “blank forms” doctrine.

(l) The program's documentation* **Yes (generally)**
 . . . But here too, protection can be “thin.”
 * Including: Technical documentation
 User manuals, Tutorials

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Scope Of Protection

2. Note – some of the “erosion” of protectable scope is the effect of certain *affirmative defenses*.

- Fair use [17 U.S.C. 107; *Sega v. Accolade* (CA9 1992); *Atari v. Nintendo* (Fed. Cir. 1992)]
 - Reverse engineering
 - Intermediate/Interim copying
 - “Clean-room” techniques
 - Transformative use
- Merger doctrine (where idea and expression are deemed *merged*)
- *Scenes a faire* doctrine
- Insufficient creativity* (e.g., the impact of “external factors”)
- What about licenses? . . . or copyright *misuse*?

* perhaps not technically an affirmative defense

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Scope Of Protection

3. A Note on Multimedia*

* For example, software or software-related products/works that include not only text and graphic content, but Music, Sounds and Video as well

- In general – protectable as part of the over-all work
May be an *audio-visual work*, however (AV), rather than a *literary work* (TX)
- Computer games: Often consist of two key elements . . .
 - the underlying software – normal rules apply
 - the Audio-visual elements – separately copyrightable (Cf. software screen displays)*

* Although depth of protection could be limited by *merger doctrine* and *creativity* shortfalls, generally entitled to copyright protection separate and apart from the underlying software.

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Scope Of Protection

C. What other proprietary **rights** – besides copyright - - might be relevant to computer software?

Note:
Owners of works need to consider securing these rights; and
Users of works need to avoid violating these rights

- Trade secret rights
- Patent rights
- Trademark rights
- Contract/License rights
- Rights of Publicity

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Scope Of Protection

- Trade Secret rights
 - Something can be a trade secret if its secrecy provides value to the company/person holding it in secret.
 - Must take reasonable steps to protect secrecy.
 - Oftentimes software companies/owners claim their underlying source code is a trade secret.
 - Trade secret status can be lost for software elements disclosed in the prosecution of a patent . . . or disclosed to the Copyright Office with a registration application . . . or otherwise published.
 - Oftentimes license agreements are employed to prohibit re-engineering (and thus protect trade secret status of source code), and permitted code redactions and omissions are used when registering for copyright (to preclude/limit publication).

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Scope Of Protection

- Patent rights
 - (Essentially, the right to enjoin others from making, using or selling the invention)
 - Invention must be novel, useful and non-obvious.
 - Not patentable: Laws of nature; Natural phenomena; Abstract ideas.
 - 20 years duration, generally.
 - Expensive to prosecute (i.e., obtain).
 - Patents can protect the process or method performed by a computer in accordance with a software program – as either (i) a *machine* (in that the software renders what was a *general purpose machine* into a new machine – i.e., a *special purpose machine*) or (ii) a process . . . *employing* an equation/algorithm.
 - » E.g., generation of a data stream to unlock a console.
 - Consider design patents for computer display icons.

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- Trademark rights
 - The overall *sensory-perceptive* image or design of the software might be protectable as trade dress . . . This requires that non-functional elements have acquired distinctiveness that the public/the market associates with the software owner (i.e., *secondary meaning*).
 - Screen icons might be protectable as trade marks
 - Trademarked names of the software, or the software owner, can sometimes be used to combat pirating of the software.
 - Consider role of trademark in *Sega v. Accolade* as well.

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Scope Of Protection

- Contract/License rights
 - Software owners use license agreements to
 - Avoid first sale doctrine . . . *ownership* of a copy
 - Protect trade secret rights
 - Limit customer's conduct, use of the software
 - Beware copyright misuse – caution re: (i) prohibitions on making competing works or using competing works of others; (ii) conduct equal to unfair competition, or antitrust.
 - » What about prohibiting reverse engineering, since that can be a fair use? Products
 - See also penultimate slide in next section (OWNERSHIP)

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Scope Of Protection

● Can multiple methods be used to secure proprietary rights?

	Copyright	Patent	Tr.Secret	T-mark	Contract
Copyright	N/A	Yes ¹	Yes ²	Yes ³	Yes ⁴
Patent	Yes ¹	N/A	Yes ⁶	No ⁵	Yes ⁴
Tr. Secret	Yes ²	No ⁵	N/A	Yes ⁷	Yes ⁸
T-mark	Yes ³	Yes ⁶	Yes ⁷	N/A	No ⁹
Contract	Yes ⁴	N/A ⁵	Yes ⁸	N/A ⁹	N/A

- 1: Yes - Copyright for the expression, and Patent for the implicit/claimed method or process.
- 2: Yes - Copyright for the visible expression, and Tr.Secret for the source code, structure.
- 3: Yes - Copyright for the expression, and T-mark for trade dress (re certain look and feel elements), plus Names, Logos.
- 4: Yes - Copyright for the expression, and License to protect tr.secrets, prevent *ownership*, limit use, etc.
- 5: However, associated but un-patented know-how might be separately licensed, along with a pat. license.
- 6: Yes - Patent for the claimed method or process, and T-mark for trade dress look and feel, plus Names, Logos.
- 7: Yes - Tr.secret for the source code, structure, and T-mark for trade dress, names, logos.
- 8: Use of contract - to secure assurances of confidential treatment - is vital when trade secrets are licensed, or rights lost.
- 9: However, as a practical matter (and for some legal considerations) written licenses can be quite important

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Scope Of Protection

● Rights of Publicity.

- Essentially: it is the right to redress the unauthorized use of one's likeness (name, image, voice, persona) for commercial purposes.
- Stems from privacy rights
- Creature of State law - majority of States recognize.
- But a 1st Amendment/"fair use" privilege applies.
- The point: a R. of. P. release is NOT implicitly included with a copyright license (e.g., re multimedia works).

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Ownership - Is The Software Copyright Yours?...All Yours?

- A. Owning the Copyright
 - Copyright ownership vests in *Authors*

Authors own copyrights – at least initially. 17 U.S.C. 201(a)

- Authors are of course free to assign their copyrights to another/others.
[17 U.S.C. 201(d)(1)]

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- NOTE - Owning the copyright in a work and owning the medium in/on which the work is affixed or recorded are two different things. [17 U.S.C. 202].
- So . . . Who is the "Author"?
 - In general . . .
 - . . . the author/owner is the person who actually develops the copyrighted work . . . who actually originates and affixes the protectable expression in a tangible medium of expression.

In the context of a software program, this is the person who actually develops the code . . . who actually creates the protectable expression to which the copyright will attach.

But someone who *merely* gives advice: dictates required functionality, reviews and critiques the work, suggests improvements, etc. generally is NOT an author/owner for copyright purposes.

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Ownership of Software Copyrights, Copies

- Works Made for Hire
 - For works that are deemed (by the Copyright Act) “works made for hire” the answer is different:

The employer or other person for whom the work was prepared is considered the author [17 U.S.C. 201(b)]
 - There are two kinds of *works made for hire* (“WMFH”)
 - Employer WMFH
 - Commissioned WMFH

Employer WMFH:
Works developed by a regular employee working within the scope of his/her employment
... owned by the employer – i.e., employer is deemed the author.

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Commissioned WMFH:

- Works that meet each of the following three requirements --
 - (A) the development of the work is specifically commissioned by a second party (normally for a pre-agreed development fee or other compensation, but not necessarily);
 - (B) the work is commissioned for one of nine specific statutory uses . . . i.e., for use --
 1. as a contribution to a collective work;
 2. as a part of a motion picture or other audiovisual work;
 3. as a translation;
 4. as a supplementary work;*
 5. as a compilation;
 6. as an instructional text;
 7. as a test;
 8. as answer material for a test; or
 9. as an atlas.
 - (C) a written agreement specifically provides that the work is to be a work made for hire.

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Ownership of Software Copyrights, Copies

... Works meeting all three requirements – A, B and C -- are also *works made for hire* and they are owned by the party commissioning the work – that party is deemed the author (and owner) of the work for copyright purposes.

- **Employee or Independent contractor?**
Frequently, disputes over copyright ownership come down to whether the actual maker of the work was an employee (and was acting as such) when the work was being created. This is because the matter of employee status can frequently affect copyright ownership results under BOTH varieties of WMFH:
 - For *Employer WMFH*,
The employer does NOT end up owning the copyright if it turns out the maker of the work was not an employee, or was not acting as such while creating the work;
 - and**
 - For *Commissioned WMFH*,
Where a commissioning party has not secured a written agreement stating that the project results will be work made for hire, or where it turns out the work does not fall within one of the nine statutory categories, oftentimes the commissioning party will argue that the maker of the work was acting as an employee for purposes of the project (and that the work is therefore owned by the commissioning party as *Employer WMFH*).

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Ownership of Software Copyrights, Copies

- And the answer to these employee status questions is determined by having resort to common law agency principles. Relevant factors will therefore include (but without limitation) :
 - » the hiring party's right to control the manner and means by which the product is created;
 - » the skill required;
 - » who provides the tools;
 - » where the work is performed;
 - » the duration of the relationship;
 - » whether the hiring party has the right to assign additional projects to the hired party;
 - » the level of discretion the hired party has over when and how long to work;
 - » the characteristics of compensation;
 - » the hired party's role in hiring and paying assistants (if any);
 - » whether the work performed by the hired party is part of the regular business of the hiring party;
 - » whether the hiring party is, in fact, in *any* business;
 - » the provision of employment benefits; and
 - » the tax treatment of the hired party.

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Ownership of Software Copyrights, Copies

- SO . . . does software commissioned from an independent contractor qualify as *work made for hire*?
In other words, is software one of the kinds of copyrightable works that fits within the nine statutory categories?
 The *usual* answer probably is **no**(!)
 Although certainly there are exceptions . . .
 - None of the 9 clearly encompasses software; and
 - U.S. Copyright Office has said as much.
- Thus: *Assignments* can be critical!

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Ownership of Software Copyrights, Copies

- Note – it *can* make a difference whether one receives copyright via the *Commissioned WMFH* route or via the *assignment* route:
 - A copyright in a WMFH --
 - » lasts for 120 years (or, if shorter, 95 years from the date of publication);
 - » is not subject to the Copyright Act's 35-year termination-of-transfer rules;* and
 - » does not have the problem of *moral rights* (or rights of attribution or integrity under 17 U.S.C. 106A) being vested in another party.
 - By contrast, all other copyrights –
 - » last for the life of the author plus 70 years (or, in the case of joint works, 70 years beyond the death of the last surviving author);
 - » include a right in the original author/owner to terminate any previously granted assignment of the copyright approximately 35 years later;* and
 - » an assignor of the copyright cannot include moral rights (or rights of attribution or integrity under 17 U.S.C. 106A) in the assignment.

