

# WIPO REGISTRATION QUESTIONNAIRE

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## Response of the United States

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### A. COPYRIGHT REGISTRATION AND RECORDATION

**1. What is the name and legal status of the copyright registering/recording body in your country?**

The copyright registering body in the United States of America is the U.S. Copyright Office. The Copyright Office is a division of the U.S. Library of Congress, and is directed by the Register of Copyrights. The Register of Copyrights, in addition to advising the U.S. Congress and providing information and assistance to the Judiciary and Federal agencies, has responsibility for performing all administrative functions and duties contained in the U.S. Copyright Act. See 17 U.S.C. § 701. These duties include the registration of copyright claims and recordation of transfers and other documents pertaining to copyright. See 17 U.S.C. §§ 408 and 205.

**2. Please provide full contact details of the copyright registering/recording body, including location of its offices, with indication of the hours they open to public.**

The Copyright Office is located in the Library of Congress, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. The Copyright Office is open to the public Monday - Friday, 8:30 a.m. to 5:00 p.m., Eastern Time, except federal holidays. Access for disabled individuals is available at the front door on Independence Avenue, S.E.

**3. Does the copyright registering/recording body have a webpage and e-mail address? If so, please list them.**

The webpage of the Copyright Office is [www.copyright.gov](http://www.copyright.gov). Questions may be submitted via the webpage, by navigating to the page entitled "Contact Us" at [www.copyright.gov/help/](http://www.copyright.gov/help/), and clicking on the link "Ask a Copyright Question." If a

user is having a technical problem using a computer to submit an application for online registration or preregistration, he or she may click on the link “Ask a Technical Question.” The Copyright Office may also be reached through the website of the Library of Congress at [www.loc.gov](http://www.loc.gov).

**4. Is the copyright registry interconnected to any other copyright data system?**

No. The Copyright Office registry of registrations and recordings is not connected to external copyright data systems, such as those maintained by private music performing rights or mechanical rights organizations, except to the extent those bodies provide links to the Copyright Office home page. The Copyright Office maintains a database containing information about registrations and recorded documents since 1978 that is available to the public from the Copyright Office website. The public may conduct online searches by visiting the Copyright Office website, at [www.copyright.gov](http://www.copyright.gov), “Search Copyright Records.” Some of these records may be accessed from private sources. (For example, see Stanford University’s Copyright Renewal Database for Books published between 1923 and 1963 at <http://collections.stanford.edu/copyrightrenewals/bin/page?forward=home>.) (See question 25 below for more on private sector resources).

**5. Please list relevant national legislation, including regulations, regarding copyright recordation/registration.**

Sections 408 through 412 of the U.S. Copyright Act are the statutory provisions in U.S. law that govern registration of copyright claims. 17 U.S.C. §§ 408-412. Section 205 is the statutory provision that provides for the voluntary recordation of transfers and other documents pertaining to copyright, and sets forth certain standards and incentives for recording, including for registered works.

Regulations concerning copyright recordation and registration can be found in the Code of Federal Regulations Title 37, Chapter II, Copyright Office, Library of Congress, Subchapter A, Copyright Office and Procedures. Specifically, Part 201 and Part 202 contain regulations with respect to general provisions and registration of claims to copyright, respectively.

**6. What kind of copyright works can be registered/recorded? Is the registration/recordation process different for each type of copyrighted work? Please describe the differences, if any.**

Registration and recordation are not the same thing under U.S. law. Registration refers to the process by which, under section 408 of the Copyright Act, “the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the Copyright Office” the required deposit, application, and fee. Claims to copyright are submitted to the Copyright Office and the information contained in the registration applications is entered into Copyright Office records after successful examination by registration specialists.

Recordation, on the other hand, refers largely to the process by which interested parties send certain documents pertaining to copyright to the Copyright Office voluntarily, where they are then recorded and indexed for the public.

**(a) Kinds of works registrable/recordable**

All copyright works can be registered, but the Register of Copyrights has specified certain administrative classes into which works are placed for purposes of deposit and registration with the Copyright Office. Such administrative classification has no significance with respect to the subject matter of copyright or the exclusive rights provided by law. 17 U.S.C. § 408. Registration will take place if the Register of Copyrights determines that “the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements” of the Copyright Act have been met. 17 U.S.C. § 410. Compilations and derivative works that constitute original works of authorship are also registrable. 17 U.S.C. § 103.

Recordation is available for any transfer of copyright ownership—including an assignment, exclusive license, or any other conveyance of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect—or other document pertaining to a copyright. 17 U.S.C. §§ 101, 205. The document must contain the proper signature or signatures, be complete by its terms, and be legible and capable of imaging. 37 C.F.R. § 201.4(c).

**(b) Whether the registration, recordation process differs for each type of work**

The administrative process for registration can differ in some minor respects depending on the type of work presented by the claimant and submitted for deposit.

