

## WEBSITES AND WEBSITE CONTENT

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## WEBSITES AND WEBSITE CONTENT

### 1001 What This Chapter Covers

This Chapter discusses the U.S. Copyright Office’s policies and procedures for the examination and registration of **copyrightable** content contained on websites.

- For a general overview of the registration process, see **Chapter 200**.
- For a general discussion of copyrightable authorship, see **Chapter 300**.
- For a discussion of who may file an application, see **Chapter 400**.
- For guidance in identifying the work that the **applicant** intends to register, see **Chapter 500**.
- For guidance in completing the fields/spaces of a **basic application**, see **Chapter 600**.
- For guidance on the **filing fee**, see **Chapter 1400**.
- For guidance on submitting the **deposit copy**, see **Chapter 1500**.

For guidance concerning the practices and procedures relating to specific types of works, see the following chapters:

- For a discussion of **literary works**, see **Chapter 700**.
- For a discussion of **works of the performing arts**, see **Chapter 800**.
- For a discussion of **visual art works**, see **Chapter 900**.

### 1002 Definitions

This Section provides a brief definition for many of the terms that are used throughout this Chapter.

#### 1002.1 Website

For purposes of copyright registration, the U.S. Copyright Office defines the registrable content of a “website” as a webpage or set of interconnected webpages, including a homepage, located on the same computer or server (*i.e.*, **fixed** together on that computer or server), and prepared and maintained as a collection of information by a person, group, or organization.

Members of the public access the information and other works on a website by using a uniform resource locator (“URL”) that is organized under a particular domain name. Each URL address

or file-path leads to a distinct webpage or file resource. When the user opens a webpage with a browser application, the user's computer retrieves data from the URL and the browser assembles, coordinates, and arranges the data for presentation as a screen display based on a set of layout instructions from the hypertext markup language ("HTML"), style sheet, or other markup language for that page. The actual content of the website may be embedded in the HTML or may be contained in a file retrieved by the markup language.

A key element of a website is that the user can browse through the content on the site by scrolling through each webpage, by using internal hypertext links, or by using a search feature. This is in contrast to a **database**, which does not disclose the underlying content to the user but instead requires a search query to find and access particular information contained within the database that matches the parameters of each query.

## 1002.2 Website Content

For purposes of copyright registration, "website content" is material that is perceptible to the users of a particular website. This may include literary or textual works (such as news articles or literature) that are visibly displayed on a website, **works of the performing arts** (such as music, **sound recordings**, **motion pictures**, other **audiovisual works** and computer games) that are displayed or performed on a website, and two-dimensional **visual art works** (such as drawings, photographs, or illustrations) that are displayed on a website.

A work that is perceptible to the user only by downloading or separately purchasing that particular work is not considered part of the website for registration purposes and must be registered separately. Likewise, externally linked content (*i.e.*, content residing on another website or another server) is not considered part of the website's content for registration purposes.

## 1002.3 Hypertext

Hypertext consists of text or graphics displayed on a webpage that allow the user to link to other content or webpages. As a general rule, these links are dynamic addresses that redirect the user to a particular part of the same page (in the manner of a bookmark), another page within the website (*i.e.*, an internal link), or an external website (*i.e.*, an external link). In some cases, the external link may be an "inline" link that presents the external content within a frame on the linking site (*i.e.*, "framing" the content).

## 1002.4 Hypertext Markup Language (HTML)

Hypertext markup language ("HTML") is the standard markup language used in the design of websites. HTML establishes the format and layout of text and graphics when a user views a website by instructing the user's browser to present material in a specified manner. HTML may be hand-coded, but it is often generated by web design software programs. For registration purposes, HTML is not considered a **computer program**.

For a definition and discussion of computer programs, see **Chapter 700**, Section 721.

### 1002.5 Cascading Style Sheets

Cascading Style Sheets (“CSS”) are a method of presenting structured documents. They are used to format and layout the organization and a uniform presentation of webpages written in a markup language, such as HTML.

### 1002.6 Databases

For purposes of copyright registration, the U.S. Copyright Office defines a “**database**” as a **compilation** of digital information comprised of data, information, abstracts, images, maps, music, **sound recordings**, video, other digitized material, or references to a particular subject or subjects. In all cases, the content of a database must be arranged in a systematic manner and it must be accessed solely by means of an integrated information retrieval program or system with the following characteristics:

- A query function must be used to access the content.
- The information retrieval program or system must yield a subset of the content or it must organize the content based on the parameters specified in each query.

In other words, a database generally consists of two fundamental elements: (i) a data set or multiple data sets, and (ii) an information retrieval program or system that serves as the sole entry point into the underlying data, information, or files. Typically, the party that created the information retrieval program or system is not the same party that created the **copyrightable** content contained within the database. An application to register a database typically covers the selection, coordination, and/or arrangement of the data, information, or files, but does not cover the data, information, or files unless they are specifically claimed in the application.

Websites may contain databases, but they are not considered databases for the purpose of copyright registration. Generally, users may access all the content on a website by browsing through the pages of the website or its hierarchical structure. By contrast, users generally cannot access the content of a database in its entirety. Instead, users retrieve specific data, data sets, or other content from the database by using a query function that fetches content that meets the particular criteria provided by the user. Whereas the content of a website is wholly displayed online, the data contained within a database is displayed only to the extent that it matches a particular query that a specific user enters into the information retrieval system. Not all search functions qualify as information retrieval programs or systems. For instance, a website may provide a search feature to assist users in locating particular information on the site, but this does not transform the website into a database because the search feature is not the sole entry point for accessing the underlying data or files.

For additional information concerning databases, see [Chapter 700](#), Section 727.

## 1003 Identifying the Authors of a Website

### 1003.1 Distinguishing Between Individual Authors, Joint Authors, and Works Made for Hire

Websites often contain multiple types of **copyrightable** content, including **literary works**, **visual art works**, and **performing arts works**. The authors of the content may include visual artists, web designers, bloggers, coders, musicians, singer songwriters, among others. These authors may be individual contributors to the website, multiple authors who contributed to a group project, or employees of a company.

When an individual creates a work of authorship, generally he or she is considered the author of that work. If two or more individuals create a work, they are considered joint authors and the work is considered a **joint work**. See **17 U.S.C. § 101** (definition of “joint work”). When an individual creates a work during the course of his or her employment, that individual is not considered the author; the employer is considered the author and the work is considered a **work made for hire**. See *id.* (definition of “work made for hire”).

For a definition and detailed discussion of joint works and works made for hire, see **Chapter 500**, Sections 505 and 506.

### 1003.2 Distinguishing Between Authorship and / or Ownership When the Owner of a Website Hires a Third Party to Create Content for That Site

When an employee of a business or other organization designs or creates content for the employer’s website while acting within the scope of his or her employment, the employee’s contribution is considered a **work made for hire**. In such cases, the employer is considered the author and the copyright owner of the website and the **copyrightable** content created by the employee.

In many cases, an individual, organization, or company will hire another individual or entity to create a website. In such cases, the hired individual or entity is considered an independent contractor and any authorship created by the independent contractor is authored and owned by that individual or entity. This is the case even if the hiring party paid the independent contractor to create the website, much like a bride and groom that hired a photographer to take photos at their wedding. In such cases, the photographer is considered the author and the owner of the copyright in the photos, even though the bride and groom paid the photographer for his or her time and purchased copies of the photos. Likewise, the author and owner of the copyright in a website may be distinct from the owner of the tangible copies of that website content, notwithstanding the fact that the hiring party purchased those copies or paid for the web designer’s services.

In such cases, the independent contractor always remains the author of the work created. That individual or entity may **transfer** ownership of the **exclusive rights** comprising the copyright only by means of a signed, written agreement that transfers or exclusively licenses those rights to another party.

*Example:*

- Wendy Genoa is a website designer who works as an independent contractor. Val Miller hired Wendy to create a website for his small business. Wendy created the copyrightable backgrounds, banners, and other graphics for the



website, as well as the selection, coordination, and arrangement of the pages of the site. Val submits an application to register the website naming himself as the author and **claimant**. The **deposit copies** clearly indicate that Wendy contributed copyrightable authorship to the work and the application contains no **transfer statement**. The **registration specialist** will communicate with the **applicant**, because Wendy appears to be the author of this content and Val does not appear to be the proper claimant unless there was a valid transfer of ownership via a signed written agreement.

- For further information on issues involving the ownership of a website or website content, see Section **1004**.

### 1003.3 Copyrightable Content Contained in or Added to a Website

Websites often contain contributions that constitute separate and independent works in themselves, such as text, photographs, videos, **sound recordings**, and the like. In such cases, the website is typically a form of **collective work** in which a number of component works are selected, coordinated, and/or arranged into a collective whole, while the components works typically are contributions to the collective work.

The creator of the website may be the author and owner of the website as a whole, while another party or parties may be the author(s) and owner(s) of particular works contained within the site. In many cases, multiple applications may be required to register the copyright in all the works contained within a website, unless there has been a valid **transfer** of ownership for the copyright interest in each of the component works (assuming those works were not previously published or registered).

### 1003.4 User Generated Content (UGC)

Many websites allow users to post content that they created, such as comments, reviews, photographs, or videos. This type of material is known as user generated content (“UGC”).

As a general rule, the user is the author of any original expression that he or she creates and posts to a website, and the user owns the copyright in that material unless he or she **transfers** ownership of all the **exclusive rights** to the website owner pursuant to a valid, signed, written transfer of ownership.

For more information on ownership issues involving UGC, see Section **1005**.

## 1004 Identifying the Owner of Website Content

For purposes of copyright registration, the owner of website content is either (i) the author of the content or (ii) a copyright owner that owns all the **exclusive rights** in that content. When completing an application to register website content, the owner of the content should be identified in the application as the “**claimant**.” Although the author of the content or the copyright owner of that content are the only parties who are entitled to **claim** ownership of the copyright in that material, an application to register that claim may be signed and submitted by any of the parties listed in **Chapter 400**, Section 402.

The author of website content may be named as a claimant even if the author transferred some or all of the exclusive rights in that content to another party. A copyright owner that owns all of the exclusive rights in website content may be named as a claimant, provided that the copyright in that content was transferred to the owner pursuant to a valid signed, written agreement. If the website contains content authored by a third party and if the copyright in that content has not been fully transferred to the claimant, the **applicant** should expressly exclude that content from the claim.

If an individual, company, or organization hires an independent contractor to design a website and/or create **copyrightable** content for the website, the hiring party may have a contractual or implied right to use the website and/or the content for the purpose for which it was intended. However, the hiring party does not own the copyright in that content and cannot be named as a claimant unless there was a valid **transfer** of ownership in the copyright from the independent contractor to the hiring party.

*Examples:*

- Trashy Productions LLC operates a fashion blog called “OneGirlsTrash;” Jake Rag is an employee of the company. Jake shot a video of street fashion and uploaded it to the company’s website. Jake submitted an application to register the video as a “**motion picture**,” naming Trashy Productions as the author and claimant with the **work made for hire** box checked “yes.” The **registration specialist** will register the claim.
- Madge Pash enters into a signed, written agreement with a well-known artist granting Madge a **nonexclusive license** to display the artist’s drawings on her website. Madge submits an application to register the content of her website, naming herself as the claimant/owner of the drawings “by nonexclusive license.” The registration specialist will refuse to register the claim in the drawings, because a nonexclusive license is not a transfer of ownership, and because Madge is neither the author of the drawings or the owner of all the exclusive rights in those works.

