

under the requirements in paragraph (c)(2)(ii) of this section. The petition should include all relevant information and views on which the petitioner relies, including any data, e.g., qualitative or quantitative consumer research, that show consumer understanding of the purpose and intent of the alternative labeling.

(ii) The term "pasteurized" may be used in lieu of "irradiated" or any of its derivatives if the irradiation process is:

(A) Reasonably certain to achieve destruction or elimination in the food of the most resistant microorganism of public health significance that is likely to occur in the food;

(B) At least as protective of the public health as a process or treatment that is defined as pasteurization in this chapter;

(C) Effective for a period that is least as long as the shelf life of the food when stored under normal and moderate abuse conditions; and

(D) The subject of a notification to the Secretary of Health and Human Services (the Secretary) that includes effectiveness data regarding the process or treatment and the Secretary has not made a determination in 120 days after the receipt of the notification that the process or treatment involved has not been shown to meet the requirements provided in paragraph (c)(2)(ii)(A), (B), and (C) of this section.

(3) For an irradiated food not in packaged form that has, as a result of the irradiation, undergone a material change in its characteristics or conditions of use, the required logo and the following disclosure statements, "irradiated," or any of its derivatives, or an alternate term as provided in paragraph (c)(2) of this section in conjunction with language describing the material change in the characteristics of the food or conditions of use as a result of the irradiation, shall be displayed to the purchaser with either of the following:

(i) The labeling of the bulk container plainly in view or

(ii) A counter sign, card, or other appropriate device bearing the information that the product has been treated with radiation. As an alternative, each item of food may be individually labeled. In either case, the information must be prominently and conspicuously displayed to purchasers. The labeling requirement applies only to a food that has been irradiated, not to a food that merely contains an irradiated ingredient but that has not itself been irradiated.

* * * * *

Dated: March 27, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 2007-3]

Registration of Claims to Copyright—Renewals

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Copyright Office is proposing to amend its regulations governing applications for registration of claims to the renewal term of copyright. This notice seeks public comment on the proposed amended regulations, which will take into account the fact that, since January 1, 2006, all applications for renewal have necessarily related to works which are subject to automatic renewal and, thus, are already in their renewal terms, making impossible any 28th-year registration of claims to the renewal term.

DATES: Comments are due May 4, 2007.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to Library of Congress, U.S. Copyright Office, 2221 S. Clark Street, 11th Floor, Arlington, VA. 22202, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office. If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site ("CCAS") located at 2nd and D Streets, NE, Washington, DC between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM-401, James Madison Building, 101 Independence Avenue, SE, Washington, DC. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box

70400, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Nanette Petruzzelli, Special Legal Advisor for Reengineering, P.O. Box 70400, Washington, DC 20024-0400. Telephone: 202-707-8350. Telefax: 202-707-8366.

SUPPLEMENTARY INFORMATION:

I. Background

The 1976 Copyright Act, 17 U.S.C. 101, et. seq., carried over provisions for the continued protection of certain works first published or registered for copyright under the 1909 Copyright Act. Reenacting and preserving the provisions of section 24 of the 1909 law for all works which were then in their first term of copyright protection, Section 304(a) of Title 17 as originally enacted in 1976 provided that renewal registration had to be made during the 28th year of the original term of copyright in order to secure the additional (then 47) years of renewal-term protection. 17 U.S.C. 304(a) (1976).

In 1992, Congress enacted a revision of section 304(a) of Title 17 which made renewal copyright automatic for works first published or registered from January 1, 1964, through December 31, 1977. This amendment allowed the renewal right to vest without registration of: [a] the claim to copyright during the original, 28-year term; or, [b] the claim to renewal copyright during the year immediately prior to the beginning of the renewal term (*i.e.*, during the 28th year); or, [c] the claim to renewal copyright during the renewal term. Pub. L. No. 102-307, 106 Stat. 264, enacted June 26, 1992. In order to encourage renewal registration and provide a public record of renewal rights, however, Congress also amended section 304(a) to provide certain benefits to a party who undertook the renewal registration within the 28th year of the original term of copyright. These benefits for works with timely renewal registrations include:

1. A certificate of registration constitutes prima facie evidence as to the validity of the copyright during its renewal term and of the facts stated in the certificate. 17 U.S.C. 304(a)(4)(B).