**(c) Differences, if any**

Differences in the registration process relate primarily to the number and types of deposits accepted by the Office. In general, for an unpublished work, a complete copy or phonorecord, or identifying material must be submitted with the application and fee. For works published in the United States, two complete copies or phonorecords of the “best edition” must be submitted unless Copyright Office regulations permit alternate deposit material to be submitted. The best edition of published works is established by regulation according to the Library of Congress’s preferred acquisition formats. Only one deposit copy or phonorecord of the first published edition is required for registration of works first published outside the United States. See 37 C.F.R. § 202.20.

Additionally, the Register of Copyrights has authority to prescribe additional rules or accommodations. 17 U.S.C. § 408(c). For example, for some classes of work, (e.g. sculptures) identifying material may be submitted in lieu of a deposit. See 37 C.F.R. §§ 202.20(c)(2), subsections (iv), (vii), (viii), and (ix-xiii). With respect to

groups of works by the same individual author, a single registration and deposit will be accepted if the works were first published as contributions to periodicals, including newspapers, within a twelve-month period, among other specifications. 37 C.F.R. § 202.3(b)(8). There are also separate statutory provisions that apply to registration of mask works and vessel hull designs, which are subject to sui generis protection. See Chapters 9 and 13 of title 17. These works are registered according to their respective statutory provisions.

**7. Can the subject matter of related rights (e.g., performances, broadcasts, sound recordings) also be registered/recorded? If yes, is there a different registration/recording process than for works protected by copyright?**

U.S. copyright law does not make a distinction between “copyright” and “related rights.” Performances, broadcasts, and sound recordings are subject to copyright protection, as with the other types of authorship, to the extent the subject matter is fixed in a tangible medium of expression and meets the requirements of originality. Fixation in a copy or phonorecord is a condition of U.S. federal copyright protection. 17 U.S.C. § 102(a). The registration and recording requirements for such subject matter are the same as described for other copyrighted works. The registration and recording procedures are also the same for sound recordings as for other works.

**8. Is there a possibility to record the transfer or licensing of copyright/related rights?**

Yes. Documents pertaining to transfers of copyright ownership and other documents pertaining to copyright may be recorded in the Copyright Office. As a general rule, recording is permissive but it carries some advantages in certain instances. For example, under section 205, the voluntary recording of transfers of ownership of registered copyright works may provide constructive notice of the facts stated in the recorded document and may ensure priority in the event of conflicting claims. The Copyright Office staff does not examine recorded documents for legal sufficiency, but by regulation certain basic standards, cited in question 6(a) above, must be met.

When a document is recorded, the Copyright Office maintains a copy which may be introduced into a court of law as evidence of the original. A description of each recorded document, including party names, titles of works, if any, and other information, is made available online for all documents recorded since 1978. The copy of the recorded document and the catalog file are available for public inspection. The Copyright Office does not enforce agreements contained in recorded documents. Nor does the Office determine whether documents satisfy legal requirements that are necessary for the documents to be effective or enforced against the parties. See 17 U.S.C. § 205.

**9. Is there a possibility to record a security interest in the copyright or related right? If so, what are the legal requirements and effects of such recording?**

Yes. Security interests are among the documents pertaining to agreements regarding copyrights that may be recorded in the Copyright Office. As with other documents pertaining to agreements regarding copyrights, recording a security interest is voluntary; however, commercial laws may require recordation for the perfection of a security interest.

#### **10. What is the legal effect of registration?**

Registration made before or within the first five years after publication provides prima facie evidence of the facts stated in the copyright certificate and prima facie evidence of the validity of the copyright. 17 U.S.C. § 410. Registration of works that equate to so-called “related rights” are treated the same as copyright to the extent that it pertains to original works of authorship fixed in tangible form.

Registration before infringement occurs entitles a copyright owner to elect statutory damages and, in the discretion of the court, to be awarded attorney’s fees if the copyright owner prevails in a copyright infringement action. If a copyright owner registers within three months of publication, statutory damages and attorney’s fees will be available for any infringements occurring after publication. 17 U.S.C. § 412. Statutory damages range from \$750 to \$30,000 per work or, in the case of willful infringement, as much as \$150,000 per work. 17 U.S.C. § 504(c).

Registration is also a prerequisite to bring suit for infringement of the copyright in any “United States work,” as this term is defined in Section 101 of the Copyright Act. 17 U.S.C. § 411(a).

Registration was mandatory in the United States until January 1, 1978. Prior to this date, the term of copyright was divided into two consecutive terms and renewal registration, within strict time limits, was required as a condition of securing the second term. For works created prior to 1978, renewal is now automatic.

