

## U.S. COPYRIGHT OFFICE AND THE COPYRIGHT LAW

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## U.S. COPYRIGHT OFFICE AND THE COPYRIGHT LAW

### General Background

#### 101 The U.S. Copyright Office

##### 101.1 History of the U.S. Copyright Office

In May 1790, when Congress enacted the first federal copyright law, the U.S. Copyright Office did not yet exist. Instead, authors and publishers recorded their claims with federal district courts and submitted copies of their works (in those days, book, maps, and charts) in support of their applications. These works, known as deposits, were stored in a variety of places, including in the U.S. Department of State and the U.S. Department of the Interior. As of 1846, the Smithsonian Institution and the Library of Congress shared them. This meant that records of copyright ownership were scattered among different government offices, and despite the federal scheme of protection, there was neither a consolidated tracking system nor centralized plan for preserving or using deposited works.

In 1870, Congress moved registration and deposit functions from the dispersed federal courts to the Library of Congress, which under Ainsworth Spofford advocated for and utilized the deposit copies as a foundation for the Library's collection. This move helped transform the Library of Congress into a national institution. However, as copyright law evolved in both scope and complexity, the Nation and the Congress began grappling with a variety of policy issues that required leadership and expertise, including, for example, provisions that extended the public performance right to musical compositions and provided corresponding criminal penalties and injunctive relief, and amendments establishing reciprocity with foreign governments. Moreover, the volume of copyright-related work required greater focus and segregation from general Library functions. *See Condition of the Library of Congress: Hearings Before the Joint Committee on the Library, 54th Cong. (1897)* (statement of Ainsworth Spofford) ("The fruit of [the Copyright Act] has been to enormously enrich the Library of Congress. On the other hand, it has at the same time enormously increased the difficulties of administration in such miserably narrow quarters."), reprinted in S. REP. NO. 54-1573, at 28 (1897).

In 1897, Congress established and funded the U.S. Copyright Office as a separate department within the Library and created the position of Register of Copyrights to head it. Since that act, the Register has been appointed by, and works under the general direction of, the Librarian of Congress. This appointment authority, however, required that the Librarian thereafter be appointed with the advice and consent of the Senate. Thus, at the dawn of the twentieth century, Congress had not only created a formal foundation for copyright administration, but also created the Register as the central position of related expertise within the U.S. government, who in turn developed an expert staff.

As with other matters of intellectual property law, Congressional Rules give the respective judiciary committees of both chambers legislative jurisdiction over all copyright matters. *See Senate*

Rule XXV; House Rule X. The Register is the principal advisor to Congress regarding domestic and international copyright issues, but also works closely and collaboratively with other federal departments and agencies on copyright matters.

The longstanding role of the U.S. Copyright Office in policy matters was codified in the Copyright Act. **17 U.S.C. § 701.** The work of the Office takes several forms. It provides expert subject matter assistance to Congress on copyright policy and interpretation of the copyright law; provides drafting support, including analysis and assistance for copyright legislation and legislative reports; undertakes studies and public roundtables for Congress; and offers advice on compliance with treaties and trade agreements.

As a critical office within the U.S. government, the U.S. Copyright Office also works closely with executive branch offices, including most regularly the Department of Justice, the White House, the Office of the U.S. Trade Representative, the Department of Commerce and U.S. Patent and Trademark Office, and the Department of State. It provides policy analysis to these offices; participates in copyright-related litigation; provides support on trade and enforcement measures; participates on U.S. delegations to intergovernmental meetings and in other international events; hosts copyright training for copyright officials from foreign countries; and provides outreach and education on a routine basis.

The Register of Copyrights has an especially important relationship with the Undersecretary for Intellectual Property, who heads the U.S. Patent and Trademark Office and advises the President on intellectual property matters. These officers frequently work together in the international arena and the Undersecretary must consult with the Register “on all copyright and related matters” that involve his Office. 35 U.S.C. § 2(c)(5). The U.S. Copyright Office also works closely with the Intellectual Property Enforcement Coordinator (the “IPEC”), based in the Executive Office of the President. The Register is a statutory member of the IPEC’s interagency intellectual property enforcement advisory committee. 15 U.S.C. § 8111(b)(3)(A)(ii).

Finally, the U.S. Copyright Office’s unique position as the guardian of copyright registration documents deserves special mention. The Office maintains a wealth of information about the different types of works that have been registered in the United States throughout the years. This amounts to an unparalleled database of cultural heritage, as the Office has registered millions of copyright claims for authors, artists, publishers, producers, and distributors of creative works since 1897. The Office annually registers more than half a million copyright claims, records more than 10,000 documents relating to chain of title and other copyright-related matters in connection with hundreds of thousands of titles, and collects more than \$300 million dollars in statutory licensing funds. Likewise, it has facilitated the acquisition of hundreds of thousands of copies of books, serial publications, sound recordings, motion pictures, photographs, maps, and prints for the Library’s collection.

U.S. Copyright Office records also provide a glimpse into the evolution of U.S. registration and recordation practices. Examples of some important historic registrations and recordations include:

- *First federal registration of a work:* John Barry’s book, *The Philadelphia Spelling Book*, registered with the U.S. District Court for the District of Pennsylvania in 1790.
- *First federal recordation of a document pertaining to copyright:* Issued on July 25, 1870.