2. A derivative work prepared under the authority of a grant of a transfer or license of copyright in a work made before the expiration of the original term of copyright may not continue to be used under the terms of the grant during the renewal term without the authority of the owner of the renewal copyright. 17 U.S.C. 304(a)(4)(A).

3. A renewal copyright vests upon the beginning of the renewal term in the

party who was entitled to claim the renewal of copyright at the time the application was made as provided under 17 U.S.C. 304(a)(2)(A)(i) and (B)(i).

Registration of a claim to the renewal term has also been possible since the 1992 amendment at any time during the renewal term, *i.e.*, at any time beyond the 28th year of the original term of copyright. 17 U.S.C. 304(a)(3)(A)(ii). Such renewal registration may be made whether or not an original-term registration was previously made. If no original-term registration was made, the renewal term applicant must provide information, under the provision of 17 U.S.C. 409 (11), regarding the original term of copyright. Such information must demonstrate that the work submitted for renewal registration complies with all requirements of the 1909 Act with respect to the existence, ownership, or duration of the copyright for the original term of the work. The Addendum to Form RE has been used to provide this information to the Copyright Office.

The 1992 amendment further provided that, where no renewal registration has been made in the name of a party identified as entitled to the renewal right in the statute at 304(a)(1)(B) and (C), an application form may be filed at any time during the renewal term by any successor or assignee of such statutorily-enumerated party. Section 304(a)(3).

II. End of 28th-Year Renewal Registration

The Copyright Act of 1909 ceased to be effective on January 1, 1978. For all works published before January 1, 1978, where the year date in the copyright notice on published copies or phonorecords distributed by authority of the copyright owner was earlier than the year date of first publication, claims to renewal copyright must have been registered during the last year of the original copyright term as that term was computed from the year date in the copyright notice. For purposes of renewal registration, this year period began on December 31 of the 27th year from the year date appearing in the notice and ran through December 31 of the 28th year from the year date appearing in the notice rather than being computed from the year date of actual first publication. This ameliorative principle arose from case law under the 1909 Act and essentially benefited the copyright owner by providing an alternative to the complete loss of copyright in instances of a wrong, *i.e.*, earlier, year date in the copyright notice. Further, for works

governed by the 1909 copyright law, in effect until December 31, 1977, the original copyright term for a published work was computed from the date of first publication; the original term for a work first registered in unpublished form was computed from the date of registration in the Copyright Office.

On January 1, 1978, the Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (October 19, 1976), became effective. The extensively revised copyright law provided that any work unpublished and not registered as of January 1, 1978, or published on or after that date, was to be governed by the 1976 statute and was to receive a term of protection provided by section 302 of the statute. However, for any copyright, the first term of which was subsisting on January 1, 1978, such term was to last 28 years with a possibility of a 47-year renewal term. Further, Pub. L. No. 105-298, 112 Stat. 2827, enacted October 27, 1998, changed the renewal term for works under copyright protection as of that date from 47 to 67 years.

Thus, works first published or registered for their original term of copyright on or before December 31, 1977, constitute the category of works for which the renewal structure is applicable. Any such work could have an original term of copyright of 28 years, assuming compliance with all applicable requirements of the 1909 statute, and no work governed by the carried-over renewal provisions of section 304(a) of Title 17 may possess an original term of copyright extending beyond December 31, 2005, *i.e.*, 28 years after December 31, 1977. Thus, December 31, 2005, was the last day on which a work first published or originally registered as unpublished during the effective period of the 1909 copyright law could have been submitted for renewal registration during the 28th year of its original term of copyright and be eligible for the benefits listed above.

III. Continuation of Post-28th Year Renewal Registration

After January 1, 2006, works that were first published or registered as unpublished for the original term of copyright between 1964 and 1977 will continue to be amenable to renewal registration. Concerning works eligible for renewal registration since 1992, statutory claimants and successors or assignees of such statutory claimants may file applications for the renewal term.

A claim to the renewal term must be registered in the name of the statutory claimant in whom the renewal copyright vested on the last day of the

original term of copyright. 17 U.S.C. 304(a)(2)(A)(ii) and (2)(B)(ii). This is true even when that claimant is no longer the owner of the copyright in the renewal term. If the statutory claimant in whom the renewal vested is the current owner and that claimant is submitting the renewal claim, that fact must be indicated on the renewal application.

