

Renewal of Copyright

Important:

- Public Law 102-307, enacted on June 26, 1992, amended the copyright law to make renewal automatic and renewal registration optional for works originally copyrighted between January 1, 1964, and December 31, 1977.
- While this amendment to the current law makes renewal registration optional for works copyrighted between January 1, 1964, and December 31, 1977, there are a number of incentives that encourage the filing of a renewal application, especially during the 28th year of the copyright term.
- Public Law 105-298, enacted on October 27, 1998, amended the copyright law to add 20 years to the copyright term.

The Renewal System

Under the 1909 copyright law, works copyrighted in the United States before January 1, 1978, were subject to a renewal system in which the term of copyright was divided into two consecutive terms. Renewal registration, within strict time limits, was required as a condition of securing the second term and extending the copyright to its maximum length.

On January 1, 1978, the current copyright law (title 17 of the *United States Code*) came into effect in the United States. This law retained the renewal system for works that were copyrighted before 1978 and were still in their first terms on January 1, 1978. For these works the statute provides for a first term of copyright protection lasting for 28 years, with the possibility for a second term of 47 years. The 1992 amending legislation automatically secures this second term for works copyrighted between January 1, 1964, and December 31, 1977.

If a copyright originally secured before January 1, 1964, was not renewed at the proper time, copyright protection expired at the end of the 28th calendar year of the copyright and could not be restored.

The Effect of the 1992 and the 1998 Amendments on Renewal of Copyright

Works copyrighted *between January 1, 1964, and December 31, 1977*, are affected by P.L. 102-307, which automatically secured the second term and made renewal registration optional, and by P.L. 105-298, which added an additional 20 years to the second term of copyright for these works. The term of copyright in works copyrighted between January 1, 1964, and December 31, 1977, is now 95 years. There is no requirement to register a renewal in order to extend the original 28-year copyright term to the full term of 95 years. Although the

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renewal term is secured automatically, the Copyright Office does not issue a renewal certificate for these works unless a renewal application and fee are received and registered in the Copyright Office.

The benefits to making a renewal registration during the 28th year of the original term of copyright are:

- 1 The renewal copyright vests in the name of the renewal claimant on the effective date of the renewal registration.

For example, if a renewal registration is made in the 28th year and the renewal claimant dies following the renewal registration but before the end of the year, the renewal copyright is secured on behalf of that renewal claimant and the 67 years of renewal copyright become a part of that individual's estate.

NOTE: If the renewal registration is not made in the 28th year, the renewal copyright will vest on the first day of the renewal term in the party entitled to claim renewal as of December 31 of the 28th year.

- 2 The Copyright Office issues a renewal certificate, which constitutes *prima facie* evidence as to the validity of the copyright during the renewed and extended term and of the facts stated in the certificate.
- 3 The right to use the derivative work in the extended term may be affected.

For example, if an author dies before the 28th year of the original term and a statutory renewal claimant registers a renewal within the 28th year, that claimant can terminate an assignment made by the deceased author authorizing the exploitation of a derivative work. If a renewal is not made during the 28th year, a derivative work created during the first term of copyright under a prior grant can continue to be used according to the terms of the grant. Thus, an author or other renewal claimant loses the right to object to the continued use of the derivative work during the second term by failing to make a timely renewal, but any terms in the prior grant concerning payment or use, *e.g.*, a royalty, must continue to be honored. This exception does not apply to a new derivative work, which can only be prepared with the consent of the author or other renewal claimant.

A renewal registration made after the 28th year will not confer the benefits mentioned above but will confer other benefits denied to unregistered works. For example, renewal registration establishes a public record of copyright ownership in a work at the time that the renewal was registered. The courts have discretion to determine the evidentiary weight accorded a certificate of renewal registration when registration is made after the 28th year of the copyright term.

Renewal registration is a prerequisite to statutory damages and attorney's fees for published works not registered for the original term.

In cases where no original registration or renewal registration is made before the expiration of the 28th year, important benefits can still be secured by filing a renewal registration at any time during the renewal term. These benefits would include, for example, statutory damages and attorney's fees in any infringement suit for infringements occurring after the renewal registration is made. Also, it is a requirement to get into court in certain circumstances under section 411 (a), and it creates a public record both to defend against innocent infringers and to facilitate easier licensing of the work.

Renewal Filing Period

For works copyrighted between January 1, 1964, and December 31, 1977, an application for renewal of copyright can be made:

- within the last (28th) calendar year of the original term of copyright or
- at any time during the renewed and extended term of 67 years.

To determine the filing period for renewal during the original term:

- 1 First, determine the date of original copyright for the work. (In the case of works originally registered in unpublished form, copyright began on the date of registration; for published works, copyright began on the date of first publication with copyright notice.)
- 2 Then add 28 years to the year the work was originally copyrighted.

