STAYING LEGAL

A Guide to Copyright and Trademark Use

Francine Ward

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Preface

Dear Colleague:

If you're interested in learning everything you need to know to protect your copyrights and trademarks, to make your company and your brand more valuable, and to save money, *plus* a few extra *bonus* tips on how to avoid being sued for infringement, then this might be the most important product you've ever purchased.

Many myths will keep you uninformed about the law. For example, do you believe

- you can protect your copyright by mailing a copy of your work to yourself?
- if you hire a photographer to take your picture, you own the copyright in that photo?
- a copyright is really the same as a trademark?
- book titles can be protected by copyright?
- the more your trademark describes your product or service, the more likely it can be protected?
- you can use up to three minutes of a movie or television clip without getting permission?
- trademarks last for your lifetime, plus 70 years?
- copyrights last forever?
- once you have trademark protection, you always have protection?
- the ® is always the proper symbol to use to claim a trademark?
- registration is the key to trademark protection?
- surfing the Internet is the best way to do a trademark search?
- you need a lawyer to register your copyrights and trademarks?

If you answered yes to any of these, then you are in the right place. Why is it important to get past the myths and why should you know how to protect your intellectual property rights?

- So you're not misled.
- So you can protect your brand.
- So you can increase the value of your company and your brand.
- So you don't end up paying thousands of dollars in legal fees.

As an author, I know firsthand the importance of protecting my creative works. As an attorney, I am frequently asked by authors, speakers, and consultants how to protect their books and other information product content. To help answer those questions, I've created the self-directed study course titled *Staying Legal: A Guide to Copyright and Trademark Use*. Throughout the course, I will simply refer to it as the Staying Legal Guide.

Here is what you'll get from the Staying Legal Guide:

- useful, easy-to-understand, ready-to-apply legal information for the nonlawyer designed to help you become more effective and ethical in your work
- answers to questions you didn't even think to ask
- tips on how to identify what you have that should be protected
- guidance on how to distinguish between what can be protected by copyright and what can be protected by trademark
- step-by-step instruction on how to register your copyright, including which form to use
- step-by-step instruction on how to register your trademark, including which form to use
- strategies on how to select a logo, design, or phrase that can be protected by trademark
- two things you *must* do to protect your copyright
- seven things you *must* do to protect your trademark
- tips on how to save money on legal fees
- valuable secrets the U.S. Copyright Office won't tell you
- four things you must know before you use someone else's material
- advice on how to protect your book title.

This content-rich material is divided into 11 individual lessons. Each lesson will cover a specific topic, such as what can be protected by copyright and how to get through the registration process. Through the use of interactive checklists, mini vignettes, and useful hot links on the companion CD, you'll walk away with a better understanding of the law.

It's important for you to know that the Staying Legal Guide is not legal advice. These materials are a guide to general principles of law. You'll receive enough information to help you identify what you can protect, how to protect it, and how to avoid being sued. If you need more information, you may need to hire an attorney to assist you with your specific situation. Moreover, the Staying Legal Guide will provide you with enough information that if you choose to hire a lawyer, you'll at least be more knowledgeable. In the Resources section you'll find lawyer referral services.

So let's get busy.

How to Use This Material

The course consists of a CD and this companion book. This is a self-directed study course, where you get to determine how fast or slow you go. You control your pace and the amount of information you take in. At the end of each lesson, you'll be given a short quiz to help you digest the information you've learned in that section.

Francine Ward
January 2007

Lesson 1:

What Is a Copyright?

Someone recently asked me to copyright her book title. "It can't be done," I said. "You cannot copyright a book title." If a book title is to be protected at all, it would likely be through trademark protection or some form of contract. "You're wrong," she insisted, "My friend copyrighted his book." As I listened more closely to what she said, I realized she had confused copyrighting her *book* with copyrighting the book's *title*. I thought to myself, I wonder how many other people have made that very same mistake, or how many people, in some way, have confused copyrights with trademarks? So, while they are both part of the family called intellectual property—something you own, which you design, develop, conceive, or construct with your own creative mind or intellect—the similarity between copyrights and trademarks ends there. Let's define both.

A copyright is a legal form of protection afforded to any original work of art or authorship that has been reduced to a tangible or physical form. An example of a tangible form is when an idea is put on paper, a painting on canvas, music or words to a song put on cassette or CD, or a speech recorded on video. Copyright protects the expression of a creative and original idea, not the idea itself. And your work is protected the moment you convert that original idea into something you can hear, see, or touch. That's what's meant by tangible. (However, later in the process we'll explore additional ways to protect your valuable copyrights.) For

now, all you need to know is that for a copyright to be valid the work must be original and tangible.

A trademark is a distinctive word, name, phrase, logo, design, symbol, sound, color, smell, or a combination of the above that identifies the source of goods or services. It simply tells the marketplace, including you the consumer, who owns what product or service. It lets you know from whom to purchase products and services and to whom to complain when there's a problem. For example, the golden arches are a protectable trademark of McDonald's, the swoosh symbol is a protectable mark of Nike, the doink doink sound on the television show *Law & Order* is a protectable mark of the *Law & Order* franchise, and the color pink used in fiberglass insulation products is a protectable mark of the Owens Corning Company. We'll cover trademarks in more detail in Lessons 8-11. Table 1 sums up the differences between a copyright and a trademark.

What can be protected by copyright? Almost any original, creative work of art or authorship. The U.S. Copyright Act has come up with eight categories of works that can be protected by copyright: literary; dramatic; musical; pictorial, graphics, or sculptural; motion pictures and other audiovisual; pantomimes; sound recordings; and architectural designs.

Although these categories may seem narrowly defined, they really aren't. Over time, the courts have interpreted them quite broadly. For example, computer programs can be registered as literary works. (See Table 2 for more examples.)

Table 1. Copyright and trademark.

Copyright	Trademark
A legal form of protection afforded to any original work of art or authorship that has been reduced a tangible or physical form	A distinctive word, name, phrase, design, symbol, sound, or smell that identifies the source of a good or service
Examples: • an idea on paper • a painting on canvas • music or lyrics to a song on a cassette or a CD • a videotaped speech	Examples: • McDonald's golden arches • Nike's swoosh symbol • *Law & Order*'s distinctive sounds

Table 2. What can be protected by copyright?

Category	Examples
Literary	Books, articles, workbooks, newsletters, e-zines, and computer software
Dramatic	Broadway plays
Musical	Printed or sheet music
Pictorial, graphics, or sculptural	Cartoons, photographs, and sculptures
Motion pictures and other audiovisual	Movies, documentaries, and videotaped speeches
Pantomimes	Pantomimes and choreographed material
Sound recordings	Speeches, music, and any spoken word
Architectural designs	Architectural designs

Your Copyright Workshop

Part 1. Identify Protected Items

Let's take a look at a short list of things that can be protected by copyright. This list includes items that you personally created or items that you hired someone else to create. It also includes items you never knew could be protected by copyright. Take a moment to review the list in Table 3 and then place a mark next to the item that you own. Identifying what you own is the first step in protecting your valuable copyrights. This mini intellectual property audit will assist you in doing that.

Part 2. Identify Items That Cannot Be Copyright Protected

Now let's look at a few things that cannot be protected by copyright and some possible ways you can protect them (see Table 4).

Table 3. Intellectual property audit.

Work of art or authorship	✔	Work of art or authorship	✔
Books (fiction or nonfiction)		Photographs	
E-books		Videos	
Articles		Overheads	
Workbooks		Training materials	
Newsletters		One sheets	
Magazines		Brochures	
E-zines		Choreographic work	
Cartoons		Pantomimes	
Speeches		Musical compositions	
Program handouts		Sound recordings	
Position papers		Screenplays	
Websites		Documentaries	
Streaming videos		Plays	
Audiocassettes		Motion pictures	
Home-study courses		Software	
Questionnaires		Surveys	
Online marketing materials		Computer source code	
E-questionnaires		E-surveys	
Quizzes		Distance learning curriculums	
Graphics		Paintings	
Architectural designs		Blueprints, building designs	

Table 4. What cannot be protected by copyright.

Things to be protected	Possible ways to protect them
Idea submissions	Put the idea into a tangible form, or use a confidentiality agreement before disclosing information
Slogans	Apply for a trademark
Designs	Apply for a trademark or a patent
Logos	Apply for a trademark
Colors	Apply for a trademark
Fragrances	Apply for a trademark
Names	Apply for a trademark
Book titles	Apply for a trademark, in specific instances
Concepts	Apply for a patent
Methods	Apply for a patent
Processes	Apply for a patent
Inventions	Apply for a patent
Plant strains	Apply for a patent

For More Information

For more information on what can or cannot be protected by copyright, go to the official U.S. Copyright Office website: www.copyright.gov/circs/circ1.html#wwp. For additional information on trademarks, go to the official U.S. Patent and Trademark Office website: www.uspto.gov/web/offices/tac/doc/basic/trade_defin.htm.

Lesson 2:

What Are the Rights of a Copyright Owner?

A copyright is a bundle of exclusive rights the law grants to authors and creators of original works of art to encourage them to continue creating. Although copyright owners (or copyright holders as they are sometimes called) may have the right to sue to protect their rights, the real benefit of having these coveted intellectual property rights is that owners of copyright can make money by selling, distributing, licensing, and renting their work to others. As a result, their businesses and their brands become more valuable.

A copyright holder has the right to

- *Reproduce.* Copyright holders have the exclusive, but not the absolute right to print, reprint, copy, or duplicate their work, which includes making photocopies, downloading music, and duplicating photographs.
- *Distribute.* The owners of copyright have the right to sell, license, lease, or rent their work to anyone they choose—for a fee, if they like.
- *Display.* This includes posting copyright-protected work on a website, in a gallery, on a blog, on a screen, or on a display board on the street if not restricted by law.
- *Perform.* This includes giving a speech, singing a song, or reciting a poem.

- *Sell or license rights*. This includes giving someone the right to make photocopies, play music, or make a copy of a cartoon to use as an overhead. This also shows up in the area of publishing. When you publish your book through a publisher, for example, you give that publisher the right to duplicate, distribute, sell, and display your work.
- *Create a derivative work*. This includes converting an article into a book, translating a book into many languages, or turning a play into a movie.

Take a moment to answer the following questions, exploring your rights as a copyright holder. You may be surprised at the answers.

Question 1

You've written an article for a trade magazine, and you want the magazine to have the right to use that article just once, and only in the print version of the magazine, not online. Do you have the right to restrict the magazine publisher from putting your article on its website? Can you prevent the magazine from selling online rights to another magazine or newspaper? Can you limit the publisher's use to a single use?

Answer

As the copyright holder, you call the shots. You have the right to duplicate, display, distribute, perform, sell, or license your work, and you have the right to give or not give other people permission to do the same. In authorizing someone to use your work, you can limit the use in whatever way you desire. You're the boss of your creative work of art or authorship. Just know that as in any negotiating situation the more influence you bring to the table, the more leverage and control you will have. For example, if you submit an article to a popular national magazine, it's likely, unless you are a celebrity writer or have something the magazine really wants, that the magazine will require you to give up all or most of your rights.

How much you give away is always a business judgment decision. If a publisher wants the right to publish your work in its magazine and online and if being published by that particular magazine is important to you, you may decide to give up certain rights for the perceived long-term benefits. You get to decide whether the offer on the table is worth what you are being asked to give up. And if you don't like the terms, you can take your copyright-protected work somewhere else.

Question 2

OK, let's suppose that after giving the situation a lot of thought you agree to write an article for that national magazine. Do you then need permission from the magazine publisher to make copies of your article for your portfolio or media or press kit? Can you post your article on your website?

Answer

The right to duplicate and display their work are rights copyright holders enjoy. However, it's likely you'll need permission to duplicate or post the article, but it depends upon the agreement you signed. The odds are that you signed a transfer of rights agreement—even if you don't think you did. In some cases the agreement will require an exclusive transfer of rights, where you transfer the copyright of your work to a publisher, record company, producer, or client company, in which case you have no remaining rights. Although this is the best-case scenario for the publisher or record company, it is the least favorable option for you, the author or creator of the work. In this case you give up the right to even make copies of what is technically considered your work.

Other alternatives are that you give the publisher many rights for a limited period of time, you give the publisher limited rights for a specific period of time, or you give the publisher rights and you retain certain rights. Some of the rights you may want to retain are

- the right to use portions of your work in other works you've created
- the right to make copies for your training presentations
- the right to make derivative works
- the right to edit or update your content
- the right to perform or display the work
- the right to include the work in your media or press kit.

On occasion, I've even heard of small trade magazines that don't require a written transfer of rights. That's not the norm, because for them to publish your work, you need to transfer some rights—in writing.

Let's say the publisher had you sign an agreement for the nonexclusive right to print your article in its magazine, and you remain the copyright holder. Although you own the copyright to the article you submitted for publication, you do not own the rights in the way it has been placed in the magazine. That's a form of expression protected by copyright. So while you may be able to reproduce your article in another forum because your agreement was nonexclusive, or give someone else the right to publish a similar article, you cannot photocopy the article from the magazine and duplicate it for your press kit without written permission from the copyright holder—the magazine publisher. That's why it's important to read every document before you sign, because the terms of the contract control the relationship.

Question 3

You give Publisher A permission to publish your book as a hardcover in the United States and its territories. You give Publisher B permission to publish a hardcover in the rest of the world. You give Publisher C permission to convert your book to a trade paperback throughout the world. You give an audio-production company the right to create an audio book based on your book. Is it legally possible to divide your publishing rights among these four companies?