For guidance in identifying the claimant and providing a **transfer statement**, see Section **1009.7** and **Chapter 600**, Sections 619 and 620. For information on the procedure for excluding third party material from a claim, see Section **1009.8** and **Chapter 600**, Section 621.

## **1005 Transfer of Ownership by Terms of Service**

In some cases, an individual author may be asked to accept the terms of service for a website before the author uploads UGC to that site. If the terms of service state that the website becomes the owner of all the **exclusive rights** in any works that are lawfully uploaded to that site, the author may be deemed to have transferred ownership of the copyright in that UGC through a written, digitally-signed **transfer** agreement. *See Metropolitan Regional Information Systems v. American Home Realty Network, Inc.*, 722 F.3d 591 (4th Cir. 2013).

While this issue has not been addressed by many courts, at present the U.S. Copyright Office will accept an application that names the owner of a website as the **claimant** for UGC that has been uploaded to that site, but only if the **applicant** identifies the authors of that content in the application and confirms that the authors transferred their rights to the claimant. The Office encourages applicants to name all the authors of the UGC that is claimed in the application.

However, if the content was created by a large number of authors, the Office will accept an application that provides representative names of some of the authors and the number of additional authors who contributed to the content that is included in the **claim** (e.g., “B.F. Pierce, John McIntyre, Hank Blake, Walter O’Reilly, and 14 others”). In any claim of ownership involving a “click-through” agreement or terms of service agreement, the claimant must know and have a record of the names of the authors who transferred ownership of all the exclusive rights to the claimant. To verify this requirement, the **registration specialist** may request additional information from the applicant. In such cases, the specialist will not accept transfers from **anonymous**, **pseudonymous**, or unidentified authors as a valid transfer of ownership.

## 1006 Copyrightable Subject Matter

**Section 102(a)** of the Copyright Act states that copyright protection only extends to “original works of authorship.” **17 U.S.C § 102(a)**. To satisfy this requirement, a work must be **fixed** in a tangible medium of expression, it must be created by a human being, it must constitute **copyrightable** subject matter, and it must contain a sufficient amount of creative expression.

A website in and of itself is not explicitly recognized as copyrightable subject matter, although it may contain copyrightable subject matter that falls within one or more of the categories of authorship set forth in **Section 102(a)**, and/or it may qualify as a **compilation**, a **collective work**, or a **derivative work**. A website is merely a medium of **fixation** for works of original authorship, but it is not a work of authorship in and of itself. In other words, it is a vehicle for the dissemination of content, which may or may not be copyrightable. Like any medium for copyrightable expression, such as a book, DVD, or CD-ROM, it is the content of the website — not the medium of expression — that comprises the copyrightable authorship that may be registered with the U.S. Copyright Office.

Websites may contain three layers of potentially copyrightable authorship:

- Websites contain content that is made perceptible on the website’s pages in the form of text or digital files. Websites usually contain multiple forms of content, such as text, **computer programs**, photographs and other two-dimensional artwork, musical works, **sound recordings**, dramatic works, and **motion pictures** or other **audiovisual works**. Website content may be registered if it constitutes copyrightable subject matter and if it contains a sufficient amount of original authorship. The Office applies the same rules when examining these types of works, regardless of whether they are made available on a website or other online medium or whether they are made available in a hard copy format.
- Websites may contain compilation authorship. Specifically, there may be authorship in the way in which the copyrightable text and/or digital files are selected, coordinated, and/or arranged on a particular webpage, or the way in which the pages of the overall website are selected, coordinated, and/or arranged, such as the manner or hierarchy in which the pages are connected or linked to each other. In many cases, the author or **claimant** of the selection, coordination, and/or arrangement may not be the same as the author of the individual elements within the website. If the selection, coordination, and/or arrangement is sufficiently creative, the website may be registered as a compilation, collective work, or derivative work.
- Websites contain underlying markup language or style sheets that structure, arrange, and coordinate the manner in which the user views or otherwise perceives the content on the site through the his or her browser. The underlying markup language for a website may or

may not contain copyrightable authorship. Moreover, markup language may or may not be authored by the creator of the website, but instead may be generated by the website design software that the creator used to create the website.

Websites are somewhat unique as vehicles for the dissemination of content. Unlike a tangible object, such as a printed magazine or a roll of film, websites are not static containers for content. They are dynamic containers that may change over time as often and to the extent that the website owner wishes. In addition, websites are not linear from beginning to end, but rather may be browsed in many varied ways.

Although websites are dynamic, copyright protection in the United States extends only to **fixed** works of authorship that fall under the categories provided in **Section 102(a)** of the Copyright Act. The Office will register a **claim** in website content only as it exists at the time that the application is received. The Office will not register a claim in website content as it may exist in the future if that content has not been fixed yet.

For information concerning specific types of website content, see Sections **1006.1** through **1006.4**. For general information on what constitutes copyrightable subject matter and copyrightable authorship, see **Chapter 300**, Sections 307 and 308. For general information concerning compilations, collective works, and derivative works, see **Chapter 300**, Sections 311 and 312, and **Chapter 500**, Sections 507, 508, and 509.

## **1006.1 Literary Works**

Websites typically contain some text or literary authorship. Websites also may include specific types of **literary works**, such as poems, short stories, news articles, blog entries, **databases**, and computer software. This type of website content may be claimed in an application if it is sufficiently creative. However, a claim in text or literary authorship does not extend to titles, short phrases, standard navigational text, or other insufficiently creative or functional elements.

### **1006.1(A) Hypertext Markup Language (HTML)**

An applicant may register HTML as a **literary work** if it was created by a human being (rather than a website design program) and if it contains a sufficient amount of creative expression. The **claim** may include the HTML underlying an entire website or it may be limited to specific webpages. In all cases, the **claimant** must be the author of the HTML or must own all of the **exclusive rights** in the HTML. If the HTML contains an appreciable amount of previously **published**, previously registered, or public domain material, that material should be excluded from the claim. For a definition and discussion of the differences between an applicant, author, and claimant, see **Chapter 400**.

The Office will not register HTML as a **computer program**, because HTML does not constitute **source code**. HTML is a markup language that merely formats the text and files on a webpage in much the same way that the codes in a word processing program format the characters and spaces in a document.

Unlike computer programs that are hand-coded by programmers using computer programming languages, HTML is frequently generated by website design software that provides templates or WYSIWYG (“What You See Is What You Get”) functionality. If the website design software

automatically creates the HTML, the website designer is not considered the author of the resulting markup language. By analogy, when an author creates a document using a word processing program, the author may insert text, spaces, and paragraphs, choose the font and the size of the letters, and select the color of these elements, but those decisions do not constitute **copyrightable** authorship. In such cases, the author of the document cannot assert a claim in the codes generated by the word processing program, because those codes were created by the program itself. The same is true for HTML that is automatically generated by website design software.

The HTML for a website typically contains any text that is viewable on the site, because the HTML formats, colors, sizes, and lays out the text on each webpage. If an applicant intends to register the text within a website, the applicant should submit the text as it is rendered on the webpage; there is no reason to submit the HTML.

To register a claim in HTML the applicant must submit copy(ies) of the entire work. The applicant may not rely on the regulations governing computer programs, which allow applicants to submit only a portion of the source code.

A registration for HTML and/or accompanying text will extend to the original text that is embedded in the HTML (*i.e.*, the series of letters and numbers, interspersed with file names and/or text). However, it will not extend to the formatting and layout of text or digital files on a webpage that may be dictated by the HTML or style sheets. A claim in a computer program may cover the **screen displays** and other content generated by the program, but a claim in HTML does not extend to the screen displays or any content of the files referred to in the HTML.

For information concerning the practices and procedures for registering computer programs see **Chapter 700**, Section 721.

## 1006.1(B) Databases

As discussed in Section **1002.6**, a website is not considered a **database** for the purpose of copyright registration. The mere fact that a website contains a database of information or the fact that the information on a website is searchable does not transform the website into a database. For these reasons, the **group registration** option for database updates cannot be used to register websites or webpages, and at present there is no group registration option for website revisions that have been made over a period of time.

If a website contains a database as part of its website content, the database may be registered as a **literary work** if it contains a sufficient amount of original authorship. The Office applies the same rules when examining this type of work, regardless of whether the database is made available through a website or in a hard copy format. For information concerning the practices and procedures for registering a database, see **Chapter 700**, Section 727. For information concerning the group registration option for database updates, see **Chapter 1100**, Section 1117.

## 1006.2 Visual Art Works

Websites typically contain visual art works, such as photographs, graphic designs, drawings, illustrations, and other two-dimensional works. This type of website content may be registered if it is sufficiently original.

A visual art work may be registered on an individual basis if the **claimant** is the author of that website content or owns all the **exclusive rights** in that content. In the alternative, the two-dimensional visual arts content contained in a website may be registered as a **collective work** if the author selected, coordinated, and/or arranged that content and if the claimant is the author of the collective work or owns all the exclusive rights in that work.

Creative pictorial authorship that is contained in a standard design feature, such as a background, button, banner, or template may be **copyrightable** if it is sufficiently creative. However, a **claim** in the pictorial authorship contained on a website does not extend to the standard placement of features on the webpages, such as elements that are part of the template, including mere coloration, the use of borders, or the selection of typeface and font.

*Example:*

- Mighty Oak Insurance creates an original logo design featuring the image of an oak tree and incorporates the logo into the template for its website. The logo may be registrable as two-dimensional artwork.

### 1006.3 Works of the Performing Arts

**Works of the performing arts** that are perceptible on webpages may be registered if they are sufficiently original, including musical works, **sound recordings**, dramatic works, **choreographic works**, **pantomimes**, **motion pictures**, and other **audiovisual works**.

A work of the performing arts may be registered on an individual basis if the **claimant** is the author of that website content or owns all the **exclusive rights** in that content. In the alternative, the performing arts content contained in a website may be registered as a **collective work** if the author selected, coordinated, and/or arranged that content and if the claimant is the author of the collective work or owns all of the exclusive rights in that work.

### 1006.4 Compilation Authorship

The Copyright Act defines a “**compilation**” as “a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.” **17 U.S.C. § 101**.

The content of a website may qualify as a compilation if there is a sufficient amount of creative expression in the selection, coordination and/or arrangement of the content as a whole. For example, there may be “selection” authorship involved in choosing the material or data that will be included in the website. There may be coordination authorship involved in classifying, categorizing, ordering, or grouping the content. In addition, there may be arrangement authorship involved in determining the placement or arrangement of the content within the website as a whole.

To register a **claim** to copyright in a compilation the **applicant** should state “compilation of \_\_\_\_\_” in the field marked Other, and should specify the type of website content that the author selected, coordinated, and/or arranged (e.g., “compilation of text” or “compilation of text and photographs”). A registration for a compilation may cover each type of authorship if it is sufficiently creative, but it does not cover any content that appears within the website unless that content is **copyrightable** and is specifically claimed in the application.

*Example:*

- Camilla Beret is the owner of a dating website called “Switch and Bait.” Camilla did not create the individual listings that are posted on the site, but she selected the fields that are included within each listing and she created the arrangement of listings, headings, graphics, and photographs within the website as a whole. If the selection and arrangement is sufficiently creative, the registration specialist may register Camilla’s authorship as a “compilation of text, graphics, and photographs.”

For general information regarding compilations, see [Chapter 500](#), Section 508. For information regarding compilation authorship, see [Chapter 300](#), Section 312. For information regarding the practices and procedures for registering a claim in a compilation, see [Chapter 600](#), Section 618.6 and 621.8(D).