This will determine the calendar year during which the copyright becomes eligible for renewal with a renewal filing during the original term due by December 31 of that year. An exception to this rule exists when the copyright notice in the work contains a year date earlier than the year date of first publication. In this case, the renewal filing period is computed from the year date in the copyright notice. For example, a work published January 20, 1975, contains a copyright notice reading "Copyright 1974 by Anderson Homes." Compute the 28-year original term from the year 1974.

To renew a copyright during the original copyright term, the renewal application and fee *must* be received in the Copyright Office during the 28th year of the original term of copyright. All terms of original copyright run through the

end of the 28th calendar year making the period for renewal registration in the original term from December 31 of the 27th year of the copyright through December 31 of the following year.

NOTE: The Copyright Office does not notify authors or claimants when the copyrights in their works become eligible for renewal.

Who May Claim Renewal

Renewal copyright may be claimed only by those persons specified in the law.

A. The following persons may claim renewal in all types of works except those enumerated in Paragraph B below:

- 1 The author, if living, may claim as *the author*.
- 2 If the author is dead, the widow or widower of the author, or the child or children of the author, or both, may claim as *the widow of the author* or *the widower of the author* and/or *the child of the deceased author* or *the children of the deceased author*.
- 3 If there is no surviving widow, widower, or child, and the author left a will, the author's executors may claim as *the executors of the author*.
- 4 If there is no surviving widow, widower, or child, and the author left no will or the will has been discharged, the next of kin may claim as *the next of kin of the deceased author, there being no will*.

B. Only in the case of the following four types of works may the copyright proprietor (owner) claim renewal:

- 1 Posthumous work (a work published after the author's death as to which no copyright assignment or other contract for exploitation has occurred during the deceased author's lifetime). Renewal may be claimed as *proprietor of copyright in a posthumous work*.
- 2 Periodical, cyclopedic, or other composite work. Renewal may be claimed as *proprietor of copyright in a composite work*.
- 3 Work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author. Renewal may be claimed as *proprietor of copyright in a work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author*. (This type of claim is considered appropriate in relatively few cases.)

- 4 Work copyrighted by an employer for whom such work was made for hire. Renewal may be claimed as *proprietor of copyright in a work made for hire*.

For registration in the 28th year of the original copyright term, the renewal claimant is the individual(s) or entity who is entitled to claim renewal copyright on the date the application is filed.

For registration after the 28th year of the original copyright term, the renewal claimant is the individual(s) or entity who is entitled to claim renewal copyright on December 31 of the 28th year.

How to Register a Renewal Claim

Application Form

Application for renewal registration must be filed on Form RE, which is supplied by the Copyright Office on request. It is also available from the Copyright Office website at www.copyright.gov.

Renewal Fee

The filing fee for a renewal application is \$60.* If several applications are submitted at the same time, a remittance for the total amount should accompany them.

All remittances should be in the form of drafts (that is, checks, money orders, or bank drafts) payable to *Register of Copyrights*. Do not send cash. The Copyright Office cannot assume any responsibility for the loss of currency sent in payment of copyright fees.

Drafts must be redeemable without service or exchange fee through a U.S. institution, must be payable in U.S. dollars, and must be imprinted with American Banking Association routing numbers.

If a check received in payment of the filing fee is returned to the Copyright Office as uncollectible, the Copyright Office will cancel the registration and will notify the applicant.

The fee for processing a renewal claim is nonrefundable, whether or not renewal registration is ultimately made.

***NOTE:** Copyright Office fees are subject to change. For current fees, please check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

Original and Renewal Registration During the 28th Year

An original registration can be made only during the first 28-year term of copyright protection. However, it is possible to make both an original registration and a renewal registration during the 28th year of the copyright term. This requires

filing the appropriate basic application form, accompanied by deposit copies and a \$30* filing fee, and a Form RE and a \$60* filing fee.

Renewal Registration Without Original Registration

A renewal registration may be even if there were no original registration made during the original 28-year term. (This applies only to works first published in 1964 and later.) A renewal application Form RE must be filed, accompanied by the Form RE Addendum, a copy of the work as first published or appropriate identifying material in accordance with the requirements of 37 CFR 202.20 and 202.21, and the filing fee. See CFR 202.17 (www.copyright.gov/title37/202/37cfr202-17.html) for further information.

The information in the Form RE Addendum is necessary to establish that copyright subsists in the original term which is capable of renewal. The deposit copy facilitates the examination of the claim to copyright which is submitted for renewal, and it is available for accession by the Library of Congress to its collections for the benefit of the nation.

A single \$90* fee will be required for a renewal registration using Form RE and Form RE Addendum. Please contact the Renewals Section in the Copyright Office for more information. Phone the Renewals Section at (202) 707-8180 or fax at (202) 707-3849 or write to the Copyright Office at:

*Library of Congress
Copyright Office
Renewals Section, LM-449
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000*

New Versions

Copyright in a new version of a previously copyrighted work (such as an arrangement, translation, dramatization, compilation, or work republished with new matter) covers only the additions, changes, or other new material appearing for the first time in that version. The copyright secured in a new version is independent of any copyright protection in material published or copyrighted earlier, and the only “authors” of a new version are those who contributed copyrightable matter to it. Thus, for renewal purposes, the person who wrote the original version upon which the new work is based cannot be regarded as an “author” of the new version, unless that person also contributed to the new matter.