Answer

Absolutely. As the copyright holder, you have the right to license all or a portion of your rights to whomever you want. In some cases, it may be to your advantage to give an exclusive license (including all sub-rights) to one publisher, particularly if you have an existing relationship and like the way that publisher treats you. It can also prove to be less cumbersome to have one accounting statement as opposed to several. Conversely, you could possibly negotiate a better deal if you divide up the rights among several publishers.

A final word: When you publish a book, article, or paper, many publishers will ask you to turn over all your rights. Doing this can be harmful to you in the long run, because it may prevent you from sharing that book, article, or paper or any part of it on your website, in your presentations, or with friends and colleagues.

Lesson 3:

Who Owns a Copyright?

The general rule of law is that the person who creates a work of art or authorship is the one who owns the copyright in that work, unless that person has transferred the rights by written agreement (for example, Assignment of Rights or Grant of Rights) to someone else or when it's a work made for hire. (For a sample Assignment of Copyright Agreement to customize for your own use, see appendixes in this book and the companion CD.) When two or more people create a work, they jointly and equally own the copyright in that work, unless an agreement exists that states different terms. When minors create copyright-protected works, although they can claim ownership, the law can be a little tricky, because state law governs the extent to which minors can enter into and be held liable for a contract. Therefore, it's best to get legal advice before entering into an agreement of any kind with a minor.

Works made for hire exist in two situations:

1. when a work is created by an employee within the scope of his or her employment
2. when a work is specifically commissioned in exchange for monetary value and a written agreement exists that states the relationship is a work made for hire.

Additionally, for a commissioned work to be considered a work made for hire, the work must fall within one of nine categories (see also U.S. Copyright Information Circular 9, available in the appendix of the CD):

1. a contribution to a collective work, for example, an article for a magazine
2. a part of a motion picture or other audiovisual work
3. a translation
4. a supplementary work
5. a compilation
6. an instructional text
7. a test
8. answer material for a test
9. an atlas.

Let's look at some real-world scenarios in the following questions.

Question 1

You hire a new employee to design and develop a video for you to use as a marketing tool for potential new clients. Who owns the rights to that video, you the employer, the employee, or both of you in a joint ownership?

Answer

The employer owns the rights, if the work was performed by an employee within the scope of the employment. How do you determine the employee–employer relationship? If you're the employer, you pay the employee a salary, provide him or her with benefits, and withhold taxes from the pay. You exercise dominion and control over the employee's work and the way the work is done. Therefore, if the video was created by an employee within the scope of the employment, you, the employer, own the rights to that video.

Here are some other employee–employer examples of works made for hire:

- a software program created by a staff programmer within the scope of his duties
- a magazine article written by a staff writer within the scope of her employment
- an employee handbook written and designed by a staff graphic designer and a staff copywriter.

Question 2

You hire a graphic designer to develop a logo and marketing materials for your new company. Who owns the copyright in the design of the new marketing materials: you, the graphic designer, or both of you?

You hire a photographer to photograph your wedding. Who owns the copyright in the photos: you, the photographer, or both of you?

You hire a web designer to create a website. Who owns the copyright in the website: you, the web designer, or both of you?

Answer

Regarding the graphic designer, the photographer, and the web designer, unless you have a written agreement that states that your relationship with them is a work made for hire, then sadly they, not you, own the rights to the work created. If you hire an independent contractor to create a work of art or authorship, have him or her sign a work-made-for-hire agreement before the work begins. If you've already entered into a relationship and the product has been created, ask the contractor to transfer his or her rights in that work to you. Caveat: When you ask after the work has been done, the copyright holder can refuse to accommodate you. Therefore, requiring an agreement before the work is done gives you more leverage.

Question 3

Another issue that comes up for speakers and authors is the ghostwriter scenario. Let's say you hire a ghostwriter to write your book. Who owns the copyright in the finished manuscript: you, the ghostwriter, or both of you?

Answer

Unless you had the ghostwriter sign a work-made-for-hire agreement that states that you own all rights in the work, an argument can be made that the ghostwriter (an independent contractor) owns the copyright in the finished manuscript. Tip: Always have a signed agreement that defines the roles, responsibilities, and ownership of all parties involved at the beginning of all business relationships.

Question 4

Suppose you and a colleague join forces to create a workbook. It was her idea, but you did all the work. Who owns the copyright in the workbook: you the worker, your colleague the idea person, or both of you?

Answer

Regarding collaborative associations, it's a good idea to clarify at the very beginning of the relationship who owns what. Even though, in this particular case, an argument can be made that the person who did the work owns the finished product, the idea person will argue that without the great idea, there would have been no product. Although the person who did the actual work might win in court, it could turn into a costly legal battle. Is the prohibitive cost of litigation worth this win?

Attending to these business details at the beginning of the relationship can prevent conflict and needless hours of wasted time and energy.

A tactical way around the ownership issue is to have independent contractors sign an agreement stating that it is a work-made-for-hire relationship and that you, not them, own all rights to and interest in the work being created in advance of any work they do for you. (For a summary of copyright ownership, see Table 5.)

Table 5. Copyright ownership.

Scenario	Copyright owner	Special circumstances
A person creates a work of art or authorship.	The creator	• Two or more people: Copyright is owned equally, unless an existing agreement states different terms. • Minors: Because state law governs contracts, it is best to seek legal advice before entering an agreement with a minor.
A person creates a work of art or authorship while in the employment of another.	The employer	
A person is commissioned to create a work of art or authorship in exchange for monetary value.	The creator, unless a work-made-for-hire agreement has transferred ownership rights to the commissioner	
A person creates a work of art or authorship based on another person's ideas.	Arguably, the creator	Given the potential for a costly legal battle over ownership of copyright, it is best to clarify at the beginning of the relationship who owns what.

Your Copyright Workshop

Part 1. Review Copyright Ownership Over Items

Looking back at Lesson 1, review the items you claimed copyright ownership in and determine whether you or someone else owns the work. For example, did you create your website, or do you have an agreement transferring the rights to you? As to the photos you use in your marketing materials, did you personally take them or did you hire someone? If you hired someone, does that person own the copyright in the photos or do you?

Part 2. Move Forward

In moving forward, require all independent contractors (for example, web designers, photographers, graphic designers, and editors) to sign a separate work-made-for-hire agreement. Or consider incorporating the work-made-for-hire provision into your consulting agreement. If independent contractors refuse to sign it, you can decide if it's worth giving up your valuable rights.

Part 3. Review Your Contracts

If you haven't done so yet, go through your files, review every contract you ever signed, and make sure you didn't inadvertently give away your rights. Here is a list of some of the agreements you may have signed: consulting agreements, wills, employment agreements, letters of agreement, offer letters, publishing agreements, production agreements, retainer agreements, and any other agreement where you might have consciously or unconsciously given away your rights. As you review these agreements, be particularly aware of provisions titled any of the following: Grant of Rights, Intellectual Property, Work Made for Hire, Reservation of Rights, Reversion of Rights, Transfer of Rights, Assignment of Rights, Ownership, and Relationship of Parties.

Part 4. Contact a Lawyer, If Necessary

If you discover you have unconsciously given away your rights, contact a lawyer immediately to determine if you can remedy the situation.

Part 5. Review the Sample Agreement

Review the sample copy of a work-made-for-hire agreement in the Appendix of this Staying Legal Guide (as well as on the accompanying CD).

Lesson 4:

How Long Does a Copyright Last?

The general rule is that if a work was created on or after January 1, 1978, a copyright lasts for the lifetime of the copyright holder, plus 70 years. If it's a joint work prepared by two or more authors who did not have a work-for-hire relationship, the term lasts for 70 years after the last surviving author's death. For works made for hire and for anonymous and pseudonymous works (unless the author's identity is revealed in U.S. Copyright Office records), the duration of copyright will be 95 years from the date of publication or 120 years from the date of its creation, whichever term is shorter.

Nonpublished works of art or authorship are protected by copyright. If they were created prior to January 1, 1978, but neither published nor registered by that date, the term of copyright in those works is generally computed in the same way as works created on or after January 1, 1978: lifetime of the copyright holder, plus 70 years, or 95 or 120 years if it was a work made for hire. So if on March 16, 1977, you created a work that was never published and never registered, the copyright in that work would last for your lifetime, plus 70 years. For the purposes of the Copyright Act, a work that has been published is made available to the public by way of a sale, lease, rental, license, or any other form of transfer of ownership.

Under the Copyright Act that was in effect before 1978, a copyright was secured either on the date it was published or on the date it was

registered. In either case, the copyright lasted for 28 years and was renewable for a second 28-year term if it was renewed in the last year of the first 28-year term. If the copyright was not renewed, it expired at the end of the first 28-year term and then entered the public domain. During the term of the copyright, you as the copyright holder have the right to transfer those rights to someone else. Transfer of rights must be done in writing.

For more detailed information on copyright duration rules for works registered prior to January 1, 1978, see U.S. Copyright Information Circular 15A (see appendix of the CD).

Table 6 summarizes these copyright durations based on publication and creation dates.

Table 6. Copyright durations.

Creation or publication date	Duration
Created on or after January 1, 1978	• Single creator: Lifetime of the copyright holder, plus 70 years • Joint creators: 70 years after the death of the last surviving author • Works for hire and anonymous and pseudonymous works: 95 years from the date of publication, or 120 years from the date of creation (whichever is shorter)
Created but not published prior to January 1, 1978	• Single creator: Lifetime of the copyright holder, plus 70 years • Joint creators: 70 years after the death of the last surviving author • Works for hire and anonymous and pseudonymous works: 95 years from the date of publication, or 120 years from the date of creation (whichever is shorter)
Published or registered prior to January 1, 1978	• From the date of publication or registration: 28 years, renewable for another 28 years

Your Copyright Workshop

Let's put together a worksheet listing all of your copyrightable works. Include, in the proper column, the year the work was created, the year it was first published (even if it's the same as the year of creation), how it was created (that is, by you, by an independent contractor, by an employee), and what year the copyright will expire.

Copyrightable work	Year it was created	Year it was published	How it was created	When it will expire

What this will give you is a nice idea of how long your copyright will last.

Lesson 5:

How to Protect Your Copyrights

It's important to know that you have a valid copyright the moment you reduce your original work of art or authorship to a tangible form. Nothing more is required. However, you can do two things that will take that protection to the next level:

1. Always apply the copyright notice symbol to your work.
2. Register your work with the U.S. Copyright Office.

Copyright Notice

Copyright notice is identifying information that you place—in a visibly perceptible manner—on all copyrighted works, which lets the world know that you claim a copyright on that work. Notice serves a legal purpose, but it also lets potential infringers know that you take seriously the protection of your valuable intellectual property.

Question 1

Does the law require that you include the copyright symbol (©), the word Copyright, or its abbreviation Copr., visibly on the face of your work to protect it?

Answer

No. Use of the notice symbol as a condition of protection, whether it's the copyright symbol, the word *Copyright,* or its abbreviation *Copr.,* is no longer required

by law, if a work was published on or after March 1, 1989. However, it's a good idea to always include it for several reasons: First, it sends the message that the work is protected by copyright. Second, it identifies the owner. Third, it deters infringers. And fourth, it prevents potential infringers from being able to say they didn't know the work was protected by copyright, making it harder for them to prevail using the "innocent infringer" defense in the event of a lawsuit.

Question 2

What is the proper format for copyright notice, and where should the notice symbol be placed?

Answer

Proper form of copyright notice for visibly perceptible works—those works that can be seen or read directly (for example, books, articles, websites, and photographs)—or works that can be read indirectly with the aid of a machine (for example, software) should contain the following identifying information: the symbol ©, the word *Copyright,* or the abbreviation *Copr.*; the year of first publication; and the name of the copyright owner. It's not necessary to use both the copyright symbol and the word *Copyright,* or the © and the abbreviation *Copr.*, because it's redundant. One or the other is all that's needed, for example:

- *© 2006 Francine Ward, JD.*
- *Copyright 2006 Francine Ward, JD.*
- *Copr. 2006 Francine Ward, JD.*

Proper notice for phonorecords in any format (for example, records, cassettes, CDs, and laser discs) is ℗.

Although not necessary, additional language can be added for emphasis, such as "All Rights Reserved" or "No part of this copyright protected material [for example, book, article, or speech] may be reproduced in any form or format, by any means, whether mechanical, electronic, or by a technology yet in existence, including any form of a storage or retrieval system."

Proper placement of notice is affixed in such a way that gives the marketplace reasonable notice of ownership of the copyright. That means it must be in a location where it can be easily seen. For phonorecords, placement should be on the label itself and on the outer packaging. (For additional information on copyright notice, see U.S. Copyright Information Circular 3 on the companion CD.)

Registration

The second thing you can do to protect your valuable copyrights is to register them with the U.S. Copyright Office in Washington, D.C.

Question 3

Is it mandatory that I register my work with the U.S. Copyright Office for it to be protected?

Answer

No, registration is not a requirement for copyright protection. Once again, you have protection the moment you reduce your original work to a tangible form. However, registering your work with the U.S. Copyright Office yields significant benefits:

1. A public record is established, which lets the world know you are the owner of the copyright in question.
2. You receive a Certificate of Registration from the U.S. Copyright Office that states you are the owner. (For a sample Certificate of Registration, see appendixes of this book and the accompanying CD.)
3. You can sue for infringement in a U.S. court of law.
4. You may receive statutory damages, ranging in amounts from $750 to $30,000 per infringement. If it's found that the infringement was willful (the infringers knew they were infringing or recklessly disregarded the possibility that they were using someone else's material), the court can award up to $150,000 per infringement.
5. You may receive attorneys' fees. Statutory damages and attorneys' fees are only awarded if your copyrighted work is registered before the infringement occurs. Consequently, it's to your advantage to register your work as soon as it's created.