- *Registration of the Statue of Liberty*: On August 31, 1876, Henry de Stuckle and Auguste F. Bartholdi secured registration number 9939-G for the “Statue of American Independence,” as the Statue of Liberty was first named. The copyright claim was filed in America’s centennial year, a decade before the statue was erected in New York Harbor.
- *First registration issued after the establishment of the U.S. Copyright Office*: “Dr. Quixote — A New Comedy in Three Acts” by Charles F. Coughlan, registered by J.E. Dodson on July 1, 1897.
- *First motion picture registrations*: The *Edison Kinetoscopic Record of a Sneeze, January 7, 1894*, submitted on January 9, 1894 by William Kennedy Laurie Dickson, is the earliest extant copyrighted motion picture in the Library of Congress’s collections. The short clip, known in film circles as *Fred Ott’s Sneeze*, shows a mustachioed man sneezing. The motion picture was registered as a series of photographs because motion pictures were not covered by U.S. copyright law until 1912. The first work registered as a motion picture was the Republic Film Company’s September 12, 1912 registration for *Black Sheep’s Wool*.
- *First television show registration*: “Unexpected Guest” by Hopalong Cassidy, registered in 1947.
- *First registration for a choreographic work embodied in Laban notation*: Hanya Holm’s choreography for *Kiss Me Kate*, registered as a dramatic work in 1952.
- *First computer program registration*: John F. Banzhaf’s computer program to compute automobile braking distances, registered in 1964.
- *First sound recording registration*: Bob and Dorothy Roberts’s “Color Photo Processing Cassette, An Accurate Sound Signal and Oral Instruction System for Processing,” registered on February 15, 1972.

## 101.2 Organization of the U.S. Copyright Office

The **Register of Copyrights** is the Director of the U.S. Copyright Office and a recognized leader and lawyer within the U.S. government. By statute, the Register works under the general direction of the Librarian of Congress and carries out a variety of legal and policy functions that are enumerated throughout Title 17. The U.S. Copyright Office has eight main divisions, in addition to the Register’s Office, and several hundred staff. There are four Associate Registers of Copyrights and four additional division heads that report directly to the Register and help to carry out her statutory mandate. An organizational chart is available on the Office’s [website](#).

### 101.2(A) Office of the Register

The Office of the Register of Copyrights has overall responsibility for the U.S. Copyright Office and its statutory mandate, specifically: for legal interpretation of the copyright law; administering the provisions of Title 17; promulgating copyright regulations; advising Congress and other government officials on domestic and international copyright policy and other intellectual property issues; determining personnel and other resource requirements for the Office; organizing strategic and annual program planning; and preparing budget estimates for inclusion in the budget of the Library of Congress and U.S. government.

**101.2(B) Office of the General Counsel**

The Office of the General Counsel (“OGC”) is headed by the General Counsel and Associate Register of Copyrights, who is an expert copyright attorney and one of four legal advisors to the Register. This Office assists the Register in carrying out critical work of the U.S. Copyright Office regarding the legal interpretation of the copyright law. The General Counsel liaisons with the Department of Justice, other federal departments, and the legal community on a wide range of copyright matters, including litigation and the administration of Title 17. The General Counsel also has primary responsibility for the formulation and promulgation of regulations and the adoption of legal positions governing policy matters and the practices of the U.S. Copyright Office.

**101.2(C) Office of Policy and International Affairs**

The Office of Policy and International Affairs (“PIA”) is headed by the Associate Register of Copyrights and Director of Policy and International Affairs, who is an expert copyright attorney and one of four legal advisors to the Register. This Office assists the Register with critical policy functions of the U.S. Copyright Office, including domestic and international policy analyses, legislative support, and trade negotiations. PIA represents the U.S. Copyright Office at meetings of government officials concerned with the international aspects of intellectual property protection, and provides regular support to Congress and its committees on statutory amendments and construction.

**101.2(D) Office of Registration Policy and Practice**

The Office of Registration Policy and Practice is headed by the Associate Register of Copyrights and Director of Registration Policy and Practice, who is an expert copyright attorney and one of four legal advisors to the Register. This Office administers the U.S. copyright registration system and advises the Register of Copyrights on questions of registration policy and related regulations and interpretations of copyright law. This Office has three divisions: Literary, Performing Arts, and Visual Arts, which are described in Chapters [700](#), [800](#), and [900](#) of this Compendium, respectively. It also has a number of specialized sections, for example, in the area of motion pictures. This Office executes major sections of the *Compendium of Copyright Office Practices*, particularly with respect to the examination of claims and related principles of law.

**101.2(E) Office of Public Information and Education**

The Office of Public Information and Education (“PIE”) is headed by the Associate Register for Public Information and Education, who is an expert copyright attorney and one of four legal advisors to the Register. This Office informs and helps carry out the work of the Register and the U.S. Copyright Office in providing authoritative information about the copyright law to the public and establishing educational programs. The Office publishes the copyright law and other provisions of Title 17; maintains a robust and accurate public website; creates and distributes a variety of circulars, information sheets, and newsletters, including [NewsNet](#); responds to public inquiries regarding provisions of the law, explains registration policies, procedures, and other copyright-related topics upon request; plans and executes a variety of educational activities; and engages in outreach with various copyright community stakeholders.