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Ownership of Software Copyrights, Copies

- Joint Authorship/Ownership
 - **Definition.** 17 U.S.C. 101: A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.
 - **Intent is Important.** Where two or more persons intend that their respective contributions will be merged in order to produce a single work, the result is a "joint work."
 - **Co-author Test.** The test for determining if a given contributor is legitimately a co-author/owner is whether the person has contributed material to the whole that would be separately copyrightable by itself.
 - **Co-Author Rights and Duties.**
 - Each co-author -- right to independently use and exploit the *entire* work.
 - But each co-author must account to the other co-authors for any profits.
 - Each co-author free to sell its co-ownership interest.

Obviously, a written agreement among co-authors, setting forth how they will proceed going forward, and share profits, could help significantly in setting expectations, limiting surprises and avoiding disputes.

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Ownership of Software Copyrights, Copies

Public Domain

- Disclaimer of Copyright
- Expiration of Copyright
- Works created by the Federal Government*
- Published Works Originating in Non-treaty Countries


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Ownership of Software Copyrights, Copies

- **B. Owning a Copy of a work vs. a License to that Copy**
 - **First Sale Doctrine**
 - The general rule of 17 U.S.C. 109: if you own a copy then you are free to sell, rent or otherwise dispose of that copy. This is known as the First Sale Doctrine, and its history traces back to the long-standing property law-based antipathy against restraints on alienation.
 - Example: If you purchase a book, you generally are free to lend it to your neighbor, sell it to a stranger, donate it to a library, swap it at a book exchange, or otherwise loan or transfer it to others (including for compensation!) – without the need of any permission from the owner of the book's underlying copyright.

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Ownership of Software Copyrights, Copies

- **Licensing.**
 - Perhaps more than any other reason, the First Sale Doctrine accounts for the widespread practice of licensing computer software.
 - A license – no title; only a revocable right to possess and use the software.
 - Since no ownership of the copy of the software, the freedom to transfer that copy pursuant to the First Sale Doctrine does not arise.
 - Accordingly, by *licensing* rather than *selling* software to consumers and businesses, software companies generally are able to prevent their customers from lawfully re-marketing the software to others and are thereby able to better protect and control the economic value of their works.

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Ownership of Software Copyrights, Copies

- *Computer Software Rental Amendments Act of 1990.*
 - Because of the difficulties of separately licensing mass quantities of popular software (and music recordings), and because of the practical ease and economic significance of the repeated re-usability and re-lending of those kinds of works . . .
 - Computer Software Rental Amendments Act of 1990 (codified at §109) . . .
 - Carved out exceptions to the First Sale Doctrine and 17 U.S.C. 109(a) for copies of those kinds of works.
 - Thus, owners of the rights in software and music recordings could protect the economic value of popular trade in those types of works without having to secure a formal license agreement in each transaction.
- **The Leverage of Licensing.**
 - Licensing also opens up many other possibilities for owners of licensed works – since the license agreement can go beyond simply preventing a “sale” from occurring but can also impose various other restrictions and duties on the purchaser of the license.
 - For example, this helps software proprietors –
 - (i) preserve trade secret protection that otherwise would be forfeited.
 - (ii) limit their liability in the event of defects or problems with the software.
 - (iii) thwart reverse engineering of software object code.
 - (iv) impose specific remedies in the event the purchaser of the license abuses the software or exceeds the limits on his permitted use of that software.
 - (v) obtain contract remedies in addition to only copyright remedies
 - (vi) specify the State or other jurisdiction whose laws will govern the parties’ contractual/license relationship; and
 - (vii) specify where litigation will occur, whether the right to a jury will be waived, and/or whether arbitration will apply rather than litigation (in all or some matters/disputes).

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Ownership of Software Copyrights, Copies

- **More on Licensing?**

An in-depth discussion of licensing and the nearly innumerable kinds of licensing that have developed over time is well beyond the scope of this presentation. However . . .

 - Every consumer and business who lawfully obtains a copy of a software program is likely to be subject to license agreement terms. And since those terms can impose important obligations and have very significant consequences, it is vital that those terms be understood – before agreeing to purchase the licensed copy of the software.
 - These duties and consequences can be as commonplace as those encountered in highly popular consumer software products or they can be as *relatively* un-common as those arising in such contexts as GPL (General Public License) “copyleft” initiatives, other so-called open-source practices, and the marketing and use of software development kits (SDK’s).
 - Businesses should also be aware of the special circumstances licensing brings about when the licensor becomes subject to bankruptcy (many of which – but not all – are addressed by §365(n) and other provisions of the U.S. Bankruptcy Code).

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What Does the Law Provide If I Don't Register?

- No publication or registration or other action in the Copyright Office is required to secure copyright.
- Copyright is secured **automatically** when the work is created, and a work is "created" when it is fixed in a copy for the first time.
- In fact, use of a copyright notice is no longer required under U. S. law
- The use of the copyright notice does not require advance permission from, or registration with, the Copyright Office.

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What Does the Law Provide If I Don't Register?

- A work that is created on or after January 1, 1978, is automatically protected from the moment of its creation, duration of copyright is ordinarily the author's life + 70 years.
- For works made for hire, the duration of copyright is 95 years from publication or 120 years from creation, whichever is shorter.
- Protection under the Berne Convention

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If Registration is Not Required, and My Company is Protected for the Next 95 Years Why Should I Register?

- In the US, you cannot file an infringement action unless your work is registered
- Registration establishes a public record of the copyright claim.
- If you register either before an infringement of your work begins or within 3 months of publishing the work, you may be entitled to attorney's fees and statutory damages
- Registration allows the owner of the copyright to record the registration with the U. S. Customs Service for protection against the importation of infringing copies.

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If Registration is Not Required, Why Should You Register?

- Very cost effective: At \$30 per registration, this is one of the cheapest forms of insurance around.
- If your work is valuable enough to publish, it's valuable enough to register
- Common for "mass-marketed" software applications

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How Do You Register?

Registration may be made at any time within the life of the copyright.

To register a work, send the following three elements ***in the same envelope or package*** to:

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

1. A properly completed application form (typically Form TX – or Form AV if primarily an audio-visual work).
2. A nonrefundable filing fee of \$30.
3. A non-returnable deposit of the work being registered. There are special deposit requirements for software programs.

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How to Register: When is Registration Complete?

In contrast to patents, a copyright registration is effective on the date the Copyright Office receives all the required elements in acceptable form, regardless of how long it then takes to process the application and mail the certificate of registration.

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How to Register:

Special Deposit Requirements for Software Programs

I. Computer Programs **Without Trade Secrets**

- For computer programs the deposit requirement is a hard copy printout of the first 25 and last 25 pages of source code, together with the page or equivalent unit containing the copyright notice, if any.
- For a computer program of < 50 pages, the deposit requirement is a hard copy printout of the entire program in source code.
- For a revised version of a program that has been previously published or previously registered or that is in the public domain:
 - where revisions occur throughout the entire program, the deposit requirement is the page containing the copyright notice, if any, and the first 25 and last 25 pages of source code.
 - where revisions are not contained in the first 25 and last 25 pages, the deposit requirement is any 50 pages representative of the revised material in the new program, together with the page or equivalent unit containing the copyright notice, if any, for the revised version.

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How to Register:

Special Deposit Requirements for Software Programs

I. Computer Programs **Without Trade Secrets** -cont'd

- If user's manuals or other printed documentation accompanies the program, deposit one copy of the user's manual also.
- For programs written in scripted languages, the script is considered the equivalent of source code.
- Reproductions of on-screen text, buttons, and commands are not an appropriate substitute for this source code deposit.
- When a computer program is embodied in a CD-ROM, ordinarily the entire CD-ROM package must be deposited, including a complete copy of any accompanying operating software and instructional manual. If registration is sought for the computer program, the deposit should also include a printout of the first 25 and last 25 pages of source code for the program.

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How to Register:

Special Deposit Requirements for Software Programs

II. Computer Programs **Containing Trade Secrets**

Include a cover letter stating that the claim contains trade secrets, along with the page containing the copyright notice, if any, plus one of the following:

● **A. Entirely new computer programs**

1. First 25 and last 25 pages of source code with portions containing trade secrets blocked out; or
2. First 10 and last 10 pages of source code alone, with no blocked out portions; or
3. First 25 and last 25 pages of object code plus any 10 or more consecutive pages of source code, with no blocked out portions; or
4. For programs 50 pages or less in length, entire source code with trade secret portions blocked out.

● **B. Revised computer programs**

1. If the revisions are present in the first 25 and last 25 pages, any one of the 4 options above, as appropriate; or
2. If the revisions are not present in the first 25 and the last 25 pages:
 - 20 pages of source code containing the revisions with no blocked out portions, or
 - Any 50 pages of source code containing the revisions with some portions blocked out.

● **NOTE:** Whenever portions of code are blocked out, the following requirements must be met: (1) the blocked out portions must be proportionately less than the material remaining; and (2) the visible portion must represent an appreciable amount of original computer code.



Enforcement – *Issues to Consider*

- Type of infringement: Which exclusive rights?
 - Mass market software: reproduce, distribute, import
 - Proprietary internal application, or website content: copy, display
 - Borrowing source code
- Secondary Liability – ISPs, auction sites (VCRs...)
- DMCA – additional protection
 - Anti-circumvention (reverse engineering exception for interoperability)
 - Safe Harbor provisions for SPs, libraries, etc.



