



Update from the U.S. Copyright Office

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Hot Topics in Trademark and Copyright Law
July 20, 2023

THE COPYRIGHT OFFICE TODAY



- Administers copyright law
- Creates/implements regulations
- Makes/maintains public records
- Administers statutory licenses
- Advises Congress
- Provides information to the public
- Participates in the international copyright community

A RECENT ENTRANCE TO PARADISE



*Copyright claimant: Dr. Steven Thaler
Author of the work: the "Creativity Machine"*

BURROW-GILES LITHOGRAPHIC CO. V. SARONY



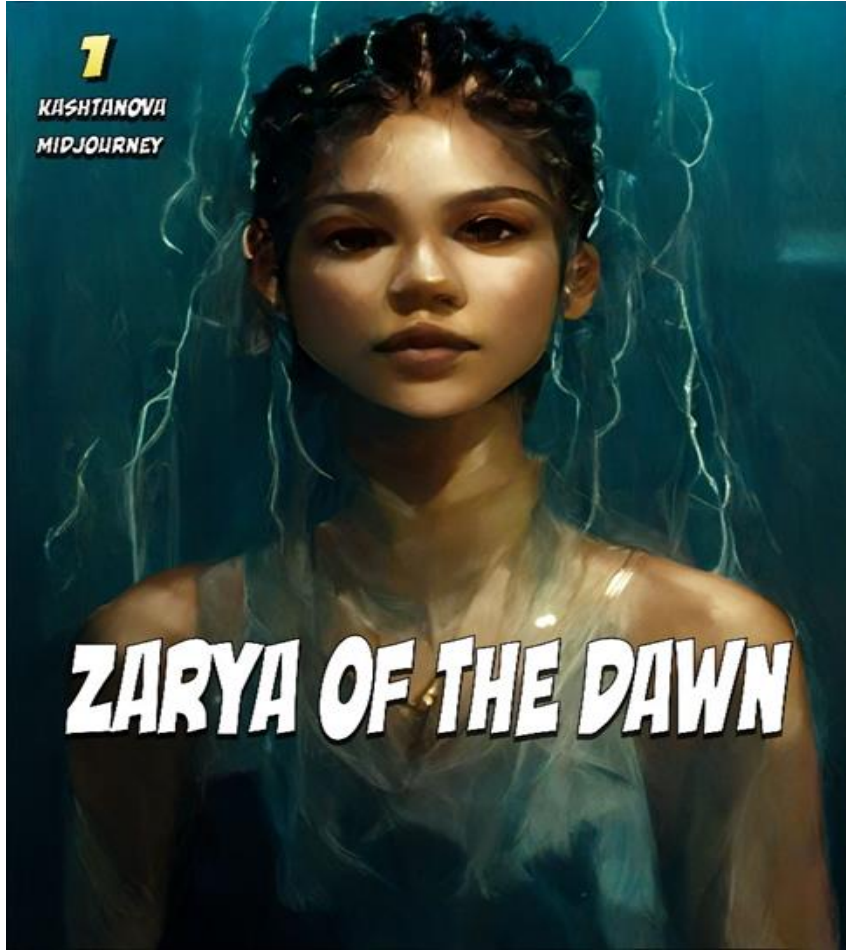
*Sarony, Napoleon, photographer.
Oscar Wilde / Sarony. ca. 1882. Photograph.
<https://www.loc.gov/item/98519710/>.*

NARUTO V. SLATER



Naruto, a crested macaque

ZARYA OF THE DAWN



Images generated by Midjourney AI tool





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Copyright and Artificial Intelligence



The Copyright Office has launched an initiative to examine the copyright law and policy issues raised by artificial intelligence (AI) technology, including the scope of copyright in works generated using AI tools and the use of copyrighted materials in AI training. After convening public listening sessions in the first half of 2023 to gather information about current technologies and their impact, the Office will publish a notice of inquiry in the *Federal Register*.

