

Copyright Registration for Sound Recordings

What Is a Sound Recording?

The copyright law of the United States (title 17 of the *United States Code*) provides for copyright protection in sound recordings.¹ Sound recordings are defined in the law as “works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work.” Common examples include recordings of music, drama, or lectures.

Copyright in a sound recording protects the particular series of sounds that are “fixed” or embodied in a recording against unauthorized reproduction and revision, unauthorized distribution of phonorecords containing those sounds, and certain unauthorized performances by means of a digital audio transmission. The Digital Performance Right in Sound Recordings Act of 1995, P.L. 104-39, effective February 1, 1996, created a new limited performance right for certain digital transmissions of sound recordings.

Generally, copyright protection extends to two elements in a sound recording: (1) the contribution of the performer(s) whose performance is captured and (2) the contribution of the person or persons responsible for capturing and processing the sounds to make the final recording.

A sound recording is not the same as a phonorecord. A phonorecord is the physical object in which works of authorship are embodied. Throughout this circular, the word “phonorecord” includes CDs, cassette tapes, LPs, and other vinyl discs, as well as other formats.

Copyright registration for a sound recording alone is neither the same as, nor a substitute for, registration for the musical, dramatic, or literary work that is recorded. The underlying work may be registered in its own right apart from any recording of the performance or, in certain cases, the underlying work may be registered together with the sound recording.

NOTE: The copyright law does not define sounds accompanying a motion picture or other audiovisual work as “sound recordings” but as an integral part of the motion picture or audiovisual work in which they are incorporated. These sounds are classified as works of the performing arts.

Copyright Protection Is Automatic

Under the 1976 Copyright Act, which became effective January 1, 1978, a work is automatically protected by copyright when it is created. A work is created when it is “fixed” in a copy or phonorecord for the first time. Neither registra-

tion in the Copyright Office nor publication is required for copyright protection under the present law.

Advantages to Copyright Registration

There are, however, certain advantages to registration, including the establishment of a public record of the copyright claim. Except for certain foreign works, copyright registration must generally be made before an infringement suit may be brought in the United States. Timely registration may also provide a broader range of remedies for an infringement of copyright.

Publication

As defined by the 1976 Copyright Act, publication is 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. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public performance or display of a work does not of itself constitute publication.

“To the public” generally means to persons under no explicit or implicit restrictions with respect to disclosure. The following acts do not constitute publication: performing the work, preparing copies or phonorecords, or sending the work to the Copyright Office.

The above definition of publication applies only to works governed by the 1976 Copyright Act, which took effect January 1, 1978. For information about works published prior to 1978, call the Copyright Office at (202) 707-3000 or 1-877-476-0778.

NOTE: 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 or 1-877-476-0778.

Filing a Claim to Copyright with the U.S. Copyright Office

For information about registering the underlying work or text such as a speech or music, for example, see Circular 1, *Copyright Basics*; Circular 50, *Copyright Registration for Musical Compositions*; and FL-109. For information about registering the underlying work and the sound recording

together, see Circular 56A, *Copyright Registration of Musical Compositions and Sound Recordings*.

An application for copyright registration contains three essential elements: a completed application form, a nonrefundable filing fee, and a nonreturnable deposit—that is, a copy or copies of the work being registered and “deposited” with the Copyright Office.

Here are the options for registering your copyright, beginning with the fastest and most cost-effective method.

Online Application

Online registration through the electronic Copyright Office (eCO) is the preferred way to register basic claims. Advantages of online filing include:

- a lower filing fee
- fastest processing time
- online status tracking
- secure payment by credit or debit card, electronic check, or Copyright Office deposit account
- the ability to upload certain categories of deposits directly into eCO as electronic files

NOTE: Hard-copy deposits are required for most published works to fulfill the mandatory deposit requirements. You can still register using eCO and save money even if you will submit a hard-copy deposit, which is required under the mandatory deposit requirements for published works. The system will prompt you to specify whether you intend to submit an electronic or a hard-copy deposit, and it will provide instructions accordingly.

Basic claims include (1) a single work; (2) multiple unpublished works if the elements are assembled in an orderly form; the combined elements bear a single title identifying the collection as a whole; the copyright claimant in all the elements and in the collection as a whole is the same; and all the elements are by the same author, or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element; and (3) multiple published works if they are all first published together in the same publication on the same date and owned by the same claimant.

To access eCO, go to the Copyright Office website at www.copyright.gov and click on electronic Copyright Office.

Paper Application

You can also register your copyright using paper Form SR. To access all forms, go to the Copyright Office website at www.copyright.gov and click on *Forms*. Fill in the form on

your personal computer, print it out, and mail it with a check or money order and your deposit. Blank forms can also be printed out and completed by hand, or they may be requested by postal mail or by calling the Forms and Publications Hotline at (202) 707-9100 (limit of two copies of each form by mail). Informational circulars about the types of applications and current registration fees are available on the Copyright Office website or by phone.