Enforcement – *Issues, continued*

- What is the real harm?
 - Image: Confusion, inaccuracy (documentation, advertising)
 - Control: Stale content, customer disconnect (updates, bug fixes)
 - Bottom line: Entire channels and markets (full product piracy, counterfeiting); lost profits to a competitor (source code)
 - Indirect: cutting time to market advantage; misappropriating proprietary investment
- Unforeseen consequences of enforcement action
 - Pyrrhic victory: C&D letter posted on website and mocked
 - Scorched earth: Today's annoying infringer is tomorrow's valuable marketing partner

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Enforcement – *Potential Remedies*

- Cooperation – cheapest!
- Injunction – works against judgment-proof
- Civil Damages
 - Damages/lost profits
 - OR Statutory damages (willfulness \$\$\$) – ©
 - Attorneys' fees & costs - discretionary
- Criminal – prison; fines; forfeiture
 - Imprisonment
 - Fines based on value of infringement
 - Forfeiture

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Enforcement – *Pre-litigation*

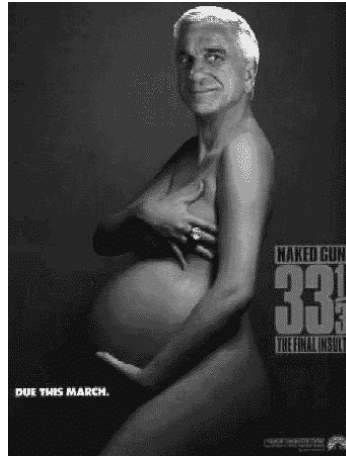
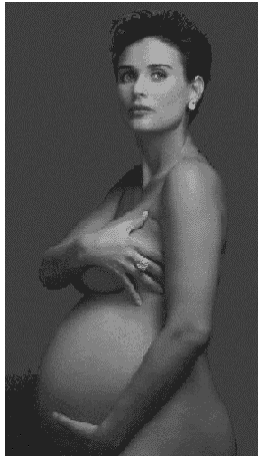
- Investigation: is it really infringing?
 - Striking similarity (verbatim)
 - Access plus substantial similarity
 - Counterfeit product
- Informal request – kids, non-profits
- Cease and desist
- Take-down notice (safe harbor under DMCA)

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Enforcement – *Defenses: Fair Use?*



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Enforcement – *Defenses, continued*

- Fair Use
 - Favored purposes (non-exclusive): criticism, comment, news reporting, teaching, scholarship, research
 - Four-factor test:
 - Purpose/character (commercial/nonprofit) – transformative?
 - Nature of the work copied
 - Nature/substantiality of portion used
 - Effect of use on market
- Independent development
- Waiver, laches, statute of limitations, etc.
- Safe Harbor under DMCA

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ACC Association of Corporate Counsel

**COPY SOFTWARE
ILLEGALLY AND YOU COULD
GET THIS HARDWARE
ABSOLUTELY FREE.**



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Enforcement – *Anti-Piracy Program*

- In-house or outsource
- Industry groups (BSA)
- Law Enforcement
 - Federal: US Atty; US Marshals
 - Customs, Tax, FTC, CFAA
 - Strategy: air supply; control; planning
- Leads: Hotline, website, investigators

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- **Information via the Internet:** Circulars, announcements, regulations, other related materials, and all copyright application forms are available from the Copyright Office Website at www.copyright.gov.
- For more information on computer program registration, including deposits for revised programs and provisions for trade secrets, request Circular 61, "Copyright Registration for Computer Programs."

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Federal Statutory Protection for Mask Works

Introduction

The Semiconductor Chip Protection Act (SCPA) of 1984 established a new type of intellectual property protection for mask works that are fixed in semiconductor chips. Public Law 98-620. The SCPA, which took effect on November 8, 1984*, amended title 17 of the United States Code by adding chapter 9. Protection for mask works is not copyright protection. Therefore, the legal requirements for copyright protection and mask work protection differ with respect to eligibility, ownership, term, scope and limitations of rights, remedies, and registration procedures. This circular provides information for registering claims under the SCPA.

*NOTE: While protection was effective from November 8, 1984, the Copyright Office did not begin registration of claims to protection until January 7, 1985, pursuant to 17 U.S.C., §913(a).

“Mask Works” and “Semiconductor Chips” Defined

Mask Works are defined in the Act as: a series of related images, however fixed or encoded (1) having or representing the predetermined three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and (2) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

The integrated circuits, better known as *semiconductor chips*, used to operate many consumer, medical, commercial, and industrial products and machinery are defined in the Act as: the final or intermediate form of any product (1) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on or etched away or otherwise removed from a piece of semiconductor material in accordance with a predetermined pattern; and (2) intended to perform electronic circuitry functions.

Protection of Mask Works

Protection under the Act extends to the three-dimensional images or patterns formed on or in the layers of metallic, insulating, or semiconductor material and fixed in a semiconductor chip product, *i.e.*, the “topography” of the “chip.”

Although these images or patterns are purely functional features, they are nevertheless protected, provided that the particular mask work is neither dictated by a particular electronic function nor is one of only a few available design choices that will accomplish that function.

Protection under the Act does not extend to any idea or concept associated with a mask work. Just as ideas are not protected by copyright, no protection is available for any procedure, process, system, method of operation, concept, principle, or discovery associated with a mask work, regardless of the form in which it is described, explained, illustrated, or embodied in a mask work. (17 U.S.C. §902 (c))

Originality

To be protected under the Act, a mask work must be original. The Report of the Committee on the Judiciary of the House of Representatives¹ provides that a mask work is "original" if it is the independent creation of an author who did not copy it.

The mask work may not consist solely of designs that are staple, commonplace, or familiar in the semiconductor industry, or variations of such designs, combined in a way that, considered as a whole, are not original. (17 U.S.C. §902 (b))

National Origin

Any original mask work fixed in a semiconductor chip product by or under the authority of the mask work owner is eligible for protection if:

- 1 On the date the mask work is registered with the Copyright Office or the date the mask work is first commercially exploited anywhere in the world, whichever occurs first, *the owner of the mask work* is:
 - a national or domiciliary of the United States; or
 - a national, domiciliary, or sovereign authority of a foreign nation that is a party with the United States to a treaty affording protection to mask works; or
 - a stateless person; or
- 2 The mask work is first commercially exploited in the United States; or
- 3 The mask work comes within the scope of a Presidential proclamation extending protection to mask works of nationals and domiciliaries of a foreign country and to works first commercially exploited in that country, on the basis of a finding that mask works protected by the Semiconductor Chip Protection Act are also protected in the particular foreign country, either under the principle of reciprocity or under the principle of national treatment.

NOTE: Under a special transitional section that expired in 1995, the Secretary of Commerce could issue temporary orders extending protection to mask works of foreign nationals, domiciliaries, and sovereign authorities and to mask works first commercially exploited in a particular country, provided that 1) the foreign country was making good faith efforts and reasonable progress toward a treaty with the United States or toward enactment of legislation protecting U. S. mask works; 2) the country was not engaging in piracy of mask works; and 3) issuance of the order would promote the purposes of the Act and interests of international community. The Secretary issued orders to the following nineteen countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Mask works registered under these orders remain valid for the full 10-year term of protection if otherwise valid. The Secretary had the authority to designate the effective date and duration in the order. The Secretary's authority terminated on July 1, 1995 (Public Law 102-64), together with all orders issued under that authority.

All countries that are members of the World Trade Organization (WTO) became eligible for mask work protection on June 1, 1996, under Presidential Proclamation 6780 that was issued on March 23, 1995. In addition, that Proclamation extended mask work protection to Australia, Canada, Japan, Switzerland, and the Member States of the European Community as of July 1, 1995.

Registration of Mask Works

Registration Mandatory to Secure Protection

In order to secure protection, owners of mask works must apply for registration of their claims with the Copyright Office. Moreover, owners of mask works must register their works within 2 years after the date on which the mask work is first commercially exploited, or the opportunity to secure protection under the Act will be lost.

The effective date of registration of a claim to protection in a mask work will be the date on which an acceptable application, deposit of identifying material, and appropriate fee are received in the Copyright Office.

NOTE: Retroactivity to July 1, 1983. Protection is available to a mask work first commercially exploited on or after July 1, 1983, and before the effective date of the Act if a claim in the mask work was registered with the Copyright Office before July 1, 1985.

Importance of Certificate of Registration

The Act further provides that a certificate of registration for a mask work issued by the Copyright Office constitutes *prima facie* evidence of the facts stated in the certificate and that the applicant issued the certificate has met the requirements for protection.

After a certificate has been issued by the Copyright Office, the owner of the mask work or the exclusive licensee of all rights in the mask work may institute a civil action for infringement occurring after the commencement of protection accorded by the Act.

Term of Protection

Protection for a mask work begins on the date the mask work is registered with the Copyright Office or the date the mask work is first commercially exploited anywhere in the world, whichever occurs first. Protection lasts for *10 years* (terminating at the end of the tenth calendar year after it began).

NOTE: To “*commercially exploit*” a mask work is defined in the Act as the distribution to the public for commercial purposes of a semiconductor chip product embodying the mask work, with the provision that the term includes an offer to sell or transfer a semiconductor chip product only when the offer is in writing and occurs after the mask work is fixed in the semiconductor chip product.

Exclusive Rights of an Owner: Limitations and Transfers

During the term of protection, the owner of a mask work has the following exclusive rights:

- 1 To reproduce the mask work by optical, electronic, or any other means
- 2 To import or distribute a semiconductor chip product in which the mask work is embodied
- 3 To induce or knowingly to cause another person to do any of the acts described in number 1 and number 2

Limitations on Rights

The Act permits *reverse engineering* of a mask work solely for the purposes of teaching, analyzing, or evaluating the concepts or techniques embodied in the mask work or in the circuitry, logic flow, or organization of components used in the mask work. The person who performs legitimate reverse

engineering may incorporate the results in an original mask work which is made to be distributed.

NOTE: House Report 98-781² refers to the “paper trail” evidencing the extensive effort involved in legitimate reverse engineering and states that reverse engineering is an affirmative defense to an infringement claim.

Purchasers also obtain a right arising from the *first sale* of semiconductor chips. The Act specifies that purchasers of semiconductor chip products have the right to use and resell them freely but not to reproduce them without the permission of the owner of the mask work embodied in the semiconductor chip product.

Transfer of Rights

The Act allows the owner of the exclusive rights to transfer all of them or to license all or fewer than all the rights. A transfer or license must be in writing and signed by the owner of the rights or by a duly authorized agent of the owner. The Act also provides that the exclusive rights in a mask work may be transferred by operation of law or by terms of a will; or, the rights may pass as personal property under the applicable state law of intestate succession.

For information on the recordation of documents of transfer in the Copyright Office, see p. 6 of this circular.

Mask Works Created by Employees of the U.S. Government

Federal protection under the Semiconductor Chip Protection Act is not available for any mask work of the U.S. Government, that is, any mask works created by U.S. Government employees as part of their official duties.