#### **11. Is copyright registration/recordation mandatory or voluntary in the following circumstances?**

##### **(a) Recognition of creation?**

Neither registration nor recordation is required to recognize creation under U.S. law. Such registration is not a condition of copyright protection. 17 U.S.C. § 408(a). Federal copyright protection subsists upon creation of an original work of authorship fixed in any tangible medium of expression. 17 U.S.C. § 102(a). However, a copyright registration certificate may provide useful evidence of the claims’ validity and veracity. 17 U.S.C. § 304(a)(4)(B).

##### **(b) Transfer of rights?**

Copyright recordation is generally voluntary in regard to transfer of rights. However, there are some cases in which recordation may be necessary to exercise certain rights. For example, recordation is a required step when, pursuant to conditions set forth by statute, authors and certain of their heirs seek to terminate transfers previously made. For the notice of termination to take effect, the author or other terminating party must record the notice of termination with the Copyright Office prior to the effective date of termination. 17 U.S.C. §§ 203(a)(4)(A) and 304(c)(4)(A) (Effecting termination rights is a discretionary option under U.S. law).

In instances where recordation is voluntary, the law provides some incentives. For example, where a document that refers to a registered work by title or register number is recorded, recordation constitutes constructive notice of the facts stated in the document. A recorded document pertaining to a registered copyright work also receives priority over conflicting transfers or exclusive licenses that have not been recorded. 17 U.S.C. §§ 205(d) and 205(e).

**(c) Initiation of judicial proceedings?**

Registration is voluntary for initiation of judicial proceedings other than for a “United States work,” as this term is defined in section 101 of the Copyright Act. In the case of a “United States work,” no action for infringement of the copyright shall be instituted until preregistration or registration of the copyright claim has been made with, or denied by, the Copyright Office. 17 U.S.C. § 411(a). These requirements do not apply to section 106(A) rights (rights of certain authors to attribution and integrity) in works of visual arts, as defined in 17 U.S.C. § 101.

Recordation of a transfer or other document pertaining to a copyright is not required in order to initiate judicial proceedings for the enforcement of contractual obligations.

**(d) Other changes in title/ownership (such as leasing)?**

As discussed in Question 11(b) above, recordation is available for any document pertaining to copyright, including changes in title or ownership and leases.

**If your country has a mandatory registration/recordation system, please describe any legal consequences for non-compliance.**

The United States registration and recordation system is voluntary in that it is not a condition of copyright. However, there are instances where failure to register, or failure to record a notice of termination of a transfer, has legal consequences. The failure to register will preclude the ability to bring an infringement action in cases where the work is a “United States work,” as defined in the statute. See 17 U.S.C. §§ 411(a) and 101. In addition, the failure to record a notice of termination with the Copyright Office in the manner and time period specified by law is a fatal mistake and will prevent the termination from taking effect. 17 U.S.C. §§ 203(a)(4)(A) and

304(c)(4)(A.)). Notices of termination of transfer are available to authors and certain heirs, on an optional basis, under very narrow circumstances.

**12. Do Courts in your country recognize copyright registrations affected by public authorities in other countries? If yes, is recognition automatic or is a local procedure required to validate or otherwise give effect to the foreign registration?**

There is no provision in the U.S. copyright statute to recognize copyright registrations effected by public authorities in other countries. However, under section 104(b)(2) of the Copyright Act, works are subject to protection under title 17 if “the work is first published in ... a foreign nation that, on the date of first publication, is a treaty party.” Thus, no local procedure is required to establish copyright protection in the United States for a work published in a treaty party country. Further, an owner of a work other than a United States work need not register his or her claim in the United States or elsewhere in order to bring suit in U.S. courts. 17 U.S.C. § 411(a). Registration in the United States, however, does provide additional benefits. See the discussion following Question 10.

**13. What are the requirements for registration?**

**(a) What are the mandatory elements of the request for registration/recordation?**

Three elements are required for U.S. registration: 1) a completed application; 2) the payment of a filing fee; and 3) the appropriate deposit.

As discussed above, registration and recordation are not the same under U.S. law. A document pertaining to a copyright, e.g. a transfer of copyright ownership, may be recorded if it is accompanied by the applicable fee, and meets basic requirements including that it: contains the proper signature or signatures, is complete by its terms, and is capable of imaging. 37 C.F.R. § 201.4(c).

**(b) Does the request need to be submitted in a specific form? Can the request be submitted by the post? Can the request be submitted electronically?**

The Copyright Office on July 1, 2008 launched an online system for registration of claims to copyright. Registration requests can still be submitted in paper format by the post; however, online registration through the electronic Copyright Office (eCO) is the preferred way to register basic claims for literary works; visual arts works; performing arts works, including motion pictures; sound recordings; and single serials. Advantages of online filing include a lower filing fee; the fastest processing time; online status tracking of claims; secure payment by credit or debit card, electronic check, or Copyright Office deposit account; and the ability to upload certain categories of deposits directly into eCO as electronic files. Claims may be

registered electronically on the Copyright Office website at [www.copyright.gov](http://www.copyright.gov), by clicking on the eCO logo.