Where there is a successor or assignee of any statutory renewal claimant (the party who was the owner of the renewal term as determined on the last day of the original 28-year term of copyright), the successor or assignee may file the renewal application. 17 U.S.C. 304(a)(3)(A)(ii). Consistent with the Offices long-standing regulation at 37 CFR 202.3(b)(10), as a general rule, only one registration can be made for the same version of a particular work. This rule applies to renewal claims, including those filed by a successor or assignee. For example, if a successor-in-interest filed a renewal claim in 2006 and later assigned his interest to someone else, that person could not file a renewal claim.

In the case of an application filed by a successor or assignee, the renewal application must identify the party in whom the renewal copyright vested by virtue of 17 U.S.C. 304(a)(1)(B) and (C) but in whose name no previous renewal registration has been made; must indicate the basis upon which copyright in the renewal term vested in that party; and must identify the party filing as successor or assignee of the statutory claimant under 17 U.S.C. 304(a)(3) and the manner by which such successor/assignee secured the renewal copyright. When such an application has been filed by a successor or assignee in the name of the statutory claimant as described in 17 U.S.C. 304(a)(1)(B) and (C), the Office will generally not accept subsequent claims filed by other successors or assignees whose rights are derived from the same statutory claimant.

Where a successor or assignee claims the renewal right from the same statutory claimant as does another successor or assignee, the Copyright Office may, however, inquire concerning the particular situation and, if appropriate, may allow adverse renewal claims from both successors/assignees to be placed on the public record. Applications in which two or more persons or organizations adversely claim the copyright to the renewal term in a particular work will be handled as the Office's *Compendium of Copyright Practices, Compendium II (1984)*, § 108.06, indicates: adverse claims will be registered if, after the Office inquires

concerning the claims, each claim, on its own merits, is determined to meet all applicable statutory and regulatory requirements. In such a case, correspondence between the parties filing competing renewal claims and the Copyright Office will be maintained within Office records and subject to public inspection according to regulations found at 37 CFR 201.2. In cases where adverse renewal claims are not accepted by the Copyright Office, however, if a public record of renewal ownership is sought by particular successors or assignees of the same statutory claimant as indicated in the filing of a previous claim by another successor or assignee, the document of transfer of the renewal copyright may be recorded in the Copyright Office.

IV. Renewal Registration Procedures

Under the proposed amendment, the Copyright Office will provide a revised application form for the registration of renewal claims. The proposed revised Form RE, as well as the proposed revised Form RE/CON (for use when additional information must be supplied) and Form RE/ADDENDUM (to be filed if the work, or the collective work in which it was first published, was not registered during the original term) may be viewed on the Copyright Office website at www.copyright.gov/proposedforms. Following issuance of a final rule, these new forms will be available on the Copyright Office website at www.copyright.gov as well as through postal mail upon request. Any requests to the Copyright Office for application forms for registration of claims to the renewal term will be filled with the newly revised form; the forms currently in use will be obsolete and the new forms must be used to file such renewal claims.

One of the major changes to the form will facilitate the filing of applications by successors or assignees of the statutory renewal claimants listed at 17 U.S.C. 304(a)(1)(B) and (C). During the past several years, those successors or assignees of statutory claimants who wished to file an application to the renewal term, 17 U.S.C. 304(a)(3)(ii), had to seek advice from the Copyright Office because of the lack of appropriate application-form instructions for the successor or assignee situation; this has been addressed in the revised application form.

V. Summary of Revisions to Regulation at 37 CFR 202.17

The proposed revision of this regulatory section, 202.17, is extensive and essentially reorders much of the information which previously appeared

within this section. The most important change in information concerns the end of the 28th-year renewal registration possibility.

1. Section 202.17(a) more specifically explains the relevant statutory changes of 1992 regarding renewal rights and sets out the distinction between pre-1964 works and post-1964 works with respect to renewal registration.

2. Section 202.17(b) expands the list of terms defined to include "statutory claimant," "assignee and successor," and "vest" as those terms relate specifically to the provisions of this renewal registration regulation.

3. Section 202.17(c) explains the relevant time periods for both original term registration and renewal term registration and their optional character as they are set out in the 1992 revision of section 304(a) of Title 17.

