

# Circular 12

## Recordation of Transfers and Other Documents

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### IN GENERAL

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#### What Copyright Is

Copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intangible works. This protection is available to both published and unpublished works.

#### Exclusive Rights

The initial owner of copyright generally has the exclusive right

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the work publicly;
- In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the work publicly;
- In the case of sound recordings, to perform the work publicly by means of certain digital audio transmissions.

#### Owner of Copyright

Only those deriving their rights through the author can own copyright in the work. The author may transfer all or part of the copyright to someone else. Copyright protection exists from the time the work is created and fixed in some tangible form. The copyright immediately becomes the property of the author upon fixation. In the case of a work having more than one author, the authors are co-owners of the copyright, unless there is an agreement to the contrary. In the case of a work made for hire, the employer, not the employee, is presumed to be the author.

A copyright may also be conveyed by operation of law and may be bequeathed by will or pass at the death of the copyright owner as personal property by the applicable laws of intestate succession.

#### Divisibility of Copyright

Any or all of the exclusive rights of the copyright owner, or any subdivision of those rights, may be transferred separately. However, the transfer of any exclusive right is not valid unless the transfer is in writing and signed by the owner of the rights conveyed (or the owner’s duly authorized agent). The transfer of a nonexclusive right does not require a written document, but a written document may afford priority to the licensee in certain situations.

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### WHAT MAY BE RECORDED

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A document that transfers copyright ownership or any other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if the document is accompanied by a sworn or official certification that it is a true copy of the original signed document. 17 U.S.C. 205(a).

#### Transfers

A “transfer of copyright ownership” is an assignment, mortgage, grant of an exclusive license, transfer by will or intestate succession, or any other change in the ownership of any or all the exclusive rights in a copyright, whether or not it is limited in time or place of effect. It does not include a nonexclusive license. A transfer of exclusive rights, other than by operation of law, is not valid unless an instrument of conveyance (for example, contract, bond, or deed) or a note or memorandum of the transfer is in writing and is signed by the owner of the rights conveyed or the owner’s duly authorized agent. The Copyright Office does not make or in any way participate in the making of transfers of copyright ownership, but it will record a document of transfer after it has been executed by the parties. No special forms for documents and notarization are necessary for recordation. The following information should be noted:

- **Forms:** The Document Cover Sheet is available from the Copyright Office for optional use whenever a document is submitted for recordation. The Document Cover Sheet is designed to facilitate recordation of documents.

Two copies of the Document Cover Sheet should accompany each document. Cover sheets should be typed or printed. When completed, the cover sheet should contain the information requested so that the Copyright Office can

process the document and return it. Any cover sheets submitted will be recorded with the document as part of the official recordation. The Copyright Office will refer to the actual document to verify the terms and will process the document based on the information in the document. Therefore, parties and titles should be clearly identified in the document or an attachment to it. Information for indexing will not be taken from the document cover sheet or other sources such as cover letters submitted with the document. To be recordable, a document must satisfy the recordation requirements of the copyright code and Copyright Office requirements. See “Documents Will Be Returned Unrecorded IF:” on page 4 and “What to Submit to Record a Document” on page 3.

The person(s) submitting a document with or without a cover sheet is (are) solely responsible for verifying the sufficiency of the document. Recording a document submitted with or without a cover sheet does not constitute a determination by the Copyright Office of the document’s validity or effect. Only a court may make such determinations.

Documents submitted for recordation should not be in the form of a letter to the Copyright Office because this Office cannot make transfers of copyright ownership. Rather, the Office serves as an office of public record of transfers.

- **Notarization of Certificate of Acknowledgement:** A valid transfer need not be notarized or otherwise accompanied by a certificate of acknowledgement. However, a notarization or certificate of acknowledgment is prima facie evidence of the execution of the transfer if:

1. In the case of a transfer executed in the United States, the certificate is issued by a person authorized to administer oaths within the United States;

**or**

2. In the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of the United States or by a person authorized to administer oaths whose authority is proved by the certificate of such a diplomatic or consular officer or by a competent foreign authority pursuant to the provisions of the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents.

### **Documents Pertaining to a Copyright**

A document is considered to “pertain to a copyright” if it has a direct or indirect relationship to the existence, scope, duration, or identification of a copyright, or to the ownership, division, allocation, licensing, transfer, or exercise of rights under a copyright. That relationship may be past, present, future, or potential.

Examples:

Exclusive and nonexclusive licenses, contracts, mortgages, powers of attorney, certificates of change of corporate title, wills, and decrees of distribution.

The work to which the document pertains may be either published or unpublished, and registration for the work need not have been made before recordation.