## 1007 Uncopyrightable Material

A registration for a [claim](#) in website content does not extend to any uncopyrightable material contained within a website. In particular, the U.S. Copyright Office will refuse to register website content that does not constitute [copyrightable](#) subject matter or content that lacks a sufficient amount of original authorship. Examples of uncopyrightable material include, but are not limited to, the following:

- Ideas, such as plans for future websites.
- Functional design elements.
- Domain names and hypertext links.
- The layout, format, or “look and feel” of a website.
- Common, unoriginal material, such as names, icons, or familiar symbols.

See [17 U.S.C. § 102\(b\)](#); see also [37 C.F.R. § 202.1](#).

This type of material is discussed in Sections [1007.1](#) through [1007.4](#). For a general discussion of uncopyrightable material, see [Chapter 300](#), Section 313.

### 1007.1 Ideas for Websites, Website Operation, or Website Structure

[Section 102\(b\)](#) of the Copyright Act specifically states that copyright protection for an original work of authorship does not “extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery... regardless of the form in which it is described, explained, illustrated, or embodied in such work.” [17 U.S.C. § 102\(b\)](#). For example, copyright protection does not extend to the ideas for a website, nor does it extend to any ideas or concepts for the visual or operational design of a website, its user interface, or the hyperlink structure of the site.

## 1007.2 Domain Names and URLs

A domain name or URL is the address for a website or webpage. It is the online equivalent of a mailing address or phone number. These elements are facts that are not eligible for copyright protection. *See Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 347 (1991) (“No one may claim originality as to facts . . . because facts do not owe their origin to an act of authorship.”). In addition, domain names and URLs are not protectable because they are merely words or short phrases that lack the sufficient amount of creativity required for copyright protection. *See 37 C.F.R. § 202.1(a)*.

## 1007.3 Hypertext Links

A hypertext link is generally a URL or bookmark within a website. These elements are not **copyrightable**, because they are essentially addresses or facts and because they are simply a method for accessing content within a website.

Although a URL or bookmark in and of itself would not be protected by copyright, the creative text or graphic that embodies a hypertext link may be copyrightable if that text or graphic contains a sufficient amount of original authorship.

## 1007.4 Layout and Format

The copyright law does not protect the overall look and feel of a website. It only protects the specific **copyrightable** expression found on a website on a given date.

As a general rule, the selection, coordination, and/or arrangement of particular content on a webpage may be copyrightable if it is sufficiently creative. However, the layout (*i.e.*, spatial placement) or format of a webpage is not copyrightable in and of itself, regardless of how many elements are used in the layout or format. For example, a **claim** based on the border width for a webpage, the placement of some banner, and a placeholder for blocks of unspecified text or images would not be registrable. By contrast, a claim based on a particular banner, text, and images that are arranged in a creative manner may be eligible for registration, but the claim would extend only to that selection, coordination, and/or arrangement of those particular elements. It would not extend to other elements that have been arranged in the same or similar way.

The U.S. Copyright Office will not register the format and layout of a website because it would impede the very purpose of copyright—to promote creativity—by limiting the ways in which creativity may be expressed. After conducting a formal rulemaking, the Office determined that it cannot register the overall format or layout of a book or other printed **publication**, including the choice of style and size of typeface, leading (*i.e.*, the space between lines of type), the placement of the folio (*i.e.*, page numbers), the arrangement of type on the pages, or the placement, spacing, and juxtaposition of textual and illustrative matter in the work. The Office cannot register these elements because they fall within the realm of uncopyrightable ideas. If the Office registered claims in format or layout it would extend protection to the idea itself, because there are only a limited number of ways to organize content within a publication. Barring these types of claims thus serves the goal of copyright by ensuring that these building blocks of expression are available to all creators. *See Registration of Claims to Copyright: Notice of Termination of Proposed Rulemaking Regarding Registration of*



### Claims to Copyright in the Graphic Elements Involved in the Design of Books and Other Printed Publications, 46 Fed. Reg. 30,651, 30,653 (June 10, 1981).

For the same reason, the Office will not register the standard arrangement or placement of the common elements and features on a webpage. The decision to add or place a banner, border, frame, sign-in box, title, footer, video screen, text blocks, or other elements in certain positions cannot be registered in the absence of specific copyrightable content in those elements, because these types of choices do not constitute original authorship. For instance, an original banner may be registered as a pictorial work if it is sufficiently creative, but the registration will not extend to the placement of that banner because there are a limited number of ways to layout that type of content on a webpage.

Style sheet languages, such as Cascading Style Sheets, are merely methods of formatting and laying out the organization of documents written in a markup language, such as HTML. Because procedures, processes, and methods of operation are not copyrightable, the Office generally will refuse to register claims based solely on CSS.

For a general discussion of layout and format, see [Chapter 300](#), Section 313.3(E) and [Chapter 900](#), Section 906.5.

## 1008 Registration Issues

**Claims** in website content are often delayed because the application contains inaccurate or incomplete information and/or because there are discrepancies between the statements provided in the application and the information or material contained in the **deposit copy(ies)**. This Section discusses issues that commonly arise in connection with the registration of such works.

### 1008.1 The Scope of a Registration for Website Content

A registration for website content extends only to the following material:

- Material that contains a sufficient amount of **copyrightable** expression,
- Material that is original to the author named in the application,
- Material that is owned by the **claimant** named in the application,
- Material that is expressly described in the application, and
- Material contained in the **deposit** accompanying the application.

### 1008.2 Unclaimable Material Must Be Excluded from the Claim

As with any type of work, a registration for website content does not extend to any unclaimable material that may be contained within that content. For purposes of registration, unclaimable material includes material that is not owned by the **claimant**, material that is in the **public domain**, or material that was previously **published** or previously registered.

If the **deposit** contains an appreciable amount of previously published, previously registered, public domain, or third party material, the **applicant** must expressly exclude that material from the **claim** using the procedure described in **Chapter 600**, Section 621.8. Asserting a claim in previously published material is one of the most common mistakes that applicants make when completing an application to register website content.

The U.S. Copyright Office has a longstanding practice of precluding previously published material from a claim in a **collective work** or derivative work, even if the author of the collective work or derivative work is the author of the previously published material and owns all of the rights in that material. The Office requires applicants to disclaim previously published material for several reasons. Historically, **publication** affected the duration of the copyright in a work, and it continues to be implicated in the duration of **works made for hire**, **anonymous works**, and **pseudonymous works**. Obtaining information about the date and nation of first publication may be necessary to determine if a particular work is eligible for copyright protection in the United States or to determine if the applicant satisfied the applicable deposit requirements. To register a published work an applicant may be required to submit a complete copy of that work, unless the Office's regulations explicitly allow for the submission of **identifying material**. Finally, this longstanding practice clarifies the date of publication for a particular work, which may assist the courts in assessing the copyright owner's eligibility for statutory damages and attorney's fees in an **infringement** action. For information concerning these issues, see **Chapter 500**, Section 503.5.

### 1008.3 Publication Issues

#### 1008.3(A) What Constitutes Publication?

Publication is defined in the U.S. Copyright Act as: “[T]he *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.” **17 U.S.C. § 101** (definition of “publication”) (emphases added). The statute also states that “[a] public performance or display of a work does not in itself constitute publication.” *Id.*

To perform or display a work “publicly” means “(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.” **17 U.S.C. § 101** (definition of “to perform or display a work ‘publicly’”).

Although, in the vernacular, the term “published” has acquired broad meaning, it has a much narrower meaning as a term of art within the Copyright Act. Moreover, publication was part of the copyright law long before the internet became a means of public communication and dissemination. While technological developments have blurred this traditional concept, the U.S. Copyright Office interprets publication in a manner consistent with congressional intent and with appreciation for the current factual and legal distinctions that may inform the assessment of this issue. Specifically, the Office views publication in light of the statutory definition of “pub-

lication,” the legislative history for the Copyright Act, and a host of business practices premised on divisible **exclusive rights**.<sup>1</sup>

For a detailed articulation of these definitions and a general discussion of publication, see **Chapter 1900**. For a general discussion of publication on the Internet, see Sections **1008.3(B)** through **1008.3(F)**.

### **1008.3(B) Reproduction and Distribution Distinguished from Performance and Display**

The statutory definition makes clear that **publication** requires (i) 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, or (ii) an offer to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display. **17 U.S.C. § 101**.

As a general rule, the U.S. Copyright Office considers a work “**published**” when it is made available online if the copyright owner authorizes the end user to retain copies or phonorecords of that work. For example, the fact that a work is expressly authorized for reproduction or download by members of the public or is expressly authorized for distribution by the public creates a reasonable inference that copies or phonorecords have been distributed and that publication has occurred.

Likewise, the Office generally considers a work “published” when the copyright owner makes copies or phonorecords available online and offers to distribute them to a group of persons for purposes of further distribution, public performance, or public display. For instance, the fact that a **sound recording** has been offered for distribution to multiple online streaming or download services, or the fact that a photographer offered a photograph to multiple stock photo companies or website for purposes of further distribution or public display creates a reasonable inference that an offer to distribute to a group of persons has been made and that publication has occurred.

It may seem odd that allowing the whole world to view or hear a work does not constitute publication of a work, but the statutory definition is clear that the public performance or public display of a work does not, in and of itself, constitute publication. A mere display or performance is not a distribution, because the end user does not retain a “copy” or “phonorecord” of the work, as defined under the Copyright Act. See **17 U.S.C. § 101** (definition of “copies” and “phonorecords”).<sup>2</sup>

As a general rule, the Office does not consider a work to be published if it is merely displayed or performed online, unless the author or copyright owner clearly authorized the reproduction or distribution of that work, or clearly offered to distribute the work to a group of intermediaries for purposes of further distribution, public performance, or public display.

- 1 U.S. copyright law has long drawn a distinction between the reproduction and distribution right, on the one hand, and the public performance and public display right on the other. Congress explicitly embraced the concept of divisibility of the **exclusive rights** of copyright when it enacted the **1976 Act, H.R. Rep. No. 94-1476, at 123 (1976)**, reprinted in 1976 U.S.C.C.A.N. 5659, 5738-39.
- 2 The term “copies” is used interchangeably in this Chapter to refer to both “**copies**” and “**phonorecords**,” which are defined in **Section 101** of the Copyright Act.

### 1008.3(C) The Authorization Requirement

A critical element of **publication** is that the distribution of **copies** or phonorecords to the public must be authorized by the copyright owner. To be considered **published**, the copyright owner must expressly or impliedly authorize users to make retainable copies or phonorecords of the work, whether by downloading, printing, or by other means.

A distribution or offer to distribute that has not been authorized by the copyright owner does not constitute publication. Thus, the mere fact that a work is disclosed on the internet does not “publish” the work. The end user’s technical capacity to copy, capture, save, or otherwise reproduce a work in and of itself does not imply that the copyright owner authorized the distribution or publication of that work, unless there is an express or implied-in-fact authorization that supports such an inference. Likewise, the fact that it may be possible for an end user to reproduce or distribute a work that has been authorized only for public display or public performance online does not mean that publication has occurred.

An unauthorized reproduction or distribution online may constitute copyright **infringement** or may be a fair use in certain circumstances, even if there are no technological protection measures preventing the use of that work. While a fair use may be lawful, it is not considered an authorized reproduction or distribution that publishes the copyright owner’s work. Similarly, an infringing reproduction or distribution does not constitute publication, even if the unauthorized copies or phonorecords are dispersed among large number of people.