4. Section 202.17(d) explains the benefits of 28th-year renewal registration under the 1992 revision to section 304(a) of Title 17 and indicates that such benefits have no longer been available since January 1, 2006, because the regime of 28th-year renewal registration has ended.

5. Section 202.17(e) sets out the parties entitled to the renewal right under 17 U.S.C. 304(a)(1)(B) and (C). This section also:

a. clarifies that, in any derivative work which may be the subject of a renewal application, a renewal claim may be filed only in the new matter, revisions, or changes incorporated into that derivative work and which form the basis of the protected authorship for purposes of registration.

b. clarifies that renewal claims for a work may, under certain circumstances, be filed under the posthumous work category and also under an individual claimant category but with the Copyright Office's taking no position as to which of such claims may be adjudicated to be valid.

For purposes of the copyright statute's renewal provision, the term "posthumous work" means a work concerning which no copyright assignment or other contract for exploitation of the work has occurred during the author's lifetime and which is unpublished at the time of the author's death. *Compendium of Copyright Office Practices, Compendium II* (1984), 1317.03(a), citing *Bartok v. Boosey & Hawkes, Inc.*, 523 F.2d 941 (2d Cir. 1975), and H.R. Rep. No. 1476, 94th Cong., 2d Sess 139 (1976). Two parties claiming renewal copyright who take different positions as to whether a particular work falls under the specific definition of "posthumous" which Congress adopted

from *Bartok* may, thus, file separate and competing claims in such a situation.

c. explains several situations concerning the filing of a renewal registration claim where an executor or a party appointed to fulfill such duties may be the appropriate filer of a renewal claim or where conflicting claims between an administrator of a will and the author's next of kin may be accepted by the Copyright Office.

The Office has also added a phrase, for purposes of § 202.17(e)(2)(iii)(C), qualifying that an executor appointed under a will must still be acting in that capacity at the time of registration when a renewal claim is filed. The phrase "if still acting in that capacity at the time of registration" is added to help claimants make decisions concerning their renewal submissions where an executor of a will may or may not be able to act in the filing of a renewal claim. For the uncertainties and varying situations concerning the presence or absence of an executor or administrator and the possibility of the next of kin's claiming as an appropriate section 304 statutory class, see e.g. *Silverman v. Sunrise Pictures Corp.*, 290 F. 804 (2d Cir.), cert. denied, 262 U.S. 758 (1923); *Gibran v. Alfred A. Knopf, Inc.*, 153 F. Supp. 854 (S.D.N.Y. 1957), *aff'd sub. nom. Gibran v. National Committee of Gibran*, 255 F.2d 121 (2d Cir.), cert. denied, 358 U.S. 828 (1958); *Capano Music v. Myers Music, Inc.*, 605 F. Supp. 692 (S.D.N.Y. 1985).

6. Section 202.17(f) clarifies the situations in which successors and assignees of the section 304(a)(1)(B) and (C) statutory renewal claimants may file applications for renewal registration.

7. Section 202.17(g) indicates the information necessary on a renewal application form for a work for which a previous, original-term registration has been made.

8. Section 202.17(h) indicates the information necessary on a renewal application form and the required accompanying deposit materials in situations for works where no original-term registration has been made. Concerning the Form RE/Addendum to be used in this situation of no original-term registration, regulatory § 202.17(h)(3)(vii) explains that the applicant must provide within the application an averment that all authorized copies of the work which were publicly distributed in the United States or elsewhere before March 1, 1989, carried a statutorily correct copyright notice.

March 1, 1989, is the effective date of the Berne Convention Implementation Act of 1988 [BCIA], making the presence of a copyright notice on copies of a

work, published in the U.S., with the authorization of the copyright owner, optional. Before March 1, 1989, however, any copy, including any reprint copy, of a work published in this country or elsewhere, even though such work may have been first published under the 1909 Copyright Act, must have carried a statutorily required copyright notice. See 17 U.S.C. 405.

List of Subjects in 37 CFR Part 202

Claims to copyright, Copyright, Registration requirements, Renewals

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend Part 202 of 37 CFR, Chapter II, in the manner set forth below:

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

2. Section 202.17 is revised to read as follows:

§ 202.17 Renewals

(a) General.

