

Copyright Registration for Derivative Works

A derivative work is a work based on or derived from one or more already existing works. Also known as a “new version,” a derivative work is copyrightable if it includes what copyright law calls an “original work of authorship.” Any work in which the editorial revisions, annotations, elaborations, or other modifications represent, as a whole, an original work of authorship is a derivative work or a new version.

A typical derivative work registered in the Copyright Office is a primarily new work but incorporates some previously published material. The previously published material makes the work a derivative work under copyright law.

To be copyrightable, a derivative work must differ sufficiently from the original to be regarded as a new work or must contain a substantial amount of new material. Making minor changes or additions of little substance to a preexisting work will not qualify a work as a new version for copyright purposes. The new material must be original and copyrightable in itself. Titles, short phrases, and formatting are not copyrightable.

Examples of Derivative Works

The following are examples of the many different types of derivative works:

- Television documentary (that contains archival footage and photographs)
- Motion picture (based on a play)
- Novel in English (a translation of a book originally published in Russian)
- Sound recording (CD in which two of the ten selections were previously published online)
- Sculpture (based on a drawing)
- Drawing (based on a photograph)
- Book of maps (based on public-domain maps with some new maps)
- Lithograph (based on a painting)
- Biography of John Doe (that contains journal entries and letters by John Doe)
- Drama about John Doe (based on the letters and journal entries of John Doe)
- Super Audio CD (in which all the tracks were previously released in a CD and have been remixed)
- Words and music (that include words from the Bible)
- Words and musical arrangement (arrangement is based on a piece by Bach)
- Musical arrangement (based on a work by Bach)

Compilations and Abridgments

Compilations and abridgments may also be copyrightable if they contain new works of authorship. When the collecting of the preexisting material that makes up the compilation is a purely mechanical task with no element of editorial

selection, or when only a few minor deletions constitute an abridgment, copyright protection for the compilation or abridgment as a new version is not available.

Some examples of copyrightable compilations are:

- Book of best short stories of 2006 (selected from stories published in magazines and literary journals in 2006)
- Sound recording of biggest pop hits of 2004 (selected from recordings released in 2004)
- Book of great news photos of 2002 (selected from newspapers and newsmagazines published in 2002)

In the above examples, original authorship was involved in deciding which were the best stories, the biggest hits, or greatest photos and in what order to present the respective works within the compilation.

Copyright Protection in Derivative Work

The copyright in a derivative work covers only the additions, changes, or other new material appearing for the first time in the work. It does not extend to any preexisting material and does not imply a copyright in that material.

One cannot extend the length of protection for a copyrighted work by creating a derivative work. A work that has fallen into the public domain, that is, a work that is no longer protected by copyright, can be used for a derivative work, but the copyright in the derivative work will not restore the copyright of the public-domain material. Neither will it prevent anyone else from using the same public-domain work for another derivative work.

In any case where a protected work is used unlawfully, that is, without the permission of the copyright owner, copyright will not be extended to the illegally used part.

Right to Prepare Derivative Work

Only the owner of copyright in a work has the right to prepare, or to authorize someone else to create, a new version of that work. The owner is generally the author or someone who has obtained rights from the author. Anyone interested in a work who does not know the copyright owner can search the records of the Copyright Office or ask the Office to conduct a search for an hourly fee. For details, see Circular 22, *How to Investigate the Copyright Status of a Work*.

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 published on and after March 1, 1989, use of copyright notice is optional.

Although not required by law, it is perfectly acceptable (and often helpful) for a work to contain a notice for the original material as well as for the new material. For example, if a previously registered book contains only a new introduction, the notice might be © 1941 John Doe; introduction © 2008 Mary Smith. For information about copyright notice, see Circular 3, *Copyright Notice*.

Copyright Registration

There are several ways to register a copyright with the U.S. Copyright Office. 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; 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. For details about eCO and other options for registering a copyright, see Circular 1, *Copyright Basics*, or sL 35, *Online Copyright Registration*.

Unfortunately, registration is often delayed because of mistakes or omissions in completing copyright applications. The following points should be helpful for those registering derivative works. The categories specified appear on copyright applications.

Author • Name the author(s) of the copyrightable material being claimed. Ordinarily, the author is the person who actually created the work. (Where the work or any contribution to it is a work made for hire, the employer is considered the author.) Do not name the author of previously published or registered work(s) or public-domain material incorporated into the derivative work, unless that person is also the author of the new material. The application should name only the author(s) of the new material in which copyright is claimed.