Question 4

I'm a fiction writer in search of a publisher. Should I register my completed manuscript even before I find an agent or a publisher? What about my nonfiction book proposal, should I register it before I secure an agent or publisher?

Answer

An issue that often arises among writers who have not yet been published, but who have a completed (or semi-completed) manuscript or a book proposal, is whether to register their unpublished material. The answer is an unequivocal yes. Prior to sending out any original work that you've reduced to a tangible form to an agent, editor, publisher, producer, potential investor, or even reviewer, register it and place the copyright notice symbol on it. Because the work is not yet published, in place of the date of publication include the date of creation. Once your work gets published, change the notice to include date of first publication. Likewise, if you have a new speech, it's a smart idea to tape it and register it. If you have new photos that you took or a sculpture you created, before sending them off to a gallery or displaying them in any way, photograph and register them.

Question 5

What steps are involved in registering my copyrights with the U.S. Copyright Office? How much does it cost? How long does it take?

Answer

The steps involved in registering your copyright are as follows:

1. Select the proper form (see appendixes of this book and the accompanying CD for samples of the following forms):
   a. Use the TX form to register literary works, such as a book, an article, or software.
   b. Use the SR form to register a sound recording, such as a music CD or a speech.
   c. Use the VA form to register visual art, such as pictorial, graphic, sculptural, and architectural works.
   d. Use the PA form to register performance art, such as musical, dramatic, pantomime, and choreographic works.
   e. Use the SE form to register a series, such as weekly or monthly newsletters, magazines, or e-zines.
2. Complete and sign the correct application form.
3. Send the following materials to the U.S. Copyright Office:
   a. a properly completed and signed application form (that is, TX, SR, VA, PA, SE)
   b. a nonrefundable filing fee of $45 (filing fees change, so check www.loc.gov/copyright periodically)
   c. a cover letter addressed to the Registrar of Copyrights (see appendixes of this book and accompanying CD for a sample letter)
   d. a stamped, self-addressed postcard
   e. a nonrefundable deposit of the work (see U.S. Copyright Information Circular 1 on the companion CD).

You'd send all of that material to:

Library of Congress
Copyright Office
Registrar of Copyrights
101 Independence Avenue, SE
Washington, DC 20559-6000

For More Information

Updated information, FAQs, downloadable forms with instructions, and a current fee schedule can be found at www.loc.gov/copyright.

So let's go through the form to help you better understand what's being asked on the copyright registration form (see sample TX form in the Appendix).

1. Title of the work of art or authorship. In some cases it will be a working title. Is the work part of a collective body of work, such as a periodical, a series, or collection? If so, you're asked to provide information about the collective work.
2. Name of the copyright holder, nationality, or domicile. Birth date (if applicable) and date of death (if applicable). Is the work a work made for hire? What is the nature of authorship, for example, is the work to be copyrighted text or graphics? Is it the first three chapters, or is it the entire book? If there is more than one author, this section must be filled out specifying each author or copyright holder.
3. When was the work created? When was it first published?
4. Who is claiming the copyright? In most cases, it will be the copyright holder, but not always. And if the claimant is different from the original creator of the work, you must let the U.S. Copyright Office know what happened—how you obtained ownership.
5. Has the work or any part of it been previously registered?
6. Is it a derivative work of art?
7. Name and address of the person to be in communication with the U.S. Copyright Office in the event a problem arises and additional information is needed.
8. This is where you certify under oath that you are who you claim to be, either the copyright owner, claimant, transferee, authorized agent, or owner of rights.

Your Copyright Workshop

Complete the following to-do list.

✔	To-do list
	Have you affixed the copyright notice symbol to your work (either the © or ℗)?
	Have you downloaded the proper form for registration (for example, TX, SR, VA, PA, SE)?
	Have you filled out the form correctly?
	Did you sign the completed application form?
	Have you included your check for $45 for each registration form?
	Did you include a stamped, self-addressed postcard with your registration form?
	Did you include either one or two copies of your work as the deposit requirement?

If you have done all of the above, you are ready to send all items (in the same envelope) to the U.S. Copyright Office. Good luck!

Lesson 6:

Copyright Infringement

What is infringement? Infringement is theft. It's stealing. It's the use of someone's copyright-protected material without permission, without a valid license, or without that use falling within a permitted use (for example, fair use privilege or public domain). Such use includes reproducing, displaying, or distributing a copyrighted work. (See Lesson 7 for more information on fair use and public domain.)

Here are a few examples of infringing behaviors:

- photocopying material, such as books, magazines, newsletters, e-zines, articles, and CDs
- using quoted material
- reproducing testimonial letters
- using clips from videos or movies
- downloading music from the Internet
- copying text and graphics from the Internet
- performing someone else's material
- going beyond the scope of a license.

Let's look at how infringement might show up in the real world (see Table 7).

Often the law hinges on the definition of one word or its interpretation. The law and its interpretation is fact specific, and sometimes an answer can totally change depending on the addition, deletion, or

modification of specific facts. Therefore, my explanations are based on general principles of law. To determine answers to your specific set of facts, contact a copyright or trademark expert in your area.

Table 7. Real-world copyright infringement.

Behavior	Copyright infringement or not?
1. You saw a great cartoon in *Fast Company* that's precisely on the point you'd like to make in your next presentation. Do you need permission to copy that cartoon and convert it into an overhead just once?	1. Yes, because you made a copy of the cartoon, which was a protected work of art. It's irrelevant that you made only one copy; it's still infringement. You made the copy and converted it to an overhead for a presentation, without permission of the copyright holder. Infringement is when you use someone's copyright-protected work without permission, without a valid license, or without it falling within the fair use privilege.
2. Could you be liable if you sing karaoke in a bar? Could the bar?	2. Yes, both you and the bar owner could possibly be liable—you for violation of the copyright holder's performance rights, and the bar owner as a third-party infringer, who knew about the infringement (or should have known) and in some way contributed to it, or had the right and ability to supervise what was going on in the bar and benefited in some way from the infringing behavior.
3. You have displayed a miniature version of someone's homepage within the body of your website in an effort to make a point and strengthen your credibility. Have you violated anyone's rights?	3. Possibly. If the website's homepage is an original work of art or authorship (presumably it is), when you make a copy or reproduce that work of art without permission or a license, you infringe the copyright holder's rights. It's irrelevant that it's a miniature version of the homepage. You could also be liable for trademark infringement, if there is a protectable trademark located on the homepage.

Table 7. Real-world copyright infringement (continued).

Behavior	Copyright infringement or not?
4. Your friend sent you a scanned copy of an article he took from *Fortune* magazine. You read it and delete it. Have you infringed anyone's rights?	4. No, because you simply read it and deleted it. No copy was made; therefore, no copyright infringement.
5. You electronically receive a link to a *Newsweek* article from a friend. It's a great article, so you cut and paste the full version and forward it to six of your friends and colleagues. Have you done anything wrong? What if you forwarded the link instead of the cut-and-pasted version of the article?	5. Quite possibly you've infringed someone's rights, because in this case you forwarded the article to six people. For the purposes of the law, forwarding is tantamount to reproducing and distributing. Had you forwarded the link there would have been no infringement.
6. You see a segment on *60 Minutes* that would be a nice addition to a training presentation you've put together. You order and receive a copy of the segment from CBS. Can you legally show it during your presentation?	6. Possibly. If you told *60 Minutes* (in writing) that you wanted to use the video for your business presentation, and the copyright owner specifically gave you permission for that purpose, then the answer is yes. However, if the copyright owner assumed your use of the video was for a personal, not commercial use, you've likely gone beyond the scope of the license agreement you have with *60 Minutes*.
7. You purchase the latest version of Microsoft Office Suite. Your associate can't afford the cost, so you allow him to copy yours. Has a violation occurred? If so, by whom?	7. Yes. You the purchaser or owner of the software went beyond the scope of your license agreement with Microsoft. Therefore, you infringed the copyright. Your associate infringed Microsoft's copyright because he reproduced your copy and you because you let him.

(continued on next page)

Table 7. Real-world copyright infringement (continued).

Behavior	Copyright infringement or not?
8. Your assistant downloaded a 10-page position paper from the Internet, which was written by someone else. She reproduced the position paper and included it as part of the handout to be distributed to every member in your audience at an upcoming event. She did not have permission from the copyright owner to copy the position paper. Is anyone liable for copyright infringement? If so, who?	8. Yes. Your assistant is likely liable for copyright infringement because she actually created the copies. You could possibly be liable as a third-party infringer, even if you didn't do the actual copying. Third-party infringement shows up in two ways. First, if you knew (or should have known) about the infringing activity, and you in any way induced, caused, or materially contributed (substantially participated) in the infringing conduct of your assistant. This is called Contributory Infringement. Or second, if you have the right and the ability to supervise the infringing activity, and you derived a direct financial benefit from the activity. This is called Vicarious Infringement. In this case, an argument can be made that you had the right and the ability to supervise your assistant's activities, and you derived a direct financial benefit. If that's proven, you could be liable for copyright infringement.
9. Your client is pleased with your work and sends you a lovely testimonial letter. You post it on your website and include it in your other marketing materials. Have you done anything wrong?	9. Yes. Unless there was a release statement in the testimonial letter, whereby your client gave you permission to reproduce the letter, stating you were free to use the letter in any way, such as in your marketing materials, your reproduction of the client's testimonial (original work of authorship reduced to a tangible form) is copyright infringement.

Lesson 7:

Fair Use and Public Domain

Understanding Fair Use

Among the rights granted a copyright owner is the right to reproduce the work and the right to authorize others to reproduce the work. To create a balance between the rights of the copyright owner and the need for the public to have free access to creative works, the law places limitations on a copyright holder's exclusive right to prevent reproduction of his or her work. This is called the fair use doctrine and is used as a defense when someone is sued for copyright infringement. This principle was developed over time through courts deciding what is and what is not considered a fair and valid use of someone's copyright-protected work.

Contrary to popular belief, not every use is a fair use that falls within this exception, and fair use exceptions are not easy to determine because no specific number of words, lines, or notes may safely be used without permission from the copyright holder. When making a decision, the courts look to four factors:

1. purpose and character of the use, including whether it is for commercial or for nonprofit educational purposes
2. nature of the copyrighted work
3. how much of the work is being used and how substantial the portion used is in relationship to the copyrighted work as a whole

4. the effect of the use upon the potential market for or value of the copyrighted work—does the intended use affect the copyright owner's ability to make money?

Despite these specific guidelines, the public is still unclear as to how much of someone's copyright-protected work is permissible to use, because various courts interpret the rules differently.

Applying Fair Use Doctrine

Let's look at how the fair use doctrine can be applied.

A copyright holder has the right to make copies or reproduce the work and the right to prevent or limit that same use by others. Therefore, if a person duplicates an article or one page of a magazine or copyright-protected book, that's considered infringement. The fair use doctrine steps in to give the infringer a break—if possible—by saying if you copy one page of an article for your personal use, it's acceptable or permitted. However, if you copy the entire book, even for your personal use or make copies for your group, that would not be a fair use.

Let's look at an example of how the doctrine might be used to determine if someone's use of copyright-protected material is a fair or permitted use. Suppose you are a trainer who's been hired to do an off-site retreat or an internal training presentation. There are 50 participants in your session, and you duplicate handouts for each. Within each handout packet, as additional resource material, you include several articles you found in popular magazines. Is this a permitted use? Does the fair use doctrine apply to the duplication of 50 handouts, which include articles from magazines? Let's take a look.

1. *Purpose and character:* The courts favor nonprofit educational uses over commercial uses; however, even when a use takes place in an educational or nonprofit setting, if you make money, the courts are not likely to see your use as a fair use. The courts also look to uses that literally transform the work to something new and different, not merely a reproduction of someone's copyright-protected work. In the above scenario, you are hired to facilitate a program for pay—a commercial purpose. There is no evidence to suggest that you transformed the content of the handouts into new and different material. Therefore, at first blush and without more information, it's not likely this use would be found to pass the purpose and character test.

2. *Nature of the copyrighted work:* Many courts seem to favor the application of the fair use doctrine when the use in issue is a nonfiction copyright-protected work, rather than a work of fiction. Therefore it's less likely you can take a piece of fiction and claim fair use. The courts also give greater consideration if the work is a printed work instead of a commercial, audiovisual work, or if it's an educational text rather than a consumable workbook. Whether a use is for research, scholarship, news reporting, comment on someone's copyright-protected work, or a parody will also play a part in whether it passes the nature test. In the above situation, the articles were copied and don't appear to be used for research, news reporting, commentary, or parody, plus they are printed material, thus their inclusion into your handout packet probably will not pass the nature test of the fair use doctrine.
3. *Amount used or substantial portion:* It's impossible to know exactly how much of someone's copyright-protected work qualifies as a fair use. However, there are two things to take into account: (1) the amount used in relation to the length of the entire document and (2) whether the amount used goes to the heart or essence of the work. A few courts have determined that a journal article by itself is an entire work and that any copying of an entire work usually weighs against fair use. The use of photos and pictures create additional problems, because the user almost always wants the full image, in which case it's not likely the entire photo will be a permitted use. Sometimes, the use of a miniature or thumbnail version, or a low-resolution version—if used for education or research purposes—could be sufficient to render use a fair use. A user can also copy a portion of a copyright-protected work, such as a photo, or the articles in question in the example, and have that use not meet the qualified amount test because it goes to the heart of the work.
4. *Market impact:* What's the effect of the use upon the potential market for or the value of the copyrighted work? Does the intended use affect the copyright owner's ability to make money? These are the questions asked and answered when this fourth factor is applied. Effect on the market is often considered the most important of the four tests, because if a use interferes with the copyright holder's ability to be compensated for the

work, it's not likely your use will be considered a fair use. Infrequent use of quotations and photocopies may not have an unfavorable effect on the market, but duplicating software, videotapes, books, multimedia kits, and large amounts of documents can prove harmful to the copyright holder's bottom line. In the above scenario, making copies of articles for every attendee equals a lot of copies. This could be perceived as affecting the copyright holder's ability to make a sale.