*Library of Congress
U.S. Copyright Office—SR
101 Independence Avenue SE
Washington, DC 20559-6237*

Use zip code extension -6601 for works sent in response to a mandatory deposit notice.

Registration is often delayed because of mistakes or omissions in filling out the application. The following points may be helpful.

Title · Give the title of the work exactly as it appears on the phonorecord.

Two or more unpublished works registered as a collection must be given a single collection title. The individual titles may be given following the collection title. For more information on unpublished collections, see Circular 50, *Copyright Registration for Musical Compositions*; and Circular 56A, *Copyright Registration of Musical Compositions and Sound Recordings*.

Completion · The year of creation of a sound recording is the year in which the sounds are fixed in a phonorecord for the first time. If the claim extends only to the compilation of preexisting sound recordings, give the year in which the compilation was fixed. The year of creation must always be given.

Publication: If publication has not taken place, leave this space blank. If the work for which registration is sought has been published, give the month, day, and year and nation where the phonorecords were first published.

Name of Author · The author of a sound recording is the performer(s) or record producer or both. If the work is “made for hire,” the employer is considered to be the author and should be named. See Circular 9, *Works Made for Hire Under the 1976 Copyright Act*.

A “work made for hire” is:

- 1 a work prepared by an employee within the scope of his or her employment, or

- 2 a work of a type specified in the law that has been specially ordered or commissioned, where there is an express written agreement signed by both parties that the work shall be considered a “work made for hire.”

Generally, for a new sound recording to be a work made for hire, it must be made by an employee within the scope of employment.

Authorship: This information must be given. Sound recording authorship is the performance, sound production, or both, that is fixed in the recording deposited for registration. If you register online using eCO, check the box(es) that describe the authorship you are registering.

If the claim includes artwork, photographs, and/or liner notes, include the appropriate term in the statement of authorship.

Copyright Claimant(s) · The name and address of the copyright claimant(s) must be given. The copyright claimant is either the author or a person or organization to whom the author has transferred all of the rights in the United States copyright. When the claimant named is not the author, a brief transfer statement is required to show how the claimant acquired the copyright. Do not attach copies of documents of copyright transfer to the application. For information on how to record transfers or other documents pertaining to a copyright, see Circular 12, *Recordation of Transfers and Other Documents*.

Previous Registrations · If a previous registration for this sound recording or another version of it was completed and a certificate of copyright registration issued, give the requested information about the previous registration.

Derivative Works · A derivative sound recording is one that incorporates some preexisting sounds that were previously registered or published, or sounds that were fixed, before February 15, 1972. The preexisting recorded sounds must have been rearranged, remixed, or otherwise altered in sequence or character, or there must be some additional new sounds. Further, the new or revised sounds must contain at least a minimum amount of original sound recording authorship. This new authorship is the basis for the copyright claim. When completing the application, identify the preexisting material and new material/authorship included in the claim. Be as complete as space allows.

Examples of derivative sound recordings that generally can be registered include the following:

- a remix from multitrack sources

- a remastering that involves multiple kinds of creative authorship, such as adjustments of equalization, sound editing, and channel assignment

Mechanical changes or processes applied to a sound recording, such as a change in format, declicking, and noise reduction, generally do not represent enough original authorship to be registered.

Compilation of Sound Recordings • A “compilation” is a work formed by the collecting and assembling of preexisting materials that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.

When an author contributes a certain minimum amount of authorship in the selection and ordering of preexisting sound recordings, the author produces a copyrightable compilation. The copyright in the compilation of recordings is separate and distinct from copyright (if any) in the recordings themselves. It extends only to the selection and ordering of the recordings on the disk or tape.

If you register online using eCO, check the box labeled “other” and describe the authorship and the material included in the claim as “compilation.”

Example: Oldies Recording Company is publishing a compilation entitled *Greatest Hit from the Age of Aquarius*. The boxed set of CDs includes some original artwork and liner notes owned by the company.

Certifications • Paper forms must bear an original signature and be dated. Stamped signatures are not acceptable. For a published work, the application must be certified on or after the date of publication. Please use black ink.

Deposit Requirements

To register a copyright claim in a sound recording, the deposit requirement is either one or two phonorecords. The number and format required depend upon several factors. For unpublished claims filed in eCO, it is acceptable to upload digital files of the sound recording(s).

- If unpublished, deposit one phonorecord (tape or disc). Be sure to label it with the title(s). If it is a collection, give the collection title on the label. If filing via eCO, upload one or more digital files.
- If first published in the United States, deposit two complete phonorecords of the best edition as published.