Announcements

March 16, 2023 - [Copyright Office Launches New Artificial Intelligence Initiative](#)

Upcoming Events

June 28, 2023 - [AI and Registration](#)

Past Events

- May 31, 2023 - [Music and Sound Recordings Listening Session](#)
- May 17, 2023 - [Audiovisual Works Listening Session](#)
- May 2, 2023 - [Visual Arts Listening Session](#)
- April 19, 2023 - [Literary Works, Including Software Listening Session](#)
- Fall 2021 - [Copyright Law and Machine Learning for AI: Where Are We and Where Are We Going?](#)
- Winter 2020 - [Copyright in the Age of Artificial Intelligence](#)

Past Announcements

Copyright Registration Guidance

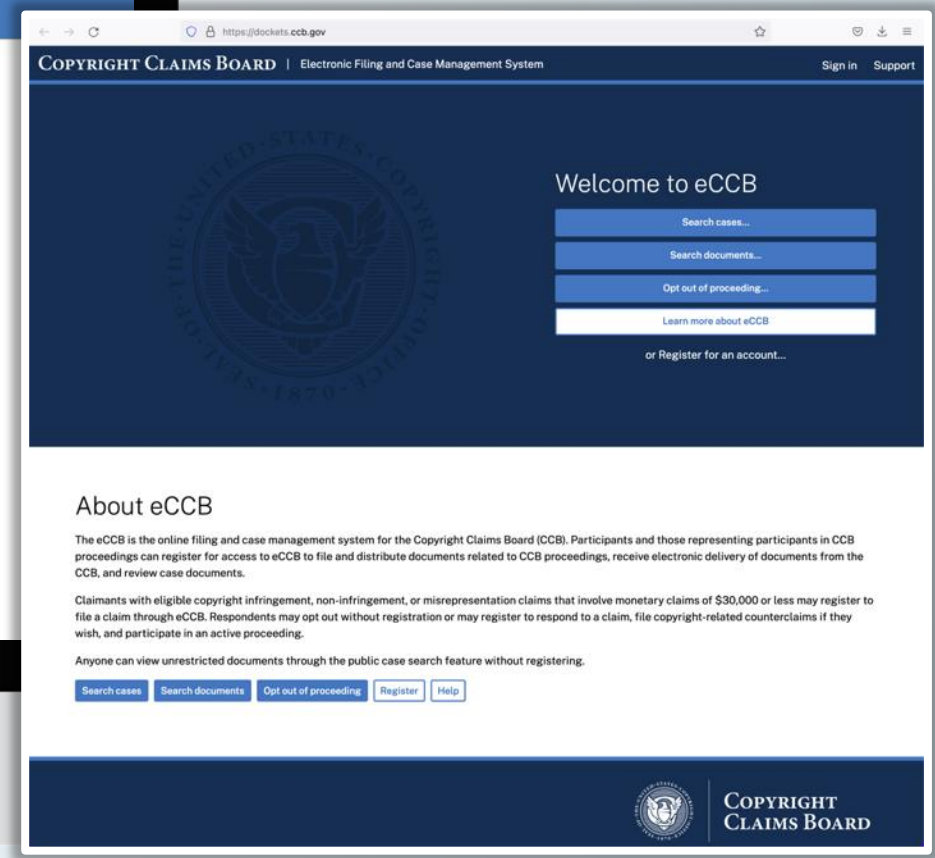
- [Copyright Registration Guidance for Works Containing AI-Generated Material](#)
- [Guidance as Published in Federal Register](#)
- [Zarya of the Dawn Registration Decision](#)
- [A Recent Entrance to Paradise Review Board Decision](#)

Related Resources

- [Compendium of U.S. Copyright Office Practices, Third Edition](#)
- [Statements to Congress](#)
- [Review Board](#)
- [USCO Guidance Letter to The MLC](#)
- [USPTO on Artificial Intelligence](#)
- [WIPO on Artificial Intelligence](#)