**101.2(F) Office of Public Records and Repositories**

The Office of Public Records and Repositories is headed by the Director, who is an expert in public administration and one of the Register's top business advisors. This Office is responsible for carrying out major provisions of Title 17, including establishing records policies; ensuring the storage and security of copyright deposits, both analog and digital; recording licenses and transfers of copyright ownership; preserving, maintaining, and servicing copyright-related records; researching and providing certified and uncertified reproductions of copyright deposits; and maintaining the official records of the U.S. Copyright Office. Additionally, the Office engages regularly in discussions with leaders in the private and public sectors regarding issues of metadata, interoperability, data management, and open government.

**101.2(G) Office of the Chief Information Officer**

The Office of the Chief Information Officer is headed by the Chief Information Officer ("CIO"), who is the Register's top advisor on the development and implementation of technology policy and infrastructure. The Office of the CIO provides strategic leadership and direction for necessary planning, design, development, and implementation of the U.S. Copyright Office's automated initiatives. The Office of the CIO is a liaison to the central technology office of the Library of Congress, which administers the U.S. Copyright Office's networks and communications. The CIO also supervises the Copyright Technology Office ("CTO"). CTO maintains the U.S. Copyright Office's enterprise-wide information technology systems for registration, recordation, public records management and access, and related public services, as well as internal and external help desk functions.

**101.2(H) Office of the Chief Financial Officer**

The Office of the Chief Financial Officer is headed by the Chief Financial Officer ("CFO"), who advises the Register on all fiscal, acquisition, budget, and financial policy matters of the U.S. Copyright Office. The Office of the CFO supervises the Copyright Office's appropriations process, budget execution, acquisitions and procurements, fee processing, statutory royalty investments and disbursements, financial controls, and resource planning. This Office interacts with every other senior management office that reports to the Register and frequently coordinates with management of the Library of Congress.

The Office of the CFO also oversees the Licensing Division. This division administers certain statutory licenses set forth in the Copyright Act. It collects royalty payments and examines statements of account for the cable statutory license (17 U.S.C. § 111), the satellite statutory license for retransmission of distant television broadcast stations (17 U.S.C. § 119), and the statutory license for digital audio recording technology (17 U.S.C. chapter 10). It also accepts and records documents associated with the use of the mechanical statutory license (17 U.S.C. § 115).

**101.2(I) Office of the Chief of Operations**

The Office of the Chief of Operations is headed by the Chief of Operations ("COO"), who advises the Register on core business functions and coordinates and directs the day-to-day operations of the U.S. Copyright Office. The Office of the COO supervises human capital, mandatory deposits and acquisitions, contracts, and strategic planning functions. This Office interacts with every

other senior management office that reports to the Register and frequently coordinates and assesses institutional projects. The COO chairs the U.S. Copyright Office’s operations committee.

The following divisions fall under the oversight of the Chief of Operations:

The Receipt Analysis and Control Division is responsible for sorting, analyzing, and scanning incoming mail; creating initial records; labeling materials; and searching, assembling, and dispatching electronic and hard copy materials and deposits to the appropriate service areas. The Division is responsible for operating the U.S. Copyright Office’s central print room, mail functions, and temporary storage.

The Copyright Acquisitions Division (“CAD”) administers the mandatory deposit requirements of the Copyright Act, acting as a trusted intermediary between copyright owners of certain published works and the acquisitions staff in the Library of Congress. **17 U.S.C. § 407**. This Office creates and updates records for the copies received by the U.S. Copyright Office; demands particular works or particular formats of works as necessary; administers deposit agreements between the Library and copyright owners; and assists the Office in public discussions and rulemakings regarding the submission requirements for digital works and the best edition requirements.

### 101.3 Functions of the U.S. Copyright Office

The functions of the U.S. Copyright Office are set forth in Title 17 of the U.S. Code, which includes the provisions of the Copyright Act of 1976 as well chapters on the Digital Millennium Copyright Act (“DMCA”), vessel designs, and other *sui generis* protections and exemptions (referred in this *Compendium*, as the case may require, as “Title 17,” the “DMCA,” or the “Copyright Act,” or with respect to the latter, the “1976 Act” or “Act”). The statute directs the Register of Copyrights, as Director of the U.S. Copyright Office, to carry out a variety of activities, which are described in Sections **101.3(A)** through **101.3(D)**.

#### 101.3(A) National Copyright Registration and Recordation System

The Copyright Act establishes the U.S. Copyright Office’s statutory obligation to administer both a copyright registration and copyright recordation system on behalf of the Nation. Pursuant to its provisions, the Office undertakes the following duties, among others:

- **REGISTRATION:** The U.S. Copyright Office examines applications for registering claims to copyright and any accompanying deposit copy(ies) to determine whether they satisfy the statutory requirements for registrability, including copyrightability, and otherwise comply with the Office’s regulations. Based on its findings, the Office then either registers or refuses to register the claims. Many of the controlling provisions for registration are set forth in **Chapter 4** of the Copyright Act. **Section 408** of the Act authorizes the Register to promulgate regulations to allow identifying material in place of deposit copy(ies), permit the registration of groups of related works with one application, and provide for the correction and amplification of registrations. **Section 410** of the Act sets forth the Register’s authority to examine and either register or refuse copyright claims. **Sections 411** and **412** address registration as a prerequisite for civil infringement claims and certain remedies. Chapters **200** through **2200** of this *Compendium* discuss the Office’s policies and practices relating to the examination of claims for copyright registration.