(1) This section concerns renewal for copyrights originally secured from January 1, 1964, through December 31, 1977, either by publication with the required copyright notice or by registration as an unpublished work. Renewal registration for these works is optional.

As provided in Pub. L. No. 102-307, 106 Stat. 264, enacted June 26, 1992, renewal registration made during the last year of the original 28-year term of copyright differs in legal effect from renewal registration made during the 67-year extended renewal term. In the latter instance, the copyright is renewed automatically at the expiration of the original 28-year term.

In the former instance, renewal by registration during the last year of the original 28-year term vested the renewal copyright in the statutory claimant living on the date of registration.

(2) Works for which copyright was secured before 1964 are governed by the provisions of 17 U.S.C. 304(a) in effect prior to the 1992 date of enactment of Pub. L. No. 102-307. The copyrights in such works could have been renewed by registration only within the last calendar year of the original 28-year term of copyright protection. If renewal registration was not made during that period of time, copyright protection was lost when the original term of copyright expired and cannot be regained.

(3) Works restored to copyright by the Uruguay Round Agreements Act are governed in their copyright term of protection by Pub. L. No. 103-465, 108

Stat. 4809, 4976 (December 8, 1994). Under 17 U.S.C. 104A(a)(1)(A) and (B), as amended, any work in which copyright is restored subsists for the remainder of the term of copyright that the work would have been otherwise granted in the United States. Such term includes the remainder of any applicable renewal term.

(4) Automatic restoration of copyright in certain foreign works that were in the public domain in the United States may have occurred under the Uruguay Round Agreements Act and may be protected by copyright or neighboring rights in their "source country," as defined at 17 U.S.C. 104A(h)(8).

(b) Definitions.

(1) For purposes of this section, the terms *assignee* and *successor*, as they pertain to 17 U.S.C. 304(a)(3)(A)(ii), refer to a party which has acquired the renewal copyright in a work by assignment or by other means of legal succession from the statutory claimant [as that claimant is defined in 17 U.S.C. 304(a)(1)(B) and (C)] in whom the renewal copyright vested but in whose name no renewal registration was previously made.

(2) For purposes of this section, a work has been *copyrighted* when it has been published with a proper copyright notice or, in the case of an unpublished work, when it has been registered for copyright.

(3) For purposes of this section, the term *posthumous work* means a work that was unpublished on the date of the death of the author and with respect to which no copyright assignment or other contract for exploitation of the work occurred during the author's lifetime.

(4) For purposes of this section, the term *statutory claimant* means:

(i) a party who was entitled to claim copyright for the renewal term at the time renewal registration was made either as a proprietary claimant, 17 U.S.C. 304(a)(2)(A)(i), or as a personal claimant, 17 U.S.C. 304(a)(2)(B)(i), if registration was made during the original term of copyright; or,

(ii) if the original copyright term expired, a party who was entitled to claim copyright for the renewal term as of the last day of the original term of copyright as either a proprietary or a personal claimant, 17 U.S.C. 304(a)(2)(A)(ii) and (a)(2)(B)(ii).

(5) For purposes of this section, the term to *vest* means to give a fixed, non-contingent right of present or future enjoyment of the renewal copyright in a work. If renewal registration was made during the 28th year of the original term of copyright, the renewal copyright vested in the party or parties entitled to claim such copyright at the time of

registration as provided by 17 U.S.C. 304(a)(1)(B) and (C). Although the vested right may have been determined by registration during the 28th year of the original term, the exercise of such right did not commence until the beginning of the renewal term, as provided in 17 U.S.C. 304(a)(2). If renewal registration was not made during the 28th year, the renewal copyright automatically vested upon the beginning of the renewal term in the party or parties entitled to claim such copyright on the last day of the original term as provided by 17 U.S.C. 304(a)(2)(A)(ii) and (B)(ii).

(c) Time limits: original term and renewal term registration.