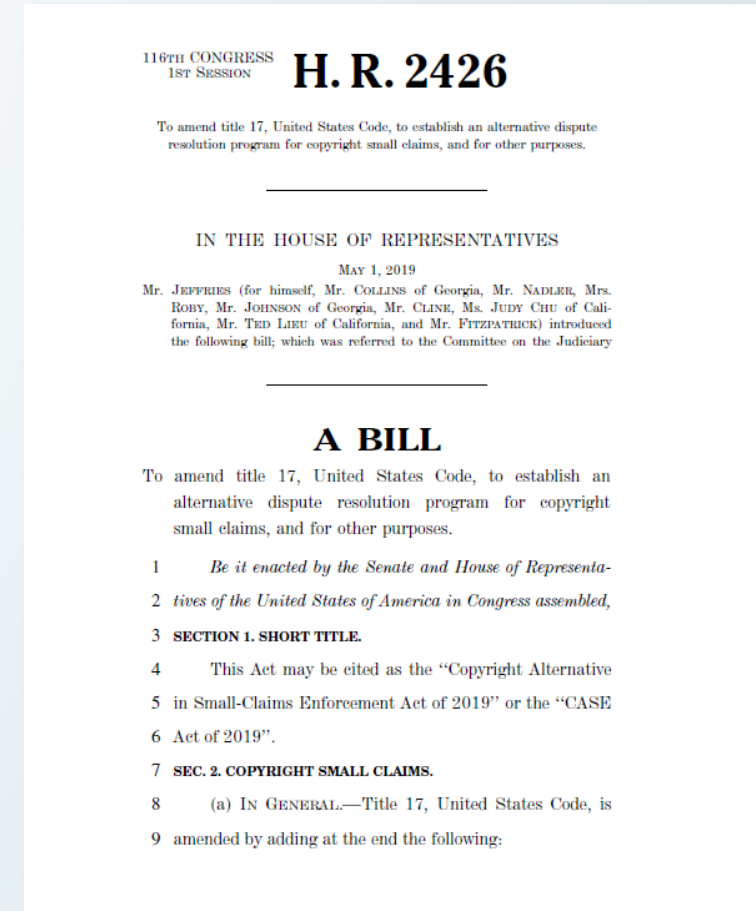
copyright.gov/ai

COPYRIGHT CLAIMS BOARD





- **Copyright Claims Board (“CCB”)**
- **Located in the Copyright Office**
- **3 Officers**
 - 2 with experience representing owners and users of copyrighted works
 - 1 with experience in ADR and copyright law
- **Voluntary, opt-out system**
- **All types of copyrightable works, but CCB can decline to hear if exceeds capacity or competence of Board**
- **Permissible claims, counterclaims, defenses**
 - Copyright infringement / declaration of non-infringement
 - 512(f) misrepresentation claim
 - Any legal or equitable defense