Examples of Fair Use

Here are a few examples of activities the courts have viewed as fair use:

1. Quoted material was used in a book review to illustrate a point or make a comment.
2. Quoted material was used in a scholarly or technical work to illustrate a point or clarify the author's observations.
3. Copyrighted work was used as a parody or satire in certain instances.
4. An address or article was summarized in a news report, which included brief quotations.
5. A library reproduced a portion of a work that was damaged.
6. A teacher or a student reproduced a small part of a work as part of a lesson plan.
7. Portions of a work were reproduced during legislative or judicial proceedings or reports.
8. A copyright-protected work was inadvertently photographed in a news report.
9. In a specific instance, the verbatim copying of 29 words out of a total of 2,100 was held to be a permitted use.

Examples That Are Not Fair Use

Here are a few examples of activities the courts have viewed as not being fair use:

- Verbatim copying of 300 words out of a total of 200,000 was not fair use because it went to the heart of the copyrighted work.
- The contents of a magazine are not fair use, even though the cover was deemed fair use.

- Copying one minute and 15 seconds from a one hour and 12 minute motion picture was not fair use; it was copyright infringement.

(For some interesting legal cases on the fair use topic, see the Resources section of this book.)

Understand Public Domain

Another limitation on the copyright holder's right to prevent the reproduction of the work is the concept of public domain. Work that has fallen into the public domain is not protected by copyright and can be freely used, copied, published, or exchanged by anyone. Generally, the following works fall into the public domain:

1. works created by employees of the federal government, within the scope of their employment, for example, copyright forms, informational government circulars, and IRS forms (however, not all government works fall within public domain)
2. facts and events (however, creative expression of those facts is protected by copyright)
3. works not protected by copyright (see Lesson 1)
4. works published in the United States in 1922 or earlier
5. works that lost their protection due to abandonment, failure of the copyright holders to renew, or where the copyright holders didn't affix notice to the copyrighted work if it was created before March 1, 1989.

It's important to note that just because a work can be freely obtained from the Internet, the public library, or a magazine doesn't mean you have the right to freely publish, display, or copy it. (See the Resources section of this book for some public domain resources.)

Avoid Copyright Infringement

To avoid being sued for copyright infringement, or entangled in an unnecessary lawsuit, consider the following:

1. Register your copyrightable work with the U.S. Copyright Office. (If it's important enough to create, it's important enough to protect.)

2. Prominently place the copyright notice symbol on all work you've created.
3. Use a work-made-for-hire agreement whenever you hire an independent contractor to create a work of art or authorship.
4. Assume that if a work isn't yours, it belongs to someone else.
5. Assume that if it belongs to someone else, you need permission to use it before you use it.
6. Ask for permission, or get a license.
7. When it's impossible or impracticable to get permission, avoid using the material, unless you are absolutely positive the fair use doctrine applies to your situation.
8. If you use work in the public domain, double check to ensure that it is.
9. Read and understand all legal documents before you sign. (You may be giving away your rights and not know it.)

Get Permission to Use Copyright-Protected Material

In most cases, securing permission is not as difficult as it first appears. It just requires a little effort. Here's what you do:

1. Identify what you want to use, such as photos, cartoons, quotes, or text.
2. Get clear on how you want to use it, such as in an overhead in your training, music during your presentation, clips in your video, in your handout materials, or as part of an article or book.
3. Identify who you need to speak with to get permission, such as the author, publisher, magazine, cartoonist, movie studio, record company, or clearinghouse.
4. Identify where you must go to get permission. For printed materials look in front of the book or magazine for information on permissions or reprints, or consider the Copyright Clearance Center. For music, contact ASCAP, BMI, or SESAC. See additional resources in the Resources section.
5. Send a letter or email requesting permission to use the material. The letter should include the following:
   a. detailed description of what you want to use and where you found it (for example, if from a book, include exact title, page number, and any other identifying information)

b. how you want to use it or what rights you need
c. who you are
d. a signature line.

6. Make two copies (one for you and one for them to keep).

We've included a sample letter in the Appendix of this book and the companion CD for your review. Please feel free to take a look at it.

Your Copyright Workshop

Part 1. The Four-Factor Test

Taking into account a work of art that doesn't belong to you that you'd like to reproduce, display, distribute, or use in some way, does your use meet the fair use four-factor test: purpose, nature, amount, and market impact?

Work	Purpose	Nature	Amount	Market Impact
1.				
2.				
3.				
4.				
5.				
6.				

Part 2. Licenses and Permissions

If not, what action can you take to secure a license or permission to use it? If it's printed matter, contact the publisher for the permissions or rights department. You will need to submit your request in writing and be as detailed and specific as you can regarding how you want to use the copyrighted work.

Part 3. Public Domain

If something is in the public domain, make sure it is indeed in the public domain. Invest the time to do the research or don't use the work. Review the public domain resource websites (see Resources section of this book).

For More Information

For more information on copyright infringement, fair use (www.copyright.gov/fls/fl102.html), or the public domain, go to www.loc.gov/copyright or contact a lawyer.

Lesson 8:

What Is a Trademark?

Trademarks

A trademark is protection given to a distinctive word, name, phrase, logo, design, symbol, sound, color, smell, or a combination of the above, which identifies the source of the goods or services (see Table 8 for some examples). It lets the marketplace know—including you the consumer—from whom to purchase products and services and whom to complain to when there's a problem. Examples are Microsoft software, Nike running shoes, Hewlett Packard printers, and IBM computers.

Service Marks

A service mark is a trademark used in connection with services, rather than goods and products. You use a service mark when referring to services, such as accounting, coaching, speaking, training, or consulting. Examples are McKinsey Management Consulting, Booz Allen Consulting, Smith Barney Financial Services, and American Express. Someone who gets paid to provide a service can also sell products and thus have a trademark affixed to items, such as books, CDs, and videos.

Table 8. Examples of trademarks.

Device	Example of protected mark	What it identifies
Words	Microsoft Windows	Computer products
Names	McDonald's golden arches	Food service
Symbols	Nike swoosh	Athletic clothing
Sounds	Doink doink sound	*Law & Order*
Colors	Pink color used in fiberglass insulation products	Owens Corning Company
Logos	Stylized blue "Q" (Quicktime)	QuickTime (Apple)

Collective Marks

A collective mark is a word, name, or symbol used by members of a group, such as a trade association, cooperative, or union. One example is the National Speakers Association, which is a professional trade association for speakers. It uses the abbreviation NSA with a microphone wrapped through the S to designate its services and products.

Certification Marks

A certification mark is a symbol used to inform the public that the goods and services referred to meet a certain standard or quality, such as the Good Housekeeping Seal of Approval.

Lesson 9:

How to Select a Protectable Trademark

In choosing a trademark that can be protected, you are encouraged to choose carefully. There are four factors to take into consideration when selecting a mark that will withstand potential attacks and, thereby, ensure protectability. First, the symbol, word, or phrase is a trademark, as defined in Lesson 8 (trademark, service mark, collective mark, and certification mark), and collectively referred to in this book as the mark. Second, the mark is distinctive. Third, the mark is not confusingly similar to an existing mark. And fourth, the mark is a device such as words, symbols, or names used to distinguish goods or services.

Requirements of Distinctiveness

A mark qualifies for protection and can be registered if it is distinctive, which means the mark is unique and can be distinguished from other marks that identify goods and services because of its uniqueness. The more inherently distinctive, the more likely the mark can be protected. There are four categories of distinctiveness. The requirements of distinctiveness range from very distinctive and unique to not at all. Let's take a look in descending order of importance.

Coined or fanciful marks are most likely to be protected. The terms are made up, or coined terms, and have no prior meaning either in the English language or in any other language. Examples are Exxon for

petroleum products, Kodak for photographic products, and Esteemable Acts for self-esteem products and services.

Arbitrary is the next best type of mark, because it is unrelated to the product or service it's attached to, such as Dominos Pizza and Apple Computers. There is a greater likelihood this type of mark will be protected, because it's rare that someone else will use the mark in the same way because it was arbitrarily chosen.

A suggestive mark doesn't describe the content of the product or service. It merely hints at the nature of the product, such as Coppertone Suntan Lotion, Huggies Diapers, or Ever-Ready Batteries. For that reason, suggestive marks are often protected.

Finally, a descriptive mark is least protectable, because it fully describes the product or service. The only way a descriptive mark can be protected by trademark is if it has acquired a secondary meaning, where the public is likely to see it as more than just a description of the product or service offered.

How to Choose a Mark

After you've taken into account the requirements of distinctiveness, consider looking through the dictionary or thesaurus for words that you like, or just to get an idea of how creatively words can be put together. When I chose Esteemable Acts as a mark for my self-esteem products and services, I broke with tradition regarding spelling and pronunciation. The correct word for an act perceived as admirable or worthy is *estimable,* and pronounced like the word *estimate.* Instead, I played on the word esteem, thus esteemable. As a result, it's a protected and registered mark. If you prefer, you can hire a consultant to help you coin an original word and phrase. You'll find a list in the Resources section.

Confusing Similarity to Another Mark

Next let's look at the requirement that the mark you choose not be confusingly similar to marks already in existence. Here, you must pay close attention to the similarity between the marks themselves and the similarity between the goods and services that the marks represent. For example, suppose a hypothetical company called BITO sells cars and has a registered trademark. Then VITO, another hypothetical company,

comes along and wants to sells cars as well in the same community. It's likely a dispute will arise because VITO sounds confusingly similar to BITO, and they sell the same product. However, it's less likely that there will be a dispute if VITO came along and sold hair care products.

Distinguishing Goods and Services

The final requirement for protectability is that the mark be a device used to distinguish goods and services.

Here are some things that cannot be protected by a trademark:

1. Generic terms: These are basic category names, such as milk, bread, car, tissue, or house and can never be protected or registered as trademark. If by accident it happens (on rare occasion it has happened), the application can be cancelled. If a protectable mark includes a generic term and a distinctive word or phrase, then the generic term will be disclaimed and the distinctive phrase will be protected if it meets all the other requirements.
2. False connection: These are marks that falsely suggest a connection with people who are living or in some cases dead, institutions, beliefs, or national symbols, such as the American flag. John Hancock for the insurance company is a registered mark, because it was found that no one would assume the insurance company was connected to the founding father.
3. Trade or business names: These don't qualify because they are not inherently distinctive, unless they have established a secondary meaning.
4. Book titles: The general rule is that book titles cannot be protected by trademark because the book is a product and the title describes what's inside the product. There are two exceptions:
   — The title of a book series can be registered as a trademark, such as the *Chicken Soup for the Soul* series, the *One-Minute Manager* series, or the Dummies series, but not the individual titles, such as *Chicken Soup for the Teen Soul* or *Chicken Soup for the Writer's Soul*.
   — The title has acquired a secondary meaning. When I wrote *Esteemable Acts: 10 Actions for Building Real Self-Esteem,* it was not part of a series and it had not yet acquired a secondary

meaning in the marketplace. So as an entrepreneur, I got busy creating and expanding my service and product offerings to include many more things than just my book. I used my mark in association with all of my self-esteem products and services. It worked—Esteemable Acts is a protectable mark. Once the second book in the series is released later this year, I'll submit another trademark application to include protection for the title for the *Esteemable Acts* book series.

Your Trademark Workshop

For the purpose of this exercise, think about a mark you are currently using, but haven't registered yet. If none exists, make up a distinctive mark. Answer the following questions:

1. Does the mark fall within one of the four categories (trademark, service mark, collective mark, or certification mark)?
2. Is the mark distinctive, and if so, which category does it most comfortably fit into (fanciful, arbitrary, suggestive, or descriptive)?
3. Is it confusingly similar to other existing marks?
4. Does it fall within a protectable device category, such as a word, symbol, or name?

If you answered yes to all of the above, then you are ready to protect your mark.

Lesson 10:

How to Protect Your Trademark

Once you have selected a trademark, your next task is to protect it. Protecting your trademark involves using the mark, using the trademark symbol, avoiding generic use, monitoring the trademark, taking legal action where appropriate, registering the mark, and renewing the mark.

Use the Mark

The key to trademark protection is use. If you don't use it, you will lose it. Use is so essential to trademark protection that the general rule is that the first person or entity to use a mark, in commerce and/or in a particular territory, has priority over the person or entity that comes along later—even if the subsequent user registered the mark first. For example, Your Company has used a mark for 10 years, throughout the eastern half of the United States, to distinguish its widgets from those of other widget retailers. Four years ago, Other Company started to use the same mark and immediately registered it with the U.S. Patent and Trademark Office (USPTO). Even though Your Company has not registered the mark with the USPTO, it has priority over Other Company because it has used the mark consistently for a longer period of time and can prove it.