(1) Under 17 U.S.C. 304(a), prior to its amendment of June 26, 1992, a registration for the original term of copyright must have been made during the 28 years of that original term, and a renewal registration must also have been made during the 28th year of that term. Pub. L. No. 102-307, 106 Stat. 264 (June 26, 1992) amended section 304(a) for works originally copyrighted from January 1, 1964, through December 31, 1977, and provided for optional original-term registration and optional renewal registration. 17 U.S.C. 304(a)(2), (a)(3) and 409(11). For such works, claims to renewal copyright could have been registered during the last year of the original term but such registration was not required in order to enjoy statutory protection during the renewal term. 17 U.S.C. 304(a)(3)(B).

(2) A renewal registration can be made at any time during the renewal term. 17 U.S.C. 304(a)(3)(A)(ii). If no original-term registration was made, renewal registration remains possible; but the Register may request information, under 17 U.S.C. 409(11), regarding the original term of copyright. Such information must demonstrate that the work complies with all requirements of the 1909 Act with respect to the existence, ownership, or duration of the copyright for the original term of the work. The Form RE/Addendum is used to provide this information.

(3) Renewal registration is currently available for works copyrighted from January 1, 1964, through December 31, 1977. Under the provisions of 17 U.S.C. 304(a)(3)(A)(ii), renewal registration may be made any time during the 67-year renewal term for such works according to the procedure indicated in paragraph (h) of this section. Such renewal registration is optional and is not a condition of the subsistence of the copyright for the 67-year renewal term. 17 U.S.C. 304(a)(3)(B). In the case of such works for which no registration was made during the original term of

copyright, renewal registration may be made by submission of a Form RE/Addendum. The Addendum, an adjunct to the renewal form, concerns the facts of first publication for a work and assures the Copyright Office that the work as it existed in its original term of copyright was in compliance with the 1909 copyright law, 17 U.S.C. 1, et. seq. (1909 Act, in effect through December 31, 1977), whose provisions govern such works.

(d) *Benefits of 28th-year renewal registration.*

Prior to January 1, 2006, renewal registration was available during the 28th year of the original term of copyright for works copyrighted from January 1, 1964, through December 31, 1977. As provided in Pub. L. No. 102-307, 106 Stat. 264, registration made during the 28th year of the original term of copyright provided the following benefits to the registrant:

(1) The certificate of registration constituted prima facie evidence as to the validity of the copyright during its renewal term and of the facts stated in the certificate. 17 U.S.C. 304(a)(4)(B).

(2) A derivative work prepared under the authority of a grant of a transfer or license of copyright in a work made before the expiration of the original term of copyright could not continue to be used under the terms of the grant during the renewal term without the authority of the owner of the renewal copyright. 17 U.S.C. 304(a)(4)(A).

(3) The renewal copyright vested upon the beginning of the renewal term in the party entitled to claim the renewal of copyright at the time the application was made as provided under 17 U.S.C. 304(a)(2)(A)(i) and (B)(i).

(e) *Statutory parties entitled to claim copyright for the renewal term under section 304(a).*

(1) Renewal claims must be registered in the name of the party or parties entitled to claim copyright for the renewal term as provided in paragraphs 2 through 4 of this section and as specified in 17 U.S.C. 304(a). If a work was a new version of a previously published or registered work, renewal registration may be claimed only in the new matter.

(2) If the renewal claim was submitted during the last, *i.e.*, the 28th, year of the original term of copyright, the claim had to be registered in the name[s] of the statutory claimant[s] entitled to claim the renewal copyright on the date on which the claim was submitted to the Copyright Office. If the renewal claim is submitted during the sixty-seven year extended renewal term, the renewal claim can be registered only in the

name[s] of the statutory claimant[s] entitled to claim the renewal on the last day (December 31) of the original term of copyright. These eligible renewal claimants are listed below:

(i) The person who, on the applicable day, was the copyright proprietor is the appropriate renewal claimant in any posthumous work or any periodical, encyclopedia, or other composite work upon which the copyright was originally secured by the proprietor

(ii) The person who, on the applicable day, was the copyright proprietor is the appropriate claimant in any work copyrighted by a corporate body (otherwise than as assignees or licensees of the individual author), or by an employer for whom such work was made for hire.

(iii) For any other copyrighted work, including a contribution by an individual author to a periodical or to an encyclopedic or other composite work, the appropriate claimants, in descending order of eligibility, are the person who, on the applicable day, was:

(A) the author(s) of the work, if still living;

(B) the widow(er) and/or child(ren) of the author, if the author was deceased on the applicable day;

(C) the author's executor(s), if still acting in that capacity on the applicable day, provided the author had a will and neither the author, nor any widow(er) or child of the author is still living;

(D) the author's next of kin, in the absence of a will and if neither the author nor any widow, widower or child of the author is living.