Paper registrations may be submitted by the post, generally by including the three elements required for U.S. registration in the same package to the Register of Copyrights at 101 Independence Ave. SE, Washington, DC 20559-6000. The Copyright Office has recently adopted a new method for registering basic claims with hard-copy deposits. The bar coded fill-in Form CO replaces Form TX, for literary works; Form PA, for works of the performing arts; Form SE, for a group of serial issues, Form SR, for sound recordings; and Form VA, for works of visual arts. Using 2D barcode scanning technology, the Copyright Office can process Form CO submissions (when properly completed by the submitter) more efficiently than the paper forms previously used. Registrants may complete Form CO on a personal computer, then print and mail it along with payment of the basic registration fee and a deposit copy, phonorecord, or identifying material. Paper forms are discouraged and more expensive, but are available on request.

**(c) Is there a deposit requirement, that is, must a fixed copy of the work be submitted with registration/recording form? If so, can it be submitted in digital form?**

In order to register a copyright claim, a deposit must be submitted to the Copyright Office along with a completed application and fee. See above for general deposit requirements.

An electronic copy of the work being registered may be uploaded directly into the electronic Copyright Office (eCO) if it is one of the following: 1) an unpublished work; 2) a work published only electronically; 3) a published work for which the deposit requirement is identifying material; and 4) a published work for which there are special agreements requiring a hard-copy deposit to be sent separately to the Library of Congress. Hard-copy deposits may be submitted with an application and payment generated by eCO to the Copyright Office by the post.

The provision of fixed representations of the copyrighted work is governed by regulations. The regulations also govern mandatory deposit of works published in the United States for the Library of Congress, which may be combined with registration. See 17 U.S.C. § 407; 37 C.F.R. 202.19-202.21. Additionally, the deposit requirements are detailed in Copyright Office circulars pertaining to specific types of works, e.g., Circular 40a, Deposit Requirements for Visual Arts Material; Circular 50, Musical Compositions; and Circular 56, Copyright for Sound Recordings. For more information, visit [www.copyright.gov/circls/](http://www.copyright.gov/circls/)

The Copyright Office website provides further information concerning specific procedures and forms, including instructions on how to complete forms. No deposit of the work is required to be submitted for recording of documents. An original,



signed document or a verified copy of the document itself must be submitted in such cases.

A copy of the work should not be submitted for recordation of documents.

**(d) Is there a registration/recordation fee? If so, how much is the registration/recordation fee?**

The filing fee for a basic claim registration filed through the electronic Copyright Office (eCO) is currently \$35. The fee for a basic registration on Form CO, completed online and submitted by the post, is currently \$50. 37 C.F.R. § 202.3(c).

The filing fee for recordation of a single title document is currently \$95. Additional titles may be recorded currently for a fee of \$12 per group of ten titles. 37 C.F.R. § 202.3(c).

**(e) What is the average time taken to complete the registration/recordation process?**

The time the Copyright Office requires to process an application varies, depending on the number of applications the Office is receiving and clearing at the time of submission and the extent of questions associated with the application. The filer community is currently in transition from a paper filing system to an electronic filing system. Under current processing times for e-Filing, most online filers should receive a certificate within 4.6 months. Many will receive their certificates much earlier. Under current processing times for Form CO, most of those who file should receive a certificate within 20 months of submission. Many will receive their certificates earlier. Estimated current processing times are updated periodically on the Copyright Office website. The effective date of a copyright registration is the day on which an acceptable application, deposit, and fee have all been received in the Copyright Office. 17 U.S.C. § 410(d).

**14. Are foreigners allowed to register/record their creations? Are people without legal residence in your country allowed to register/record their creations? Is there a different registration/recordation process for domestic as opposed to foreign works or objects of related rights?**

Yes. Any foreign author or copyright owner may register an unpublished or published work that is protected by U.S. copyright law. Unpublished works are protected in the United States, regardless of the nationality or domicile of the author. 17 U.S.C. § 104(a). Published works are subject to protection under U.S. law as follows:

- (1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or

sovereign authority of a treaty party, or is a stateless person, wherever that person may be domiciled; or

(2) the work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party; or

(3) the work is a sound recording that was first fixed in a treaty party; or

(4) the work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or

(5) the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or

(6) the work comes within the scope of a Presidential proclamation.

17 U.S.C. § 104(b). The registration processes for domestic works and foreign works and rights is the same. Likewise, the process of recording documents does not distinguish between domestic or foreign origin.