- **RECORDATION:** The statutory provisions governing recordation are set forth in [Chapter 2](#) of the Copyright Act. Under [Section 205](#), any transfer of copyright ownership or other document relating to copyright may be recorded in the U.S. Copyright Office, subject to certain conditions. The recordation of documents pertaining to transfers or other ownership matters is voluntary, but recommended because: (i) it provides constructive notice of the facts stated in the recorded document if certain conditions have been met; (ii) when a transfer of copyright is timely recorded (within one month of its execution in the United States or two months of its execution outside of the United States, or any time before a conflicting transfer is recorded), the recorded transfer prevails over a later executed transfer; and (iii) a complete public record may mitigate problems related to orphan works. Interested parties also record or consult documents pertaining to licenses, death of authors, expiration of term, wills, trusts, security interests, and mortgages, to name a few. For a discussion of some of these documents, see [Chapter 2300](#) of this *Compendium*.
- **TERMINATION NOTICES:** The Copyright Act allows, under certain circumstances, authors or their heirs to terminate an agreement that previously granted one or more of the author's exclusive rights to a third party. These termination provisions are set forth in [Sections 203](#), [304\(c\)](#), and [304\(d\)](#) of the Act. To terminate an agreement, a notice of termination must be served on the grantee, and it must be recorded with the U.S. Copyright Office in a timely manner as a condition of effect. [17 U.S.C. §§ 203\(a\)\(4\), 304\(c\)\(4\), 304\(d\)\(1\)](#). For a discussion of recordation of notices of termination, see [Chapter 2300](#), Section 2310 of this *Compendium*.
- **PUBLIC RECORDS:** The U.S. Copyright Office maintains extensive public records of copyright claims dating back to 1870 and in some instances earlier, including:
  - Certificates of registration, which attest that registration has been made and may constitute *prima facie* evidence of the validity of the copyright and of the facts stated in the certificate (if registration is made before publication or within five years of first publication). [17 U.S.C. § 410\(c\)](#).
  - The **online public record**, which provides the basic facts of registrations and recordations made after January 1, 1978. This information is available in a searchable database on the Office's [website](#).
  - The **Copyright Card Catalog**, which is a physical archive available for public use at the Copyright Office in searching for completed registrations and recorded documents made before January 1, 1978.

In some circumstances, the Office will issue certified copies of applications, correspondence, deposit copy(ies), documents, and other materials submitted to the Office in connection with copyright registrations and recorded documents. In addition, the Office has a reference search service that provides search reports regarding the facts of registration and recordation contained in the Office's files. For a discussion of these services, see [Chapter 2400](#) of this *Compendium*.

- **MANDATORY DEPOSIT:** The U.S. Copyright Office administers [Section 407](#) of the Copyright Act, which requires copyright owners to deposit certain published works with the Library of Congress for its collections. In this role, the Office may facilitate, demand, negotiate, or exempt the provision of copies or phonorecords. Absent a special exemption, the law requires that one or two copies of the **best edition** of every copyrightable work published in the United States be sent to the Office within three months of publication, regardless of whether

a claim in the work is registered. **17 U.S.C. § 407(a)**. For a detailed discussion of mandatory deposit, see **Chapter 1500**, Section 1511 of this *Compendium*.

- **SERVICE PROVIDER DIRECTORY:** The Office of Public Records and Repositories administers a directory of service provider agents to receive notifications of claims of infringement as provided under **Section 512(c)** of the Copyright Act.
- **MASK WORKS:** The U.S. Copyright Office examines and registers claims to mask works fixed in semiconductor chip products filed under the Semiconductor Chip Protection Act of 1984, title III of Pub. L. No. 98-620, 98 Stat. 3335, 3347 (codified as amended at **17 U.S.C. §§ 901-914**). **Chapter 1200** of this *Compendium* discusses the examination of claims in mask works.
- **VESSEL DESIGNS:** The U.S. Copyright Office examines and registers claims in vessel designs filed under the Vessel Hull Design Protection Act, title V of the Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860, 2905 (1998) (codified as amended at **17 U.S.C. §§1301-1332**). **Chapter 1300** of this *Compendium* discusses the examination of claims in vessel designs.

### 101.3(B) Regulatory Work

The U.S. Copyright Office promulgates regulations regarding its policies and procedures pursuant to the provisions of Title 17, which authorizes the Register of Copyrights “to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title.” **17 U.S.C. § 702**. These regulations are subject to the approval of the Librarian of Congress, who is the agency head. *See id.*

Congress expressly made the Register’s actions under Title 17 subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended. **17 U.S.C. § 701(e)**.