While it is often a simple matter to determine whether a distribution of tangible copies was authorized by the copyright owner, it is not always factually clear whether the placement of works online is intended to be an authorized distribution of those works or merely an authorized public performance or public display.

The answer to this question may vary for different types of works or vary based on the way in which works are placed online. For instance, posting a **sound recording** online for authorized downloading by the public may well provide evidence of publication, whereas making a sound recording available for streaming would not constitute publication, because the work is only intended to be publically performed. Similarly, posting an article on a news website that authorizes users to download articles or email them to a friend may support a finding of publication for that particular article, whereas posting the entire news website online would not constitute publication because the website as a whole is intended only for public display. Indeed, there would appear to be little basis for inferring that a copyright owner authorized a user to copy and/or distribute an entire website absent some indication to the contrary.

Because publication is premised on authorized distribution, it is ultimately for the author or the copyright owner to determine whether a work is authorized for distribution or is limited to public performance or public display. This choice may be express (*e.g.*, an express statement that the works on a website may be downloaded or that they are available only for online display) or implied in fact (*e.g.*, a website that provides a download option or a website that only provides a streaming option).

Authors and copyright owners who wish to clarify the publication status of their works should provide express information about what they are, or are not, authorizing others to do with their works. For instance, explicitly authorizing downloading or reproduction of all the content on a website would indicate that the works posted on that site have been published. Implicitly authorizing downloading or transmission of copies of works by offering copies for sale, free

downloading, or transmission to others via email also may suggest that works subject to that implicit authorization have been published. By contrast, clearly stating that the content on a particular is available only for public display or public performance with an express prohibition on the reproduction, distribution, or transmission of any of that content would indicate that the works on that site are **unpublished**.

### 1008.3(D) Implied Nonexclusive License or Authorization

To assess the **publication** status of works placed online, it may be necessary to clarify the scope of any implied license purportedly granted by the copyright owner of those works. Courts have found that an implied, nonexclusive license or authorization may exist where the circumstances and the parties' conduct reflected their intent or understanding that the work would be used for a specific purpose.

Courts have considered a wide variety of factors in determining whether a nonexclusive, implied license may exist. In some cases, the grant of a license may be implied by objective conduct that “supports a finding that an implied license existed.” *Effects Associates, Inc. v. Cohen*, 908 F.2d 555, 558 n.8 (9th Cir. 1990) (finding an implied license where the author created special effects for a horror movie and stated that the footage would be used for this purpose in both a written agreement and in its application to register the footage). In other cases, a license may be implied by the totality of the parties' conduct. *See, e.g., Falcon Enterprises, Inc. v. Publishers Service, Inc.*, 438 Fed. App'x. 579, 581 (9th Cir. 2011) (holding that the parties' conduct demonstrated the existence of an ongoing nonexclusive, implied license where the plaintiff received a fee each time he sent copyrighted images to the publisher for publication over a period of several years). However, express or explicit limits on use may supersede an implied license, particularly if the copyright owner conveys those limits before the work is delivered to the licensee. *See Johnson v. Jones*, 149 F.3d 494, 500-501 (6th Cir. 1998) (finding no implied license where architect presented the client with proposed contracts containing an express provision stating that the drawings could not be used without his agreement or without appropriate compensation).

A variety of factors may be relevant in determining whether a copyright owner **published** website content by impliedly authorizing users to make copies of that content. Examples of factors that may be considered include the following:

- Whether there are indications on the website or webpage relevant to the work indicating that the copyright owner intends for the work to be distributed to the user via download, saving, printing, or emailing, such as the presence of a “download,” “save,” or “email” button for a particular work.
- Whether the copyright owner expressly reserved copyright rights in the work or explicitly prohibited the reproduction or distribution of the work in whole or in part.
- Whether the copyright owner employed barriers to the reproduction or distribution of the work, such as technological measures that disable or impair a web browser's print, copy, and/or save capabilities.
- Whether the copyright owner permitted the work to be streamed or displayed, but did not expressly permit the work to be copied or downloaded.

### 1008.3(E) Intermediate or Buffer Copies Made in the Course of Streaming

When a work is performed or displayed online through streaming or browsing, temporary copies of that work are routinely made due to the way in which the internet operates. These intermediate copies are necessary to perform or display the work online. If the means of achieving a public performance or public display constituted a distribution in all cases, the right of public performance and public display would cease to be distinct and separate **exclusive rights** in the online environment. That would be contrary to Congress’s clear intention to explicitly recognize the divisibility of exclusive rights in the **1976 Act**.

As discussed above, the U.S. Copyright Office does not consider a work “**published**” when it is made available online through a public performance or public display unless the copyright owner authorizes the end user to retain copies of that work. The fact that the user’s computer or other device makes intermediate copies, buffer copies, or other temporary digital copies during a performance or display of that work is irrelevant to this determination. Authorizing the performance or display of a work does not necessarily mean that the copyright owner authorized the end user to retain copies of the work. While temporary copies may or may not be **fixed** in the user’s computer or other device for a period of more than transitory duration, they are purely functional copies made solely for the purpose of facilitating the technological delivery of the performance or display. Typically the copyright owner does not intend for the user to permanently retain those copies on his or her computer, and any further use of those copies would be unauthorized by the owner.

Moreover, temporary copies made in the course of browsing websites do not reproduce the entire site, but only the pages displayed in the user’s web browser. When a website and its content are posted online, the copyright owner presumably gives users an implied license to create temporary copies for the purpose of viewing that content in a browser. But it is doubtful that an implied license would extend to authorizing the permanent reproduction of an entire website or its contents without clear authorization from the copyright owner.

### 1008.3(F) Determining the Publication Status of a Work Made Available Only Online

The **applicant** — not the U.S. Copyright Office — must determine whether a particular work is **published** or **unpublished**. This determination should be based on the facts that exist at the time the application is filed with the Office. As a general rule, the Office will accept the applicant’s representation that website content is published or unpublished, unless that statement is implausible or is contradicted by information provided elsewhere in the registration materials or in the Office’s records or by information that is known to the **registration specialist**.

In making this determination, the applicant may wish to consider the following general guidelines:

- *Streamed-only content:* Streaming is a performance, which, in and of itself, does not constitute a distribution of copies, because, as a practical matter, the user does not receive a copy. If a work is made available on a website only by streaming and not for download, it is not published.
- *Express authorization to download content:* If a work is expressly made available for download the work is deemed published, because a distribution occurs each time a user downloads a copy, such as when MP3s of a **sound recording** are offered for sale on a website or where a

copy of software or a videogame can be obtained by clicking on a “download now” button or similar link.

- *Downloading or reproduction expressly prohibited:* If a work is posted and displayed on a website and if there is a notice on the webpage, in the terms of service for the site, or in another obvious place stating that the work and/or all content on the site may not be downloaded, printed, or copied (or other statement to that effect), that work(s) may be deemed unpublished, because any copies that may be downloaded, printed, or otherwise distributed to the user have not been authorized by the copyright owner.
- *Work posted without the authority of the copyright owner:* The fact that a work was posted on a website without authorization from the copyright owner has no impact on whether the work is published or unpublished (even if the work may be downloaded or printed from the site), because the copyright owner did not authorize the work’s availability on the website in the first instance.
- *Implied license:* If a work is posted on a website and there is no evident statement in the terms of service for the site, on the webpage where the work is displayed, or elsewhere stating that the work may be downloaded, copied, forwarded, and/or printed it may be unclear whether the copyright owner authorized the distribution of that work. If downloading, reproducing, or retransmitting is facilitated in some manner by the website, there may or may not be an implied license to distribute the work, in which case the work may or may not be considered published.
- *Work made available in electronic and hard copy format.* If the same work is posted online and distributed in tangible copies, such as CDs, DVDs, or in printed formats, the work will be deemed published, even if it has not been published online.

For complete certainty, authors or copyright owners may register website content as an unpublished work before it is distributed or placed online. Likewise, if a website has not been posted online yet and if all of the content contained in the site has never been distributed, the website may be registered as an unpublished work. A registration for an unpublished work secures the statutory benefits for a work, such as the availability of statutory damages and attorney’s fees for **infringements** that occur after the effective date of the registration for that work (regardless of whether the work is subsequently published).

#### 1008.4 Identifying the Work(s) That May Be Included in the Claim

To register a **claim** with the U.S. Copyright Office the **applicant** should begin by identifying the work(s) of authorship that will be included in the claim. This is especially critical for websites, because they typically contain a number of discrete works of authorship. Each work may present unique registration issues that the applicant may need to consider when preparing the application and the **deposit** material.

For example, if the website contains a number of works that are owned by different parties, it may be necessary to submit a separate application for each work. Separate applications may be necessary if the applicant determines that the works have been **published** and that each work was published on a different date. Likewise, separate applications may be necessary if the applicant intends to register multiple versions of the same work and if the applicant determines that the versions were published on successive dates. Indeed, every work that is added to a website

potentially may qualify as a **derivative work** or a new contribution to a **collective work**. In such cases, a separate application and separate **publication** date may be required for each date that new content was uploaded to the website and authorized for distribution to the public.

By contrast, if the website qualifies as a collective work it may be possible to register the entire site with one application, provided that the **claimant** owns the copyright in the site as a whole. It also may be possible to register the entire site together with the component works contained therein if the claimant is the author of or owns the copyright in those works. However, it is important to note that a website claimed as a collective work will only be eligible for one award of statutory damages no matter how many discrete works within the website may be infringed. **17 U.S.C. § 504(c)(1)**. For information concerning the registration options for collective works and contributions to collective works, see **Chapter 500**, Section 509.

If the applicant determines that a website is **unpublished**, it may be possible to register the works that appear on site as an **unpublished collection**, such as an unpublished collection of photographs, an unpublished collection of articles, or an unpublished collection of blog posts. In other cases, it may be possible to register a number of works with one application by using one of the **group registration** options, such as the option for registering a group of published photographs or a group of contributions to periodicals, provided that the applicant satisfies the eligibility criteria for that option. For information concerning these registration options, see **Chapter 1000** (Registration for Multiple Works).

### 1008.5 Identifying the Specific Version That May Be Included in the Claim

Many websites are frequently updated and may change significantly over time. A website may add content every hour, day, week, month, or year. To register a **claim** with the U.S. Copyright Office it is important to identify the specific version of the work(s) that will be included in the claim.

As a general rule, each version of a work may be registered as a separate work if the version contains a sufficient amount of new, **copyrightable** authorship. See **17 U.S.C. § 101** (stating that “where the work has been prepared in different versions, each version constitutes a separate work”). A registration for a specific version of a work covers the new material that the author contributed to that version, including any copyrightable changes, revisions, additions, or other modifications that the author contributed to that version. But as discussed in Section **1008.2**, the registration does not cover any unclaimable material that appears in that version, including any material that has been previously **published** or previously registered with the Office. Therefore, if the version contains an appreciable amount of content that has been previously published and/or previously registered, the **applicant** should exclude that material from the claim.

*Example:*

- Sam Bavard operates a duck hunting website called “Animal Quackers.” Every three months Sam revises the website by adding new text and photographs. When Sam submits an application to register the latest version of the site he limits the claim to the “new text and photographs” that he added to the site, and he excludes the photographs and text that were previously registered with the Copyright Office.



For information concerning the procedure for excluding unclaimable material, see Section [1009.8](#). For a general discussion of issues involving the registration of different versions of a work, see [Chapter 500](#), Section 512.