#### **15. Are the files stored in digital form?**

Since 1978, registration and recordation cataloging information has been stored in digital form. Cataloging information concerning works registered before 1978 is stored on catalog cards in the Copyright Office. The Copyright Office has begun digitizing pre-1978 registration records. In addition, tangible copies of the deposits and forms themselves are stored in the form submitted. The Copyright Office has developed a new electronic system as part of a reengineering program that began in 2000. One goal of the program was to receive more registration submissions for processing and storage in digital form. In 2005, the Copyright Office began storing files regarding mandatory deposits (discussed in questions 27-45 below) in digital form, in addition to the registration and recordation cataloging information already being stored digitally.

#### **16. What criteria are followed for classification of the registrations/recordations (including chronology/name of right owner/name of work or related right/type of work or subject matter of related rights, etc)? Is it possible to correct or update relevant information?**

Registrations are classified according to categories set forth by regulation by the Register of Copyrights. See 37 C.F.R. 202.3 (b)(1)(i)-(iv). These are Class TX: Nondramatic literary works; Class PA: Works of the performing arts; Class VA: works of the visual arts; and Class SR: Sound recordings. Copyright registration claimants for each of these classes of works provide the following information on

their applications, either with the Electronic Copyright Office or with Fill-in Form CO:

- Description of copyrightable authorship forming the basis of the claim to copyright (e.g., text of a poem, 3-dimensional sculpture, musical composition),
- Title of work,
- Date of first publication (or date of creation for unpublished works), and nation of first publication,
- Author identity information (including name(s) and citizenship or domicile),
- Claimant information, i.e., identity of the owner of all rights which constitute the copyright and contact information for rights and permissions, and
- If applicable, pre-existing material included in the work.

See <http://www.copyright.gov/forms/>. Copyright registrations may be subsequently corrected or updated for a fee; this is referred to as supplementary registration. The original registration remains in the public record along with the supplementary registration for the work. The Office indexes copyright registrations according to type of work, registration number, title, and copyright claimant, and other information as provided.

The Office indexes recorded documents according to document number, title(s) of the work(s), parties to the transaction, and other information as provided.

Registration of claims to copyright and recordation of documents pertaining to copyrights are memorialized in Copyright Office records and may reflect the history of a creative work, including its ownership and use.

#### **17. Does the system have a search facility?**

Yes. The Copyright Office maintains a physical Card Catalog of pre-1978 records as well as annotated copies of a series of publications called the Catalog of Copyright Entries (CCEs). Registrations for all works dating from January 1, 1978, to the present are searchable in the online catalog, available at [www.copyright.gov/records](http://www.copyright.gov/records). Together, the copyright card catalog, the CCEs, and the online files of the Copyright Office provide a complete index to copyright registrations in the United States from 1870 to the present. The copyright card catalog contains approximately 45 million cards covering the period 1870 through 1977. The online catalog contains approximately 20 million records for works registered and documents recorded with the Copyright Office since 1978.

The records include registrations as well as documents that pertain to a copyright that have been recorded with the Copyright Office.

**18. Is it accessible by the public? Is the search facility available online?**

Yes. The physical card catalog is available for public search in the Copyright Office during business hours at no cost. The online catalog is available to the public 24 hours a day at no cost, but pertains only to records from 1978 forward. See [www.copyright.gov/records](http://www.copyright.gov/records). The Copyright Office staff is also available to conduct a search of the records by the title of a work, an author's name, or a claimant's name, at an hourly rate set by statute, and various private search firms offer similar services. A record will appear in the online copyright public catalog approximately one day after the completion of the claim by the Copyright Office. Information about the records is available by telephone prior to availability of the catalog record.

**19. Is access granted to the work registered or its copies?**

Copyright owners are granted access to the fixed copy of their registered work and may receive reproductions without restriction. 37 C.F.R. § 201.2(d). Persons who are not copyright owners are granted access to works under prescribed circumstances. *Id.* Under supervision, parties may inspect a copy of a deposited work and take limited notes during inspection, but may not make copies. *Id.* Upon submission and approval of a litigation statement involving a work, a party to a lawsuit or a pending lawsuit, or that person's legal representative, may obtain a copy of the work. Additionally, a court may order the Copyright Office to produce a copy of the work. 37 C.F.R. § 201.2(d)(2).

**20. Does the general public have access to other documents submitted or to any information regarding the work registered/recorded?**

As noted above, since 1978, information about registered works and recorded documents is available to the public online through the Copyright Office's website. Pre-1978 records in the Copyright Office Card Catalog or the CCEs may be searched on-site by the public free of charge. Upon payment of applicable service fees, the general public may request other documents, for example, correspondence submitted in connection with registration, or application forms. Access to materials while they are being processed, that is, prior to registration or refusal of registration, is proscribed. In exceptional cases, upon a showing of good cause, the Register may grant special permission to obtain access to in-process files. Access to certain materials submitted in connection with registration, for example financial information pertaining to payment of fees, is generally not available. Nor is access granted to information concerning the privacy of individuals or internal business matters relating to Copyright Office procedures. 37 C.F.R. § 201.2.