How to Apply for Registration of Mask Works

To apply for registration of a mask work, send the following to the Copyright Office:

- 1 Completed Form MW
- 2 A nonrefundable \$75 filing fee,* and
- 3 The appropriate identifying material (deposit)

***NOTE:** Copyright Office fees are subject to change.

For current fees, please check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

Send the application, fee, and deposit *in the same package* to:

*Library of Congress
Copyright Office, Department MW
101 Independence Avenue, S.E.
Washington, D.C. 20540*

To obtain Form MW free of charge, download it from the Copyright Office website at www.copyright.gov. You may photocopy blank application forms. However, photocopies of Form MW submitted to the Copyright Office must be clear and legible on a good grade of 8½-inch by 11-inch (preferably blue) paper suitable for automatic feeding through a photocopier. Forms not meeting these requirements will be returned. You may also call the Forms and Publications Hotline at (202) 707-9100 and leave a recorded request.

Deposit of Identifying Material

The Act gives the Register of Copyrights broad, general authority to specify the identifying material to be deposited in connection with the claim for registration. In recognition of the public representations of a need to preserve trade secret protection or avoid public disclosure of sensitive information embodied in various identifying materials, the regulations of the Copyright Office provide different deposit options, depending upon whether the mask work has been commercially exploited. The Copyright Office encourages the fullest disclosure of the mask work within the deposit options established by the regulation.

For commercially exploited mask works, the identifying material shall consist of the following:

- 1 Four chips (dies) as first commercially exploited; and
- 2 One full set of visually perceptible reproductions of each layer of the mask work. The applicant may elect to deposit either plastic color overlays, composite plots, or photographs of each layer of the mask work.

For mask works that have not been commercially exploited, the identifying material shall consist of:

- 1 One full set of either plastic color overlays or composite plots of each layer of the semiconductor chip product.
- 2 Although no chips (dies) need to be sent, the applicant may elect to deposit four reproductions of the most complete form as fixed in a chip product.

The visually perceptible materials shall be reproduced at a magnification sufficient to reveal the basic design of the mask work and shall be at least 20 times the magnification of the actual size. They must be readily storable in an 8½-inch by 11-inch format. Titles should be placed on all identifying

materials so that applications and deposit materials can be matched.

Registration in Most Complete Form

Owners seeking registration of a mask work must generally submit the entire original mask work in its most complete form as fixed in a semiconductor chip product. The most complete form means the stage of the manufacturing process which is closest to completion. Entire impersonalized gate arrays and custom metallization layers may be registered separately, as an exception to the general rule.

Full Disclosure Requirement for Registration of Less Than 20 Percent of Intended Final Form

Where the mask work in which registration is sought represents less than 20 percent of the area of the intended final form of the chip product, the deposit must consist of a visually perceptible representation of the work that reveals the totality of the mask work contribution to a person trained in the state of the art. The representation may consist of any combination of plastic color overlay sheets, drawings or plots in composite form, or a photograph(s) of the entire mask set. If needed, additional explanatory material may accompany the visually perceptible representation to identify all of the elements in the mask work contribution.

Deposit for Trade Secret Protection

Where an applicant makes a claim of trade secret protection or a need to protect sensitive information, certain material may be withheld from the deposit of identifying material. Below is an outline of the deposit options.

Mask Works Commercially Exploited

- 1 Four chips as first commercially exploited, and
- 2 Special "identifying portions" (defined below) for no more than two of each five layers of the mask work in which trade secrecy is claimed, and
- 3 Color overlays, plots, or photographs for all other layers

Mask Works Not Commercially Exploited

- 1 Special "identifying portions" (defined below) for any layer or layers in which trade secrecy is claimed, and

- 2 A single photograph of the top or other visible layers of the mask work with the sensitive information maintained under a claim of trade secrecy blocked out, provided the blocked out portions do not exceed the remaining portions

Identifying Portions

The "identifying portions" shall consist of a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, *or* visually perceptible representations (plastic color overlays, composite plots, *or* in the case of commercially exploited mask works, photographs of the masks) in which portions maintained under a claim of trade secrecy are blocked out, provided that the portions remaining are greater than the portions blocked out. For mask works not commercially exploited, sensitive information may be blocked out from the design data, provided that the portions remaining are greater than the portions blocked out.

Special Relief

On a case-by-case basis, the Register of Copyrights may decide to grant special relief from the deposit requirements. Requests for special relief must be made in writing and must set forth the specific reasons why the request should be granted. Also, they should generally propose an alternative form of deposit. Requests should be addressed to:

*Library of Congress
Copyright Office
Chief, Examining Division
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000*

Fee

The nonrefundable filing fee for an application for registration of a claim to protection in a mask work is \$75 (check, money order, or bank draft, not cash) payable to: *Register of Copyrights*.

Special Handling

Special handling of an application for registration of a claim to protection in a mask work is granted at the discretion of the Register of Copyrights in a limited number of cases involving pending or prospective litigation or contract deadlines. The fee for special handling is \$580, in addition to the

\$75 filing fee. Payment must be in the form of a certified check, cashier's check, or money order.

Requests for special handling may be made in person in the Copyright Office's Public Information Office in room LM-401 in the Library of Congress, James Madison Memorial Building, located at 101 Independence Avenue, S.E., Washington, D.C. 20559-6000, or by mail. A special handling form or a letter containing answers to the following questions is required. Why is there an urgent need for special handling? If it is because of litigation, is the litigation actual or prospective? Are you or your client the plaintiff or defendant? What are the names of the parties and the name of the court where the action is pending or expected? It is also necessary to certify that the answers to these questions are correct to the best of your knowledge. Mailed requests and any later correspondence concerning a special handling application should be sent to:

*Library of Congress
Department 100—Special Handling
Washington, D.C. 20540*

The outside of the envelope and the letter inside should clearly indicate that it is a request for special handling. The request must be accompanied by a completed application, the required deposit material, and the required fees.

Notice

The owner of a mask work protected under the Semiconductor Chip Protection Act may affix a notice of ownership to mask works, to masks, and to semiconductor chip products embodying the mask work in a manner and location which gives reasonable notice of the claim to protection.

The Act requires the form of the notice to be:

- 1 The words *mask work*, the symbol *M* or the symbol ®, *and*
- 2 The name of the owner(s) of the rights in the mask work or an abbreviation by which the name is recognized or generally known

Affixation of such a notice is optional and is not a condition of protection, but the notice does constitute *prima facie* evidence of notice of protection. The Register of Copyrights shall prescribe by regulation, as examples, specific methods of affixation and positions of the notice.

Public Access to In-Process Files

In-process files are those which the Copyright Office makes for its own immediate internal use in connection with pending applications for registration or the recordation of documents, and which are preliminary to the completion of the public record.

There is no direct access by the public to in-process files or to any of the areas where they are kept. Likewise, direct public use of computer terminals intended to access the automated equivalent of these files is not permitted.

Requests for certain information contained in the in-process files may be obtained by anyone, following payment of applicable fees, upon request to:

*Library of Congress
Copyright Office
Information and Reference Division, LM-453
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000*

Public Access to Document Records

Requests for copies of records or deposits should be addressed to:

*Library of Congress
Copyright Office
Certifications and Documents Section, LM-402
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000.
Tel: (202) 707-6787*

Copying of certain completed records and indexes relating to a registration of a recorded document or identifying material deposited in connection with a completed registration may be done in the Certifications and Documents Section. Since some of the materials are not stored at the Copyright Office, it is advisable to consult with the Certifications and Documents Section to determine the length of time necessary to reproduce the required materials.

Requests for searches of the catalogs and indexes of the Copyright Office should be addressed to:

*Library of Congress
Copyright Office
Reference and Bibliography Section, LM-450
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000
Tel: (202) 707-6850*

Recordation

Any transfer of ownership or other document pertaining to a mask work may be recorded in the Copyright Office if the document filed for recordation is accompanied by the appropriate fee and meets the following requirements:

- 1 The document must bear the actual signature or signatures of the person or persons who executed (signed) the document. Or, if a photocopy of the original signed document is submitted, it must be accompanied by a sworn or official certification. The certification must state that the attached reproduction is a true copy of the original signed document.
- 2 The certification must be:
 - a A sworn certification signed by at least one of the parties to the signed document or by an authorized representative of that person and must contain a notarization or a statement made under penalty of perjury.
Example: "I certify under penalty of perjury under the laws of the United States of America that the foregoing is a true copy of the original document," or
 - b An official certification. An "official certification" is a certification, by the appropriate Government official, that the original of the document is on file in a public office and that the reproduction is a true copy of the original.
- 3 The document must be complete by its own terms, that is, a document that contains a reference to any schedule, appendix, exhibit, addendum, or other material as being attached or made a part of it, is generally recordable only if the attachment is submitted for recordation with the document.
- 4 The document must be legible and capable of being reproduced on microfilm.

The fee for recordation of documents pertaining to mask works shall be computed as follows:

- a For a document covering no more than one title, \$80.*
- b For additional titles: each group of 10 or fewer, \$20.*

Documents Will Be Returned Unrecorded If:

- a The document submitted is not capable of being reproduced legibly;

- b The document is incomplete by its own terms;
- c The document is marked as an Exhibit;
- d The complete recordation fee is not submitted;
- e It is unclear whether the document is to be recorded;
- f The document is submitted to this Office in error.

Upon receipt of the acceptable document and fee, the Copyright Office shall record the document and return it with a certificate of recordation.

Please send documents to be recorded to:

*Library of Congress
Copyright Office
Documents Recordation Section, LM-462
Cataloging Division
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000*

For Further Information

Information via the Internet

Frequently requested circulars, announcements, regulations, other related materials, and all copyright application forms are available via the Internet. You may access these from the Copyright Office website at www.copyright.gov.

Information by fax

Circulars and other information (but not application forms) are available by using a touchtone phone to access Fax-on-Demand at (202) 707-2600.

Information by telephone

For general information about copyright, call the Copyright Public Information Office at (202) 707-3000. The TTY number is (202) 707-6737. Information specialists are on duty from 8:30 a.m. to 5:00 p.m., eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day. Or, if you know which application forms and circulars you want, request them 24 hours a day from the Forms and Publications Hotline at (202) 707-9100. Leave a recorded message.