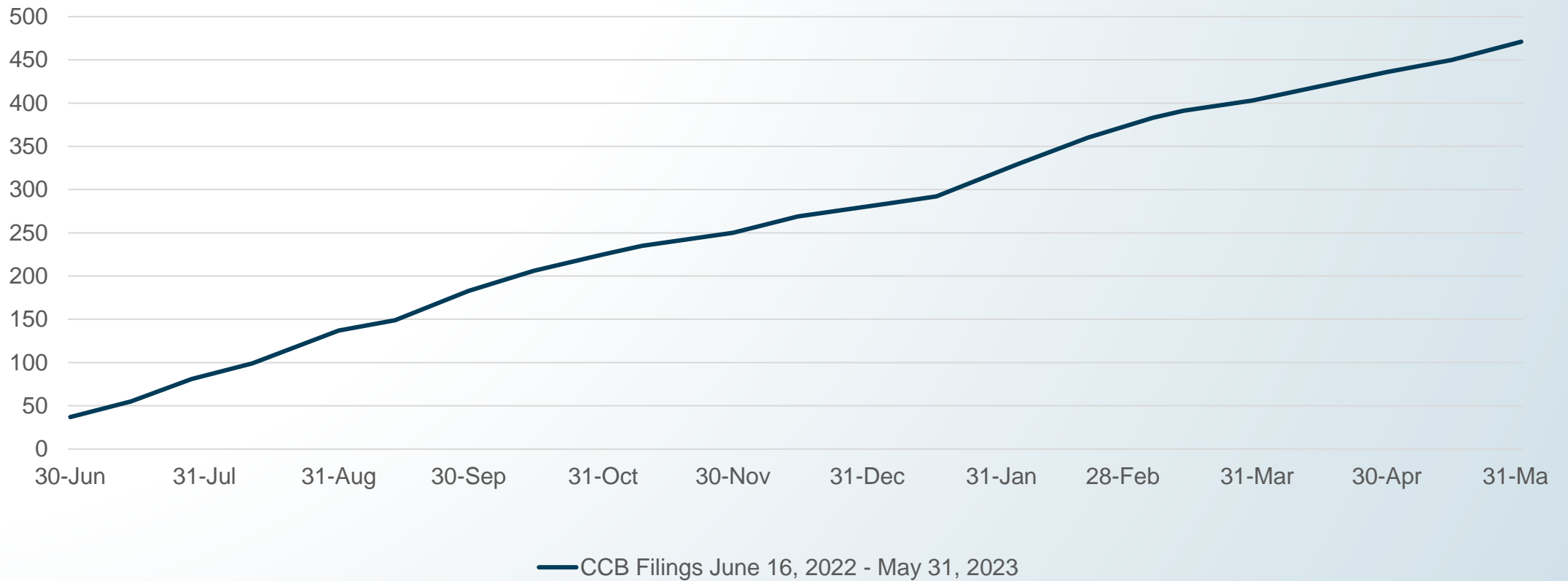
Copyright Alternative in Small-Claims Enforcement Act of 2019