## 1008.6 Distinguishing Between Published and Unpublished Content

**Published** and **unpublished website** content is treated differently for the purposes of registration. Sections [1008.6\(A\)](#) and [1008.6\(B\)](#) discuss some of the issues that should be considered when asserting a **claim** in published or unpublished content. For guidance in determining whether website content is published or unpublished, see Section [1008.3](#).

### 1008.6(A) Published Website Content

If the **applicant** determines that the content has been **published**, the applicant may register all of the **copyrightable** material that was first published on the date of **publication** specified in the application. If the content contains copyrightable material that was published before that date, the applicant must exclude that previously published material from the **claim**.

When preparing an application to register content that appears on a published website, the applicant should do the following:

- Identify the content that the applicant intends to register.
- Identify the year that the content was created.
- Identify the year that the content was completed.
- Identify the date (*e.g.*, month, day, and year) that the content was first published.
- Prepare an appropriate **deposit** containing a complete copy of the content in the form in which it was first published.

The date of first publication specified in the application must be limited to a single date, and a registration for published website content only covers the content that was first published on that date. Therefore, the deposit should contain a copy of the content as it existed on the date of publication that is specified in the application. If the publication date specified in the application is not the same as the publication date for the content reflected in the deposit, the **registration specialist** will communicate with the applicant, which will delay the examination of the claim.

If an author or copyright owner determines that a website has been published, that party is encouraged to preserve and maintain a copy of the website as it existed on each day that copyrightable authorship is added or incorporated into the website. This will ensure that a proper deposit may be prepared and submitted to the Office in the event that the author, the copyright owner, or other authorized party decides to register the website or the content contained therein. It also may provide critical evidence in the event there is an **infringement** dispute involving that content. As discussed in [Chapter 200](#), Section 202, the date of publication may be crucial in determining whether a copyright owner is able to seek statutory damages and attorney's fees in an infringement action.

If the applicant determines that a website has been published, it may be beneficial to register the initial version of the content that appeared on the site on the date that the site was first published. If the applicant takes this approach, the registration will cover that content as it existed on the date of publication specified in the initial application, provided that the content (i) is contained within the deposit, (ii) is owned by the **claimant** named in the application, and (iii) has not been previously published or previously registered with the Office.

If the applicant subsequently submits an application to register subsequent versions of the website, the registration will cover the new or revised material that was first published on the date specified in the subsequent application. As a general rule, the applicant should submit a separate application for each separately published update or revision to the website that the applicant wishes to register. If this is impracticable, the applicant may decide to seek one or more strategic registrations that cover the published content that is most valuable to the claimant.

### 1008.6(B) Unpublished Website Content

If the **applicant** determines that the content was placed online solely for the purpose of public display or public performance, the work may be deemed **unpublished**. If so, the applicant may register all of the **copyrightable** material that appears on the website as of the date that the application is submitted, provided that the material (i) is reflected in the **deposit**, (ii) is owned by the **claimant** named in the application, and (iii) has not been previously **published** or previously registered with the Office. If the website contains an appreciable amount of previously published, previously registered material, or material that is owned by a third party, the applicant must exclude that material from the **claim**. If copyrightable material is subsequently added to the website, the applicant may seek a new registration for the new or revised material when the claimant determines that further protection is desirable.

In some cases, it may be possible to register a number of unpublished works with one application. Specifically, an applicant may register a number of unpublished works as an **unpublished collection**, provided that the works are combined and assembled in an orderly form with a single title, and provided that the claimant is the same for all the elements and at least one author contributed copyrightable authorship to all of those elements. For a detailed discussion of this option, see **Chapter 1000**, Section 1006. It also may be possible to register a website as an unpublished **collective work**, provided that the site contains a sufficiently creative selection, coordination, and/or arrangement of content. For a detailed discussion of collective works, see **Chapter 500**, Section 509.

### 1008.7 Statutory Damages

In determining whether to register the content of a website separately or together the **applicant** should consider the potential impact on the copyright owner's ability to seek damages in the event that a third party infringes that content.

It is possible to register vast amounts of material that appear together on a website with one application if the content qualifies as a **compilation**, a **collective work**, or contribution to a collective work. It also may be possible to register an updated version of a website that contains vast amounts of new or revised content if it qualifies as a derivative version of the original website. However, **derivative works**, compilations, and collective works are considered one work for purposes of calculating statutory damages. See **17 U.S.C. § 504(c)(1)** ("For the purposes of this

subsection, all the parts of a compilation or derivative work constitute one work.”); **17 U.S.C. § 101** (“The term ‘compilation’ includes collective works.”). Consequently, registering a number of self-contained works that appear on a website together as a compilation, collective work, or derivative work may have significant consequences in a copyright **infringement** action. For example, when a website consisting predominantly of photographs is registered as a compilation, a court may issue only one award of statutory damages for all the photographs covered by that registration. That is not necessarily the case, however, if the photographs are (i) **unpublished** and are registered as an **unpublished collection** (if no selection or arrangement is claimed), or (ii) are published and are registered using the **group registration** option for groups of published photographs. See **37 C.F.R. § 202.3(b)(4), (b)(10)**. Thus, if the applicant only intends to register individual works on a website, such as an unpublished collection of photographs the applicant may want to include a statement in the application that the claimant claims no authorship in the selection, coordination, and/or arrangement of works within the website. When completing an online application this statement may be provided in the Note to Copyright Office field. When completing a paper application it may be provided in a cover letter.

For information concerning unpublished collections and the group registration options for published photographs, see **Chapter 1100**, Sections 1106 and 1116. For a discussion of derivative works, compilations, and collective works, see **Chapter 500**, Sections 507 through 509. For a general discussion of **publication** issues involving website content, see Section **1008.3**.

## 1009 Application Tips for Websites and Website Content

This Section provides basic information on how to complete an online application or paper application for a website or website content, as well as terms to use and terms to avoid when describing the authorship in such works.

For detailed information on how to complete an application, see **Chapter 600**.

### 1009.1 Type of Work

Many websites contain multiple forms of authorship, including text, images, artwork, musical works, **sound recordings**, videogames, **computer programs**, **audiovisual works**, among other types of works. Identifying the type of work that will be submitted to the U.S. Copyright Office is the first step in completing an application.

The **Register of Copyrights** has prescribed six classes of works that may be registered with the Office. The **applicant** should select the class of work that is most appropriate for the type of content that the applicant intends to register. When completing an online application, the applicant should select the appropriate class from the drop down menu marked Type of Work. When completing a paper application, the applicant should use the form that has been designated for the type of content that appears in the work.

- *Literary Works*: When completing an online application, the applicant should select “Literary Work” if the content primarily contains nondramatic text, such as articles, blog entries, or the like, or if the content primary consists of computer programs, **databases**, compilations of information, or other works that are expressed in numbers or other verbal or numerical symbols or indicia.

- *Works of the Visual Arts:* When completing an online application, the applicant should select “Work of the Visual Arts” if the content primarily contains or consists of pictorial or graphic material, such as artwork, images, drawings, illustrations, photographs, or the like. When completing a paper application, the applicant should use **Form VA**.
- *Works of the Performing Arts:* When completing an online application, the applicant should select “Work of the Performing Arts” if the content primarily contains or consists of music, lyrics, scripts, choreography, or other works that are intended to be performed for an audience. When completing a paper application, the applicant should use **Form PA**.
- *Sound Recordings:* When completing an online application, the applicant must select “Sound Recording” if the content contains or consists of recorded sound, even if the work also contains other types of authorship, such as music or lyrics. When completing a paper application, the applicant must use **Form SR**.

**NOTE:** There is a limited exception to this rule. If the content consists of sounds accompanying a **motion picture** or other **audiovisual work**, the applicant should select “motion picture / audiovisual material” or should use **Form PA**.

- *Motion Picture / Audiovisual Material:* When completing an online application, the applicant should select “Motion Picture / AV Work” if the content primarily contains or consists of motion pictures or other audiovisual works. When completing a paper application, the applicant should use Form PA.
- *Single Serial Issue:* When completing an online application, the applicant should select “Single Serial Issue” if the content consists of a single issue of a serial **publication**, such as a newsletter that is **published** and distributed online or via email as a self-contained, downloadable work. When completing a paper application, the applicant should use **Form SE**.

If the content contains more than one type of authorship, the applicant should select the option that is appropriate for the predominant form of authorship that appears in the **deposit copy(ies)** or phonorecord(s). For example, the applicant should select “**literary work**” to register a blog that mostly consists of text, even if the blog contains some images that accompany the text. By contrast, the applicant should select “work of the visual arts” to register a library of photographs or a website that primarily consists of clip art.

For additional guidance in selecting the appropriate type of work, see **Chapter 600**, Section 609.2.

## 1009.2 Title of This Work

The **applicant** should provide the title of the content that will be submitted for registration, including any subtitles. When completing an online application, the applicant should provide this information on the Title screen in the field marked Title of This Work. When completing a paper application, the applicant should provide this information on space 1 of the application.

The Office strongly encourages applicants to provide a title for each work that will be submitted. Interested parties typically search for works by title and it may be extremely difficult to find a particular work if the applicant fails to provide that information in the application. If the author has not selected a formal title for the content, the applicant may provide a descriptive title that identifies the author of the content, the type of content that the author created, or other per-

inent information that can be reasonably identified in a search of the U.S. Copyright Office’s online [database](#).

*Examples:*

- Zehra Salim owns a website called “Zehra’s Art Store,” which sells art supplies. Zehra created a logo for the site that features a paint brush superimposed on a compass. To register this logo the applicant may provide a descriptive title, such as “Logo artwork for Zehra’s Art Store,” “Paint brush / compass logo for Zehra’s Art Store,” or the like.
- Cristine Prele owns a fan website called “Wild About Oscar,” which celebrates the career of Oscar Wilde. To register the entire content of her website, Christine may provide the URL for the site or a descriptive title for the site as a whole, such as “Oscar Wilde fan website.”

The electronic registration system will accept titles consisting of Roman letters and/or Arabic numerals, but it will not accept a title that has been underlined. When providing a URL as the title for a website, the applicant may include the suffix that identifies for top level domain name for the site, such as .com, .net, or .org, but applicants should not include the prefixes “www,” “http://” or other generic introductory phrases.

*Examples:*

- PetSupplies.com.
- Backtoschool.org (2012 version).
- Irvington Historical Society website.

For additional guidance in completing the title field/space of the application, see [Chapter 600](#), Section 610.

### 1009.3 Year of Completion

The [applicant](#) must identify the year that the author completed the website or website content that the applicant intends to register. The applicant should only provide a year of completion for the specific version that will be submitted for registration. The applicant should not provide a year of completion for any other version that will not be submitted to the Office.

When completing an online application, the applicant should provide the year of completion on the Publication/Creation screen; when completing a paper application the applicant should provide this information in space 3(a). For guidance in completing this portion of the application, see [Chapter 600](#), Section 611.

The year of completion may vary depending on the type of content that the applicant intends to register. If the content is a discrete work contained on a website, the year of completion is typically the year that the author completed that work in its final form. If the applicant intends to register multiple works that were created over a period of more than year, the applicant may provide the year of completion for the most recent work that will be submitted for registration.

If the applicant intends to register the collective authorship in the website as a whole, the year of completion may vary depending on whether the website is **published** or **unpublished**. If the website has been published, the year of completion must precede or be the same as the date of first **publication** for the specific content that is claimed in the application. If the website is deemed unpublished (*i.e.*, a site that is authorized only for public display or public performance), the Office will accept any year of completion that precedes the date that the application was submitted.