Use the Trademark Symbol

Affix the appropriate symbol next to your trademark. Although not required, it's a good idea to place the trademark notice symbol next to your trademark or service mark. Once again, this lets the world know that you claim ownership rights in this mark. Here are some guidelines for using trademark symbols:

- Use the TM designation for trademarks or to distinguish an entity selling primarily products and goods, even if it also provides a service. Proper placement is in the upper right hand corner of your word, phrase, logo, or design. For example: Microsoft™.
- Use the SM designation for service marks or to distinguish an entity selling primarily a service, even if it also sells goods. For example: EthnoConnect℠.
- The R inside the circle is only to be used after you have registered your valid trademark with the USPTO. To use it before registration is illegal. For example: Exxon®.

Avoid Generic Use

Don't allow your mark to become generic. It becomes generic when a term that was once distinctive and protected is improperly used in commerce. Examples of marks that were once protected but have now lost their protection are Thermos for vacuum-sealed bottles, Cellophane for clear wrapping paper, and Aspirin for headache medication. The public started to use thermos for all vacuum-sealed bottles, cellophane to identify all clear wrapping paper, and aspirin as the term for all pain medication. Some companies have invested tens of thousands of dollars to teach the public how to use their marks. Protection begins with how you use your mark. Use it as an adjective, not as a noun, such as Kleenex tissues, not just Kleenex.

Monitor the Trademark

It's not enough to spend money on creating and registering your mark, you must carefully monitor the marketplace to ensure no one else is using it and make sure people are using it properly. There are companies

that provide this service, such as Thomson & Thomson, Legal Zoom, and any number of law firms.

Take Legal Action

If you discover that someone is using your protected mark, contact a lawyer who will take appropriate and immediate action, such as sending a cease-and-desist letter. (See appendixes of this book and the companion CD for a sample cease-and-desist letter.) Take this action without delay. The longer you wait, the more likely someone can argue you weren't monitoring, thus protecting, your valuable mark.

Register the Mark

Register your mark with the USPTO. A trademark or service mark is entitled to protection even if you never register it. But there are clear benefits to registration. Here are a few:

1. Priority: You have the right to use your mark nationwide. Even if you are currently only using it in your local area, you have the right to expand.
2. Constructive notice: This simply means that no one can say, "I didn't know you were using the mark." The standard is that people know or should have known because all they had to do was a thorough search.
3. Right to sue: As a registered trademark owner, you have the right to sue in federal court (where it really counts) if someone infringes your mark.
4. Compensation: You have the right to recover lost profits, treble statutory damages, court costs, and attorneys' fees.
5. Customs deposit: You have the right to deposit your registration with the customs office in an effort to track and stop the importation that bears the infringing mark.
6. Evidence of validity: You don't have to further prove you are the trademark owner in the event you have to go to court to defend your mark. There is already the presumption that you are the owner because you have a valid registration.
7. Additional benefits of registration are that you have a valuable asset that can be sold, licensed, leased, or mortgaged. And such

a valuable asset increases and enhances the goodwill of your company in the event you wish to sell the business down the road. Finally, there can be tax benefits to registering your valuable trademarks.

Renew the Trademark

A trademark lasts forever, as long as you continue to use it in connection with the goods and services stated in the registration application and renew it every 10 years. An application for renewal of registration must be filed within one year before your trademark's tenth anniversary or within six months after the expiration date. You are also required to file a declaration of use between the fifth and sixth years after registration of your trademark. Because the USPTO doesn't send renewal notices of any kind, you are responsible for meeting your deadlines. If you fail to file a declaration of use or a renewal application within that time, your registration will expire.

For More Information

For more information on how to protect your trademark and post-registration requirements, go to www.uspto.gov.

Your Trademark Workshop

For this exercise, choose a mark you're currently using but haven't registered yet, or one that you intend to use. Answer the following questions:

1. Are you using the mark? If so, when did you start using it?
2. In what way are you using it? In relation to what products or services?
3. Where do you use it, within your state? Nationally? Internationally?
4. If you are using the mark, do you use the appropriate designation, such as TM or SM?
5. If you currently are using a mark, have you allowed it to become generic? Do you use it properly?

6. Are you monitoring the marketplace to make sure no one else is using your mark without your permission or a license?
7. Have you registered your mark with the USPTO?
8. If you've previously registered your mark, have you scheduled a date to file your declaration of use? Have you scheduled a date to file your renewal application?

Now that you've examined the steps required to protect your mark, if you haven't already done so, let's look at the actual registration process.

Lesson 11:

How to Register Your Trademark

We're in the final stretch. In this lesson you will learn how to register your own trademark without the assistance of a lawyer—if you so choose. The steps in registering your trademark are

- making an initial determination of classification
- doing a thorough search
- analyzing the report
- selecting the proper application form
- submitting specimens
- paying the fee
- checking the status of the application.

Make an Initial Determination of Classification

The first step in the registration process is to identify how you want to use your mark, such as in relation to your coaching, speaking, or training services, or on your merchandise, books, or handouts. That will help you determine the class in which you will register your mark. Simply think about all the ways you want to use your mark and on what. The USPTO has an online document called the "Acceptable Identification of Goods and Services Manual" that will assist you in making the determination (see Resources section for more information). For example, if you are a speaker and want to use your mark in

connection with your speaking, training, and teaching services, you would consider registering your mark under Classification 41. If you want to affix your mark to your program materials, informational brochures, and other paper products, you would consider filing under Classification 16.

Do a Thorough Search

You can do the search yourself and save money, or you can hire a firm that specializes in trademark searches. There are pros and cons to both, and you ultimately need to decide based on your available time and budget. If you do it yourself, make sure you do a thorough search, which includes a federal search of USPTO registrations, state registrations, common law search of those marks that are in use but have never been registered, domain name search, and a business name search (perhaps through Dun & Bradstreet). For a listing of firms that do the search, see the Resources section.

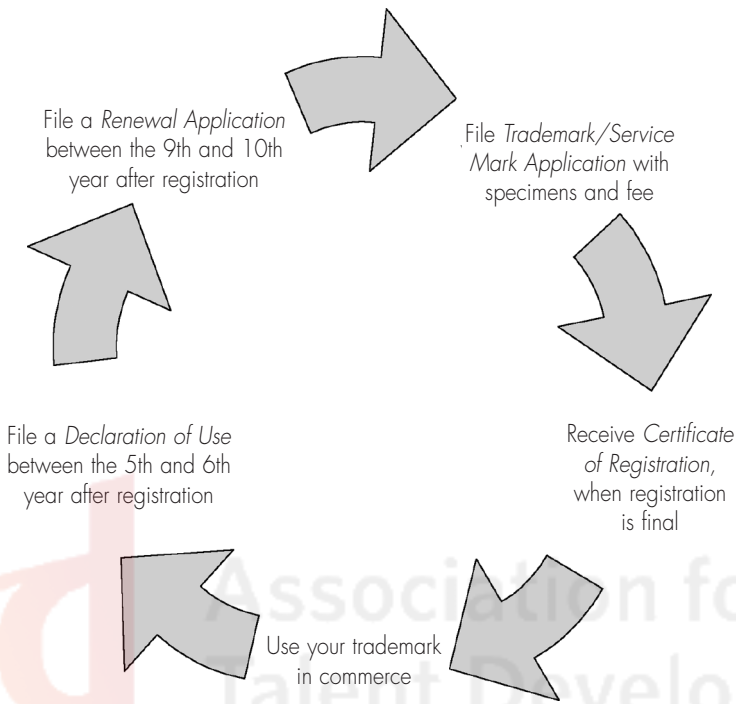
Analyze the Report

Whether you do the search yourself or hire someone, you must thoroughly analyze the information you receive. Make sure your mark is not confusingly similar in any way to an existing mark. Marks are compared for similarity in appearance, meaning, connotation, and sound. For example, a mark might not look or sound like an existing mark, but it might have a similar meaning.

Select the Proper Application Form

The application form you use will depend on whether you are currently using your mark in commerce or simply intend to use it at a later date. If you are presently using your mark, submit the Trademark/Service Mark Application (see Figure 1 for an illustration of the process), required specimens, and fee. If you are not yet using your mark, but have a bona fide (real) intention to do so, submit the Intent to Use Application (see Figure 2) with the required fee. Please note that the USPTO prefers that you apply using their online Trademark Electronic Application System (TEAS), but it is possible to file using paper forms (see appendix of CD for forms in PDF format).

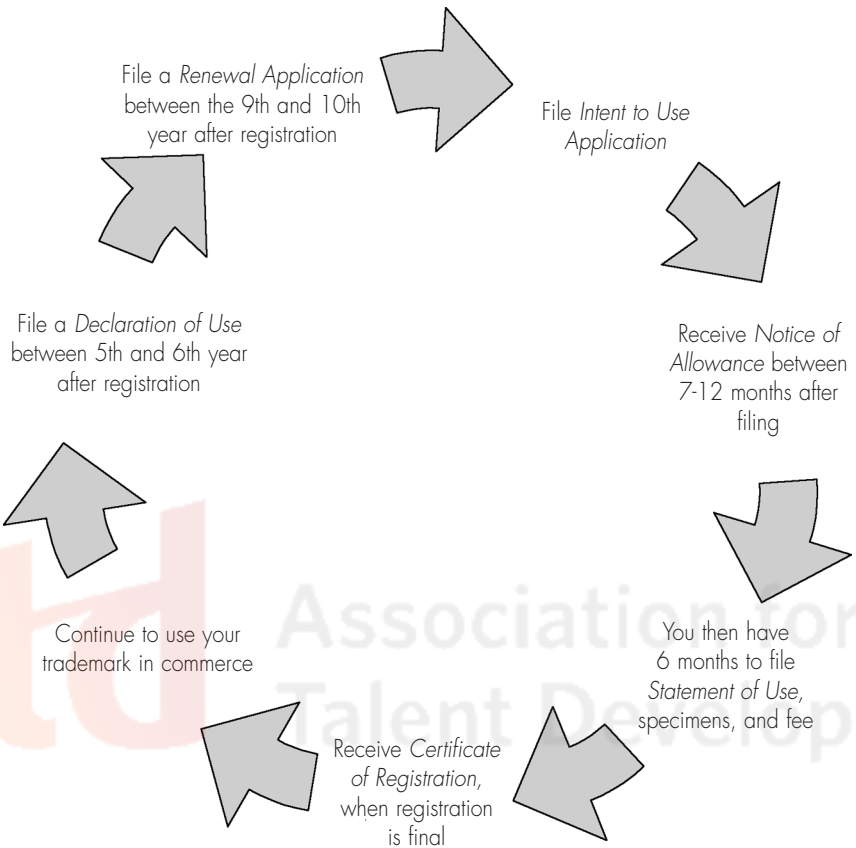
Figure 1. Overview of process for the Trademark/Service Mark Application.



Submit Specimens

If you file the Trademark/Service Mark Application, you are required to submit specimens or samples of how you will use the mark in commerce. Send three specimens for each classification. They could be three of the same item, such as three informational brochures, if you are registering under Classification 16, or three different specimens, such as one informational brochure, one workbook, and one blank writing journal. Your specimens could also be a combination of the three, such as one informational brochure and two workbooks, so long as your application package includes the requisite three specimens. To be valid, the specimens must specifically reference the applicant's type of service (if registration is under a service classification) or be affixed to a product (if registration is under a product

Figure 2. Overview of process for the Intent to Use Application.



classification). The USPTO provides for online registration through TEAS, where you can submit all required documentation, including JPEGs of your specimen. At your convenience, feel free to browse the TEAS system for a quick tutorial.

Pay the Fee

Currently the filing fee established by the USPTO for either the Intent to Use Application or the Trademark/Service Mark Application is $325 per class, per mark, if you submit your registration online through TEAS.

It's $375 per class, per mark if you submit a paper filing. Effective July 2005, there is a new online form you can use where you pay only $275 (TEAS Plus) if certain requirements are met, such as you must

1. file online
2. file a Trademark/Service Mark Application, not an Intent to Use Application
3. select goods and services descriptions from the "Acceptable Identification of Goods and Services Manual" only
4. agree to receive and communicate with the U.S. Patent and Trademark Office via email only.

There are other requirements you can find online at http://teasplus.uspto.gov/TeasPlus. The mailing address for all paper-filed trademark-related correspondence, with a few exceptions is

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Check Status of Application

Once you've filed your application and have received your first communication from the USPTO, you will be able to go online and periodically check the status of your trademark application. Go to www.uspto.gov, and click on trademark, then status. You'll be asked to input your serial number. You'll then be guided to your page. It's a good idea when you receive your first piece of communication from the USPTO to check to make sure all the information you submitted is the information on that status page. If there is an error, contact the attorney listed on your communication or on the status page immediately.

It's also a good idea to periodically check the Important Notices page for any updates that might affect you.

Information Required for the Trademark Application

The following information is asked of you in the application form and must be completely answered before the USPTO will accept it, so be prepared with all the requisite information before you sit down to fill out

the application (consider downloading a copy from the USPTO website for review before you begin):

- *applicant's name* (as an individual or entity)
- *business address* (post office boxes are acceptable)
- *type of entity* (individual, corporation, or partnership)
- *type of goods or services* (books, clothing, teddy bears, software, coaching services, speaking services, legal services)
- *basis for application* (Are you currently using the mark in the marketplace? Do you intend to use the mark?)
- *drawing of your mark* (How will it appear on your goods and services? Write out the word(s) or a stylized version of the word(s) or provide a picture of the design or logo.)
- *specimen* (If you're filing a Trademark/Service Mark Application, you'll need to submit a specimen, which shows how the mark will be used in connection with your goods or services.)
- *fee*. (This will depend on the number of classes you file under. For example, if you file online under three classifications, you'll submit $975; if you file a paper copy, you'll submit $1,125.)