(3) The provisions of paragraphs (e)(1) and (2) of this section are subject to the following qualification:

Notwithstanding the definition of "posthumous work" in paragraph (b)(4) of this section, a renewal claim may be registered in the name of the proprietor of a work, as well as in the name of the appropriate claimant under paragraph (e)(2)(iii) of this section, in any case in which a contract for exploitation of the work but no copyright assignment in the work has occurred during the author's lifetime. However, registration by the Copyright Office in this case should not be interpreted as evidencing the validity of either claim.

(4) The provisions of paragraphs (e)(2)(iii)(C) and (D) of this section are subject to the following qualifications:

(i) In any case where:

(A) the author has left a will which names no executor; or,

(B) the author has left a will which names an executor who cannot or will not serve in that capacity; or,

(C) the author has left a will which names an executor who has been

discharged upon settlement of the estate, removed before the estate has been completely administered, or is deceased at the time of the renewal registration submission, the renewal claim may be registered either in the name of an administrator cum testamento annexo (administrator c.t.a.) or an administrator de bonis non cum testamento annexo (administrator d.b.n.c.t.a.) so appointed by a court of competent jurisdiction.

(ii) In any case described in paragraph (e) of this section, except in the case where the author has left a will without naming an executor and a court-appointed administrator c.t.a. or administrator d.b.n.c.t.a. is in existence at the time of renewal registration, the renewal claim also may be registered in the name of the author's next of kin. However, registration by the Copyright Office of conflicting renewal claims in such a case should not be interpreted as evidencing the validity of either claim.

(f) *Successors/assignees entitled to file an application for the renewal term under section 304(a).*(1) The provisions of paragraph (e) of this section are subject to the following qualifications:

(i) Where no renewal registration has been made in the name of a person or entity identified in paragraphs (e)(2)(i), (ii) and (iii) of this section, a renewal application may be filed at any time during the renewal term by any successor or assignee of such person or entity.

(ii) In such cases described in paragraph (f)(1)(i) of this section, the renewal application must identify the party in whom the renewal copyright vested; must indicate the basis upon which copyright for the renewal term vested in that party; must identify the party who is the successor or assignee of the statutory claimant under 17 U.S.C. 304(a)(3); and, must give the manner by which such successor/assignee secured the renewal copyright.

(iii) When such a claim has been filed by a successor or assignee in the name of the statutory claimant as described in paragraph (e)(2)(i), (ii) and (iii) of this section, generally no subsequent claims may be filed by other successors or assignees whose rights are derived from the same statutory claimant. If a public record of renewal ownership is sought by other successors or assignees of the same statutory claimant, the document of transfer of the renewal copyright, either the renewal in its entirety or in part, may be recorded in the Copyright Office.

(iv) Where a successor or assignee claims the renewal right from the same statutory claimant as does another successor or assignee, the Copyright

Office may inquire concerning the situation and, if appropriate, may allow adverse renewal claims from the successors/assignees to be placed on the public record. In such cases, correspondence between the parties filing competing renewal claims and the Copyright Office will be, as always, maintained within Office records and subject to public inspection according to regulations found at 37 CFR 201.2.

(g) *Application for renewal registration for a work registered in its original 28-year term.*

(1) Each application for renewal registration shall be submitted on Form RE. All forms are available free of charge via the Internet by accessing the Copyright Office homepage at <http://www.copyright.gov>. Copies of Form RE are also available free upon request to the Public Information Office, United States Copyright Office, Library of Congress, 101 Independence Avenue, Washington, DC 20559-6000.

(2) (i) An application for renewal registration may be submitted by any eligible statutory renewal claimant as specified in paragraph (e) of this section or by the duly authorized agent of such claimant, or by the successor or assignee of such claimant as provided under paragraph (f) of this section or by the duly authorized agent of such successor or assignee.