**21. Does your country have legislation dealing specifically with "orphan works", i.e. works in respect of which the right owner can not be identified**

**and/or located (e.g., a compulsory license or a limitation on liability)? Please briefly describe the main elements of that legislation.**

No. However, the United States has been actively considering the orphan works problem.

In 2006, at the request of members of the U.S. Congress, the Copyright Office published a Report on Orphan Works, available on the Copyright Office website at [www.copyright.gov/orphan](http://www.copyright.gov/orphan). To date, legislative discussions in the United States have focused on an approach that would limit, but not eliminate, the liability of good faith users of orphan works, provided they first executed and documented a diligent search for the copyright owner(s).

**22. Independently of whether your country has legislation on the subject, are there industry practices in your country aimed at identifying and/or locating the copyright owner of “orphan works”?**

The Report on Orphan Works, available at [www.copyright.gov/orphan](http://www.copyright.gov/orphan), discusses in general terms the various practices employed by stakeholders when a copyright owner cannot be located. Moreover, the draft legislation considered to date by the U.S. Congress contemplated a minimum search requirement coupled with the incorporation of best practices of copyright owners and users. See Shawn Bentley Orphan Works Act of 2008, H.R. 5889, 110<sup>th</sup> Cong. (2008).

**23. Does the registering/recording body play a relevant role in the legislation or practice dealing with “orphan works”?**

As the office of public record for copyright registrations and documents pertaining to copyright ownership in the United States, the Copyright Office serves an important role in searches for those seeking to use copyrighted works whose owners cannot be located. See responses to questions 17 and 18 for details about searching Copyright Office records. Also, as mentioned in the discussion after question 21, the Copyright Office may serve as the office of record for certain notices of intention to obtain a compulsory license under section 115(b) of the Copyright Act, a process which may implicate orphan works.

**24. Is there a system to identify and list recorded/registered works or objects of related rights in the public domain? Is that system automated? Is that information made available to the public?**

The Copyright Office neither compiles nor maintains a list of works in the public domain. A search of the records, however, may reveal whether a particular work has fallen into the public domain.

**25. If your country has a public registration/recording system, do private institutions or initiatives exist that provide additional mechanisms to access registered/recorded information from the public system?**

Stanford University provides a database that makes searchable the copyright renewal records received by the U.S. Copyright Office between 1950 and 1992 for books published in the United States between 1923 and 1963. The database is available online at <http://collections.stanford.edu/copyrightrenewals/>. Rutgers University also provides a facility that searches the U.S. copyright renewal records, available at <http://comminfo.rutgers.edu/~lesk/copyrenew.html>. Google has digitized 91 volumes of the U.S. Copyright Office Catalog of Copyright Entries: <http://books.google.com/googlebooks/copyrightsearch.html>.

Various private institutions within the United States serve to assist individuals seeking to make use of copyrighted works in licensing or other relevant activities, and many of these institutions provide mechanisms to access information as to the ownership or copyright status of those works. That information may either supplement or be derived from the resources of the Copyright Office. A partial list of copyright licensing organizations and publications rights clearinghouses is available on the Copyright Office website at [www.copyright.gov/resces.html](http://www.copyright.gov/resces.html).

**26. Please provide statistics on following registrations/recordations:**

- (a) Number per statistical period (last five years)

The number of registrations of claims to copyright in the last five years is 2,193,997.

The number of recordation documents received during the last five years is 59,724. A recordation document may have up to 80,000 individual titles associated with a single filing.

- (b) Number per nationality (last five years)

While the Copyright Office registration forms allow claimants to provide the nationality of the author, the Copyright Office cannot systematically retrieve this data for purposes of compiling statistics.

- (c) Number of inquiries/requests for information filed per statistical period (last five years).

The number of non-fee information service requests filled during the last five years is 1,689,133.

- (d) Number of recordation/registrations whose subject matter has entered the public domain. Global figure/Figure per statistical period (last five years)

The Copyright Office does not track the number of registrations whose subject matter enters the public domain.

## **B. LEGAL DEPOSIT**

### **27. Does your country have a legal deposit system/s in place?**

Yes. All works published in the United States as of January 1, 1978 are subject to the mandatory deposit requirements of the Copyright Act, with the qualification that works published between January 1, 1978 and March 1, 1989 were only implicated if they included a copyright notice upon publication. This change was made in Public Law 100-568, the Berne Convention Implementation Act of 1988.

### **28. Please list relevant national legislation regulating the legal deposit.**

The mandatory deposit requirement of the United States is found in section 407 of the United States Copyright Act, 17 U.S.C. § 407. Unlike the deposit associated with copyright registration, which is permissive, the deposit of works published in the United States is mandatory. As explained in the discussion following Question 31, copyright owners may satisfy requirements for both mandatory deposit and copyright deposit with a single deposit.