Information by regular mail

Write to:

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

Endnotes

1. House Report No. 98-781, 98th Cong. 2d Sess. 4 (1984), p. 17.
2. House Report No. 98-781, 98th Cong., 2d Sess. 4 (1984), p. 21.

Circular 61

Copyright Registration for Computer Programs

DEFINITION

A "computer program" is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

EXTENT OF COPYRIGHT PROTECTION

Copyright protection extends to all of the copyrightable expression embodied in the computer program. Copyright protection is not available for ideas, program logic, algorithms, systems, methods, concepts, or layouts.

WHAT TO SEND

- A completed application form (typically Form TX)
- A \$30* nonrefundable filing fee payable to the *Register of Copyrights*
- One copy of identifying material (see "Deposit Requirements" below)

Mail all of the above material in the same envelope or package addressed to:

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

*** NOTE: Copyright Office fees are subject to change. For current fees, please check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.**

COMPLETING FORM TX

NOTE: These points do not cover all of the required information on the application. Be sure to refer to the instructions on the Form TX before completing the application.

Space 2. Nature of Authorship. In the "Nature of Authorship" space describe the copyrightable authorship in the computer program for which registration is sought. Acceptable statements include "computer program," "entire text of computer program," "entire program code," "text of user's manual and computer program," etc. Do not refer to design, physical form, hardware, or algorithm. Do not describe the program's features or functions.

Space 3. Year of Creation. Give the year of creation and the exact date of first publication, if any, for the particular version of the computer program for which registration is sought.

Space 6. Derivative Work or Compilation. Complete this space if the computer program contains a substantial amount of previously published, registered, or public domain material such as subroutines, modules, textual images, or if the work was developed using an underlying computer program or authoring tool. Space 6a may state "previous version." Typical examples of descriptions of new material for space 6b include "revised computer program," "editorial revisions," "revisions and additional text of computer program," "new programming text," etc. Do not refer to debugging, error corrections, new functions of the revised program, or other unregistrable elements.

DEPOSIT REQUIREMENTS

I. Computer Programs Without Trade Secrets

For published or unpublished computer programs, send one copy of identifying portions of the program (first 25 and last 25 pages of source code) reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform, together with the page or equivalent unit containing the copyright notice, if any.

For a program less than 50 pages in length, send a visually perceptible copy of the entire source code. For a revised version of a program that has been previously published or previously registered or that is in the public domain, if the revisions occur throughout the entire program, send the page containing the copyright notice, if any, and the first 25 and last 25 pages of source code. If the revisions are not contained in the first 25 and last 25 pages, send any 50 pages representative of the revised material in the new program, together with the page or equivalent

unit containing the copyright notice, if any, for the revised version.

In any case where the program is so structured that it has no identifiable beginning or end, the applicant should make a determination as to which pages may reasonably represent the first 25 and last 25 pages.

Where an applicant is unable or unwilling to deposit source code, he/she must state in writing that the work as deposited in object code contains copyrightable authorship. The Office will send a letter stating that registration has been made under its rule of doubt and warning that it has not determined the existence of copyrightable authorship.

If a published user's manual or other printed documentation accompanies the computer program, deposit one copy of the user's manual along with one copy of the identifying material for the program.

For programs written in HyperCard® and other scripted languages, the script is considered the equivalent of source code. Thus, the same number of pages of script would be required as is required for source code. Reproductions of on-screen text, buttons, and commands are not an appropriate substitute for this source code deposit. Where a scripted program contains trade secrets, the deposit of script pages must meet the requirements of part II below.

NOTE: When a computer program is embodied in a CD-ROM, ordinarily the entire CD-ROM package must be deposited, including a complete copy of any accompanying operating software and instructional manual. If registration is sought for the computer program, the deposit should also include a printout of the first 25 and last 25 pages of source code for the program.

II. Computer Programs Containing Trade Secrets

Where a computer program contains trade secret material, include a cover letter stating that the claim contains trade secrets, along with the page containing the copyright notice, if any, plus one of the following:

A. Entirely new computer programs

- First 25 and last 25 pages of source code with portions containing trade secrets blocked out; or
- First 10 and last 10 pages of source code alone, with no blocked out portions; or
- First 25 and last 25 pages of object code plus any 10 or more consecutive pages of source code, with no blocked-out portions; or
- For programs 50 pages or less in length, entire source code with trade secret portions blocked out.

B. Revised computer programs

- If the revisions are present in the first 25 and last 25 pages, any one of the 4 options above, as appropriate; or

- If the revisions are not present in the first 25 and the last 25 pages:
 - 20 pages of source code containing the revisions with no blocked out portions, or
 - any 50 pages of source code containing the revisions with some portions blocked out.

NOTE: Whenever portions of code are blocked out, the following requirements must be met:

- (1) the blocked out portions must be proportionately less than the material remaining; and
- (2) the visible portion must represent an appreciable amount of original computer code.

Points to Remember

- To obtain the full benefits of registration, each separately published version of a given computer program must be separately registered, provided each contains a sufficient amount of new or revised authorship to sustain a claim to copyright.
- If the deposit material for the computer program has a copyright notice containing multiple year dates, the Copyright Office will question whether the particular program is a revised or derivative version if space 6 of the application has not been completed. If the program is not a derivative work and if the multiple year dates in the notice refer to internal revisions or the history of development of the program, please put that information in a cover letter to help speed processing.
- If the deposit material for the computer program does not give a printed title and/or version indicator, please add the title and any indicia that can be used in identifying the particular program.

SCREEN DISPLAYS

Copyright protection for computer screen displays, including videogames, has been an issue in the courts for some time. Courts have differed in their opinions regarding whether screen displays may be registered separately.

The Copyright Office has consistently believed that a single registration is sufficient to protect the copyright in a computer program and related screen displays, including videogames, without a separate registration for the screen displays or a specific reference to them on the application for the computer program. An application may give a general description in the "nature of authorship" space, such as "entire work" or "computer program." This description will cover any copyrightable authorship contained in the computer program and screen displays, regardless of whether identifying material for the screen is deposited.

A specific claim in the screen displays may be asserted on the application. In such a case, identifying materials for the screens must be deposited.

HOW TO REGISTER COMPUTER PROGRAMS CONTAINING COPYRIGHTABLE SCREEN DISPLAYS

A single registration should be made in the class appropriate to the predominant authorship. Because the computer program is a literary work, literary authorship will predominate in most works, including many in which there are screen graphics. Therefore, registration will usually be appropriate on Form TX. If pictorial or graphic authorship predominates, registration may be made on Form PA as an audiovisual work.

The registration will extend to any related copyrightable screens, regardless of whether identifying material for the screens is deposited. If identifying material for screen displays is deposited and if there is a specific claim in screens, the identifying material will be examined for copyrightability. Where the application refers specifically to screen displays, identifying material for the screens must be deposited. Where the screens are essentially not copyrightable (e.g., *de minimis* menu screens, blank forms, or the like), the application should not refer to screens.

If screen display authorship has already been registered without a claim in the computer program, a separate registration may be made for the program. In such a case, the normal requirements for registration of a computer program apply.

If a computer program has already been registered without a specific claim asserted in the related screen displays, a separate registration for the screens is not required, but will be permitted. In such a case, the application should describe the nature of authorship appropriately, for example, "text of screen displays" or "audiovisual material." Identifying material for the screens containing copyrightable authorship must be deposited.

NOTICE OF COPYRIGHT

Before March 1, 1989, the use of copyright notice was mandatory on all published works, and any work first published before that date should have carried a notice. For works first published on and after March 1, 1989, use of the copyright notice is optional. For more information about copyright notice, see Circular 3, "Copyright Notice."

EFFECTIVE DATE OF REGISTRATION

A copyright registration is effective on the date the Copyright Office receives all the required elements in acceptable form, regardless of how long it then takes to process the application and mail the certificate of registration. The time the Copyright Office requires to process an application varies, depending on the amount of material the Office is receiving. It may take several days for mailed material to reach the Copyright Office and for the certificate of registration to reach the recipient.

To register a computer program and its related screen displays:

- Select the application form appropriate for the predominant authorship;
- Refer to the chart below to complete space 2 of the application and to determine whether to **file identifying material for the screen displays**.

HOW TO COMPLETE APPLICATION		WHAT TO DEPOSIT
Space 2	Nature of Authorship	ID Material for Screens (In addition to Required Source Code)
Option 1	"Entire work" OR "Entire computer program"	Optional
Option 2	"Entire computer program, including text of screen displays" OR "Entire computer program, including audiovisual material" OR "Entire computer program, including artwork on screen displays"	Required
	NOTE: The description of authorship on the application should not refer to elements such as "menu screens," "structure, sequence and organization," "layout," "format" or the like.	NOTE: Identifying material for screen displays should consist of printouts, photographs, or drawings clearly revealing the screens. For works that are predominantly audiovisual, such as videogames, 1/2 inch VHS videotape is acceptable. All screen identifying material will be examined for copyrightability. If screens are reproduced in a manual, the manual will suffice as identifying material.

If you apply for copyright registration, you will not receive an acknowledgment that your application has been received (the Office receives more than 600,000 applications annually), but you can expect:

- A letter or a telephone call from a Copyright Office staff member if further information is needed, or
- A certificate of registration indicating that the work has been registered, or if the application cannot be accepted, a letter explaining why it has been rejected.

If you want to know the date that the Copyright Office receives your material, send it by registered or certified mail and request a return receipt.

FOR FURTHER INFORMATION

Information via the Internet: Circulars, announcements, regulations, other related materials, and all copyright application forms are available via the Internet. You may access these from the Copyright Office website at www.copyright.gov.

Information by Fax: Circulars and other information (but not application forms) are available by using a touchtone phone to access Fax-On-Demand at (202) 707-2600.

Information by telephone: If you have specific questions about registering a computer program or you need general information about copyright, call the Public Information Office at (202) 707-3000. The TTY number is (202) 707-6737. Information specialists are on duty in the Public Information Office from 8:30 a.m. to 5:00 p.m., eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day. Or, if you know which application forms and circulars you want, request them from the Forms and Publications Hotline at (202) 707-9100 24-hours a day. Leave a recorded message.