(ii) An application for renewal registration shall be accompanied by the required fee as set forth in 37 CFR 201.3. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of:

(A) A designation of whether the applicant is the renewal claimant, or a successor or assignee, or the duly authorized agent of such claimant or of such successor or assignee (whose identity shall also be given);

(B) The handwritten signature of such claimant, successor or assignee, or agent, accompanied by the typewritten or printed name of that person;

(C) A declaration that the statements made in the application are correct to the best of that person's knowledge; and

(D) The date of certification.

(3) Once a renewal registration has been made, the Copyright Office will not accept another application for renewal registration on behalf of the same renewal claimant.

(h) *Renewal with addendum registration for an unregistered work.*

(1) *General.* For published works copyrighted from January 1, 1964, through December 31, 1977, where no registration was made during the original term of copyright and where

renewal registration is sought during the 67-year renewal term, the Form RE/Addendum must be used to provide information concerning the original term of copyright. The Form RE/Addendum requires a separate fee and the deposit of one copy or phonorecord of the work as first published (or identifying material in lieu of a copy or phonorecord). The effective date of registration for a renewal claim submitted on a Form RE/Addendum is the date the Copyright Office receives an acceptable completed application, the required fees, and an acceptable deposit for the work.

(2) *Time Limits.* A renewal claim accompanied by an Addendum to Form RE may be filed at any time during the 67-year renewal term.

(3) *Content.* The Form RE/Addendum must contain the following information:

(i) The title of the work;

(ii) The name of the author(s);

(iii) The date of first publication of the work;

(iv) The nation of first publication of the work;

(v) The citizenship of the author(s) on the date of first publication of the work;

(vi) The domicile of the author(s) on the date of first publication of the work;

(vii) An averment that, at the time of first publication, and thereafter until March 1, 1989 [effective date of the Berne Implementation Act of 1988], all the copies or phonorecords of the work, including reprints of the work, published, *i.e.*, publicly distributed in the United States or elsewhere, under the authority of the author or other copyright proprietor, bore the copyright notice required by the Copyright Act of 1909 and that United States copyright subsists in the work;

(viii) For works of United States origin which were subject to the manufacturing provisions of section 16 of the Copyright Act of 1909 as it existed at the time the work was published, the Form RE/Addendum must also contain information about the country of manufacture and the manufacturing processes; and

(ix) The handwritten signature of the renewal claimant or successor or assignee, or the duly authorized agent of the claimant or of the successor or assignee. The signature shall be accompanied by the printed or typewritten name of the person signing the Addendum and by the date of the signature; and shall be immediately preceded by a declaration that the statements made in the application are correct to the best of that person's knowledge.

(4) *Fees.* Form RE and Form RE/Addendum must be accompanied by the

required fee for each form as required in 37 CFR 201.3.

(5) *Deposit requirement.* One copy or phonorecord or identifying material of the work as first published in accordance with the deposit requirements set out in 37 CFR 202.20 and 202.21 is required.

(6) *Waiver of the deposit requirement.* Where the renewal applicant asserts that it is either impossible or otherwise an undue hardship to satisfy the deposit requirements of 37 CFR 202.20 and 202.21, the Copyright Office, at its discretion, may, upon receipt of an acceptable explanation of the inability to submit such copy or identifying material, permit the deposit of the following in descending order of preference. In every case, however, proof of the copyright notice showing the content and location of the notice as it appeared on copies or phonorecords of the work as first published must be included.

(i) A reproduction of the entire work as first published (*e.g.*, photocopy, videotape, audiotape, CD-ROM, DVD are examples of physical media which may hold reproductions of a work as first published). If the work is a contribution to a periodical, a reproduction of only the contribution (including the relevant copyright notice) will suffice.

(ii) A reprint of the work (*e.g.*, a later edition, a later release of a phonorecord, or the like). The reprint must show the copyright notice as it appeared in the same location within the first published copy of the work as well as the exact content of the copyright notice appearing in the first published edition. If the copyrightable content of the reprint differs from that of the first published edition, an explanation of the differences between the two editions is required.

(iii) Identifying material including a reproduction of the greatest feasible portion of the copyrightable content of a work including a photocopy or photograph of the title page, title screen, record label or the like, as first published, and a photocopy or photograph showing the copyright notice content and location as first published. The Copyright Office may request deposit of additional material if the initial submission is inadequate for examination purposes.

Dated: March 28, 2007.

Marybeth Peters,

Register of Copyrights.

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