If the applicant intends to register content that is frequently revised or updated, such as a news website or blog, the applicant should provide the year of completion for the content that is reflected in the **deposit copy(ies)** (*i.e.*, the most recent year that is reflected in the deposit material). If the applicant provides a year of completion for an earlier version of the website, but does not submit a deposit containing that version, or provides a year of completion for any other content that is not contained in the deposit copy(ies), the **registration specialist** may communicate with the applicant, which will delay the examination of the **claim**.

*Example:*

- Precious & Paulie LLC operates a website that features cat videos. The company submits an application to register the entire content of this site. The application states that the work was completed in 2014, but the **deposit** material contains a statement that reads “last updated 2012.” The registration specialist will communicate with the applicant to verify the year of completion.

#### 1009.4 Date and Nation of First Publication

When completing an application, the **applicant** — not the U.S. Copyright Office — must determine whether the work is **published** or **unpublished**. This may be difficult when the applicant intends to register a website or website content. Often times, the website as a whole may be viewed as an unpublished work, but the particular content that appears on the site may be deemed published if it has been explicitly authorized for distribution (*e.g.*, with a button that enables users to “download” website content, an icon that invites users to “save” website content, or a feature that allows users to transmit content by email or other means).

As a general rule, the Office will accept the applicant’s representation that a work is published or unpublished, unless that statement is implausible or is contradicted by information provided elsewhere in the registration materials or in the Office’s records or by information that is known by the **registration specialist**.

If the applicant determines that the work has been authorized for distribution to the public, the applicant must identify the date and nation of first **publication** for that work. In most cases, the date of first publication is the date that the work was posted online with the authorization of the copyright owner.

If the applicant intends to register multiple works and if those works were published on successive dates, the applicant generally should submit a separate application with a separate date of publication for each work. Likewise, separate applications and separate publication dates may be required if the applicant intends to register multiple versions of the same work and if each version was distributed on a different date. Indeed, every work that is added to a website may constitute a derivative work or a contribution to a **collective work**, and a separate application and separate publication date may be required for each date that new material has been authorized for distribution on that site. In some cases the applicant may need to limit the **claim** to

each individual work that was added to the website on a particular date, while in other cases the applicant may need to exclude previously published material that was distributed on the website on an earlier date.

By contrast, if the applicant determines that the work was placed online solely for the purpose of public display or public performance, the work may be deemed unpublished. An application for an unpublished work may cover all of the **copyrightable** material contained in the **deposit copy(ies)** that is owned by the **copyright claimant**, provided that the material has not been previously published or previously registered with the Office. As discussed in Section **1008.6(B)**, it may also be possible to register a number of unpublished works with one application, one filing fee, and one set of deposit copies if the applicant satisfies the requirements for registering the works as an **unpublished collection**. If the applicant subsequently decides to register unpublished material that was added to the website at a later date, the applicant may seek a new registration for the new material when the copyright owner determines that further protection is desirable.

#### **1009.4(A) Date of Publication**

When completing an online application, the **applicant** will be asked to provide **publication** information on the Publication / Completion screen. If the applicant determines that the work has been **published**, the applicant should select “yes” in the drop down menu marked “Has this work been published?” In addition, the applicant should provide the month, day, and year that the work was published for the first time. Specifically, the applicant should provide the date that the work was first distributed or the date that the work was offered to a group of persons for the purpose of further distribution, performance, or display (whichever is earlier). As a general rule, the applicant should only provide a date of first publication for the specific version that will be submitted for registration. The applicant should not provide a date of publication for any other version of the work that will not be submitted to the Office.

If the applicant determines that the work is **unpublished**, the applicant should select “no” on the Publication / Completion screen.

When completing a paper application the applicant should provide the date of first publication in space 3(b) under the heading marked “Date and Nation of Publication of This Particular Work.” If the work has not been published, space 3(b) should be left blank.

For additional guidance concerning this portion of the application, see **Chapter 600**, Section 612.

#### **1009.4(A)(1) Date of First Publication for the Original Version of a Work**

If the **applicant** intends to register a work that was **published** on the original version of a website, the applicant generally should provide the month, day, and year that the work was first posted on that site.

*Example:*

- J.J. Cool created a website to promote his music career. On May 18, 2012 he uploaded several songs that have never been published before, and he offered them for sale for \$1.99 apiece. J.J. intends to register the words, lyrics, and sound recordings embodied in these songs. J.J. submits a separate application

for each work, and in each case, he states that the work was first published on May 18, 2012. The registration specialist will register the claims.

#### 1009.4(A)(2) Date of First Publication for Subsequent Versions of a Work

If the **applicant** intends to register a revised version of a **published** website, the applicant generally should provide the month, day, and year that the revised content was first posted on that site.

*Example:*

- Zeke Quarry operates a website called “Internal Revolution,” which contains a **compilation of public domain** photographs from the Civil War. Users may download content from the website if they pay a subscription fee. Zeke launched the site on December 20, 2004, and he intends to register the selection of images that he added to the site on January 1, 2013, June 30, 2013, and December 31, 2013. Zeke submits a separate application for each batch of images, and he states that these updates were first published on January 1, 2013, June 30, 2013, and December 31, 2013. If each compilation contains a sufficient amount of creative expression, the **registration specialist** will register these claims.

#### 1009.4(A)(3) Content Published Online and in Hard Copy Form

If the **applicant** determines that the work was **published** both online and in hard copy form (*e.g.*, in physical copies or phonorecords), the applicant should provide the date that the work was first published, regardless of whether the first publication occurred online or in hard copies.

#### 1009.4(B) Nation of First Publication

If the **applicant** determines that the work has been **published**, the applicant must identify the nation of first publication. The Office may use this information to determine if the work is eligible for protection under U.S. copyright law.

When completing an online application the applicant should identify the country where the work was first published by selecting one of the countries listed in the drop down menu marked Nation of first publication. When completing a paper application, the application should provide this information on space 3(b) next to the heading marked Nation. For guidance in completing this portion of the application, see **Chapter 600**, Section 612.

As a general rule, the nation of first publication is the country where **copies** or **phonorecords** of the work were first published with the authorization of the copyright owner. This determination may be difficult when the applicant intends to register a website or website content, because the law in this area is unsettled. If the website was directed at users in a particular country (*e.g.*, a website written entirely in Danish with a domain name ending in the suffix .dk), that country could be deemed the nation of first publication for purposes of copyright registration. The location of the server where the work resides and/or the scope of the intended audience may also be relevant to this issue.



Upon request, the Office will provide the applicant with general information about the Copyright Act and the legislative history for the statute, including the statutory definition of publication and the provisions concerning nation of publication. However, the Office will not give specific legal advice on whether a work has or has not been published within a particular country. Instead, the Office leaves this determination to the applicant and the courts, because they are in a better position to assess the complete facts in any particular situation.

### 1009.5 Name of Author

The **applicant** should identify all of the authors who created or co-created the **copyrightable** content that is claimed in the application.

When completing an online application, the applicant should provide the author's full name on the Authors screen. If the content was created by an individual, the applicant should provide that person's full name in the field marked Individual Author. If the content was created by or on behalf of a legal entity, such as a corporation, partnership, or other organization, the applicant should provide that entity's name in the field marked Organization. If the works were created by more than one author, the applicant should complete the relevant fields, click the Save button, and then repeat this process for the other authors.

If the author created the content as a **work made for hire**, the applicant should select "yes" in response to the question "Is this author's contribution a work made for hire?" (For a definition and discussion of works made for hire, see **Chapter 500**, Section 506.) If the content was created by an employee acting within the scope of his or her employment, the employer should be named as the author (not the employee). If the content was specially ordered or commissioned as a work made for hire, the person or organization that ordered or commissioned the work should be listed as the author (rather than the individual who actually created the work).

**NOTE:** When asserting a **claim** in copyrightable web design authorship, the web designer(s) should be named as the author unless the designer created the website under a work for hire agreement.

In all cases, the applicant should provide the author's country of citizenship or domicile. The Office may use this information to determine if the work is eligible for protection under U.S. copyright law. If the applicant fails to provide this information, the application will not be accepted by the electronic registration system. If the author's citizenship or domicile is unknown, the applicant may select "not known" from the drop down menu.

When completing a paper application, the applicant should provide the author's full name and his or her country of citizenship and/or domicile on space 2(a). If the content was created by more than one author, the applicant should provide this information for the other authors on spaces 2(b) and 2(c). If the content was created by more than three authors, the applicant should provide this information on **Form CON**.

If the content qualifies as an **anonymous** work or **pseudonymous** work, the applicant may check the appropriate boxes that appear on the Authors screen of the online application or in space 2 of the paper application. For a definition and discussion of anonymous works and pseudonymous works, see **Chapter 600**, Sections 615.1 and 615.2.

For additional guidance in providing the Author's Name, see [Chapter 600](#), Section 613.9. For guidance in providing the author's citizenship and domicile, see [Chapter 600](#), Section 617.

## 1009.6 Author Created / Nature of Authorship Statements

To register a website or website content the **applicant** must identify the **copyrightable** authorship that will be submitted for registration and the applicant must assert a **claim** to copyright in that authorship. If the content was created by a single author, the applicant should clearly identify the copyrightable authorship that the author contributed to that work. If the content was created or co-created by two or more authors, the applicant should clearly identify the copyrightable authorship that each author contributed to work. However, the applicant should not describe any uncopyrightable material or *de minimis* elements that appear in the content.

When completing an online application, the applicant should provide this information on the Authors screen. Specifically, the applicant should check one or more of the boxes in the Author Created field that accurately describe the author's contribution to the content. If none of these terms fully describe the content that will be submitted for registration, the applicant should provide a more specific description in the field marked "Other." For guidance on completing this field, see [Chapter 600](#), Section 618.4(A).

When completing a paper application, the applicant should provide this information in the space marked Nature of Authorship. For guidance in completing this portion of the application, see [Chapter 600](#), Section 618.4(B).

**NOTE:** The **deposit copy(ies)** must contain all of the authorship that is claimed in the Author Created field or the Nature of Authorship space. If the applicant asserts a claim in content that does not appear in the deposit copy(ies), the **registration specialist** may communicate with the applicant or may refuse to register that aspect of the claim. For more information on the deposit requirements, see Section [1010](#).

### 1009.6(A) Acceptable Terminology for an Application to Register a Website or Website Content

As a general rule, the following terms may be used to describe the **copyrightable** content on a website, provided that they accurately describe the authorship that appears in the **deposit copy(ies)**. In most cases, the Office will accept combinations or variant forms of these terms, unless they are contradicted by information provided in the deposit copy(ies) or elsewhere in the registration materials.

*Literary content:*

- Text

*Visual arts content:*

- Artwork or 2-D artwork
- Photographs

- Drawings
- Technical drawings
- Map
- Architectural work

*Performing arts content:*

- Music
- Lyrics
- Script
- Choreographic work
- Pantomime

*Recorded sounds:*

- Sound recording

*Audiovisual content:*

- Audiovisual work
- Motion picture

For a definition and discussion of these terms, see [Chapter 600](#), Section 618.4(C).

To register a **computer program** or a **database** that is contained or embedded within a website, the **applicant** should follow the instructions set forth in [Chapter 700](#), Sections 721.9(F) and 727.3(D).

To register a derivative work, the applicant should describe the new material that the author contributed to the website using appropriate terms, such as “new photographs,” “updated text,” “revised artwork,” “additional music,” or the like.

If the applicant intends to register the authorship involved in selecting, coordinating, and/or arranging the content that appears on a website, the applicant may use any of the terms listed below, provided that they accurately describe the copyrightable authorship that appears in the **deposit copy(ies)**. In most cases, the Office will accept combinations or variant forms of these terms, unless they are contradicted by information provided in the deposit copy(ies) or elsewhere in the registration materials.