Contributions to Periodicals or Other Composite Works

Separate Renewal for a Single Contribution

Separate renewal registration is possible for a work published as a contribution to a periodical, serial, or other composite work whether or not the contribution was copyrighted independently or as part of the larger work in which it appeared. Except in the cases described in the next paragraph, each contribution published in a separate issue requires a *separate* renewal registration.

Renewal for a Group of Contributions

Requirements for Group Renewal: A renewal registration using a single application and \$60* fee, plus \$30* for each addendum (if required), can be made for a group of periodical contributions if all the following five statutory conditions are met:

- 1 All the works were written by the same author, who is or was an individual (not an employee for hire);
- 2 All of the works were first published as contributions to periodicals (including newspapers) and were copyrighted on their first publication;
- 3 The renewal claimant or claimants and the basis of the claim or claims are the same for all the works;
- 4 The renewal application and fee are received not less than 27 years after the 31st day of December of the calendar year in which all the works were first published; and
- 5 The renewal application identifies each work separately, including the periodical containing it and the date of first publication.

Time Limits for Group Renewals: To be renewed as a group, all the contributions must have been first published during the same calendar year. For example, suppose six contributions by the same author were published on April 1, 1974; July 1, 1974; November 1, 1974; February 1, 1975; July 1, 1975; and March 1, 1976. The three 1974 copyrights can be combined and renewed on the same Form RE at any time during 2002; the two 1975 copyrights can be renewed as a group during 2003; but the 1976 copyright must be renewed by itself in 2004.

Notice of Renewal of Copyright

The Copyright Office is frequently asked whether the notice of copyright should be changed on copies of a work issued during the renewal term. The copyright law is silent on this point, and the continued use of the original form of notice

may therefore be considered appropriate. However, a notice that also refers to the fact of renewal might be regarded as more informative and, hence, preferable; for example:

Copyright 1975 Bobby Eroica Dupea

Copyright renewed 2002 by Rayette Depesto

Effective Date of Registration

A renewal registration is effective on the date the Copyright Office receives all the required renewal elements in acceptable form, regardless of how long it then takes to process the application and mail the certificate of registration. The time the Copyright Office requires to process an application varies, depending on the amount of material the Office is receiving. Please keep in mind that it may take a number of days for mailed material to reach the Copyright Office and for the certificate of registration to reach the recipient after being mailed by the Copyright Office.

If you file an application for renewal registration in the Copyright Office, you will not receive an acknowledgment that your application has been received, but you can expect:

- A letter or telephone call from a copyright examiner or other staff member if further information is needed;
- A certificate of registration to indicate the renewal has been registered;
- If renewal registration cannot be made, a letter explaining why it has been refused.

If you want to know when the Copyright Office receives your material, send it by registered or certified mail and request a return receipt from the U.S. Postal Service. Allow at least 4–6 weeks for the return of your receipt.

If you need additional application forms for renewal registration, call (202) 707-9100 anytime, day or night, to record your request on the Copyright Office Forms and Publications Hotline. Please specify the number of forms you need.

You may photocopy blank application forms; *however*, photocopied forms submitted to the Copyright Office must be clear and legible on a good grade of 8½ inch by 11 inch white paper suitable for automatic feeding through a photocopier. The forms should be printed, preferably in black ink, head-to-head (so that when you turn the sheet over, the top of page 2 is directly behind the top of page 1). *Forms not meeting these requirements will be returned to the originator.*

If, after reading this circular, you have additional questions about renewal of copyright, you may call the Renewals Section of the Examining Division at (202) 707-8180 or fax at (202) 707-3849 or write to the Copyright Office at this address:

Library of Congress

Copyright Office

Renewals Section, LM-449

101 Independence Avenue, S.E.

Washington, D.C. 20559-6000

For Further Information

Information via the Internet

Frequently requested circulars, announcements, regulations, other related materials, and all copyright application forms are available via the Internet. You may access these from the Copyright Office website at www.copyright.gov.

Information by fax

Circulars and other information (but not application forms) are available by using a touchtone phone to access Fax-on-Demand at (202) 707-2600.

Information by telephone

For general information about copyright, call the Copyright Public Information Office at (202) 707-3000. The TTY number is (202) 707-6737. Information specialists are on duty from 8:30 a.m. to 5:00 p.m., eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day. Or, if you know which application forms and circulars you want, request them 24 hours a day from the Forms and Publications Hotline at (202) 707-9100. Leave a recorded message.

Information by regular mail

Write to:

Library of Congress

Copyright Office

Publications Section, LM-455

101 Independence Avenue, S.E.

Washington, D.C. 20559-6000