A Few Final Notes Regarding Registration

As mentioned earlier, once you receive your first piece of communication from the USPTO, you can monitor the progress of your application at anytime online. Make sure you record the serial number of your application in a safe place, as that will be your reference number for checking your application status.

Carefully read every piece of communication the USPTO sends you. Each document is important, and each is time sensitive. If you miss a deadline, the USPTO will likely deem your application abandoned, in which case you lose your application fee and valuable time. Although you can start the process again, you will be required to pay another fee and possibly need to hire an attorney to handle the problem for you. Thus, it's not worth missing a deadline!

For More Information

For additional information on submission requirements and the registration process, go to www.uspto.gov.

Afterword

We've now come to the end of our Staying Legal Guide. My goal was to provide you with useful, easy-to-understand, ready-to-apply legal information. You now have enough knowledge to help you

1. identify works that can be protected by copyright and trademark
2. protect your valuable copyrights and trademarks
3. select a trademark that can be protected by law
4. register both your copyrights and your trademarks
5. avoid being sued for copyright infringement.

This was just an overview, designed to get you thinking about the basics of copyright and trademark law and to provide you with the answers to questions you never even thought to ask. Perhaps the information you received even raised a few more questions. If so, I encourage you to consult with a legal expert to help you resolve any specific issues you might have. At least now you will be able to discuss your concerns with confidence.

Until next time, I'm Francine Ward (www.stayinglegalguide.com, Francine@stayinglegalguide.com).

Resources

Copyrights and Licenses

- American Society of Composers, Authors, and Publishers (ASCAP): www.ascap.com (provides music licenses)
- Broadcast Music Incorporated (BMI): www.bmi.com (provides music licenses)
- Copyright Clearance Center: www.copyright.com (source for articles from newspapers and magazines)
- Harry Fox Agency: www.nmpa.org/hfa.html (provides synchronization licenses when using music in conjunction with multimedia programs)
- Media Image Resource Alliance: www.mira.com (source for photographs and online images)
- Motion Picture Licensing Corporation: www.mplc.com (provides video and film clip licenses)
- Music Bakery: www.musicbakery.com (royalty-free music)
- Society of European Stage Authors & Composers (SESAC): www.sesac.com (provides music licenses)
- United Media: www.unitedmedia.com (provides cartoon licenses)

Fair Use Legal Cases

Copying for Education

- *Basic Books, Inc. v. Kinko's Graphics Corp.*—Copying material from books for use in course materials
- *Encyclopedia Britannica Educational Corp. v. Crooks*—Recording television programs for use in classroom
- *Princeton University Press v. Michigan Document Services, Inc.*—Copying material from books for use in course materials

Copying for Research

- *American Geophysical Union v. Texaco Inc.*—Photocopying of scholarly articles by corporations for use in research
- *Sundeman v. The Seajay Society, Inc.* —Use of quoted material in oral presentations; copying for websites and public dissemination

Internet and Website Development

- *Kelly v. Arriba Soft Corp.*—Internet search engine copied photographs from the web for use as thumbnails
- *Los Angeles Times v. Free Republic*—Posting full newspaper articles on Internet bulletin board website

Multimedia Production

- *Higgins v. Detroit Educational Television Foundation*—Use of music in educational video for public television

Preparation of Publications

- *Castle Rock Entertainment, Inc. v. Carol Publishing Group, Inc.*—Trivia book created based on popular television show
- *Maxtone-Graham v. Burtchaell*—Use of excerpts from out-of-print book in new work
- *Worldwide Church of God v. Philadelphia Church of God*—Reprinting entire copy of out-of-print work

Uses of Photographs

- *Kelly v. Arriba Soft Corp.*—Photos copied off web for use as thumbnails
- *Nunez v. Caribbean International News Corp.* —Controversial photos published by newspaper without permission
- *Tiffany Design, Inc. v. Reno-Tahoe Specialty, Inc.*—Photograph digitally scanned and elements inserted into new photograph

Legal Resources and Consultants

- American Bar Association: www.abanet.org (lawyer referrals)
- Copyright Act: www.copyright.gov/title17/

- Findlaw: www.findlaw.com (resource for legal information and finding a lawyer)
- Freeadvice: www.freeadvice.com (resource for basic legal information)
- Law Info: www.lawinfo.com (resource for finding a lawyer)
- Legal Zoom: www.legalzoom.com (online legal resource)
- The Nolo Press: www.Nolo.com (resource for legal products and information)
- Publishing Law Center: www.publaw.com (resource for legal publishing information)
- Stanford University: http://fairuse.stanford.edu (resource for legal information on fair use)
- Thomson & Thomson: www.thomson-thomson.com (copyright and trademark search firm/monitoring services)
- Trademark Law: www.uspto.gov/web/offices/tac/tmlaw2.html (Trademark Act)

Public Domain Resources

- List of Material in the Public Domain: www.pdimages.com/pdlist.htm (how to get access to everything in the public domain)
- "The Mythology of the Public Domain: Exploring the Myths Behind Attacks on the Duration of Copyright Protection" by Scott M. Martin, senior vice president for Intellectual Property and Associate General Counsel, Paramount Pictures Corporation, published in *The Loyola of Los Angeles Law Review* (2002)
- Public Domain Images: www.pdimages.com (a website to assist you in identifying public domain videos)
- Public Domain Music: www.pdinfo.com (a website to assist you in identifying public domain songs, sheet music, and royalty-free music you can license)
- Stories and Characters That Have Had Their Copyright Expire: www.pdimages.com/stories.htm (a website to assist you in identifying public domain stories and characters)

U.S. Government Websites

- Library of Congress: www.loc.gov/copyright (official U.S. Copyright Office website, replete with FAQs, downloadable forms, and updated information)
  - Copyright Office Basics: www.copyright.gov/circs/circ1.html#wwp
- U.S. Patent and Trademark Office: www.uspto.gov (official U.S. Patent and Trademark Office website)
  - USPTO Acceptable Identification of Goods and Services Manual: http://tess2.uspto.gov/netahtml/tidm.html
  - USPTO Basic Facts: Trademark, Copyright, or Patent?: www.uspto.gov/web/offices/tac/doc/basic/trade_defin.htm
  - USPTO Keep a Trademark Registration FAQs: www.uspto.gov/web/trademarks/workflow/prfaq.htm
  - USPTO TEAS file online: www.uspto.gov/teas/index.html
  - USPTO TEAS Selection of Application Type: http://teasplus.uspto.gov/TeasPlus (for TEAS Plus requirements)
  - USPTO TEAS Tutorial: www.uspto.gov/teas/eTEAStutorial.htm
  - USPTO Trademark Electronic Search System (TESS): http://www.uspto.gov/ebc/tess/index.html

Appendix:

Sample Forms, Contracts, and Letters

- Sample Assignment of Copyright Agreement
- Sample Work-Made-for-Hire Agreement
- Sample Certificate of Registration from the U.S. Copyright Office
- Forms TX, SR VA, PA, SE
- Sample Cover Letter to the Registrar of Copyrights
- Sample Permission Request Letter
- Sample Cease-and-Desist Letter for Copyright/Trademark Infringement

Sample Assignment of Copyright Agreement

This Assignment of Copyright Agreement is entered into on this ___ day of _____ 200__, between _____ (the *"Assignee"*) and _____ (*"Assignor"*), regarding a work product commissioned by Assignee, produced by Assignor, and hereinafter known as the _____[name of work product] (the *"Work"*).

It is understood that Assignor, the creator of the Work is the sole copyright owner of the Work, and therefore has the right and the authority to transfer all rights to another party. It is also understood that the Assignor desires to assign all interest in, and rights and title to the Work over to the Assignee.

Therefore on this day, for the fair and negotiated sum of $_____, the Assignor transfers to the Assignee all interest in, and rights and title to the Work, including but not limited to content, graphics and other visuals, music, photos, notes, design elements, final product, the master recording, and any other component deemed a part of the Work.

It is agreed that as a result of this transfer of all rights by the copyright holder, that he/she will have no further rights to or interest in the Work.

Sample Work-Made-for-Hire Agreement

Note: A Work-Made-for-Hire agreement is used when you enter into a relationship with an independent contractor to create a product, such as a video, CD product, your website, or to take your photo. This allows you to retain all rights in the product you pay for. It must be signed by you and the person who creates the work or who employs the person who creates the work. This is a sample and must be customized to your particular needs. When using any contract template, it is advisable to have an expert review it.

TO: [name of person who is creating the work of art, for example, website, graphics, and photos] (the *"Contractor"*).

[company name or individual person who is hiring the independent contractor to create the work of art or authorship] (the *"Client"*).

Description of work: _____ (hereinafter known as the *"Work"*).

Due date: _____ (hereinafter known as the *"Due Date"*).

Fee: $_____ (hereinafter known as the *"Fee"*).

Contractor agrees to create a work of art based on the specific specifications set forth by Client. The Client agrees to pay the Contractor the Fee upon Client's acceptance of the Work.

It is hereby understood and agreed that **this is a work-made-for-hire relationship** and that the Client, not Contractor, owns all the rights to title and interest in the Work, including but not limited to content, graphics and other visuals, music, photos, design elements, source code, final product, and any other work that has gone into the creation of and the desired use of the Work.

Contractor warrants that the Work will be an original work that has not been in the public domain or previously created, and that the Work will be free of any unauthorized extractions from other sources.

Client agrees to grant to Contractor a limited license to use the Work in sales and marketing presentations to show to potential clients.

I agree to perform the work listed above, and I accept the terms of this agreement as stated above.

Signature_____ SN or Federal Tax ID #_____
(Vendor) (Required by IRS)

Sample Certificate of Registration from the U.S. Copyright Office

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form TX
For a Nondramatic Literary Work
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER
TX 6-410-253
[redacted]
TX TXU

EFFECTIVE DATE OF REGISTRATION
7 7 06
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼
Job Aids Basics

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2 a NAME OF AUTHOR ▼
Joe Willmore

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☒ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ United States of America
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
If the answer to either of these questions is "Yes," see detailed instructions.
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼
Entire Text

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
If the answer to either of these questions is "Yes," see detailed instructions.
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

c NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
If the answer to either of these questions is "Yes," see detailed instructions.
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases.
2006 ◀ Year

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published.
Month ▶ 01 Day ▶ 02 Year ▶ 2007
◀ Nation

4 See instructions before completing this space.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼
American Society for Training & Development
1640 King Street, Box 1443
Alexandria, VA 22313-1443

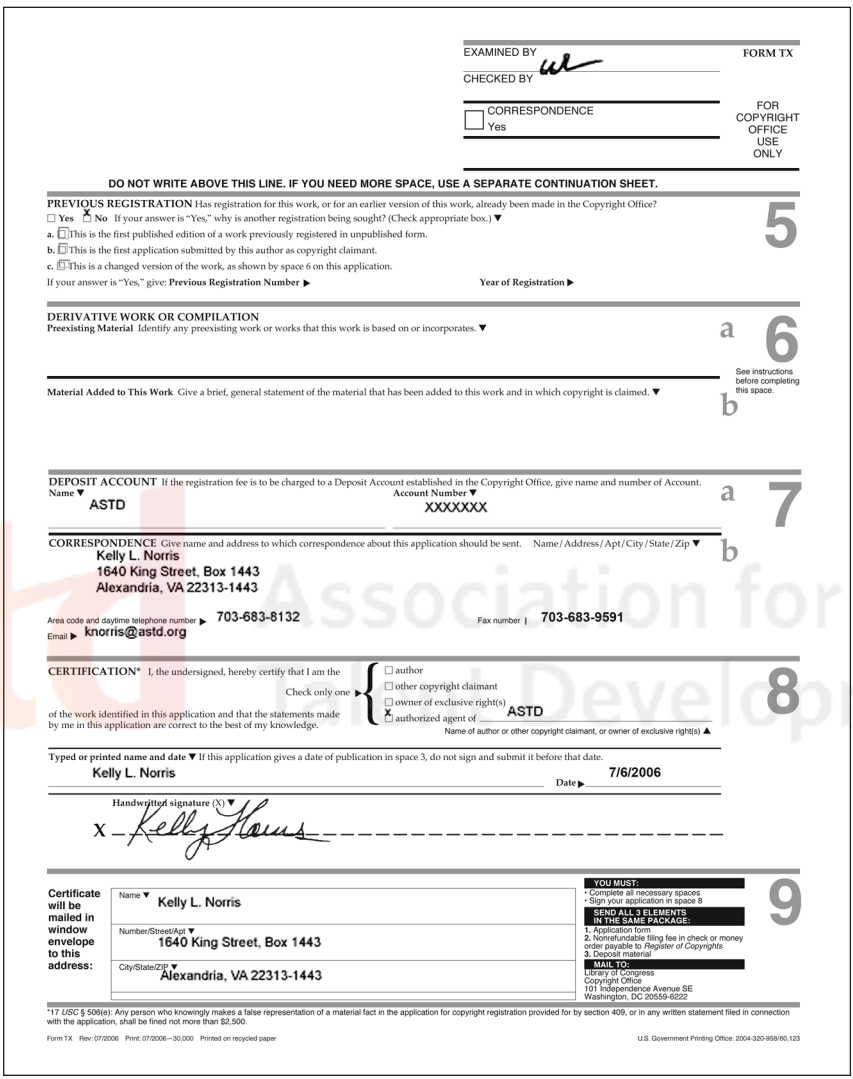
TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼
By Written Agreement