Information by regular mail:

Library of Congress
Copyright Office
Public Information Office, LM-401
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

Library of Congress • Copyright Office • 101 Independence Avenue, S.E. • Washington, D.C. 20559-6000
www.copyright.gov

Form TX

*Detach and read these instructions before completing this form.
Make sure all applicable spaces have been filled in before you return this form.*

BASIC INFORMATION

When to Use This Form: Use Form TX for registration of published or unpublished nondramatic literary works, excluding periodicals or serial issues. This class includes a wide variety of works: fiction, nonfiction, poetry, textbooks, reference works, directories, catalogs, advertising copy, compilations of information, and computer programs. For periodicals and serials, use Form SE.

Deposit to Accompany Application: An application for copyright registration must be accompanied by a deposit consisting of copies or phonorecords representing the entire work for which registration is to be made. The following are the general deposit requirements as set forth in the statute:

Unpublished Work: Deposit one complete copy (or phonorecord)

Published Work: Deposit two complete copies (or one phonorecord) of the best edition.

Work First Published Outside the United States: Deposit one complete copy (or phonorecord) of the first foreign edition.

Contribution to a Collective Work: Deposit one complete copy (or phonorecord) of the best edition of the collective work.

The Copyright Notice: Before March 1, 1989, the use of copyright notice was mandatory on all published works, and any work first published before that date should have carried a notice. For works first

published on and after March 1, 1989, use of the copyright notice is optional. For more information about copyright notice, see Circular 3, "Copyright Notices."

For Further Information: To speak to an information specialist, call (202) 707-3000 (TTY: (202) 707-6737). Recorded information is available 24 hours a day. Order forms and other publications from the address in space 9 or call the Forms and Publications Hotline at (202) 707-9100. Most circulars (but not forms) are available via fax. Call (202) 707-2600 from a touchtone phone. Access and download circulars, forms, and other information from the Copyright Office Website at www.copyright.gov.

PRIVACY ACT ADVISORY STATEMENT Required by the Privacy Act of 1974 (P.L. 93-579)

The authority for requesting this information is title 17, U.S.C., secs. 409 and 410. Furnishing the requested information is voluntary. But if the information is not furnished, it may be necessary to delay or refuse registration and you may not be entitled to certain relief, remedies, and benefits provided in chapters 4 and 5 of title 17, U.S.C.

The principal uses of the requested information are the establishment and maintenance of a public record and the examination of the application for compliance with the registration requirements of the copyright code.

Other routine uses include public inspection and copying, preparation of public indexes, preparation of public catalogs of copyright registrations, and preparation of search reports upon request.

NOTE: No other advisory statement will be given in connection with this application. Please keep this statement and refer to it if we communicate with you regarding this application.

LINE-BY-LINE INSTRUCTIONS

Please type or print using black ink. The form is used to produce the certificate.

1 SPACE 1: Title

Title of This Work: Every work submitted for copyright registration must be given a title to identify that particular work. If the copies or phonorecords of the work bear a title or an identifying phrase that could serve as a title, transcribe that wording *completely* and *exactly* on the application. Indexing of the registration and future identification of the work will depend on the information you give here.

Previous or Alternative Titles: Complete this space if there are any additional titles for the work under which someone searching for the registration might be likely to look or under which a document pertaining to the work might be recorded.

Publication as a Contribution: If the work being registered is a contribution to a periodical, serial, or collection, give the title of the contribution in the "Title of This Work" space. Then, in the line headed "Publication as a Contribution," give information about the collective work in which the contribution appeared.

2 SPACE 2: Author(s)

General Instructions: After reading these instructions, decide who are the "authors" of this work for copyright purposes. Then, unless the work is a "collective work," give the requested information about every "author" who contributed any appreciable amount of copyrightable matter to this version of the work. If you need further space, request Continuation Sheets. In the case of a collective work, such as an anthology, collection of essays, or encyclopedia, give information about the author of the collective work as a whole.

Name of Author: The fullest form of the author's name should be given. Unless the work was "made for hire," the individual who actually created the work is its "author." In the case of a work made

for hire, the statute provides that "the employer or other person for whom the work was prepared is considered the author."

What is a "Work Made for Hire"? A "work made for hire" is defined as (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 works shall be considered a work made for hire." If you have checked "Yes" to indicate that the work was "made for hire," you must give the full legal name of the employer (or other person for whom the work was prepared). You may also include the name of the employee along with the name of the employer (for example: "Elster Publishing Co., employer for hire of John Ferguson").

"Anonymous" or "Pseudonymous" Work: An author's contribution to a work is "anonymous" if that author is not identified on the copies or phonorecords of the work. An author's contribution to a work is "pseudonymous" if that author is identified on the copies or phonorecords under a fictitious name. If the work is "anonymous" you may: (1) leave the line blank; or (2) state "anonymous" on the line; or (3) reveal the author's identity. If the work is "pseudonymous" you may: (1) leave the line blank; or (2) give the pseudonym and identify it as such (for example: "Huntley Haverstock, pseudonym"); or (3) reveal the author's name, making clear which is the real name and which is the pseudonym (for example, "Judith Barton, whose pseudonym is Madeline Elster"). However, the citizenship or domicile of the author **must** be given in all cases.

Dates of Birth and Death: If the author is dead, the statute requires that the year of death be included in the application unless the work is anonymous or pseudonymous. The author's birth date is optional but is useful as a form of identification. Leave this space blank if the author's contribution was a "work made for hire."

Author's Nationality or Domicile: Give the country of which the author is a citizen or the country in which the author is domiciled. Nationality or domicile **must** be given in all cases.

Nature of Authorship: After the words "Nature of Authorship," give a brief general statement of the nature of this particular author's contribution to the work. Examples: "Entire text"; "Coauthor of entire text"; "Computer program"; "Editorial revisions"; "Compilation and English translation"; "New text."

3 SPACE 3: Creation and Publication

General Instructions: Do not confuse "creation" with "publication." Every application for copyright registration must state "the year in which creation of the work was completed." Give the date and nation of first publication only if the work has been published.

Creation: Under the statute, a work is "created" when it is fixed in a copy or phonorecord for the first time. Where a work has been prepared over a period of time, the part of the work existing in fixed form on a particular date constitutes the created work on that date. The date you give here should be the year in which the author completed the particular version for which registration is now being sought, even if other versions exist or if further changes or additions are planned.

Publication: The statute defines "publication" as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending." A work is also "published" if there has been an "offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display." Give the full date (month, day, year) when, and the country where, publication first occurred. If first publication took place simultaneously in the United States and other countries, it is sufficient to state "U.S.A."

4 SPACE 4: Claimant(s)

Name(s) and Address(es) of Copyright Claimant(s):

Give the name(s) and address(es) of the copyright claimant(s) in this work even if the claimant is the same as the author. Copyright in a work belongs initially to the author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared). The copyright claimant is either the author of the work or a person or organization to whom the copyright initially belonging to the author has been transferred.

Transfer: The statute provides that, if the copyright claimant is not the author, the application for registration must contain "a brief statement of how the claimant obtained ownership of the copyright." If any copyright claimant named in space 4 is not an author named in space 2, give a brief statement explaining how the claimant(s) obtained ownership of the copyright. Examples: "By written contract"; "Transfer of all rights by author"; "Assignment"; "By will." Do not attach transfer documents or other attachments or riders.

5 SPACE 5: Previous Registration

General Instructions: The questions in space 5 are intended to show whether an earlier registration has been made for this work and, if so, whether there is any basis for a new registration. As a general rule, only one basic copyright registration can be made for the same version of a particular work.

Same Version: If this version is substantially the same as the work covered by a previous registration, a second registration is not generally possible unless: (1) the work has been registered in unpublished form and a second registration is now being sought to cover this first published edition; or (2) someone other than the

author is identified as copyright claimant in the earlier registration, and the author is now seeking registration in his or her own name. If either of these two exceptions applies, check the appropriate box and give the earlier registration number and date. Otherwise, do not submit Form TX. Instead, write the Copyright Office for information about supplementary registration or recordation of transfers of copyright ownership.

Changed Version: If the work has been changed and you are now seeking registration to cover the additions or revisions, check the last box in space 5, give the earlier registration number and date, and complete both parts of space 6 in accordance with the instructions below.

Previous Registration Number and Date: If more than one previous registration has been made for the work, give the number and date of the latest registration.

6 SPACE 6: Derivative Work or Compilation

General Instructions: Complete space 6 if this work is a "changed version," "compilation," or "derivative work" and if it incorporates one or more earlier works that have already been published or registered for copyright or that have fallen into the public domain. A "compilation" is defined as "a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship." A "derivative work" is "a work based on one or more preexisting works." Examples of derivative works include translations, fictionalizations, abridgments, condensations, or "any other form in which a work may be recast, transformed, or adapted." Derivative works also include works "consisting of editorial revisions, annotations, or other modifications" if these changes, as a whole, represent an original work of authorship.

Preexisting Material (space 6a): For derivative works, complete this space **and** space 6b. In space 6a identify the preexisting work that has been recast, transformed, or adapted. The preexisting work may be material that has been previously published, previously registered, or that is in the public domain. An example of preexisting material might be: "Russian version of Goncharov's 'Oblomov.'"

Material Added to This Work (space 6b): Give a brief, general statement of the new material covered by the copyright claim for which registration is sought. **Derivative work** examples include: "Foreword, editing, critical annotations"; "Translation"; "Chapters 11-17." If the work is a **compilation**, describe both the compilation itself and the material that has been compiled. Example: "Compilation of certain 1917 Speeches by Woodrow Wilson." A work may be both a derivative work and compilation, in which case a sample statement might be: "Compilation and additional new material."

7, 8, 9 SPACE 7, 8, 9: Fee, Correspondence, Certification, Return Address

Deposit Account: If you maintain a Deposit Account in the Copyright Office, identify it in space 7a. Otherwise leave the space blank and send the fee of \$30 with your application and deposit.

Correspondence (space 7b): This space should contain the name, address, area code, telephone number, fax number, and email address (if available) of the person to be consulted if correspondence about this application becomes necessary.

Certification (space 8): The application cannot be accepted unless it bears the date and the **handwritten signature** of the author or other copyright claimant, or of the owner of exclusive right(s), or of the duly authorized agent of author, claimant, or owner of exclusive right(s).

Address for Return of Certificate (space 9): The address box must be completed legibly since the certificate will be returned in a window envelope.

Copyright Office fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.