### **29. Is the legal deposit mandatory or voluntary in your Country? If mandatory, what are the legal consequences in case of non compliance?**

The deposit requirement is mandatory for the owner of copyright or of the exclusive right of publication in a work published in the United States, unless exempted by regulation adopted by the Register of Copyrights. Under section 407(d) of the Copyright Act, the Register of Copyrights may make written demand for the required deposit, subject to a fine of not more than \$250 per work if the deposit is not made within three months of receipt of demand. Noncompliance is subject to a fine of \$2,500.

### **30. What are the functions performed by your National legal deposit system (e.g. preservation of cultural heritage; collection of statistical information, etc)?**

The mandatory deposit provision ensures that the Copyright Office is entitled to receive copies of every copyrightable work published in the United States. Section 704 of the Copyright Act states that these deposits “are available to the Library of Congress for its collections, or for exchange or transfer to any other library.”

In 1870 Congress passed a law that centralized the copyright system in the Library of Congress. No legislation was more important to the development of the Library than that law, which required all authors to deposit in the Library two copies of every book, pamphlet, map, print, and piece of music registered in the United States. That partnership, created nearly 140 years ago, has served the nation well.

Supplying the information needs of the Congress, the Library of Congress has become the world's largest library and America's national library. This great repository of more than 142 million books, photographs, maps, films, documents, sound recordings, computer programs, and other items has been created largely through the operations of the copyright system, which brings deposits of every copyrighted work into the Library.

**31. Is there any connection or interaction among legal deposit and copyright protection?**

No.

**32. Does your national legislation have any provision in regard to making copies or adapting formats of deposited works for preservation purposes? If so, please clarify under which terms and conditions.**

Yes. Under section 704(c) of the Copyright Act, the "Register of Copyrights is authorized, for specific or general categories of works, to make a facsimile reproduction of all or any part of the material deposited under section 408, and to make such reproduction a part of the Copyright Office records of the registration." To the extent the deposit is accepted by the Library of Congress for its collections, other provisions may apply to preservation copies, including, for example, the library exceptions or fair use provisions of copyright law. 17 U.S.C. §§ 107 and 108.

**33. What is the object of legal deposit? Please list all types or categories of material subject to legal deposit (e.g. Print Material, such as books, serials, government publication; Non-Print Material, such as music and audiovisual works, broadcast material).**

All works under copyright protection that are published in the United States are subject to the mandatory deposit provision of the copyright law. However, because many deposits are not suitable for addition to the Library of Congress collections or for use in national library programs, the Copyright Office has issued regulations that exempt certain categories of works entirely from the mandatory deposit requirements. Among the exempt categories of works are: architectural blueprints, mechanical drawings, greeting cards, lectures and speeches when published individually, certain automated databases, three-dimensional sculptural works, merchandise catalogs, tests and answer material for tests, and television transmission programs that have not been published by reason of a license or grant to a for-profit institution. The regulations also reduce the required number of copies or phonorecords from two to one for certain other categories. These regulations are set forth in 37 C.F.R. § 202.19, available at [www.copyright.gov/title37/202](http://www.copyright.gov/title37/202).

**34. Does legal deposit apply upon production/printing of content or after its distribution? Does legal deposit apply to material printed in your country but distributed abroad?**



Copyright owners must make a deposit with the Copyright Office within three months after the date of publication in the United States. If the work is not published in the United States, the deposit requirement set forth in section 407 of the Copyright Act does not apply.

**35. Is there any type or category of material exempted from legal deposit for policy reasons?**

Section 407(c) of the Copyright Act provides that the Register of Copyrights may by regulation exempt any categories of material from deposit requirements. Such regulations provide “either for complete exemption from the deposit requirements..., or for alternative forms of deposit aimed at providing a satisfactory archival record of a work without imposing practical or financial hardships on the depositor, where the individual author is the owner of copyright in a pictorial, graphic, or sculptural work and (i) less than five copies of the work have been published, or (ii) the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies of the best edition of the work burdensome, unfair, or unreasonable.” 17 U.S.C. 407(c).

**36. Is there any specific regulation in regard to material published in electronic format? If so, does the regulation distinguish between on-line and off-line material? Please clarify relevant differences.**

The regulations governing mandatory deposit in the United States contain an exemption for automated databases available *only* on-line in the United States. See 37 C.F.R. § 202.19(c)(5). If a work is readable on a personal computer, deposit is required. This requirement includes CD-ROMs. For works in this category that are not copy protected, deposit of one complete copy of the best edition is required, together with any documentation such as a user’s guide. For works that are copy protected, the mandatory deposit consists of two copies of the best edition plus any documentation. 37 C.F.R. § 202.19(d)(2)(vii).