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## **COPYRIGHT OFFICE DOES NOT EXAMINE DOCUMENTS FOR LEGAL SUFFICIENCY**

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The Copyright Office does not attempt to judge the legal sufficiency or to interpret the content of any document submitted for recordation. It does not screen the document for errors or discrepancies. It does not screen the documents for content and does not generally correspond with the remitter about the sufficiency of the document.

Parties are therefore cautioned to review and scrutinize any document to assure its legal sufficiency before submitting it to the Copyright Office for recordation. The Copyright Office will record the document, but recordation may be without legal effect unless the remitter has prepared the document in a way that satisfies applicable legal requirements.

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## **WHAT TO SUBMIT TO RECORD A DOCUMENT**

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### **NOTE: In order to be recorded, a document must**

1. Have an original signature (or proper certification of photocopy);
2. Be complete by its own terms;
3. **Be legible;**
4. **Be accompanied by the correct fee.**

Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation meets the following requirements:

1. The document must bear the actual signature or signatures of the person or persons who executed (signed) the document. If a photocopy of the original signed document is submitted, it must be accompanied by a sworn or official certification. The certification must state that the attached reproduction is a true copy of the original signed document.

The certification must be either a “sworn certification” or an “official certification.”

- a. A **sworn certification** is used with a document that requires no validation by, nor filing in, a public office.

The sworn certification must communicate that the attached reproduction is a true copy of the original signed document, and the sworn certification must be signed by one of the parties to the document or by an authorized representative of that person. Sworn certifications may be issued by a notary or other person authorized to administer oaths. As an alternative to a notarized certification, the following statement is acceptable:

“I declare under penalty of perjury that the accompanying document is a true and correct copy of the original document. Executed on (date) (signature).”

**NOTE:** A notary public’s signature certifying that the photocopy is a true copy IS NOT ACCEPTABLE. The signatory must be one of the parties to the document or an authorized representative of that person.

The Document Cover Sheet is an available option to use for the sworn certification. It has the above statement pre-printed.

b. An **official certification** is used with a document that requires validation by, or filing in, a public office.

An official certification is a certification by the appropriate government official that the original of the document is on file in a public office and that the reproduction submitted is a true copy of the original.

NOTE: You must submit an ORIGINAL official certification. A photocopy of an official certification is NOT acceptable.

**and**

2. The document must be complete by its own terms. That is, a document that contains a reference to any schedule, appendix, exhibit, addendum, or other material as being attached or made a part of it is recordable only if the attachment is submitted for recordation with the document.

**and**

3. The document must be legible and capable of being reproduced in legible imaged copies.

**and**

4. The document must be accompanied by the recording fee prescribed in the law. Bank drafts must be drawn on or payable through a U.S. bank. The proper fee\* may be computed from the following schedule:

a. The basic recording fee for a document covering no more than one title is \$80.\*

b. An additional charge of \$20 is made for each group of 10 additional titles or fewer. Thus, one extra title will cost \$20 (plus the original \$80), and 10 extra titles will cost \$20 (plus the original \$80). "Alternative" titles, "formally-known-as" titles, and "also-known-as" titles are charged as extra titles.\*

**Examples:**

A document containing 1 title is \$80.\*

A document containing 2 to 11 titles is \$100.\*

A document containing 12 titles is \$120.\*

NOTE: If a document covers more than one transfer, the fee for each transfer is \$80 regardless of how many transfers are in a single document.\*

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

c. In the case of multiple title documents, titles that are repeated in documents will be counted as a single title, **except** where the document lists different issues, volumes, chapters, or installments following the title. Each such entry will be regarded as a separate title and will be indexed separately and counted separately for purposes of computing the recordation fee. This procedure for computing the fee on multiple title documents is effective July 1, 1998.

**Example** of multiple titles for which a separate fee is charged:

"Fan Club News," vol. 1, no. 3 (June 1981)

"Fan Club News," vol. 1, no. 4 (July 1981)

"Fan Club News," vol. 1, no. 5 (August 1981)

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**DOCUMENTS WILL BE RETURNED  
UNRECORDED IF:**

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1. The document does not have an original signature or proper certification.
  2. The document submitted is not capable of being reproduced legibly.
  3. The document is incomplete by its own terms.
  4. The document is marked as an Exhibit, unless the person requesting recordation asserts that the document is sufficiently complete as it stands.
  5. The complete recordation fee is not submitted.
  6. It is unclear whether the document is to be recorded.
  7. The document is submitted to this Office in error.
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**MECHANICS OF RECORDING  
TRANSFERS OR OTHER DOCUMENTS**

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The date of recordation is the date when the written document in proper form and the proper fee are received in the Copyright Office.