### 101.3(C) Advising Congress and Intergovernmental Work

The Register advises Congress on national and international copyright issues. The U.S. Copyright Office also works closely with the federal departments and agencies discussed in Section **101.1** above. **17 U.S.C. § 701**. Among other things, the Office provides expert assistance to Congress in the interpretation of Title 17 and compliance with international agreements, such as the **Berne Convention for the Protection of Literary and Artistic Works** (the “Berne Convention”) and the WIPO Internet Treaties. The Office also conducts public discussions on law and policy; produces major legal studies, makes policy recommendations; participates in copyright-related litigation when the U.S. government has an interest; provides support on trade and enforcement measures; attends intergovernmental meetings and other international events; and hosts copyright training for copyright officials from foreign countries.

### 101.3(D) Administering Statutory Licenses

As discussed in Section **101.2(H)**, the U.S. Copyright Office’s Licensing Division administers the statutory licenses for cable and satellite retransmissions and the statutory license for digital audio recording technology. It also records certain documents associated with the mechanical statutory license. These statutory licenses allow third parties to make certain limited uses of copyrighted works without the copyright owners’ permission, provided that certain statutory requirements

are met. The Division deducts its operating costs from these royalty fees and invests the balance in interest-bearing securities with the U.S. Treasury for later distribution to copyright owners.

#### 101.4 U.S. Copyright Office Seal

The Register of Copyrights has adopted the following official seal pursuant to the authority of the Copyright Act. **17 U.S.C. § 701(c)**; **Notice of New Copyright Office Seal, 68 Fed. Reg. 71,171 (Dec. 22, 2003)**. The U.S. Copyright Office uses this seal on **certificates of registration**, certified records, and in connection with other official documents, including reports to Congress.



### 102 Sources of Law

U.S. copyright law is derived from several authoritative sources, including the U.S. Constitution, statutory provisions, court decisions, and regulations. These sources and their role in shaping copyright law in the United States are reviewed in Sections **102.1** through **102.7** below.

#### 102.1 Constitutional Basis for and Purpose of Copyright Law

Copyright has been a part of the American legal landscape since colonial times, when many of the colonies adopted copyright laws. *See* U.S. COPYRIGHT OFFICE BULLETIN 3, COPYRIGHT ENACTMENTS 1783-1900, at 9-29 (listing copyright laws enacted by Connecticut, Massachusetts, Maryland, New Jersey, New Hampshire, Rhode Island, Pennsylvania, South Carolina, Virginia, North Carolina, Georgia, and New York between 1783 and 1786), *available at* [www.copyright.gov/history/Copyright\\_Enactments\\_1783-1973.pdf](http://www.copyright.gov/history/Copyright_Enactments_1783-1973.pdf). Upon ratification, the U.S. Constitution provided Congress with the ability to make federal laws to protect copyright. Specifically, **Article 1, Section 8, Clause 8** (which includes the “Copyright Clause”) states that “Congress shall have Power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” The promotion of “science,” as that term is used in the Copyright Clause, is understood to refer to the purpose of copyright law (despite the contemporary usage of the term). *See Eldred v. Ashcroft*, 537 U.S. 186, 197 (2003). The Supreme Court has confirmed that this clause empowers Congress to enact a copyright system. *See Golan v. Holder*, 565 U.S. 302, 323-25 (2012).

U.S. courts have analyzed the purpose of the Copyright Clause in a number of cases. The Supreme Court has interpreted the Copyright Clause to mean that copyright laws should promote both the creation and dissemination of creative works. *See, e.g., Golan*, 132 S. Ct. at 888-89. Thus, “[t]he Framers intended copyright itself to be the engine of free expression.” *Harper & Row Publishers, Inc. v. Nation Enterprises et al.*, 471 U.S. 539, 558 (1985); *see also Golan*, 132 S. Ct. at

890 (“By establishing a marketable right to the use of one’s expression, copyright supplies the economic incentive to create and disseminate ideas.”).

## 102.2 Statutes and Regulations

Congress has exercised its authority to enact federal copyright laws on numerous occasions. The first Copyright Act, enacted in 1790, and subsequent laws are summarized in the historical timeline in Section 102.7 below. The current Copyright Act was enacted in 1976 and became effective on January 1, 1978. It has been amended numerous times since its enactment. The Copyright Act protects “original works of authorship” that are “fixed in any tangible medium of expression. . . .” 17 U.S.C. § 102(a). Section 106 of the Act provides copyright holders with a number of exclusive rights (including the right to reproduce works, prepare derivative works, distribute works, and in certain cases, to publicly perform and display works). It also provides certain exceptions and limitations to these exclusive rights. See 17 U.S.C. §§ 107-122.

Works that predate the effective date of the 1976 Act are governed by statutory provisions of the 1909 Copyright Act; the most relevant of these provisions are discussed in Chapter 2100 of this *Compendium*.