NUMBER OF FILINGS



Number of claims
filed in total: 471

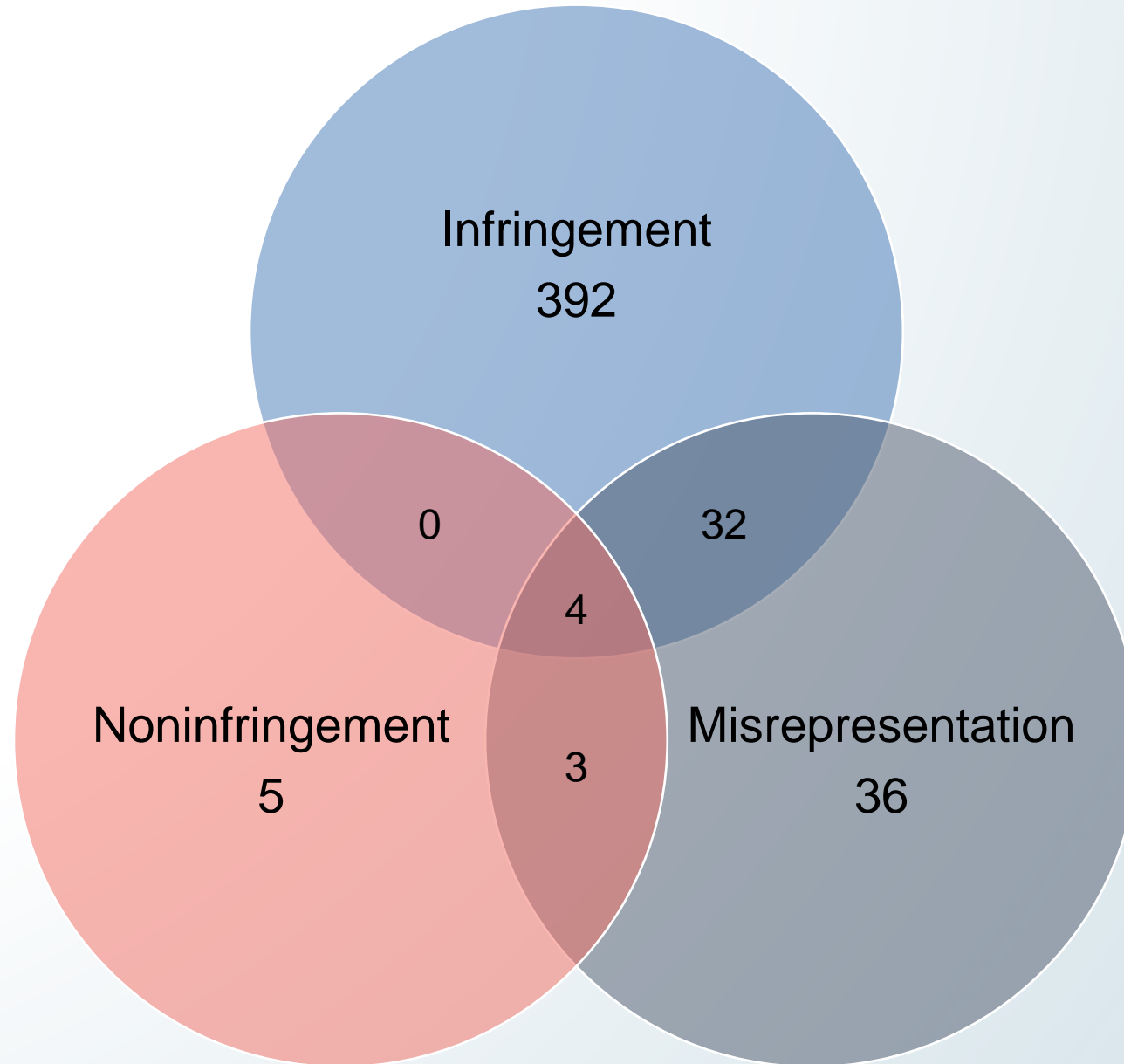
CCB Filings June 16, 2022 – May 31, 2023



*There have been three instances of failed payment.

Data covers period from 06/16/2022-05/31/2023

NATURE OF CLAIM



OPT-OUT ACTIVITY



| | |
|--|-----------|
| Opt Out: Claims with single respondent | 33 |
| Opt Out: Claims with multiple respondents but not all respondents opted out | 0 |
| Opt Out: Claims with multiple respondents and all respondents opted out | 3 |

PROGRESS OF ACTIVE CASES



| | |
|---|-----------|
| Cases that have reached Active Phase* | 46 |
| Referrals from District Court | 1 |
| Cases in discovery | 8 |
| Cases where a First Default Notice has been issued | 18 |
| Settlement conferences held | 1 |

*Not all of the cases that have reached Active Phase are currently in Active Phase. For example, the parties settled in one case after the 60 day opt-out period ended.

Data covers period from 06/16/2022-05/31/2023

Andy Warhol Foundation for the Visual Arts v. Goldsmith -- S.Ct. -- (May 18, 2023)





Challenges to Section 1201

- *Green, et al. v. U.S. Department of Justice, et al.*, D.C. Cir. 21-5195 (Decided on December 6, 2022)
 - District Court order denying plaintiffs' request for injunctive relief denied
 - Case remanded; Headed to D.C. Circuit again
- *Medical Imaging & Technology Alliance v. Library of Congress*, D.D.C 23-5067 (Decided on March 27, 2023)
 - Summary judgment for government
 - Now on appeal to D.C. Circuit

APA Challenges to Registration Refusals

- *Thaler v. Perlmutter* – discussed above
- *Munro v. U.S. Copyright Office*, D.D.C. 22-02909

Challenge to Section 407 “Mandatory Deposit”

- *Valancourt Books LLC v. Merrick Garland, Attorney General, et al.*, D.C.Cir. 21-5203
 - Awaiting a decision