**A written document is in proper form when**

1. It contains the proper signature or signatures;
2. It is complete by its own terms; and
3. It is capable of being imaged.

Documents sent to the Documents Recordation Section for recordation are first screened, and nonrecordable documents are returned before fees are accepted in the Office. Documents accepted for recordation are verified, numbered, cataloged, and imaged for the public record.

They are indexed in the Copyright Office online documents file, COHD, under the names and titles they contain. The original is returned to the sender with a certificate of record bearing the date of recordation and the volume and document number identifying the recorded document.

Documents are available for public viewing in the Copyright Card Catalog. The Copyright Card Catalog is open to the public from 8:30 a.m. to 5 p.m., eastern time, Monday through Friday, except federal holidays. It is located in Room LM-459, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C.

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**MAILING INSTRUCTIONS**

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Recordations, transfers of copyright, and other documents pertaining to a copyright should be submitted to:

Library of Congress

Copyright Office

Documents Recordation Section, LM-462

101 Independence Avenue, S.E.

Washington, D.C. 20559-6000

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## ADVANTAGES OF RECORDATION

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While the recordation of a transfer or document pertaining to a copyright is not mandatory, there are several advantages to recordation. These include:

- Under certain conditions, recordation establishes priorities between conflicting transfers, or between a conflicting transfer and a nonexclusive license.
- Recordation establishes a public record of the contents of the transfer or document.
- Recordation of a document in the Copyright Office provides the advantage of “constructive notice,” a legal concept meaning that members of the public are deemed to have knowledge of the facts stated in the document and cannot claim otherwise. Section 205 of the 1976 Copyright Act says that recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if

1. The document or material attached to it specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title (or registration number) of the work;

**and**

2. Registration has been made for the work.

Recordation may be required to perfect a security interest, according to recent case law.

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## PUBLIC ACCESS TO IN-PROCESS FILES

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In-process files are those that the Copyright Office makes for its own immediate internal use in connection with pending applications for registration or the recordation of documents and that are preliminary to the completion of the public record.

No access is afforded to the public for viewing in-process files or for visiting any of the areas where they are kept. Likewise, public use of computer terminals intended to access the automated equivalent of these files is not permitted. However, upon payment of applicable fees, the public may use a computer to access the automated equivalent of limited portions of these files. That computer terminal is located in the Records Maintenance Unit, LM-B14, and is available 8:30 a.m. to 5 p.m., eastern time, Monday through Friday, except federal holidays.

Requests for certain information contained in the in-process files may be obtained by anyone, following payment of applicable fees. Address your request to:

Library of Congress  
Copyright Office  
Certifications and Documents Section, LM-402  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

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## PUBLIC ACCESS TO IN-PROCESS DOCUMENTS

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Access will be afforded to pending applications for registration, the deposit material accompanying them, and pending documents for recordation that were submitted within the 12-month period immediately preceding the request, upon the request of the copyright claimant or his/her authorized representative and upon the request of at least one of the persons who executed the document or by an authorized representative of that person. These requests should be made to:

Library of Congress  
Copyright Office  
Public Information Office, LM-401  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

Review of the materials upon request of the persons mentioned above will be permitted in the Public Information Office. No charge will be made for this service.

In exceptional circumstances, the Register of Copyrights may allow inspection of pending applications and open correspondence files by someone other than the copyright claimant, upon submission of a written request that is deemed by the Register to show good cause for such access and to establish that the person making the request is one properly and directly concerned. The written request should be addressed to:

Copyright GC/I&R  
P.O. Box 70400  
Southwest Station  
Washington, D.C. 20024

No direct public access is permitted to financial or accounting records.

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## PUBLIC ACCESS TO DOCUMENT RECORDS

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Requests for copies of recorded documents should be addressed to:

Library of Congress  
Copyright Office  
Certifications and Documents Section, LM-402  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000  
Tel: (202) 707-6787  
Fax: (202) 707-6859 **(for Deposit Account holders only)**

Inspection and copying of completed records and indexes relating to a registration or a recorded document and inspection of copies or identifying material deposited in connection with a completed copyright registration may be undertaken in the Certifications and Documents Section upon payment of the appropriate fee. Since some of the materials are not stored on the immediate premises of the Copyright Office, it is advisable to consult with the Certifications and Documents Section in advance to determine the length of time necessary to produce the required materials.