### 102.2(A) Copyright Act of 1976

The 1976 Act replaced the 1909 Copyright Act and changed much of how copyright law operates, including as follows:

- The 1976 Act implemented a new calculus for determining the duration of copyright (known as the “term of protection” or, more simply, the “term”). Previously, works were protected for a specific initial term and could be renewed for an additional **renewal** term. The 1976 Act does not require renewal. In most cases, the Act provides protection to works based on the time frame of the author’s life plus seventy years. 17 U.S.C. § 302(a). In the case of an **anonymous work**, a **pseudonymous work**, or a **work made for hire**, the copyright lasts for a term of ninety-five years from the year of its first publication, or a term of one hundred twenty years from the year of its creation, whichever expires first. 17 U.S.C. § 302(c).
- Unlike prior U.S. copyright laws, copyright protection under the 1976 Act is not contingent on publication or registration. All copyrightable works are now protected from the moment of **fixation** in a tangible medium of expression, regardless of whether they are published, registered, or recorded at any time. 17 U.S.C. § 102(a).
- The 1976 Act (in Sections 203, 304(c), and 304(d)) allows an author to terminate certain grants of copyright in the author’s work after a specified number of years. The 1909 Act, by contrast, gave the author an opportunity to recoup his or her rights by vesting the copyright in the renewal term in the author, meaning that the author had to provide a separate grant expressly to a publisher or other third party for the renewal term (*i.e.*, after the first twenty-eight years).
- The 1976 Act added protections for certain additional types of works, including pantomime and choreography. 17 U.S.C. § 102(a)(4). Since 1976, the statute has been amended to provide copyright protection for **architectural works** and certain protection for **mask works** and **vessel designs**.

- Congress added numerous exceptions and limitations to the statute (currently set forth in Sections 107 through 122 of the Act), including [Sections 107](#) (which codified the judicially-created fair use doctrine) and [Section 108](#) (which created specific exceptions for libraries and archives).

Congress has updated the [1976 Act](#) several times. For more information concerning these amendments, see the historical timeline in [Section 102.7](#) below.

## 102.2(B) U.S. Copyright Office Regulations

[Section 702](#) of the Copyright Act authorizes the [Register of Copyrights](#), subject to the approval of the Librarian of Congress, to promulgate regulations relating to the Register’s duties, including the registration of copyrights. Pursuant to this authority, the U.S. Copyright Office has promulgated regulations pertaining to the examination and registration of copyrights and the [recordation](#) of transfers of copyright ownership, among other things. These regulations are embodied in [Title 37 of the Code of Federal Regulations](#). They cover a variety of registration topics, such as how to submit applications, how to contest the Office’s refusal to issue a copyright registration, and specific deposit requirements. Ordinarily, when the Office decides to issue a new regulation, it publishes a notice of proposed rulemaking in the Federal Register in accordance with the Administrative Procedure Act. [17 U.S.C. § 701\(e\)](#); *see also* [5 U.S.C. § 553](#). Typically, the Office also notifies the public through its [NewsNet](#) service. In most cases, the public is invited to provide comments on proposed regulations for the Office’s consideration.

## 102.3 Administrative Procedure Act

Congress expressly made the Register’s actions under the Copyright Act subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended. [17 U.S.C. § 701\(e\)](#). Congress legislated only one express exception to this rule: [Section 706\(b\)](#) of the Copyright Act which provides for the U.S. Copyright Office to issue regulations specifying the conditions under which the Office may authorize or furnish copies or reproductions of deposited articles retained by the Office.

## 102.4 Federal Court Decisions

Federal courts have interpreted the [1976 Act](#) on numerous occasions, resulting in a well-developed body of case law. Sometimes courts decide issues that are not squarely addressed by the [1976 Act](#) and, in doing so, develop standards that are consistent with the Act and provide additional guidance. Thus, certain copyright law doctrines are derived largely from court decisions.

For example, the Copyright Act does not explain what level of creativity is necessary for a work to qualify as a “work of authorship” under the Act. [Section 102\(a\)](#) of the Act states—without further elaboration—that “[c]opyright protection subsists... in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” Numerous courts have analyzed what an original work of authorship is under the Act. For more information on the originality requirement, see [Chapter 300](#), Section 308 of this *Compendium*.

The standards for comparing works and determining when a work protected by copyright is infringed by another work also come from judicial doctrine. For instance, courts have held that, to prevail in a copyright infringement case, a copyright owner must show (i) direct evidence that the defendant copied the copyright owner's work, or (ii) that the defendant had access to the copyrighted work, and (iii) that the copyright owner's and defendant's works are substantially similar.

Certain U.S. copyright law doctrines are entirely judicially-created and have never been directly codified in the Act, such as theories of contributory and vicarious liability for infringement. Others, such as principles of fair use ([Section 107](#) of the Act), are codified at a high level in the [1976 Act](#), but are interpreted on a case-by-case basis by the courts.

For these reasons, it is important to consult court opinions on copyright-related issues. When doing so, note that copyright law doctrines may differ among jurisdictions, as different circuits have followed different standards. For example, the infringement standard in the Ninth Circuit is somewhat different from that of the First and the Second Circuits. Additionally, some circuits allow a claim for copyright infringement to be brought upon submission of an application for registration to the U.S. Copyright Office under [Section 411](#) of the Copyright Act, while others require a [certificate of registration](#) or refusal to register issued by the Office. For more information on this issue, see [Chapter 600](#), Section 625.5 of this *Compendium*.

## 102.5 State Laws

U.S. copyright protection is governed by federal law. [Section 301\(a\)](#) of the 1976 Act preempts all similar protections provided by state law, other than with respect to [sound recordings](#) fixed before February 15, 1972, as provided under [Section 301\(c\)](#) of the Act. Preemption applies only when a state law provides protections that are equivalent to those set forth in the Copyright Act (*i.e.*, rights equivalent to any of the exclusive rights under [Section 106](#) of the Act in fixed works of authorship that fall within the subject matter of copyright). There are a significant number of court decisions interpreting exactly when a state claim is close enough to an exclusive right provided by the Copyright Act to be preempted. This case law should be consulted for questions regarding preemption and may vary to some extent by jurisdiction.