REGISTRATION NUMBER

TX	TXU	
EFFECTIVE DATE OF REGISTRATION		
Month	Day	Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. **Title of Collective Work ▼**

If published in a periodical or serial give: **Volume ▼** **Number ▼** **Issue Date ▼** **On Pages ▼**

2 a NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
 Yes No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ _____
Domiciled in ▶ _____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
 Yes No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ _____
Domiciled in ▶ _____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

c NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
 Yes No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ _____
Domiciled in ▶ _____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
This information must be given in all cases. Year

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published. Month ▶ _____ Day ▶ _____ Year ▶ _____ Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY

APPLICATION RECEIVED _____

ONE DEPOSIT RECEIVED _____

TWO DEPOSITS RECEIVED _____

FUNDS RECEIVED _____

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 8. **DO NOT WRITE HERE**
Page 1 of _____ pages

EXAMINED BY _____	FORM TX
CHECKED BY _____	
<input type="checkbox"/> CORRESPONDENCE	FOR
<input type="checkbox"/> Yes	COPYRIGHT
	OFFICE
	USE
	ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

- a. This is the first published edition of a work previously registered in unpublished form.
- b. This is the first application submitted by this author as copyright claimant.
- c. This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: **Previous Registration Number** ►

Year of Registration ►

5

DERIVATIVE WORK OR COMPILATION

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

a 6

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

b See instructions before completing this space.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼

a 7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/ Address/Apt/City/State/ZIP ▼

b

Area code and daytime telephone number ►
Email ►

Fax number ►

CERTIFICATION* I, the undersigned, hereby certify that I am the

- Check only one ►
- author
 - other copyright claimant
 - owner of exclusive right(s)
 - authorized agent of _____
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

8

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Date ►

Handwritten signature (X) ▼

X _____

Certificate will be mailed in window envelope to this address:

Name ▼
Number/Street/Apt ▼
City/State/ZIP ▼

YOU MUST:
• Complete all necessary spaces
• Sign your application in space 8

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

MAIL TO:
Library of Congress
Copyright Office - TX
101 Independence Avenue, S.E.
Washington, D.C. 20559-6222

Fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

9

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

Hypothetical:

The company: Realitate, Inc. [think: *Retaliata*]

The work:

The *Realitator* 1.0

A computer program that (1) evaluates reality TV shows, compares them with each other based on prescribed criteria (creativity, stupidity level, production qualities, humor, sleaze, level of "real" reality, obnoxiousness, etc.), (2) at the mid-point of each "new Fall season" the program calculates the worst show then on the air, and (3) then sends out special interceptor rays that scramble all broadcast, satellite and cable signals for that show -- for all viewers.

The program will be licensed for no charge, except one must pledge to contribute \$10/year to one's local public television network.

Realitate, Inc. will also market a second program, the *Realitator Subjugator* 1.0

This program detects the interceptor rays from *Realitator* 1.0 and offsets them - - but only for a single specified television set/receiver, thus rendering the offending reality TV show viewable again on that set/receiver. *Realitator Subjugator* 1.0 is licensed for a fee of \$10,000 for the balance of a given new Fall television season. (For households with seven or more televisions the fee is multiplied by the number of household televisions.)

Realitate, Inc. will also market British versions of both programs in the UK – *Sir-Realitator* 1.0 and *Sir-Realitator Subjugator* 1.0.

All programs will be distributed via Website download and via CD-ROMs made available at retail outlets and by mail, fax, telephone and on-line orders. The CD-ROMs will feature special anti-piracy protection technology. Assent to a license agreement will be required for all programs, which will, among other things, prohibit reverse engineering, tampering and any other conduct in respect of the product (including all product media) that is not expressly authorized by the license.

All programs have rich functionality that includes, in addition to the key functionality described above:

the ability of the user to itself evaluate the season's reality TV shows and perform his/her own analysis and compare it with that generated by the Realitate, Inc. products;

Clips from previously aired programs are included together with each show's theme music;

Photo galleries with actor images are included;

There's even a special *Blow-up-the-show!* video game included;

There is of course a robust tutorial included; and

An electronic copy of *The History of Television*, written by Bea Afrac and licensed to Realitate, Inc., is included with the program.

Realitate, Inc. is busy trying to complete the full product offering in time to meet its various business plan target dates and has hired You Betcha! Consulting, Ltd. to help with various of the computer program design, coding, documentation and testing.

Before the first beta test, a copy of the software was leaked to an internet discussion list hosted on a server in Romania. Fortunately the scrambling technology was not yet included. One of You Betcha!'s senior employees, coincidentally, was fired the following week for stealing lunches out of the company's common-area refrigerator.

Immediately after the full product was released to manufacturing, and despite the anti-piracy technology in place, pirated versions of *Realitator Subjugator* began popping up on hacker networks, and counterfeit versions with identical marking were soon available on the street in Beijing and elsewhere. Not long after that, it was possible to bid on copies posted on several US auction sites.

* * * * *

Form VA

Detach and read these instructions before completing this form.
Make sure all applicable spaces have been filled in before you return this form.

BASIC INFORMATION

When to Use This Form: Use Form VA for copyright registration of published or unpublished works of the visual arts. This category consists of "pictorial, graphic, or sculptural works," including two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams, and models.

What Does Copyright Protect? Copyright in a work of the visual arts protects those pictorial, graphic, or sculptural elements that, either alone or in combination, represent an "original work of authorship." The statute declares: "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."

Works of Artistic Craftsmanship and Designs: "Works of artistic craftsmanship" are registrable on Form VA, but the statute makes clear that protection extends to "their form" and not to "their mechanical or utilitarian aspects." The "design of a useful article" is considered copyrightable "only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article."

Labels and Advertisements: Works prepared for use in connection with the sale or advertisement of goods and services are registrable if they contain "original work of authorship." Use Form VA if the copyrightable material in the work you are registering is mainly pictorial or graphic; use Form TX if it consists mainly of text. **NOTE:** Words and short phrases such as names, titles, and slogans cannot be protected by copyright, and the same is true of standard symbols, emblems, and other commonly used graphic designs that are in the public domain. When used commercially, material of that sort can sometimes be protected under state laws of unfair competition or under the federal trademark laws. For information about trademark registration, write to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Architectural Works: Copyright protection extends to the design of buildings created for the use of human beings. Architectural works created on or after December 1, 1990, or that on December 1, 1990, were unconstructed and embodied only in unpublished plans or drawings are eligible. Request Circular 41 for more information. Architectural works and technical drawings cannot be registered on the same application.

Deposit to Accompany Application: An application for copyright registration must be accompanied by a deposit consisting of copies representing the entire work for which registration is to be made.

Unpublished Work: Deposit one complete copy.

Published Work: Deposit two complete copies of the best edition.

Work First Published Outside the United States: Deposit one complete copy of the first foreign edition.

Contribution to a Collective Work: Deposit one complete copy of the best edition of the collective work.

The Copyright Notice: Before March 1, 1989, the use of copyright notice was mandatory on all published works, and any work first published before that date should have carried a notice. For works first published on and after March 1, 1989, use of the copyright notice is optional. For more information about copyright notice, see Circular 3, "Copyright Notice."

For Further Information: To speak to an information specialist, call (202) 707-3000 (TTY: (202) 707-6737). Recorded information is available 24 hours a day. Order forms and other publications from the address in space 9 or call the Forms and Publications Hotline at (202) 707-9100. Most circulars (but not forms) are available via fax. Call (202) 707-2600 from a touchtone phone. Access and download circulars, forms, and other information from the Copyright Office website at www.copyright.gov.

LINE-BY-LINE INSTRUCTIONS

Please type or print using black ink. The form is used to produce the certificate.

1 SPACE 1: Title

Title of This Work: Every work submitted for copyright registration must be given a title to identify that particular work. If the copies of the work bear a title (or an identifying phrase that could serve as a title), register that wording *completely and exactly* on the application. Indexing of the registration and future identification of the work will depend on the information you give here. For an architectural work that has been constructed, add the date of construction after the title; if unconstructed at this time, add "not yet constructed."

Publication as a Contribution: If the work being registered is a contribution to a periodical, serial, or collection, give the title of the contribution in the "Title of This Work" space. Then, in the line headed "Publication as a Contribution," give information about the collective work in which the contribution appeared.

Nature of This Work: Briefly describe the general nature or character of the pictorial, graphic, or sculptural work being registered for copyright. Examples: "Oil Painting"; "Charcoal Drawing"; "Etching"; "Sculpture"; "Map"; "Photograph"; "Scale Model"; "Lithographic Print"; "Jewelry Design"; "Fabric Design."

Previous or Alternative Titles: Complete this space if there are any additional titles for the work under which someone searching for the registration might be likely to look, or under which a document pertaining to the work might be recorded.

2 SPACE 2: Author(s)

General Instruction: After reading these instructions, decide who are the "authors" of this work for copyright purposes. Then, unless the work is a "collective work," give the requested information about every "author" who contributed any appreciable amount of copyrightable matter to this version of the work. If you need further space, request Continuation Sheets. In the case of a collective work, such as a catalog of paintings or collection of cartoons by various authors, give information about the author of the collective work as a whole.

Name of Author: The fullest form of the author's name should be given. Unless the work was "made for hire," the individual who actually created the work is its "author." In the case of a work made for hire, the statute provides that "the employer or other person for whom the work was prepared is considered the author."

What is a "Work Made for Hire"? A "work made for hire" is defined as: (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." If you have checked "Yes" to indicate that the work was "made for hire," you must give the full legal name of the employer (or other person for whom the work was prepared). You may also include the name of the employee along with the name of the employer (for example: "Elster Publishing Co., employer for hire of John Ferguson").

"Anonymous" or "Pseudonymous" Work: An author's contribution to a work is "anonymous" if that author is not identified on the copies or phonorecords of the work. An author's contribution to a work is "pseudonymous" if that author is identified on the copies or phonorecords under a fictitious name. If the work is "anonymous" you may: (1) leave the line blank; or (2) state "anonymous" on the line; or (3) reveal the author's identity. If the work is "pseudonymous" you may: (1) leave the line blank; or (2) give the pseudonym and identify it as such (for example: "Huntley Haverstock, pseudonym"); or (3) reveal the author's name, making clear which is the real name and which is the pseudonym (for example: "Henry Leek, whose pseudonym is Priam Farrel"). However, the citizenship or domicile of the author **must** be given in all cases.

Dates of Birth and Death: If the author is dead, the statute requires that the year of death be included in the application unless the work is anonymous or pseudonymous. The author's birth date is optional but is useful as a form of identification. Leave this space blank if the author's contribution was a "work made for hire."