The Copyright Office recently conducted a rulemaking procedure and adopted an interim regulation governing mandatory deposit of electronic works published in the United States and available only online. The regulation establishes that such works continue to be exempt from mandatory deposit until a demand for deposit of copies or phonorecords of such works is issued by the Copyright Office. It also states that categories of online-only works subject to demand will first be identified in the regulations, and names electronic serials as the first such category for which demands will issue. For a record of Federal Register Notices issued by the Copyright Office, including regarding rulemaking pertaining to mandatory deposit requirements and exemptions, see [www.copyright.gov/fedreg/](http://www.copyright.gov/fedreg/).

**37. How many copies does the depositor have to deposit? Are there special conditions for limited or de luxe editions?**

Depending on the type of work, a depositor not subject to an exemption may be required to deposit one or two copies of the work. Under section 407 of the Copyright Act, two copies or phonorecords of the best edition are required, but the Register may exempt categories of works or permit only one copy to be deposited with respect to any category.

The copyright law requires that deposits be of the “best edition” of the work. 17 U.S.C. § 407(a). When two or more editions of the same version of a work have been published, the one of the highest quality is generally considered to be the best edition. In accordance with 37 C.F.R. § 202.19(b), in judging quality, the Library of Congress will generally adhere to the criteria set forth in the statement entitled “Best Edition of Published Copyrighted Works for the Collections of the Library of Congress,” set forth in 37 C.F.R. § 202 Appendix B. According to those criteria, a limited edition book would generally be preferred over a trade edition; however, other factors may take precedence. In an example provided in the statement, “[i]f a comparison is made between two hardbound editions of a book, one a trade edition printed on acid free paper, and the other a specially bound edition printed on average paper, the former will be the best edition because the type of paper is a more important criterion than the binding.”

**38. Who is/are the subject/subjects responsible for delivering the legal deposit?**

Deposit of copies or phonorecords for the Library of Congress is the responsibility of the owner of the copyright or of the exclusive right of publication in a work published in the United States.

**39. What are the time requirements for legal deposit?**

Copies or phonorecords must be deposited with the Library of Congress within three months after the date of publication in the United States.

**40. Is there a payment or compensation involved in legal deposit? If so, please indicate its amount.**

The Copyright Office does not issue compensation in association with mandatory deposits. In addition, no fee is required for compliance with the mandatory deposit rules of 17 U.S.C. § 407. The depositor may request a receipt for the deposit, which the Register of Copyrights will issue upon the depositor’s payment of a fee of \$20. 37 C.F.R. Ch. 11 § 201.3(c). The depositor may also request full-term retention of a published deposit with payment of a fee of \$470.

**41. What is/are the entity/entities responsible for acting as legal depository?**

The entity responsible for administering the mandatory deposit system is the Copyright Acquisitions Division, Copyright Office, Library of Congress, in

consultation with Library of Congress specialists. The ultimate depository of works received through mandatory deposit is the Library of Congress.

**42. Does the general public have access to legally deposited materials? If so, please explain under which terms and conditions.**

The Library of Congress is a research institution and makes its collection, including works that come in through the copyright system, available through a combination of on-site and on-line practices. Any copies that remain with the Copyright Office may be inspected by the public on-site by appointment and pursuant to applicable regulations.

**43. Do/does the depository/depositories provide publicly available search facilities? If so, are they accessible on-line?**

Catalog entries for deposit materials selected by the Library of Congress for its collection are searchable within the publicly available Library of Congress Online Catalog. The Catalog may be accessed online at [catalog.loc.gov](http://catalog.loc.gov).

**44. Is legal deposit linked to any number or code? Is there any relation with the International Standard Books Number (ISBN) with the International Standard Serial Number (ISSN) and other such codes?**

Yes, books received by mandatory deposit that are accompanied by an International Standard Books Number (ISBN) or International Standard Serial Number (ISSN) will be catalogued and searchable according to the given code.

**45. Please provide statistics on the number of deposits per year for the following items (last five years); a) print material; b) musical works; (c) audiovisual works.**

These figures are calculated from the annual number of registrations that the Copyright Office completed according to the categories used in Copyright Office reports:

a) Nondramatic Literary Works (monographs, serials):

2005	438,637
2006	427,232
2007	446,824
2008	182,768
2009	310,691

b) Works of the Performing Arts (musical works, dramatic works, choreography and pantomimes, motions pictures and filmstrips):

2005	182,616
2006	163,504
2007	180,297
2008	95,691
2009	132,386

c) Works of the Visual Arts (two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works, commercial prints and labels, and works of applied arts):

2005	129,658
2006	139,901
2007	139,550
2008	65,839
2009	118,797

d) Sound Recordings:

2005	65,820
2006	67,153
2007	69,186
2008	31,279
2009	55,161