Notices of Inquiry and Proposed Rules

- Section 1201 Exemptions to Prohibition Against Circumvention of TMs Protecting Copyrighted Works (June 2023)
 - *Renewal Petitions due July 7*
 - *New/Expanded Petitions due Aug. 11*
 - *Oppositions to Renewals due Aug. 11*
- Fees for Late Royalty Payments under the MMA's Blanket Mechanical License (Feb. 2023)
 - *Comments closed on May 9*
- Termination Rights and the MMA (Nov. 2022)
 - *Comments closed on Jan. 5*

Issued Rules

- Secure Tests Registration (June 2023)
- Remitter Payment Options and Deposit Account Requirements (Sept. 2022)
- Deposit Requirements for Registering a Single Issue of a Serial Publication (July 2022)



Studies Completed

- Consultations on Voluntary Technical Measures (Dec. 2022)
- Study on Standard Technical Measures and Section 512 (i) (Dec. 2022)
- Study on Electronic Deposits and Best Edition (Dec. 2022)
- Study on Deferred Registration Examination (Aug. 2022)
- Study on Ancillary Protections for Press Publishers (June 2022)

In Progress: Joint Study with the USPTO on Non-Fungible Tokens (NFTs) and Intellectual Property

Letters Delivered

- Letter on actions the Office is taking on artificial intelligence (May 2023)
- Joint USCO-USPTO letter regarding possible national commission on AI (Dec. 2022)
- Letter on CRB proceedings (Dec. 2022)
- Joint USCO-USPTO letter on over the air broadcasting of sound recordings (Sept. 2022)
- Letter on music royalty payments deadlines and the DLC (June 2022)



The average processing time for all claims is 2.1 months

eService Claims: online application with uploaded digital deposit (approximately 82% of all applications)

Claims that DO NOT require correspondence (approximately 77% of all eService claims and 64% of all claims)

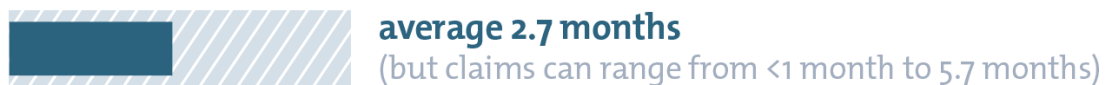


Claims WITH correspondence (approximately 23% of all eService claims and 19% of all claims)



Deposit Ticket Claims: online application with mail-in physical deposit (approximately 15% of all applications)

Claims that DO NOT require correspondence (approximately 79% of all Deposit Ticket claims and 12% of all claims)



Claims WITH correspondence (approximately 21% of all Deposit Ticket claims and 3% of all claims)



CHANGES TO DEPOSIT REQUIREMENTS



Changes to Deposit Requirements at the U.S. Copyright Office

What is the deposit requirement for copyright registration?

When you register your published work with the Office or comply with the **mandatory deposit requirement**, you must submit copies of your work to the Office. In certain situations, those copies must also comply with the **requirement** to deposit the "best edition" of a work from among multiple editions of the work available at the time of registration. When a work is first published in physical form, best edition physical deposits are generally required except in the situations listed below. For all unpublished works and works only published online, you only need to submit electronic deposits and are not required to submit best edition physical deposits.

Recent Changes to Copyright Registration Deposit Requirements



Literary Monographs

A **literary monograph** is a literary work that is published in one volume or a finite number of volumes. Common examples include fiction, nonfiction, poetry, short stories, memoirs, and textbooks. As a general rule, publishers may submit one copy of the best edition of the work; two copies are not required in most cases. If two copies are required, the Office will contact the applicant.



Single Serial Issues

A **serial** is a work issued in successive parts bearing numerical or chronological designations, such as a newspaper, newsletter, magazine, journal, or similar publication. When registering a single issue of a serial publication, publishers may now upload a digital copy of the issue instead of mailing two physical copies of the best edition, even if the serial is published in a physical form or in both a physical and electronic form. Note that sending a physical copy will delay the examination of the claim and result in a later effective date of registration. Also note that when registering a group of serial issues, applicants must upload an electronic copy of each issue they are registering.