DO NOT WRITE HERE OFFICE USE ONLY
APPLICATION RECEIVED
[redacted]
ONE DEPOSIT RECEIVED
TWO DEPOSITS RECEIVED
[redacted]
FUNDS RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page. • See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE
Page 1 of 2 pages

Sample Certificate of Registration from the U.S. Copyright Office (continued)



EXAMINED BY
CHECKED BY
FORM TX

☐ CORRESPONDENCE Yes

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? 5
☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼
a. ☐ This is the first published edition of a work previously registered in unpublished form.
b. ☐ This is the first application submitted by this author as copyright claimant.
c. ☐ This is a changed version of the work, as shown by space 6 on this application.
If your answer is "Yes," give: **Previous Registration Number** ▶ **Year of Registration** ▶

DERIVATIVE WORK OR COMPILATION 6
Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼ a

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼ b

See instructions before completing this space.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. 7
Name ▼ ASTD **Account Number** ▼ XXXXXXX a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼ b
Kelly L. Norris
1640 King Street, Box 1443
Alexandria, VA 22313-1443

Area code and daytime telephone number ▶ 703-683-8132 Fax number ▶ 703-683-9591
Email ▶ knorris@astd.org

CERTIFICATION* I, the undersigned, hereby certify that I am the 8
Check only one ▶ ☐ author ☐ other copyright claimant ☐ owner of exclusive right(s) ☒ authorized agent of ASTD
Name of author or other copyright claimant, or owner of exclusive right(s) ▲
of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.
Kelly L. Norris Date ▶ 7/6/2006

Handwritten signature (X) ▼
X Kelly Norris

Certificate will be mailed in window envelope to this address: 9
Name ▼ Kelly L. Norris
Number/Street/Apt ▼ 1640 King Street, Box 1443
City/State/ZIP ▼ Alexandria, VA 22313-1443

YOU MUST:
• Complete all necessary spaces
• Sign your application in space 8

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:
1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

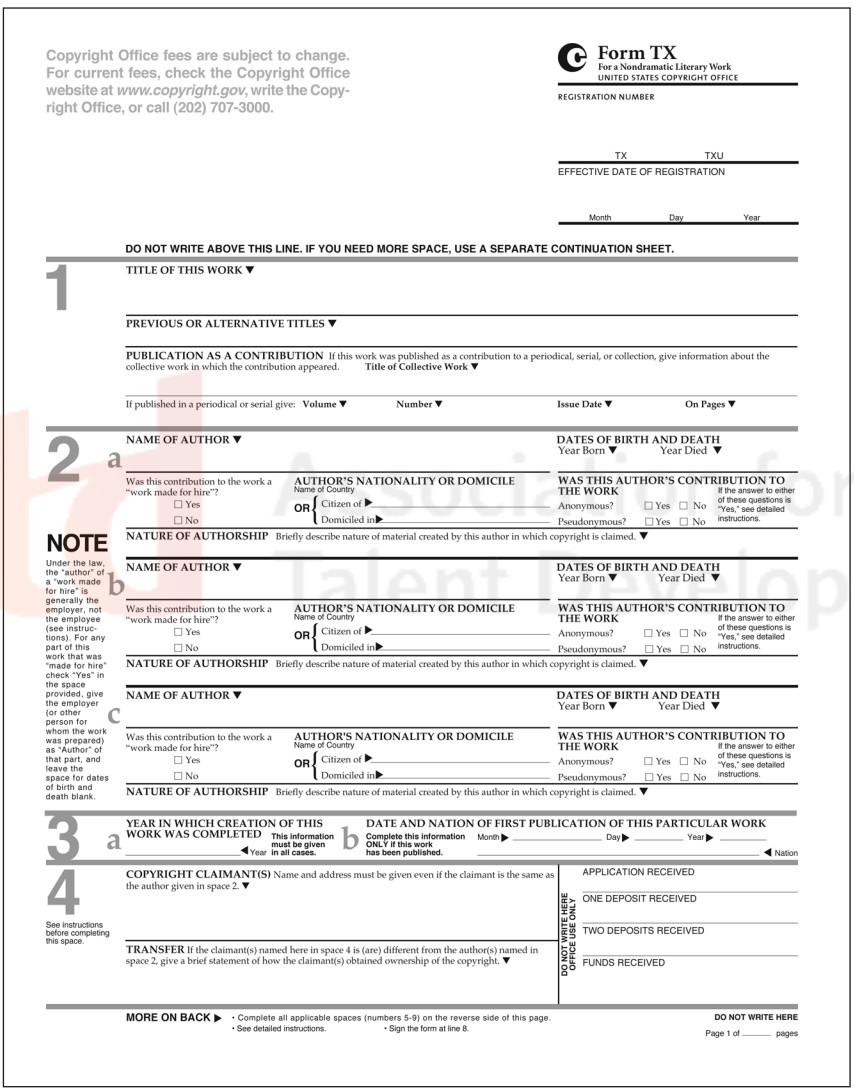
MAIL TO:
Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6222

*17 *USC* § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

Form TX Rev: 07/2006 Print: 07/2006—30,000 Printed on recycled paper U.S. Government Printing Office: 2004-320-958/60,123

Form TX

The following is an example of Form TX for a copyright application for a published or unpublished nondramatic work. For up-to-date forms, instructions, and fee schedules, go to www.copyright.gov/forms/.



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

Form TX
For a Nondramatic Literary Work
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TX TXU

EFFECTIVE DATE OF REGISTRATION

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2 a NAME OF AUTHOR ▼ DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of ▶ / Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK If the answer to either of these questions is "Yes," see detailed instructions. Anonymous? ☐ Yes ☐ No Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

b NAME OF AUTHOR ▼ DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of ▶ / Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK If the answer to either of these questions is "Yes," see detailed instructions. Anonymous? ☐ Yes ☐ No Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

c NAME OF AUTHOR ▼ DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of ▶ / Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK If the answer to either of these questions is "Yes," see detailed instructions. Anonymous? ☐ Yes ☐ No Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases. ◀ Year

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Complete this information ONLY if this work has been published. Month ▶ Day ▶ Year ▶ ◀ Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

See instructions before completing this space.

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

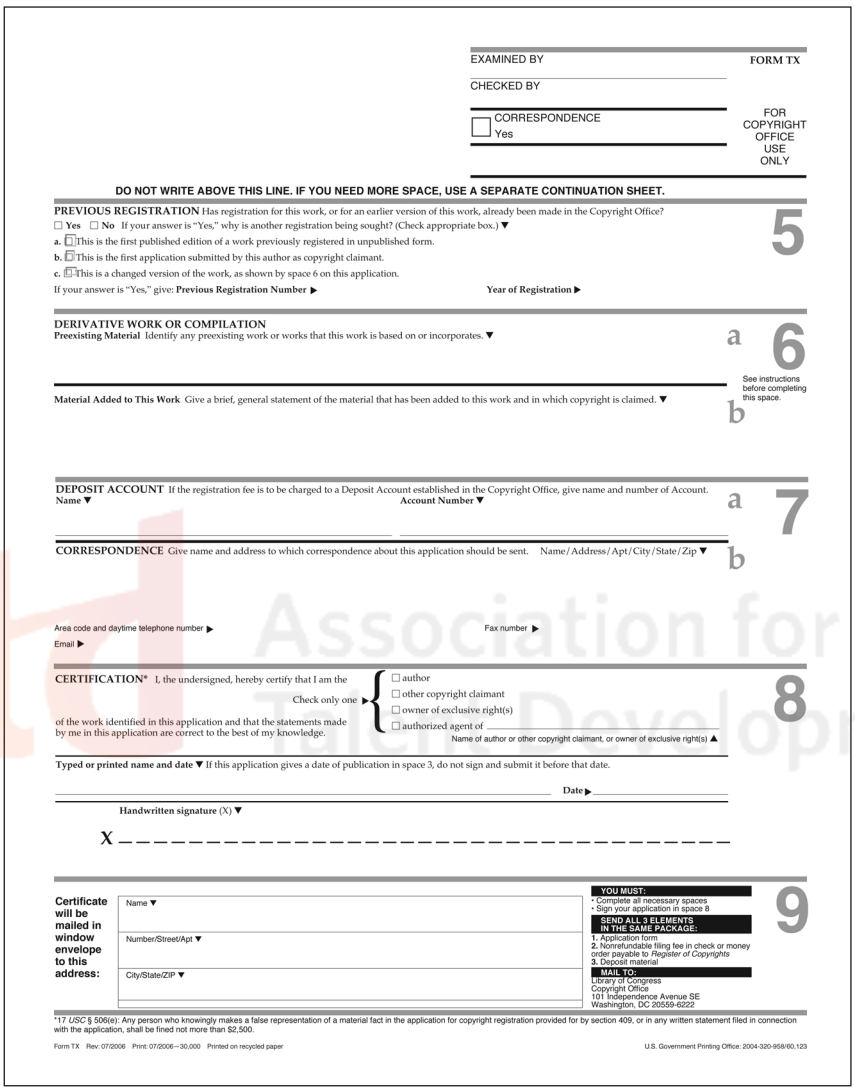
FUNDS RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page. • See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of ____ pages

Form TX (continued)



EXAMINED BY — FORM TX

CHECKED BY

☐ CORRESPONDENCE Yes

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? 5

☐ **Yes** ☐ **No** If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

a. ☐ This is the first published edition of a work previously registered in unpublished form.

b. ☐ This is the first application submitted by this author as copyright claimant.

c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: **Previous Registration Number** ▶ **Year of Registration** ▶

DERIVATIVE WORK OR COMPILATION 6

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼ a

See instructions before completing this space.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼ b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. 7

Name ▼ **Account Number** ▼ a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼ b

Area code and daytime telephone number ▶ Fax number ▶

Email ▶

CERTIFICATION* I, the undersigned, hereby certify that I am the 8

Check only one ▶ ☐ author ☐ other copyright claimant ☐ owner of exclusive right(s) ☐ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Date ▶

Handwritten signature (X) ▼

X

Certificate will be mailed in window envelope to this address: 9

Name ▼

Number/Street/Apt ▼

City/State/ZIP ▼

YOU MUST:
- Complete all necessary spaces
- Sign your application in space 8

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:
1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

MAIL TO:
Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6222

*17 *USC* § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

Form TX Rev: 07/2006 Print: 07/2006—30,000 Printed on recycled paper U.S. Government Printing Office: 2004-320-958/60,123

Form SR

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

Form SR
For a Sound Recording
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

SR SRU

EFFECTIVE DATE OF REGISTRATION

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼

PREVIOUS, ALTERNATIVE, OR CONTENTS TITLES (CIRCLE ONE) ▼

2 a NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
❑ Yes
❑ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ / Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
If the answer to either of these questions is "Yes," see detailed instructions.
Anonymous? ❑ Yes ❑ No
Pseudonymous? ❑ Yes ❑ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire," check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
❑ Yes
❑ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ / Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
If the answer to either of these questions is "Yes," see detailed instructions.
Anonymous? ❑ Yes ❑ No
Pseudonymous? ❑ Yes ❑ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

c NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
❑ Yes
❑ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ / Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
If the answer to either of these questions is "Yes," see detailed instructions.
Anonymous? ❑ Yes ❑ No
Pseudonymous? ❑ Yes ❑ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
This information must be given in all cases.
◀ Year

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published.
Month ▶ Day ▶ Year ▶
◀ Nation

4 a COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

See instructions before completing this space.

b TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY
APPLICATION RECEIVED
ONE DEPOSIT RECEIVED
TWO DEPOSITS RECEIVED
FUNDS RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5–9) on the reverse side of this page. • See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE
Page 1 of ____ pages

Form SR (continued)

EXAMINED BY | FORM SR

CHECKED BY

CORRESPONDENCE
❑ Yes

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? **5**

❑ **Yes** ❑ **No** If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

a. ❑ This work was previously registered in unpublished form and now has been published for the first time.

b. ❑ This is the first application submitted by this author as copyright claimant.

c. ❑ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: **Previous Registration Number** ▼ **Year of Registration** ▼

DERIVATIVE WORK OR COMPILATION **6**

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

a

See instructions before completing this space.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a deposit account established in the Copyright Office, give name and number of Account. **7**

Name ▼ **Account Number** ▼

a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼

b

Area code and daytime telephone number Fax number

Email

CERTIFICATION* I, the undersigned, hereby certify that I am the **8**

Check only one ▼

❑ author ❑ owner of exclusive right(s)

❑ other copyright claimant ❑ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Date

Handwritten signature (x) ▼

x

Certificate will be mailed in window envelope to this address **9**

Name ▼

Number/Street/Apt ▼

City/State/Zip ▼

YOU MUST:
- Complete all necessary spaces
- Sign your application in space 8

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:
1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

MAIL TO:
Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000

*17 *USC* §506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

Form SR Rev: 07/2006 Print: 07/2006—xx,000 Printed on recycled paper U.S. Government Printing Office: 2005-xxx-xxx/60,xxx

Form VA

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

Form VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

VA VAU

EFFECTIVE DATE OF REGISTRATION

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

Title of This Work ▼

NATURE OF THIS WORK ▼ See instructions

Previous or Alternative Titles ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. **Title of Collective Work ▼**

If published in a periodical or serial give: **Volume ▼** **Number ▼** **Issue Date ▼** **On Pages ▼**

2

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

a

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR { Citizen of
Domiciled in

Was This Author's Contribution to the Work
If the answer to either of these questions is "Yes," see detailed instructions.
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

Nature of Authorship Check appropriate box(es). **See instructions**
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

b

Name of Author ▼

Dates of Birth and Death
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR { Citizen of
Domiciled in

Was This Author's Contribution to the Work
If the answer to either of these questions is "Yes," see detailed instructions.
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