[Sections 301\(b\)](#) and [\(c\)](#) of the 1976 Act also specifically set forth some types of copyright-like protections that states may provide. These include: (i) works not fixed in a tangible medium of expression; (ii) pre-1972 sound recordings; (iii) state and local landmarks, historic preservation, zoning, or building codes relating to architectural works protected under [Section 102\(a\)\(8\)](#) of the Act; and (iv) causes of actions for acts that took place before January 1, 1978.

## 102.6 Territorial Scope of U.S. Copyright Law

Generally speaking, U.S. copyright law applies only to acts that take place in the United States, including the Commonwealth of Puerto Rico and U.S. territories. *See Subafilms, Ltd. v. MGM-Pathe Communications Co.*, 24 F.3d 1088, 1094-95 (9th Cir. 1994). Under the Berne Convention, national law applies to foreign works, and the law of the country in which infringement takes place generally applies to infringement disputes. Berne Convention for the Protection of Literary and Artistic Works, art. 5(1), (3), Sept. 9, 1886, as revised at Paris on July 24, 1971 and amended on Sept. 28, 1979, S. Treaty Doc. No. 99-27 (1986). Thus, copyright infringement that occurs in the United States is governed by U.S. law. However, courts may look to the law of a foreign country

where ownership of the work was established or transferred in cases where questions are raised concerning foreign ownership and copyright origin even in the context of a U.S. infringement action. *See, e.g., Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 153 F.3d 82, 88-92 (2d Cir. 1998).

## 102.7 Timeline of Selected Historical Dates in U.S. Copyright Law

The United States has a long and rich history of copyright law. Below is a timeline of some of the most interesting developments that have occurred since the colonial era. In addition to this timeline, the U.S. Copyright Office's [website](#) includes a wealth of historical information, including additional notable dates, extensive information on past copyright laws, and prior publications.

- August 18, 1787: James Madison submits to the framers of the Constitution a provision “to secure to literary authors their copyrights for a limited time.”
- June 23, 1789: First federal bill relating to copyrights (H.R.10) presented to the first Congress.
- May 31, 1790: Congress enacts the first federal copyright law, “An act for encouragement of learning by securing copies of maps, charts, and books to the authors and proprietors of such copies during the times therein mentioned.” This law provided for a term of fourteen years with the option of renewing the registration for another fourteen-year term. The law only applied to books, maps, and charts. It also noted that a copyright should be registered in the U.S. district court where the author or proprietor resided (not the U.S. Copyright Office, which had not yet been created).
- April 29, 1802: Congress adds prints to works protected by copyright law.
- February 3, 1831: First general revision of the copyright law. Music added to works protected against unauthorized printing and vending. First term of copyright extended to twenty-eight years with the option of renewal for another fourteen-year term.
- August 18, 1856: Congress passes a supplementary law to protect dramatic compositions.
- December 31, 1864: President Abraham Lincoln appoints Ainsworth Rand Spofford to be the sixth Librarian of Congress. Spofford served as the *de facto* Register of Copyrights until the formal position of Register was created in 1897.
- March 3, 1865: Congress enacts “An Act to amend the several Acts respecting Copyright,” which added protections for photographs and photographic negatives.
- July 8, 1870: In this second major revision of copyright law, Congress centralized copyright activities (including registration and deposit) in the Library of Congress. The law added “works of art” to the list of protected works and reserved to authors the right to create certain derivative works, including translations and dramatizations.
- March 3, 1891: With the passage of the International Copyright Act, Congress extended copyright protection to certain works by foreign authors. This was the first U.S. copyright law authorizing establishment of copyright relations with foreign countries.

- July 1891: The *Catalog of Copyright Entries*, which includes records of registered works, is published in book form for the first time.
- 1895: Congress mandates that U.S. government works are not subject to copyright protection.
- January 6, 1897: Congress enacts a law to protect music against unauthorized public performance.
- February 19, 1897: The U.S. Copyright Office is established as a separate department of the Library of Congress. Position of Register of Copyrights created.
- July 1, 1909: Effective date of third general revision of the copyright law. Certain classes of unpublished works now eligible for registration. Term of statutory protection for a work copyrighted in published form measured from the date of publication of the work. Renewal term extended from fourteen to twenty-eight years.
- August 24, 1912: Motion pictures, previously allowed to be registered only as a series of still photographs, added as a class of protected works.
- July 13, 1914: President Woodrow Wilson proclaims U.S. adherence to the Buenos Aires Copyright Convention of 1910, which established copyright protection between the United States and certain Latin American nations.
- July 1, 1940: Effective date of transfer of jurisdiction for the registration of commercial prints and labels from the U.S. Patent Office to the U.S. Copyright Office.
- July 30, 1947: The copyright law codified as Title 17 of the U.S. Code.
- January 1, 1953: Recording and performing rights extended to nondramatic literary works.
- September 16, 1955: United States becomes party to the 1952 Universal Copyright Convention as revised in Geneva, Switzerland.
- September 19, 1962: First of nine special acts extending terms of subsisting renewal copyrights pending congressional action on general copyright law revision.
- February 15, 1972: Effective date of the act extending limited copyright protection to sound recordings fixed and first published on or after this date.
- March 10, 1974: United States becomes a member of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.
- July 10, 1974: United States becomes party to the 1971 revision of the Universal Copyright Convention as revised at Paris, France.
- October 19, 1976: Fourth general revision of the copyright law signed by President Gerald Ford. This extensive revision included numerous provisions that modernized copyright law, as described in Section 102.2(A) above.
- January 1, 1978: Effective date of principal provisions of the 1976 copyright law.