Requests for searches of recordings in the completed catalogs and indexes of the Copyright Office should be addressed to:

Library of Congress  
Copyright Office  
Reference and Bibliography Section, LM-451  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000  
Tel: (202) 707-6850  
Fax: (202) 707-6859 (for Deposit Account holders only)

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## COPYRIGHT OFFICE FILES AVAILABLE OVER THE INTERNET

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Copyright Office records in machine-readable form cataloged from Jan. 1, 1978, to the present, including registration information and recorded documents, are available over the Internet. These include the following files: COHM, which contains all original and renewal registrations except serials; COHD, which contains documents; and COHS, which contains serials. The Copyright Office website address is [www.copyright.gov](http://www.copyright.gov).

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## DOCUMENTS NOT COVERED BY THIS CIRCULAR

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The filing or recordation of the following documents is not covered by this circular, and other requirements may apply:

1. Certain contracts entered into by cable systems located outside the 48 contiguous states. [17 U.S.C. 111(e); see 37 CFR 201.12];
2. Notices of Identity and Signal Carriage Complement, and Statements of Account of cable systems. [17 U.S.C. 111(d); see 37 CFR 201.11 and 201.17];
3. Statements of account of satellite carriers. [17 U.S.C. 119(b); see 37 CFR 201.11];
4. Notices and statements of account submitted for distribution of digital audio recording equipment and media. [17 U.S.C. chapter 10, 1003-1004; see 37 CFR 201.27 and 201.28];
5. Original signed notices of intention to obtain a compulsory license to make and distribute phonorecords of nondramatic musical works. [17 U.S.C. 115(b); see 37 CFR 201.18];
6. License agreements and terms and rates of royalty payments voluntarily negotiated between one or more public broadcasting entities and certain owners of copyright. [17 U.S.C. 118; see 37 CFR 201.9];
7. Notices of termination. [17 U.S.C. 203, 304(c); see 37 CFR 201.10].
8. Statements regarding the identity of authors of anonymous and pseudonymous works and statements relating to the death of authors. [17 U.S.C. 302];
9. Notices of Intent to Enforce filed under the URAA. [17 U.S.C. 104(a), 109(b), chapter 11];
10. Documents pertaining to the removal of works of visual art from buildings. [17 U.S.C. 113(d)];
11. Documents pertaining to transfers of Mask Works. [17 U.S.C. 903(c)].

For information on recording shareware, contact the Documents Recordation Section at the address given above under "Mailing Instructions."

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## RELEVANT STATUTORY PROVISIONS FROM TITLE 17 OF THE UNITED STATES CODE

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### Section 101.

#### § 101. Definitions

A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

A "transfer of copyright ownership" is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a non-exclusive license.

### Section 204.

#### § 204. Execution of transfers of copyright ownership

(a) A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and is signed by the owner of the rights conveyed or such owner's duly authorized agent.

(b) A certificate of acknowledgement is not required for the validity of a transfer but is prima facie evidence of the execution of the transfer if—

(1) in the case of a transfer executed in the United States, the certificate is issued by a person authorized to administer oaths within the United States; or

(2) in the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of the United States, or by a person authorized to administer oaths whose authority is proved by a certificate of such an officer.

### Section 205.

#### § 205. Recordation of transfers and other documents

(a) CONDITIONS FOR RECORDATION.—Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document.

(b) CERTIFICATE OF RECORDATION.—The Register of Copyrights shall, upon receipt of a document as provided by subsection (a) and of the fee provided by 17 U.S.C. 708, record the document and return it with a certificate of recordation.

(c) RECORDATION AS CONSTRUCTIVE NOTICE.—Recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if—

(1) the document, or materials attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; and

(2) registration has been made for the work.

(d) PRIORITY BETWEEN CONFLICTING TRANSFERS.—As between two conflicting transfers, the one executed first prevails if it is recorded, in the manner required to give constructive notice under subsection (c), within 1 month after its execution in the United States or within 2 months after its execution outside the United States, or at any time before recordation in such manner of the later transfer. Otherwise the later transfer prevails if recorded first in such manner and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer.

(e) PRIORITY BETWEEN CONFLICTING TRANSFER OF OWNERSHIP AND NONEXCLUSIVE LICENSE.—A nonexclusive license, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed or such owner's duly authorized agent, and if—

(1) the license was taken before execution of the transfer;

or

(2) the license was taken in good faith before recordation of the transfer and without notice of it.

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## FOR FURTHER INFORMATION

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**Information via the Internet:** Circulars, announcements, regulations, other related materials, and all copyright application forms are available on the Copyright Office website at [www.copyright.gov](http://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:**

Library of Congress  
Copyright Office  
Publications Section, LM-455  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000