Nature of Authorship Check appropriate box(es). **See instructions**
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3

a **Year in Which Creation of This Work Was Completed**
This information must be given in all cases.
Year

b **Date and Nation of First Publication of This Particular Work**
Complete this information ONLY if this work has been published.
Month Day Year
Nation

4

See instructions before completing this space.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

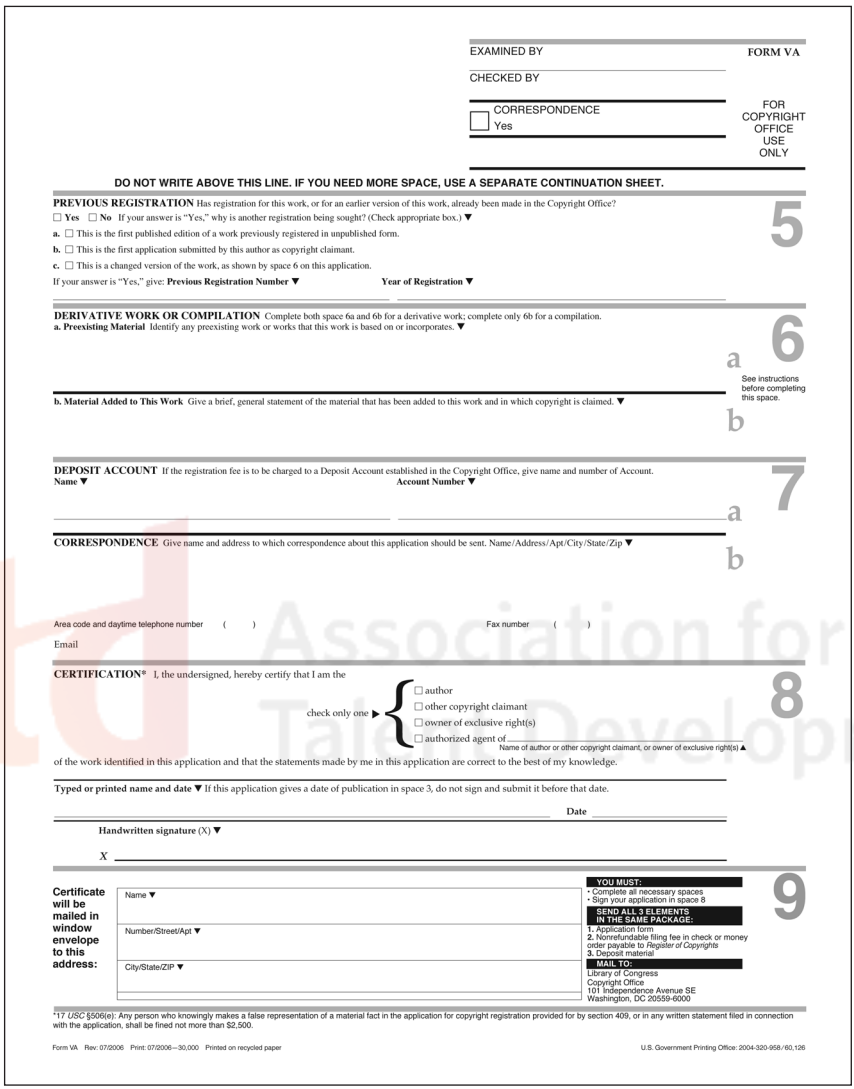
TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page. • See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE
Page 1 of _____ pages

Form VA (continued)



EXAMINED BY — FORM VA

CHECKED BY

☐ CORRESPONDENCE Yes — FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? 5

☐ **Yes** ☐ **No** If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

a. ☐ This is the first published edition of a work previously registered in unpublished form.

b. ☐ This is the first application submitted by this author as copyright claimant.

c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: **Previous Registration Number** ▼ **Year of Registration** ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation. 6

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼ a

See instructions before completing this space.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼ b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. 7

Name ▼ **Account Number** ▼ a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼ b

Area code and daytime telephone number ( ) Fax number ( )

Email

CERTIFICATION* I, the undersigned, hereby certify that I am the 8

check only one ▶ ☐ author ☐ other copyright claimant ☐ owner of exclusive right(s) ☐ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Date

Handwritten signature (X) ▼

X

Certificate will be mailed in window envelope to this address: 9

Name ▼

Number/Street/Apt ▼

City/State/ZIP ▼

YOU MUST:
- Complete all necessary spaces
- Sign your application in space 8

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:
1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

MAIL TO:
Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000

*17 *USC* §506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

Form VA Rev: 07/2006 Print: 07/2006—30,000 Printed on recycled paper U.S. Government Printing Office: 2004-320-958/60,126

Form PA

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

Form PA
For a Work of Performing Arts
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

PA PAU

EFFECTIVE DATE OF REGISTRATION

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼

PREVIOUS OR ALTERNATIVE TITLES ▼

NATURE OF THIS WORK ▼ See instructions

2 a NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ____ / Domiciled in ____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
If the answer to either of these questions is "Yes," see detailed instructions.
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ____ / Domiciled in ____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
If the answer to either of these questions is "Yes," see detailed instructions.
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

c NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ____ / Domiciled in ____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
If the answer to either of these questions is "Yes," see detailed instructions.
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
This information must be given in all cases.
Year

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published.
Month ____ Day ____ Year ____
Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

See instructions before completing this space.

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page. • See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of ____ pages

Form PA (continued)

EXAMINED BY — FORM PA

CHECKED BY

☐ CORRESPONDENCE Yes — FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? 5

☐ **Yes** ☐ **No** If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼ If your answer is No, do **not** check box A, B, or C.

a. ☐ This is the first published edition of a work previously registered in unpublished form.

b. ☐ This is the first application submitted by this author as copyright claimant.

c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: **Previous Registration Number** ▼ **Year of Registration** ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation. 6

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼ a

See instructions before completing this space.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼ b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. 7

Name ▼ **Account Number** ▼ a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip▼ b

Area code and daytime telephone number ( ) Fax number ( )

Email

CERTIFICATION* I, the undersigned, hereby certify that I am the 8

Check only one ▶
- ☐ author
- ☐ other copyright claimant
- ☐ owner of exclusive right(s)
- ☐ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Date

Handwritten signature (X) ▼

x

Certificate will be mailed in window envelope to this address: 9

Name ▼

Number/Street/Apt ▼

City/State/Zip ▼

YOU MUST:
- Complete all necessary spaces
- Sign your application in space 8

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:
1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

MAIL TO:
Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000

*17 *USC* §506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

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Form SE

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

Form SE
For a Serial
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

EFFECTIVE DATE OF REGISTRATION

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS SERIAL ▼

Volume ▼ Number ▼ Date of Copies ▼ Frequency of Publication ▼

PREVIOUS OR ALTERNATIVE TITLES ▼

2 a NAME OF AUTHOR ▼ — DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of ▶ / Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK If the answer to either of these questions is "Yes," see detailed instructions. Anonymous? ☐ Yes ☐ No Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼
☐ Collective Work Other:

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b NAME OF AUTHOR ▼ — DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of ▶ / Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK If the answer to either of these questions is "Yes," see detailed instructions. Anonymous? ☐ Yes ☐ No Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼
☐ Collective Work Other:

c NAME OF AUTHOR ▼ — DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of ▶ / Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK If the answer to either of these questions is "Yes," see detailed instructions. Anonymous? ☐ Yes ☐ No Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼
☐ Collective Work Other:

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases. ◀ Year

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Complete this information ONLY if this work has been published. Month ▶ Day ▶ Year ▶ ◀ Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

See instructions before completing this space.

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

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ONE DEPOSIT RECEIVED
TWO DEPOSITS RECEIVED
FUNDS RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5–9) on the reverse side of this page. • See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE
Page 1 of _____ pages

Form SE (continued)

EXAMINED BY — FORM SE

CHECKED BY

☐ CORRESPONDENCE Yes

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? 5

☐ **Yes** ☐ **No** If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

a. ☐ This is the first published edition of a work previously registered in unpublished form.

b. ☐ This is the first application submitted by this author as copyright claimant.

c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: **Previous Registration Number** ▶ **Year of Registration** ▶

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation. 6

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼ a

See instructions before completing this space.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼ b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. 7

Name ▼ **Account Number** ▼ a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼ b

Area code and daytime telephone number ▶ Fax number ▶

Email ▶

CERTIFICATION* I, the undersigned, hereby certify that I am the 8

Check only one ▶ { ☐ author ☐ other copyright claimant ☐ owner of exclusive right(s) ☐ authorized agent of _____ }

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Date ▶ _____

Handwritten signature (X) ▼

X _____

Certificate will be mailed in window envelope to this address: 9

Name ▼

Number/Street/Apt ▼

City/State/Zip ▼

YOU MUST:
- Complete all necessary spaces
- Sign your application in space 8

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:
1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

MAIL TO:
Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6222

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Sample Cover Letter to the Registrar of Copyrights

Note: Attach this cover letter to your copyright registration application package. It allows the Registrar of Copyrights to easily identify whether you have all the required materials.

Date

Library of Congress
Copyright Office—Registrar of Copyrights
101 Independence Avenue, SE
Washington, DC 20559-6000

Dear Registrar of Copyrights:

I am submitting the enclosed application for registration of a copyright. The deposited materials are my original work of art or authorship and as you can see it is in a tangible form. Enclosed please find the following for your review:

1. This cover letter addressed to the ***Registrar of Copyrights.***
2. A correct and properly completed application form [specify which form].
3. A nonrefundable filing fee of $45 in U.S. currency.
4. A stamped, self-addressed postcard addressed to me, demonstrating receipt of my materials by you.
5. One [or two] copy [verify how many you'll need to send] of a nonrefundable deposit of my work.

Thank you.

Sincerely,

_____

Sample Permission Request Letter

Date

Dear Ms. Simon:

My name is Dana Westrin, and I'm a corporate trainer specializing in leadership development. Frequently, I give presentations before audiences ranging from 50 to 300 people. In an effort to enhance their experience, I like to include visual overheads. I also like to include resource material in my handout packet. I am writing to request permission to use material from your book, *The Effective Leader: A Primer for New Leaders and Managers*. The details are as follows:

Book: *The Effective Leader: A Primer for New Leaders and Managers*

Author: Joanna Simon

Type of Publication: Book

Publication date, copyright year, edition, ISBN #: 2006, 2nd edition, #-#####-###-#.

Rights Needed #1: Use cartoon title, In Your Shadow, Chapter 2, page 26. To be used as overhead.

Rights Needed #2: Use cartoon title, Leaders & Managers, Chapter 3, page 41. To be used as overhead.

Rights Needed #3: Use text in chapter 4, pages 52-54. To be included as resource material in handout.

Please review my request and let me know the terms for licensing your material and the exact form of credit you require. If you are in agreement, please sign and date both copies of this letter and return one to me with any additional information you'd like me to know.

Sincerely,

Joanna Simon

_____

Dana Westrin

_____

Rights Holder (or Permissions Dept. Publisher)

Sample Cease-and-Desist Letter for Copyright/Trademark Infringement

*Note: The specific language of a **Cease-and-Desist** letter depends on a variety of conditions. As a result, the following is a sample letter used in one particular situation: infringement of a copyright. Feel free to modify the text to suit your needs, including adding additional paragraphs. However, because it's a legal document, you should have a lawyer review it before sending it out.*

Date

Ms./Mrs./Mr.
Address
City, State, Zip

DEAR SIR OR MADAM,

I've become aware that you have made an unauthorized use of my copyrighted work titled _____ and it has also come to my attention that you are using my protected trademark titled _____ in a prohibited manner (the combined works hereinafter known as the *"Work"*). I have reserved all rights in the Work, and have registered both the copyright and the trademark in question. Since you have and continue to use my material without my consent, and because your use does not ostensibly fall within the Fair Use doctrine, by using my protected work you have infringed both my copyright and my trademark. Enclosed are samples of your unauthorized and illegal use.

The purpose of this letter is to advise you of my rights and ask that you discontinue your use immediately; secondly, to inform you of the consequences of your inaction. Therefore I demand that you immediately STOP using and distributing all infringing copies of the Work, including electronic copies. I also request that you send me any and all unused and undistributed copies, or destroy them immediately. Further, I demand that you desist from this or any other infringement of my rights in the future. Please reply to this letter within fourteen (14) business days indicating your compliance with my request.

All relevant information in this letter is accurate as of the time it was compiled. In an effort to avoid bringing lawyers into the picture, I request that you please confirm, in writing, that you have complied with my reasonable request. If I do not receive such notice within the stipulated time, you leave me no choice but to resort to a legal remedy.

Thank you,

_____

About the Author

Francine Ward, internationally known speaker and personal coach, is an equally respected attorney and expert on copyright and trademark law. A 1989 graduate of Georgetown University Law Center, Ward is admitted to the New York State Bar and is a member of the American Bar Association's Intellectual Property Law Section, the National Speakers Association, the American Society for Training & Development, and the International Coach Federation. She also finds time to participate in a number of community service activities, such as Rotary International, Marin Services for Women, volunteering to speak at local schools, Marin County Women's Jail, Covenant House, Marin Abused Women Services, and Timothy Murphy School for Boys.

She's the author of *Esteemable Acts: 10 Actions for Building Real Self-Esteem* and *52 Weeks of Esteemable Acts: A Guide to Right Living*. She's been featured in the *Chicago Tribune, Washington Post, Black Enterprise,* and *Heart & Soul Magazine*. She's also appeared on *The Tavis Smiley Show, Good Day New York,* and *Good Day Atlanta*. PBS will profile her life and work in a show scheduled for January 2007.

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