- Compilation of [specify material that has been selected, coordinated, and/or arranged, e.g., “compilation of text and artwork”].

- Selection, coordination, and/or arrangement of [specify material that has been selected, coordinated, and/or arranged, *e.g.* “selection and arrangement of text and photographs”].

For additional guidance in registering compilation authorship, see **Chapter 600**, Section 618.6.

**NOTE:** Websites often contain previously **published** material, previously registered material, **public domain** material, or material owned by a third party. If the deposit copy(ies) contain an appreciable amount of unclaimable material, then as discussed in Section **1009.8** the applicant should exclude that material from the **claim**. For information concerning this procedure, see Section **1009.8**.

### **1009.6(B) Unclear Terminology for an Application to Register Website Content**

The **applicant** should clearly identify the authorship that will be submitted for registration and the **claim** to copyright in that authorship should be clearly stated. Specifically, the applicant should identify the **copyrightable** authorship that the author contributed to the website or the website content, preferably using one or more of the terms set forth in Section **1009.6(A)**. If the claim to copyright is unclear, the **registration specialist** may communicate with the applicant or may refuse registration. For representative examples of unclear terms that may prompt a communication from the registration specialist, see **Chapter 600**, Sections 618.8(A)(1) through 618.8(A)(11).

### **1009.6(C) Unacceptable Terminology for an Application to Register a Website or Website Content**

As discussed in Section **1006**, a website does not constitute **copyrightable** subject matter in and of itself. The **applicant** should not use the term “website,” “webpage,” “screen,” or the like in the Author Created field or the Nature of Authorship space, because these terms are vague, misleading, and fail to identify the particular authorship that the author contributed to the work.

If the applicant asserts a **claim** in both the copyrightable and uncopyrightable features of a website, the **registration specialist** may annotate the application to indicate that the registration does not extend to the uncopyrightable features. If the applicant expressly asserts a claim to copyright in any feature of the website that is uncopyrightable, the specialist may communicate with the applicant or may refuse registration if the claim appears to be based solely on those features. Examples of unacceptable terms include the following or any combination of the following:

- Concept
- Design(s)
- Format
- Layout
- Lettering
- Look and feel

- Website
- Website design
- Webpage
- Screen
- Entire work, entire website, or similar terms
- Hyperlinks
- Hyperlink structure
- Menu choices
- User interface
- Game play

### 1009.7 Claimant

The **applicant** must provide the name and address of the owner or co-owners of the **copyrightable** authorship that is claimed in the application. This party is known as the **copyright claimant**. The claimant(s) may be the author(s) of the work, or a party that owns all of the **exclusive rights** that initially belonged to the author of that work. If the author and the claimant are not the same person, the applicant should provide a brief statement that explains how the claimant acquired the rights that initially belonged to the author.

When completing an online application the applicant should provide this information on the Author and Claimant screens; when completing a paper application the applicant should provide this information on spaces 2 and 4. For guidance on completing these portions of the application, see **Chapter 600**, Sections 613 and 619.

Website owners frequently assume that they own the copyright in code or other content that was created for them by an independent contractor, because the owner paid for the content or paid the contractor to create that material. In such cases, the website owner does not own the content unless the contractor agreed to create the content pursuant to a **work made for hire** agreement or executed a written agreement that assigned the copyright in that material to the website owner. Likewise, a website owner cannot assert a **claim** in website content if the owner merely owns a physical copy of that content or merely has a nonexclusive license to use that material.

*Examples:*

- Kari Crow is a web designer who created an illustration for a gardening website. Kari is not an employee of the website owner and she did not **transfer** ownership of the copyright to that party. Therefore, the applicant should name Kari Crow as the author and claimant for this illustration. If Kari contributed multiple illustrations to the website, each illustration must be registered separately.

- Dizzy Dog LLC owns and operates a website that sells dozens of beats for use on hip hop tracks. The company employs two producers who created these beats for the website. Dizzy Dog LLC should be named as the author and claimant for each work, and in each case the work made for hire box should be checked “yes.”

### 1009.8 Limitation of Claim

As discussed in Section [1008.1](#), a registration for a website or website content covers the **copyrightable** material that was created by the author(s) named in the application that is owned by the **claimant** named in the application, provided that the material is expressly described in the application and is contained in the **deposit copy(ies)**.

A registration for a website or website content does not cover any material that has been previously **published** or previously registered with the U.S. Copyright Office. Nor does it cover material that is in the **public domain** or material that is not owned by the **copyright claimant**. If the website contains an appreciable amount of previously published material, previously registered material, public domain material, or third party material, the **applicant** should exclude that material from the **claim**.

- *Previously published material:* Frequently applicants submit websites or website content that contain previously published material, but fail to exclude that material from the claim. If the deposit copy(ies) contain material, that was published on any day or twenty-four period prior to the date of first **publication** specified in the application, the applicant should exclude that material using the procedure described in [Chapter 600](#), Section 621.8(B). When completing an online application, the applicant should identify the previously published material on the Limitation of Claim screen in the Material Excluded field. When completing a paper application, the applicant should identify this material in space 6(a) under the heading marked Preexisting Material.
- *Previously registered material:* If the deposit copy(ies) contain material that has been previously registered, the applicant should exclude that material from the claim (regardless of whether the material is published or **unpublished**). Specifically, the applicant should provide the registration number and year of registration for the previously registered material in the Previous Registration field of the online application or in space 5 of the paper application. For guidance in completing this portion of the application, see [Chapter 600](#), Section 621.8(F).
- *Content owned by a third party:* If the deposit copy(ies) contain content that is owned by someone other than the claimant, the applicant should exclude that content from the claim (regardless of whether the content is published or unpublished). When completing an online application, the applicant should identify the third party content in the Material Excluded field. When completing a paper application the applicant should provide this information in space 6(a). For guidance in completing this portion of the application, see [Chapter 600](#), Sections 621.7 and 621.8(B).
- *Public domain material:* If the deposit copy(ies) contain material that is in the public domain, the applicant should identify that material in the Material Excluded field of the online application or in space 6(b) of the paper application. For guidance in completing this portion of the application, see [Chapter 600](#), Sections 621.7 and 621.8(B).

In addition, the applicant should identify the new copyrightable material that the author contributed to the website or the website content. When completing an online application, the applicant should provide this information on the Limitation of Claim screen. Specifically, the applicant should check one or more of the boxes in the New Material Included field that accurately describes the author's contribution. If none of these terms fully describe the new material that the author contributed to the website, the applicant should provide a more specific description in the field marked Other. For guidance on completing this field, see [Chapter 600](#), Section 621.8(C)(1).

When completing a paper application, the applicant should provide this information in space 6(b) under the heading marked Material Added to This Work. For guidance in completing this portion of the application, see [Chapter 600](#), Section 621.8(C)(2).

**NOTE:** The New Material Included field should be completed only if material has been excluded from the claim in the Material Excluded field. Likewise, space 6(b) of the paper application should be completed only if material has been excluded from the claim in space 6(a).

As a general rule, the information that the applicant provides in the New Material Included field should be identical to the information that the applicant provides in the Author Created field. Likewise, the information that the applicant provides in space 6(a) of the paper application should be identical to the information that the applicant provides in space 2 under the heading marked Nature of Authorship.

The applicant should only identify the new material created by the author(s) named in the application that is owned by the copyright claimant. The applicant should not mention any material that is not owned by the claimant, material that will not be submitted for registration, or material that does not appear in the deposit copy(ies). If there is anything in the registration material that casts doubt on the accuracy of the claim, the [registration specialist](#) may communicate with the applicant.

*Example:*

- Alexander Temple writes a blog called “Don’t Tread On Me.” The blog contains musings about politics, together with photographs created by the Department of Homeland Security, the Department of Defense, and other federal government agencies. Alexander submits an online application along with printouts from his blog. In the application, Alexander asserts a claim in his “website,” but he fails to complete the Limitation of Claim screen. The registration specialist will ask the applicant to describe the new material that he contributed as “text” and “compilation of text and photographs” in the Author Created and New Material Included fields. The photographs appear to be in the public domain, because they were created by employees of the U.S. government. Therefore, the specialist will ask the applicant to exclude that material from the claim by checking the box marked “photographs” in the Material Excluded field.

## 1010 Deposit Requirements for Website Content

This Section provides basic information concerning the [deposit](#) requirements for registering a website or website content. For detailed information concerning these requirements, see [Chapter 1500](#).

For information concerning mandatory deposit, see Section [1010.7](#).

## 1010.1 Deposit Requirements for Registration

To register a website or website content, the **applicant** must submit a **deposit** containing the **copyrightable** content that is claimed in the application.

When examining the deposit for a website or website content, the U.S. Copyright Office will apply the same rules that apply to any other type of work. For example, the **registration specialist** will consider the type of authorship that is claimed in the application, whether the work is **published** or **unpublished**, and whether the applicant satisfied the applicable deposit requirements for that type of work.

If the work is unpublished, the **deposit copy** may include all of the content that is owned by the **copyright claimant** as of the date that the application is submitted. If the work has been published, the deposit copies should include the content as it existed on the date of first **publication** specified in the application, and the **claim** should be limited to the content that was first published on the date.

The deposit must contain a complete copy of all the copyrightable authorship that is claimed in the application or appropriate **identifying material** (if identifying material is an acceptable form of deposit for that type of work). For example, to register an entire website, the applicant should submit a deposit containing all the authorship that the applicant intends to register, regardless of the number of pages or screens that appear on the site. To register a particular work contained on a website, the applicant should submit an appropriate deposit for that type of work. To register the authorship involved in selecting, coordinating, and/or arranging works on a website, the applicant must submit a deposit that adequately displays the compilation authorship that is claimed in the application.

In all cases, the applicant must submit **fixed** copy(ies) or phonorecord(s) of the work that the applicant intends to register. The U.S. Copyright Office will not accept a link to a website or other online source that merely provides access to content that continually changes.

The fixed copy(ies) or phonorecord(s) should be submitted in a format that allows the registration specialist to perceive the actual content and context where the work appears on a given website or webpage. In other words, the deposit should show how the content would be perceived when a user accesses that content in the online environment. The specialist may communicate with the applicant or may refuse registration if the applicant submits separate files or folders containing unassembled content or content that has been disassociated from the website or webpage where it originally appeared.

As the technological means of fixing and normalizing websites and their content evolve into easier solutions and standardized formats, the Office will seek to provide additional guidance on the **fixation** of websites. At the present time, the PDF format standard is the preferred means for submitting websites and website content. For information concerning this format and the methods for submitting the deposit to the Office, see Section [1010.3](#).

As a general rule, a registration for a website or for website content does not cover any authorship or works that are not included in the deposit. However, there is a limited exception to this rule. A registration for a **computer program** or **database** may cover the entire work, even if the



applicant submits only a portion of the **source code** for that program or a representative selection of the records from the database. For information concerning the deposit requirements for these types of works, see **Chapter 1500**, Sections 1509.1(C) and 1509.1(D).

The registration specialist may communicate with the applicant if the deposit appears incomplete. If the work is relatively short (based on the number of printed pages or downloaded pages that will be submitted), the applicant should submit the entire website and should provide a brief statement confirming that the deposit contains the complete site. This may avoid the need to communicate with the applicant to determine whether the entire work has been submitted. When completing an online application, the applicant may provide this information in the Note to Copyright Office field. When completing a paper application, the applicant may provide this information in a cover letter.