Author Created • Specify what the author(s) created. Examples include “text,” “translation,” “editing,” “music,” “lyrics,” “musical arrangement,” “photographs,” “artwork,” “compilation.”

Year of Completion • The year of completion is the year in which the new work—the particular version for which registration is sought—was fixed in a copy or phonorecord for the first time, even if other versions exist or if further changes or additions are planned. Do not confuse completion with publication.

Publication • Copyright law 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. 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.”

The following do not constitute publication: performing the work, preparing phonorecords, or sending the work to the Copyright Office.

The date of publication is the month, day, and year when the work for which registration is sought was first published. If the work has not been published, no date of publication should be given on the application.

Copyright claimant • The copyright claimant is either the author of the work or a person or organization who has obtained from the author all the rights the author initially owned. When the claimant named is not the author, a brief transfer statement is required to show how the claimant acquired the copyright. Examples are “by written agreement” and “by inheritance.” Do not send copies of documents of transfer with the application.

When the name of the claimant is not the name of the author, but the two names identify one person, the relationship between the names should be explained. Examples are “Doe Publishing Company, solely owned by John Doe” or “John Doe doing business as Doe Recording Company.”

Previous registration • If no registration has been made for this version or an earlier version of this work, leave this portion of the application blank.

If a previous registration for this work or another version of it was completed and a certificate of registration was issued, give the requested information about the previous registration, if known.

Limitation of claim • Complete this portion of the application if the work being registered contains a *substantial* amount of material that

- was previously published,
- was previously registered in the U.S. Copyright Office,
- is in the public domain, or

- is not included in the claim.

Material excluded • Briefly, in general terms, describe the preexisting material that has been recast, transformed, or adapted. See examples below. Do not complete this space for compilations.

New material included • Briefly, in general terms, describe all new copyrightable authorship covered by the copyright claim for which registration is sought. See examples below. All elements of authorship described in “author created” should be accounted for in “new material included.”

If the claim is in the compilation only, state “compilation” in “new material included.” If the claim is in the compilation and any other material, state both “compilation” and the material that has been compiled—for example, “compilation and foreword”; “compilation of photographs, additional photography, and foreword”; “compilation of recordings and liner notes”; “compilation of gospel songs, additional music, and foreword”; “compilation of 19th-century political cartoons, new foreword, and index.”

Examples for “Material Excluded” and “New Material Included” entries for derivative works:

- Motion picture based on the novel *Little Women*:
Material Excluded: Text
New Material Included: Entire Motion Picture
- New arrangement of preexisting music for piano:
Material Excluded: Music
New Material Included: Musical Arrangement
- Two-act play expanded to a three-act play with editing throughout:
Material Excluded: Text
New Material Included: Text, Editing
- A new edition of Shakespeare’s *Romeo and Juliet* with a new introduction:
Material Excluded: Text
New Material Included: Text
- A 1989 catalog that has been revised and to which new text and photographs have been added:
Material Excluded: Text, Photographs
New Material Included: Text, Photographs, Editing
- Lithographic print of a 19th-century oil painting:
Material Excluded: Artwork
New Material Included: Reproduction by photolithography [in “other” space]
- U.S. Geological Survey map of southern Virginia with additional maps and text added:
Material Excluded: Map
New Material Included: Map, Text

- A CD containing previously published sound recordings on some tracks and new sound recordings on other tracks:

Material Excluded: Sound Recording

New Material Included: Sound Recording

- A new release of a sound recording first published in the 1980s with new photographs and text included in the CD package:

Material Excluded: Sound Recording

New Material Included: Photograph(s), Text of liner notes

- Remixed sounds from a 1970 recording by Sperryville Symphony of Bach Double Concerto

Material Excluded: Sound Recording

New Material Included: Remix

For Further Information

By Internet

Circulars, announcements, regulations, certain application forms, and other related materials are available from the Copyright Office website at www.copyright.gov. To send an email message, 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. Staff members are on duty from 8:30 AM to 5:00 PM, Monday through Friday, eastern time, except federal holidays. Recorded information is available 24 hours a day. To request paper application forms or circulars, call the Forms and Publications Hotline at (202) 707-9100 and leave a recorded message.

By Regular Mail

Write to:

Library of Congress

Copyright Office—COPUBS

101 Independence Avenue SE

Washington, DC 20559-6304