- December 12, 1980: Copyright law amended to address computer programs.
- May 24, 1982: Section 506(a) amended to provide that persons who infringe copyright willfully and for purposes of commercial advantage or private financial gain shall be subject to criminal penalties.
- October 4, 1984: Effective date of Record Rental Amendments of 1984, which granted the owner of copyright in a sound recording the right to authorize or prohibit the rental, lease, or lending of phonorecords for direct or indirect commercial purposes.
- November 8, 1984: Federal statutory protection for mask works became available under the Semiconductor Chip Protection Act, with the U.S. Copyright Office assuming administrative responsibility. The Office began registering claims in mask works on January 7, 1985.
- June 30, 1986: Expiration of the **manufacturing clause** of the Copyright Act of 1976, which required that certain types of works be typeset, printed, and bound in the United States. For more information about the manufacturing clause under the 1909 Act, see **Chapter 2100** of this *Compendium*.
- March 1, 1989: The effective date of United States adherence to the Berne Convention for the Protection of Literary and Artistic Works, as revised in Paris, France in 1971.
- December 1, 1990: Copyright protection extended to architectural works. **Section 106A** added to copyright law by the Visual Artists Rights Act, which allows authors of certain types of visual works of art certain moral rights of attribution and integrity.
- December 1, 1990: Effective date of the Computer Software Rental Amendments Act. Grants the owner of copyright in **computer programs** the exclusive right to authorize or prohibit the rental, lease, or lending of a program for direct or indirect commercial purposes.
- June 26, 1992: Renewal registration becomes optional on a prospective basis. Any work in its twenty-eighth year of copyright protection no longer requires a renewal application with the U.S. Copyright Office in order for the copyright to extend into and through the renewal term. As such, all works initially copyrighted between January 1, 1964 and December 31, 1977 were renewed automatically, even if the party entitled to claim the renewal copyright failed to file a timely renewal with the Office.
- October 28, 1992: Effective date of the Audio Home Recording Act. The Act requires the placement of serial copy management systems in digital audio recorders and imposes royalties on the sale of digital audio recording devices and media that are distributed to the copyright owners.
- December 17, 1993: Copyright Royalty Tribunal Reform Act of 1993 eliminates the existing Copyright Royalty Tribunal and replaces it with *ad hoc* Copyright Arbitration Royalty Panels administered by the Librarian of Congress and the U.S. Copyright Office.
- December 8, 1994: The **Uruguay Round Agreements Act** restores copyright to certain foreign works under protection in the source country but in the public domain in the United States. It also repeals the sunset of the Software Rental Amendments Act and creates legal measures to prohibit the unauthorized fixation and trafficking in sound recordings of live musical performances and music videos.

- November 16, 1997: The No Electronic Theft (NET) Act defines “financial gain” in relation to copyright infringement and sets penalties for willfully infringing a copyright either for the purposes of commercial advantage or private financial gain or by reproducing or distributing (including by electronic means) phonorecords of a certain value.
- October 27, 1998: The Sonny Bono Copyright Term Extension Act extends the term of copyright for most works by twenty years.
- October 28, 1998: The Digital Millennium Copyright Act of 1998 (“DMCA”) adds several major provisions to the Copyright Act. It provides for the implementation of the World Intellectual Property Organization (“WIPO”) Copyright Treaty (“WCT”) and the WIPO Performances and Phonograms Treaty (“WPPT”), by adding prohibitions against circumventing technological measures protecting copyrighted works and removing or altering copyright management information. It also creates the **Section 512** safe harbors from liability for internet service providers; provides an exemption in **Section 117** of the Act permitting the temporary reproduction of computer programs made in the course of maintenance or repair; clarifies the policy role of the U.S. Copyright Office; and creates a new form of protection for **vessel designs**.
- November 2, 2002: The Technology, Education, and Copyright Harmonization (“TEACH”) Act provides for the use of copyrighted works by accredited nonprofit educational institutions in distance education.
- November 30, 2004: The Copyright Royalty and Distribution Reform Act phases out the Copyright Arbitration Royalty Panel system and replaces it with the Copyright Royalty Board.
- April 27, 2005: The Artists’ Rights and Theft Prevention Act (“ART Act”) allows for **preregistration** of certain works being prepared for commercial distribution.
- October 13, 2008: The Prioritizing Resources and Organization for Intellectual Property Act of 2008 (“PRO-IP Act”) is enacted. Among other things, the PRO-IP Act established the new government position of the Intellectual Property Enforcement Coordinator, codified case law regarding the effect of inaccurate information knowingly included in an application for copyright registration, and prohibited the export and import of infringing copies of works that are or would be protected under the U.S. Copyright Act.