### 1010.2 Deposit Requirements for Works Published Online and in Hard Copy Format

If the work was **published** both online and in a hard copy form (*e.g.*, paper, discs, film, or other physically tangible media), the **applicant** generally should submit two complete **copy(ies)** or **phonorecord(s)** of the work as it was first published in the hard copy format. See **37 C.F.R. § 202.20(b)(1)**. For example, if an article was published simultaneously on a website and in a magazine, the applicant must submit two complete copies of the article as it appeared in the magazine. For information concerning the **deposit** requirements for works published in hard copy formats, see **Chapter 1500**, Sections 1507.1 and 1508.2.

In particular, an applicant should submit two complete copies of the **best edition** if the work was published in the United States on or after January 1, 1978. The criteria used to identify the best edition for a particular work are listed in the “Best Edition Statement,” which is set forth in **Appendix B to Part 202** of the Office’s regulations. It is also posted on the Office’s website in *Best Edition of Published Copyrighted Works for the Collections of the Library of Congress (Circular 7b)*. For more information concerning the best edition requirement, see **Chapter 1500**, Section 1504.

### 1010.3 Deposit Requirements for Unpublished Works and Works Published Solely Online

In most cases, the **applicant** does not need to satisfy the **best edition** requirement in order to register a website or to register a work that has been **published** solely online (although as discussed in Section **1010.6(H)**, there is a limited exception to this rule for electronic serials). Instead, the applicant may submit an electronic copy of the work, provided that the applicant submits the **deposit** in an acceptable file format. A current list of acceptable file formats is posted on the Office’s **website**. In the alternative, the applicant may submit **identifying material** that adequately represents the authorship claimed in the application.

The preferred formats and methods for submitting the deposit for an **unpublished** work or a work that is published solely online, in order of preference, are as follows:

- *Uploading electronic files to the electronic registration system:* When submitting an online application through the electronic registration system, the applicant may upload a PDF-A, PDF file, PDF package, or PDF portfolio that contains all of the website content that is claimed

in the application. Any audio or audiovisual content should be submitted in separate files. The deposit also should include a note that identifies the URL(s) where such files reside. Additional guidance on uploading files is provided on the Office's [website](#).

- *Submitting electronic files by mail, by courier, or by hand delivery:* When submitting an online application or a paper application, the applicant may deposit a PDF-A file, PDF file, PDF package, or PDF portfolio that contains all of the website content that is claimed in the application. Any audio or audiovisual content claimed should be submitted in separate files. All of the files should be burned onto a computer disc, and the deposit should include a note that identifies the URL(s) where the files reside. The disc may be delivered to the Office by mail, by courier, or by hand delivery. For guidance on this procedure, see [Chapter 1500](#), Section 1508.3 through 1508.5.
- *Identifying material:* When submitting an online application or a paper application, the applicant may deposit a printout of all the pages of the website that are claimed in the application, along with a disk or other appropriate media containing any audio or audiovisual content that is included in the [claim](#). In the alternative, the applicant may deposit [identifying material](#) in the format that is most appropriate for the type of authorship that is claimed in the application, provided that the identifying material includes all of the authorship being claimed. For example, the applicant may submit paper printouts for websites that contain text and artwork, but do not contain sound, music, or audiovisual elements. The applicant may submit audio or audiovisual files for websites containing sound, music, or audiovisual elements. A site map may be used as the identifying material for a claim based on the organization of the pages within a website. However, a claim based on the selection, coordination, and/or arrangement of audio or audiovisual files cannot be included in the claim unless the selection, coordination, and/or arrangement of the audio or audiovisual files is provided. In all cases, identifying material may be delivered to the Office by upload, by mail, by courier, or by hand delivery. For guidance on this procedure, see [Chapter 1500](#), Section 1508.3 through 1508.5.

**NOTE:** When submitting an online application and delivering the deposit by mail, by courier, or by hand delivery, the applicant must attach a [shipping slip](#) to each deposit. If the applicant fails to attach a shipping slip to each deposit, the Office will be unable to connect the deposit with the application. For information concerning this procedure, see [Chapter 1500](#), Section 1508.2.

*Examples:*

- Patrick O'Connor created all the text that appears on a website that describes points of interest in the Shenandoah Valley. Users may view this content, but the terms of service expressly state that the site is only intended for public display. The text may be registered as an unpublished work. Therefore, Patrick may upload this content to the electronic registration system in one or more digital files, provided that the text is submitted in an acceptable format, such as .txt, .pdf, .docx, .wpf, and provided that the files contain all the copyrightable text that is claimed in the application.
- On November 3, 2013 Joseph Andres posted dozens of photographs to a stock photography website that allows users to download or reproduce images for their own personal use. The photographs may be registered as published works. Joseph may upload electronic copies of these images through the electronic registration system, either by submitting a separate application for each photograph or by submitting an application to register a group of published photographs.

#### 1010.4 Uploading Large Files or Large Numbers of Files to the Electronic Registration System

The electronic registration system has a sixty minute “time out” feature that limits the size and the number of files that may be submitted during each upload session. These limits vary depending on the connection speed of the **applicant’s** computer. The maximum size for files submitted with a typical modem is 11.3 MB, while the maximum size for files submitted with a typical broadband connection is 170 MB.

If the applicant intends to upload a large number of files, the Office encourages the applicant to submit the **deposit** in one or more compressed ZIP files. If the applicant intends to upload a very large file, the Office encourages the applicant to compress the deposit in a ZIP file or to separate the deposit into two or more smaller files. Alternatively, the applicant may upload the deposit during two or more upload sessions; information concerning this procedure is available on the Office’s **website**.

If the applicant is unable to upload the deposit with these options, then as discussed in Section **1010.3**, the applicant may fix the **deposit copy(ies)** on a disc and deliver it to the Office by mail, by courier, or by hand delivery, together with a **shipping slip** that connects the deposit with the online application.

#### 1010.5 The Deposit Material Must Match the Material Claimed in the Application

Frequently, **applicants** seek to register **published** website content, but fail to **deposit** the content that existed on the website as of the date of **publication** specified in the application. In some cases, the applicant provides the date that the website was first published, but instead of depositing the content that appeared on the site as of that date, the applicant deposits the content that appeared on the website on the date that the application was filed. In other cases, the applicant intends to register the most recent version of a website, but instead of providing the date of first publication for that version, the applicant provides the date that the website first appeared on the internet.

To register material from the initial version or any subsequent version of a published website, the applicant must deposit an acceptable **copy** or **phonorecord** of the specific version that the applicant intends to register and the applicant must provide the correct date of first publication for that version. If the date of publication specified in the application does not match the version reflected in the **deposit copy(ies)**, the **registration specialist** may communicate with the applicant to determine if the correct version has been submitted.

*Examples:*

- Capitol City Cupcakes owns a website that went live on June 1, 2009. The company submits a copy of all the text, artwork, and other copyrightable content that appeared on the site on June 1, 2009 and states that the content was first published on that date. The registration specialist will register the claim. The registration will cover the content as it existed on June 1, 2009, but it will not cover any new material that has been added to the site since then.
- DC Doughnuts owns a website that first appeared on the internet on July 1, 2013. A year later the company decides to register all of the photographs, illustrations, and other copyrightable content that appeared on the initial

version of the site. The applicant states that the website was first published on July 1, 2013, but submits a copy of the website as it existed on July 1, 2014. The registration specialist will communicate with the applicant to determine if the date of publication is correct, and if so, to request an appropriate copy of the content that appeared on the site as of July 1, 2013.

## 1010.6 Deposit Requirements for Specific Types of Website Content

### 1010.6(A) The Initial Version of a Published Website

To register the initial version of a **published** website, the **applicant** should submit the relevant webpages as they existed on the date that the initial version was first published.

### 1010.6(B) Subsequent Versions of a Published Website

To register subsequent versions of a **published** website, the **applicant** should submit the relevant webpages as they existed on the date that the subsequent version was first published.

### 1010.6(C) Revised Website Content

To register new text, new photographs, new artwork, or other content that has been added, modified, or revised on a website, the **applicant** should submit a complete **copy** or **phonorecord** of the new material. The **deposit** should contain all of the new **copyrightable** material that is described in the application.

*Example:*

- Artifax, LLC added a new page to its website that describes the company's products and services. Artifax submits an application to register the "new text" and "new illustrations" that appear on this webpage, along with a PDF file containing the new content. The registration specialist will register the claim.

### 1010.6(D) Compilations

If the **applicant** asserts a **claim** in the selection, coordination, and/or arrangement of material within a website, the compilation authorship must be fully represented in the **deposit**. See *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 358 (1991) ("Originality requires only that the author make the selection or arrangement independently . . . and *that it display* some minimal level of creativity) (emphasis added). For instance, the Office may register a website that contains a compilation of photographs, provided that the author's selection, coordination, and/or arrangement of images is evident in the claim. If the author's contribution is unclear, the **registration specialist** will communicate with the applicant.

### 1010.6(E) Hypertext Markup Language (HTML)

To register the HTML for a website, the **applicant** must **deposit** the entire HTML.

**1010.6(F) Computer Programs Contained or Embedded Within a Website**

To register a **computer program** that is contained or embedded within a website, the **applicant** must submit the appropriate **deposit** material for that type of work. For a discussion of the deposit requirements for computer programs, including derivative computer programs and programs that contain trade secret material, see **Chapter 1500**, Section 1509.1(C).

**1010.6(G) Databases Contained or Embedded Within a Website**

To register a **database** that is contained or embedded within a website, the **applicant** must submit the appropriate **deposit** material for that type of work.

For a discussion of the deposit requirements for a single-file or multi-file database, see **Chapter 1500**, Section 1509.1(D). For a discussion of the deposit requirements for registering a group of updates or revisions to a database, see **Chapter 1100**, Section 1117.6.

**1010.6(H) Electronic Serials**

As a general rule, the **applicant** does not need to satisfy the **best edition** requirement in order to register a website or to register a work that has been **published** solely online. However, there is a limited exception to this rule for electronic serials published in the United States on or after February 24, 2010. If the U.S. Copyright Office has determined that an electronic serial is subject to the mandatory **deposit** requirement, the applicant may need to submit two complete copies of the best edition in order to register that serial with the Office. For a definition of “electronic serial” and a discussion of the mandatory deposit requirements for such works, see Section **1010.7**.

**1010.7 Mandatory Deposit**

Mandatory deposit is a statutory requirement for the benefit of the national collection of the Library of Congress. **Section 407** of the Copyright Act states that the owner of copyright or the owner of the exclusive right of **publication** in a work **published** in the United States shall deposit two **copies** or **phonorecords** of the work within three months after publication. **17 U.S.C. § 407(a)**.

The mandatory deposit requirement generally does not apply to works published in the United States that are available only online. However, there is a limited exception to this rule. Electronic serials published on or after February 24, 2010 are subject to mandatory deposit if the U.S. Copyright Office issues a written demand for a copy or phonorecord of that work for the use or disposition of the Library of Congress. See **37 C.F.R. §§ 202.19(c)(5), 202.24(a)**.

For purposes of mandatory deposit, an “electronic serial” is defined as “an electronic work published in the United States and available only online, issued or intended to be issued on an established schedule in successive parts bearing numerical or chronological designations, without subsequent alterations, and intended to be continued indefinitely.” *Id.* **§ 202.19(b)(4)**.

For additional information concerning the mandatory deposit requirements for electronic serials, see **Chapter 1500**, Section 1511.6.