Author's Nationality or Domicile: Give the country of which the author is a citizen or the country in which the author is domiciled. Nationality or domicile must be given in all cases.

Nature of Authorship: Categories of pictorial, graphic, and sculptural authorship are listed below. Check the box(es) that best describe(s) each author's contribution to the work.

3-Dimensional sculptures: fine art sculptures, toys, dolls, scale models, and sculptural designs applied to useful articles.

2-Dimensional artwork: watercolor and oil paintings; pen and ink drawings; logo illustrations; greeting cards; collages; stencils; patterns; computer graphics; graphics appearing in screen displays; artwork appearing on posters, calendars, games, commercial prints and labels, and packaging, as well as 2-dimensional artwork applied to useful articles, and designs reproduced on textiles, lace, and other fabrics; on wallpaper, carpeting, floor tile, wrapping paper, and clothing.

Reproductions of works of art: reproductions of preexisting artwork made by, for example, lithography, photoengraving, or etching.

Maps: cartographic representations of an area, such as state and county maps, atlases, marine charts, relief maps, and globes.

Photographs: pictorial photographic prints and slides and holograms.

Jewelry designs: 3-dimensional designs applied to rings, pendants, earrings, necklaces, and the like.

Technical drawings: diagrams illustrating scientific or technical information in linear form, such as architectural blueprints or mechanical drawings.

Text: textual material that accompanies pictorial, graphic, or sculptural works, such as comic strips, greeting cards, games rules, commercial prints or labels, and maps.

Architectural works: designs of buildings, including the overall form as well as the arrangement and composition of spaces and elements of the design.

NOTE: Any registration for the underlying architectural plans must be applied for on a separate Form VA, checking the box "Technical drawing."

3 SPACE 3: Creation and Publication

General Instructions: Do not confuse "creation" with "publication." Every application for copyright registration must state "the year in which creation of the work was completed." Give the date and nation of first publication only if the work has been published.

Creation: Under the statute, a work is "created" when it is fixed in a copy or phonorecord for the first time. Where a work has been prepared over a period of time, the part of the work existing in fixed form on a particular date constitutes the created work on that date. The date you give here should be the year in which the author completed the particular version for which registration is now being sought, even if other versions exist or if further changes or additions are planned.

Publication: The statute defines "publication" as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending"; a work is also "published" if there has been an "offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display." Give the full date (month, day, year) when, and the country where, publication first occurred. If first publication took place simultaneously in the United States and other countries, it is sufficient to state "U.S.A."

4 SPACE 4: Claimant(s)

Name(s) and Address(es) of Copyright Claimant(s): Give the name(s) and address(es) of the copyright claimant(s) in this work even if the claimant is the same as the author. Copyright in a work belongs initially to the author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared). The copyright claimant is either the author of the work or a person or organization to whom the copyright initially belonging to the author has been transferred.

Transfer: The statute provides that, if the copyright claimant is not the author, the application for registration must contain "a brief statement of how the claimant obtained ownership of the copyright." If any copyright claimant named in space 4 is not an author named in space 2, give a brief statement explaining how the claimant(s) obtained ownership of the copyright. Examples: "By written contract"; "Transfer of all rights by author"; "Assignment"; "By will." Do not attach transfer documents or other attachments or riders.

5 SPACE 5: Previous Registration

General Instructions: The questions in space 5 are intended to find out whether an earlier registration has been made for this work and, if so, whether there is any basis for a new registration. As a rule, only one basic

copyright registration can be made for the same version of a particular work.

Same Version: If this version is substantially the same as the work covered by a previous registration, a second registration is not generally possible unless: (1) the work has been registered in unpublished form and a second registration is now being sought to cover this first published edition; or (2) someone other than the author is identified as a copyright claimant in the earlier registration, and the author is now seeking registration in his or her own name. If either of these two exceptions applies, check the appropriate box and give the earlier registration number and date. Otherwise, do not submit Form VA; instead, write the Copyright Office for information about supplementary registration or recordation of transfers of copyright ownership.

Changed Version: If the work has been changed and you are now seeking registration to cover the additions or revisions, check the last box in space 5, give the earlier registration number and date, and complete both parts of space 6 in accordance with the instruction below.

Previous Registration Number and Date: If more than one previous registration has been made for the work, give the number and date of the latest registration.

6 SPACE 6: Derivative Work or Compilation

General Instructions: Complete space 6 if this work is a "changed version," "compilation," or "derivative work," and if it incorporates one or more earlier works that have already been published or registered for copyright, or that have fallen into the public domain. A "compilation" is defined as "a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship." A "derivative work" is "a work based on one or more preexisting works." Examples of derivative works include reproductions of works of art, sculptures based on drawings, lithographs based on paintings, maps based on previously published sources, or "any other form in which a work may be recast, transformed, or adapted." Derivative works also include works "consisting of editorial revisions, annotations, or other modifications" if these changes, as a whole, represent an original work of authorship.

Preexisting Material (space 6a): Complete this space and space 6b for derivative works. In this space identify the preexisting work that has been recast, transformed, or adapted. Examples of preexisting material might be "Grunewald Altarpiece" or "19th century quilt design." Do not complete this space for compilations.

Material Added to This Work (space 6b): Give a brief, general statement of the additional new material covered by the copyright claim for which registration is sought. In the case of a derivative work, identify this new material. Examples: "Adaptation of design and additional artistic work"; "Reproduction of painting by photolithography"; "Additional cartographic material"; "Compilation of photographs." If the work is a compilation, give a brief, general statement describing both the material that has been compiled and the compilation itself. Example: "Compilation of 19th century political cartoons."

7,8,9 SPACE 7,8,9: Fee, Correspondence, Certification, Return Address

Deposit Account: If you maintain a Deposit Account in the Copyright Office, identify it in space 7a. Otherwise, leave the space blank and send the fee of \$30 with your application and deposit.

Correspondence (space 7b): This space should contain the name, address, area code, telephone number, email address, and fax number (if available) of the person to be consulted if correspondence about this application becomes necessary.

Certification (space 8): The application cannot be accepted unless it bears the date and the **handwritten signature** of the author or other copyright claimant, or of the owner of exclusive right(s), or of the duly authorized agent of the author, claimant, or owner of exclusive right(s).

Address for Return of Certificate (space 9): The address box must be completed legibly since the certificate will be returned in a window envelope.

PRIVACY ACT ADVISORY STATEMENT Required by the Privacy Act of 1974 (P.L. 93 - 579)

The authority for requesting this information is title 17, U.S.C., secs. 409 and 410. Furnishing the requested information is voluntary. But if the information is not furnished, it may be necessary to delay or refuse registration and you may not be entitled to certain relief, remedies, and benefits provided in chapters 4 and 5 of title 17, U.S.C.

The principal uses of the requested information are the establishment and maintenance of a public record and the examination of the application for compliance with the registration requirements of the copyright code.

Other routine uses include public inspection and copying, preparation of public indexes, preparation of public catalogs of copyright registrations, and preparation of search reports upon request.

NOTE: No other advisory statement will be given in connection with this application. Please keep this statement and refer to it if we communicate with you regarding this application.

Copyright Office fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.



REGISTRATION NUMBER

VA	VAU
EFFECTIVE DATE OF REGISTRATION	
Month	Day
Year	

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 Title of This Work ▼ NATURE OF THIS WORK ▼ See instructions

Previous or Alternative Titles ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. **Title of Collective Work ▼**

If published in a periodical or serial give: **Volume ▼** **Number ▼** **Issue Date ▼** **On Pages ▼**

2 **NOTE**
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

a NAME OF AUTHOR ▼ DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? Yes No

Author's Nationality or Domicile
Name of Country _____
OR { Citizen of _____
Domiciled in _____

Was This Author's Contribution to the Work
Anonymous? Yes No
Pseudonymous? Yes No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). **See instructions**

<input type="checkbox"/> 3-Dimensional sculpture	<input type="checkbox"/> Map	<input type="checkbox"/> Technical drawing
<input type="checkbox"/> 2-Dimensional artwork	<input type="checkbox"/> Photograph	<input type="checkbox"/> Text
<input type="checkbox"/> Reproduction of work of art	<input type="checkbox"/> Jewelry design	<input type="checkbox"/> Architectural work

b Name of Author ▼ Dates of Birth and Death
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? Yes No

Author's Nationality or Domicile
Name of Country _____
OR { Citizen of _____
Domiciled in _____

Was This Author's Contribution to the Work
Anonymous? Yes No
Pseudonymous? Yes No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). **See instructions**

<input type="checkbox"/> 3-Dimensional sculpture	<input type="checkbox"/> Map	<input type="checkbox"/> Technical drawing
<input type="checkbox"/> 2-Dimensional artwork	<input type="checkbox"/> Photograph	<input type="checkbox"/> Text
<input type="checkbox"/> Reproduction of work of art	<input type="checkbox"/> Jewelry design	<input type="checkbox"/> Architectural work

3 **a** Year in Which Creation of This Work Was Completed _____ Year **b** Date and Nation of First Publication of This Particular Work
Complete this information ONLY if this work has been published. Month _____ Day _____ Year _____ Nation _____

4 See instructions before completing this space.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY

APPLICATION RECEIVED _____

ONE DEPOSIT RECEIVED _____

TWO DEPOSITS RECEIVED _____

FUNDS RECEIVED _____

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page. • See detailed instructions. • Sign the form at line 8. **DO NOT WRITE HERE**
Page 1 of _____ pages

EXAMINED BY _____	FORM VA
CHECKED BY _____	
<input type="checkbox"/> CORRESPONDENCE Yes	FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

- a. This is the first published edition of a work previously registered in unpublished form.
- b. This is the first application submitted by this author as copyright claimant.
- c. This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: **Previous Registration Number** ▼ **Year of Registration** ▼

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼

a 6
See instructions before completing this space.

b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼ **Account Number** ▼

a 7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

b

Area code and daytime telephone number () Fax number ()

Email

CERTIFICATION* I, the undersigned, hereby certify that I am the

check only one ▶ {

- author
- other copyright claimant
- owner of exclusive right(s)
- authorized agent of _____

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

8

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Date _____

Handwritten signature (X) ▼

X _____

Certificate will be mailed in window envelope to this address:

Name ▼
Number/Street/Apt ▼
City/State/ZIP ▼

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 8

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

MAIL TO:

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

Fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

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*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.