Musical Works

A **musical work** is a song's underlying composition and any accompanying lyrics. Musical works are usually created by a songwriter or composer. These works may be published in visually perceptible copies (such as sheet music) or in phonorecords. A **phonorecord** is a material object in which sounds are fixed and from which the sounds can be perceived, reproduced, or otherwise communicated either directly or with the aid of a machine or device. Examples include a cassette tape, CD, or digital file.

When registering a musical work, if the work was first published in a phonorecord, applicants can upload a digital audio file as long as they are registering the musical work that is embodied in the phonorecord (and not the sound recording). Applicants do not need to submit a physical copy of the phonorecord, even if the work was published in a physical format, such as an LP or compact disc.



Photographs

When registering photos using the Office's group registration options, applicants must upload an electronic copy of each photo in JPEG, GIF, or TIFF format. However, applicants do not need to submit a physical copy of the best edition, even if the photos have been published in a physical form, such as in a book, magazine, poster, or other format.



Architectural Works

The Copyright Act defines **architectural works** as "the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features."

When registering architectural work, applicants may submit the deposit in electronic form instead of mailing physical copies. Applicants containing the most finished version of an architectural drawing should also submit photos of the building.

Electronic Deposits for Group Applications

All group registration options except for group databases allow or require electronic deposits. See the full list here.

| Group Registration | Allow Electronic Deposits | Require Electronic Deposits | Physical Deposit Required |
|---|---------------------------|-----------------------------|---------------------------|
| Group Registration | | ✓ | |
| Group Registration of Unpublished Works (GRUW) | ✓ | | |
| Group Registration of Unpublished Photographs (GRUPH) | ✓ | | |
| Group Registration of Published Photographs (GRPPH) | ✓ | | |
| Group Registration of Musical Works on an Album of Music (GRAM) | ✓* | | |
| Group Registration of Sound Recordings on an Album of Music (GRAM) | | ✓ | |
| Group Registration of Serials (GRSE) | | ✓ | |
| Group Registration of Newspapers (GRNP) | | ✓ | |
| Group Registration of Newsletters (GRNL) | | ✓ | |
| Group Registration of Short Online Literary Works (GRTX) | | ✓ | |
| Group Registration of Contributions to Periodicals (GRCP) | | ✓ | |
| Group Registration of Secure Test Items (GRSTQ) | | | ✓ |
| Group Registration of Updates to a Non-Photographic Database (GRDB) | | | ✓ |

*Electronic deposits are allowed if the album has been released only in a digital format and has not been released in a physical format.

Deposit Declaration Form

Effective April 2, 2020, the Office created a **special accommodation** for applicants who are required to submit a physical copy of the best edition. Applicants are allowed to upload a digital copy of the work and a **deposit declaration form** confirming that they have sent or intend to send the required physical copies within three days. The Office examines the electronic copy instead of waiting to receive the physical copies so that applicants may receive their registration decision much sooner. Applicants may also use this procedure when requesting special handling for a work that requires a physical deposit.

What Is the Mandatory Deposit Requirement?

Mandatory deposit requires the owner of the copyright or of the exclusive right of distribution to deposit in the Office for the use of the Library of Congress two complete copies of the best edition within three months after a work is published or distributed in the United States. Mandatory deposit applies to works first published in a foreign country when they are distributed in the United States.

Copyright law in the United States has continued to evolve, and the Office has worked to keep pace with changing laws and technology. More than a decade ago, the Office exempted works published solely online from mandatory deposit requirements. There are two limited exceptions to this rule: eBooks and eSerials published in the United States are potentially subject to mandatory deposit. However, publishers have no obligation to submit their eBooks and eSerials unless the Library of Congress expressly demands them. In other words, if your eBook or eSerial is needed for the collections, the Office will let you know.