- If first published outside the United States before March 1, 1989, deposit one complete phonorecord of the work as first published.
- If first published outside the United States after March 1, 1989, deposit one complete phonorecord of either the first published edition or the best edition of the work.

note: Deposits cannot be returned.

If the sound recording has been published in only one edition, send two phonorecords of that edition.

If it has been published in more than one edition, the “best edition” in descending order of suitability is: (1) a compact digital disc rather than a vinyl disc; (2) a vinyl disc rather than a tape; (3) an open-reel tape rather than a cartridge; and (4) a cartridge rather than a cassette.

Notice of Copyright for Sound Recordings

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*.

Mandatory Deposit for Works Published in the United States

Although a copyright registration is not required, the 1976 Copyright Act establishes a mandatory deposit requirement for works published in the United States. In general, the owner of copyright or the owner of the exclusive right of publication in the work has a legal obligation to deposit in the Copyright Office within three months of publication in the United States two complete phonorecords of the best edition. It is the responsibility of the owner of copyright or the owner of the right of first publication in the work to fulfill this mandatory deposit requirement. Failure to make the deposit can result in fines and other penalties but does not affect copyright protection. If applicable, a copy of the mandatory deposit notice must also be included with the submission.

A “complete phonorecord” in the case of a sound recording includes a phonorecord together with any material published with the phonorecord, such as textual or pictorial matter appearing on the album cover or embodied in inserts in the container.

Certain categories of works are entirely exempt from the mandatory deposit requirements, and the obligation is reduced for certain other categories. For further information, see Circular 7D, *Mandatory Deposit of Copies or Phonorecords for the Library of Congress*.

The 1976 Copyright Act establishes the conditions under which the same deposit of phonorecords will satisfy the deposit requirements for the Library of Congress and for copyright registration. If you register online using eCO, the phonorecord should be sent to the Copyright Office accompanied by the *shipping slip* that will be provided by the eCO system. If you register using a paper Form SE or Short Form SE, the phonorecords should be sent to the Copyright Office accompanied by the application form and the correct fee all together in the same mailing package.

The mandatory deposit requirement also applies to sound recordings first published abroad that are later published in this country by the distribution of phonorecords that either are imported or are issued as an American edition. Once the sound recording is registered, the mandatory deposit requirement has been satisfied.

note: 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 or 1-877-476-0778.

Effective Date of Registration

When the Copyright Office issues a registration certificate, it assigns as the effective date of registration the date it received all required elements— an application, a nonrefundable filing fee, and a nonreturnable deposit—in acceptable form, regardless of how long it took to process the application and mail the certificate. You do not have to receive your certificate before you publish or produce your work, nor do you need permission from the Copyright Office to place a copyright notice on your work. However, the Copyright Office must have acted on your application before you can file a suit for copyright infringement, and certain remedies, such as statutory damages and attorney's fees, are available only for acts of infringement that occurred after the effective date of registration. If a published work was infringed before the effective date of registration, those remedies may also be available if the effective date of registration is no later than three months after the first publication of the work.

If you apply online for copyright registration, you will receive an email saying that your application was received.

If you apply for copyright registration using a paper application, 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.

Requests to have certificates available for pickup in the Copyright Office or to have certificates sent by Federal Express or another mail service cannot be honored.

If you want to know the date that the Copyright Office receives your paper application or hard-copy deposit, send it by registered or certified mail and request a return receipt.

For Further Information

By Internet

Circulars, announcements, regulations, copyright applications, and other related materials are available from the Copyright Office website at www.copyright.gov. To send an email communication, click on *Contact Us* at the bottom of the homepage.

By Telephone

For general information about copyright, call the Copyright Public Information Office at (202) 707-3000 or 1-877-476-0778 (toll free). Staff members are on duty from 8:30 AM to 5:00 PM, eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day. To request paper application forms or circulars by postal mail, call (202) 707-9100 or 1-877-476-0778 and leave a recorded message.

By Regular Mail

Write to:

*Library of Congress
Copyright Office—COPUBS
Publications Section
101 Independence Avenue SE
Washington, DC 20559-6304*

Notes

1. Sound recordings fixed before February 15, 1972, were generally protected by common law or in some cases by statutes enacted in certain states but were not protected by federal copyright law. In 1971 Congress

amended the copyright code to provide copyright protection for sound recordings fixed and first published with the statutory copyright notice on or after February 15, 1972. The 1976 Copyright Act, effective January 1, 1978, provides federal copyright protection for unpublished and published sound recordings fixed on or after February 15, 1972. Any rights or remedies under state law for sound recordings fixed before February 15, 1972, are not annulled or limited by the 1976 Copyright Act until February 15, 2047.

Under the Uruguay Round Agreements Act, effective January 1, 1996, copyright was restored for certain unpublished foreign sound recordings fixed before February 15, 1972, and for certain foreign sound recordings originally published without notice. For further information, request Circular 38b, *Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA)*.