Where Can I Find More Information?

Visit copyright.gov for more information, including FAQs and circulars.

You can also contact us:

Phone: 1-877-476-0778 (toll-free)

Email: copyinfo@copyright.gov



Modernization



What is Copyright Office Modernization?

Copyright Office modernization is the initiative to reimagine the entire Office by (1) building a new enterprise IT system designed to be more flexible and easier to use, (2) modernizing supporting IT systems, and (3) further ensuring that Office practices and processes are efficient and productive.



Resources

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Women in the Copyright System

An Analysis of Women Authors in Copyright Registrations from 1978 to 2020.

Women in the Copyright System
 An Analysis of Women Authors in Copyright Registrations from 1978 to 2020
 A special report by the United States Copyright Office

For certain categories, such as nondramatic literary works, women authors have achieved parity with or surpassed registration rates by men, while other categories, including those more closely related to scientific and technological areas, show lower shares of participation by women authors.

gs

r of copyright relatively stable since be current Copyright works listing women rly every category, uniform across in categories, such women authors have ised registration gories, including icientific and er participation



Figure 1 – Share of copyright registrations in which at least one author is a woman.

ons

only 27.9 percent y 2012, this rcent²³ and, as of ounts to a 6.9 women authors ns from 2012 to growth in the l registration tuted 38.5 cent of all works

As noted above, works of authorship are assigned categories by the Copyright Office during the registration process for internal organizational purposes. The female share of authors identified in registrations varies significantly across those categories, as summarized in Figure 2. Cumulative data from registration records between 1978 and 2020, show the lowest rates of authorship by women in architectural drawing registrations (11.9 percent)²⁴ and the highest rates in multimedia and kit registrations (48 percent).

ic and technology-related categories, including machine-readable works or computer programs and the women inventor rate for patents identified as the share of U.S. inventors receiving patents who are women and Potential Report.

thor, multiple authorship is less common than multiple inventorship in patents. Accordingly there is little il and the share of copyright registrations listing at least one female author. Compare USPTO Progress and n the percent of patents with at least one female inventor and the women inventor rates. ical drawings were classified as technical drawings or models. During this time, women comprised 14.1 or models.



What **musicians** should know about copyright.



Whether you are a songwriter, a performer, or both, it's good to know a few key facts about copyright law. In this video, we explain what copyright protects, what it means to be a copyright holder, and how you can register your sound recordings and musical works with the U.S. Copyright Office.



If you're a musician, there are a few key things to know about copyright law and the protections available to you.

First, you should know that copyright protection exists from the moment an original work is "fixed" in a tangible medium. For example, fixation occurs when a song is recorded in an audio file or when a musical work is notated in sheet music or a digital file. You don't need to do anything else for your work to be protected by copyright. As the owner of your music, copyright gives you the right to make and sell copies, distribute those copies, make new works based on your work, and, with some limitations explained below, publicly perform or display the work.

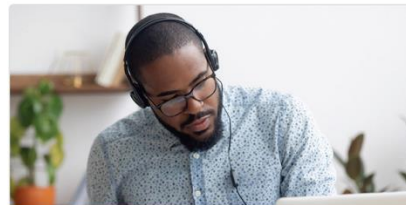
The Two Types of Copyright-Protected Works

When you record a song, you may be creating two works that are protected by copyright: a musical work and a sound recording. A sound recording and the music, lyrics, words, or other content included in the recording are separate copyright-protected works. These works are subject to different rules and are commonly owned and licensed separately.

- A **musical work** is a song's underlying composition along with any accompanying lyrics. Musical works are usually created by a



When you record a song, you may be creating two works that are protected by copyright: a **musical work** and a **sound recording**.



Although your work is protected by copyright from the moment it is fixed, you can

Music Modernization Act

Implementation by the Office includes MLC oversight, rulemakings and educational outreach

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Q & A

