

EXHIBIT A

Copyright Registration Practice

2d Edition

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Treatises and Practice Aids

Abrams, Law of Copyright § 10:43

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§ 22:1 Examination process

Research References

West's Key Number Digest, Copyrights and Intellectual Property
⊞50.16, 50.30

The examination process is initiated by filing of an application to register a claim to copyright, and concluded with either issuance of the requested registration or a final refusal to register the claim. This section discusses the examination process; the next section addresses appeals from final refusals to register copyright claims.

§ 22:2 Examination process—In general

Research References

West's Key Number Digest, Copyrights and Intellectual Property
⊞50.16, 50.30

The examination process encompasses examination of the copies or phonorecords of works submitted for registration, as well as the completed application form itself, and all other material and correspondence submitted with the application.

The examination is made to determine (1) whether or not the work for which registration is sought constitutes copyrightable matter, and (2) whether or not the other legal and formal requirements have been met, including those set forth in the Copyright Act, the Copyright Office regulations (37 C.F.R.), and in the *Compendium of Copyright Office Practices*.

The Copyright Office does not generally make comparisons of copyright deposits to determine whether or not particular material has already been registered, nor does the Copyright Office make findings of fact with respect to publication or any other thing done outside the Copyright Office. However, the Copyright Office will take notice of matters of general knowledge. It may use such knowledge as the basis for

questioning applications that appear to contain, or to be based upon, inaccurate or erroneous information.

Should the Copyright Office receive separate applications by two or more claimants for registration of a claim to copyright in the same work, the Copyright Office may inform each applicant of the existence of the other claim and inquire concerning the basis for the claim made by each claimant. All such claims will be registered if they are in order and confirmed or reasserted by the response to the Copyright Office inquiry. The Copyright Office does not conduct "opposition" or "interference" proceedings, such as those conducted in the United States Patent and Trademark Office.

§ 22:3 Examination process—"Rule of doubt"

Research References

West's Key Number Digest, Copyrights and Intellectual Property
©50.15, 50.16

The Copyright Office, as a matter of policy, will register a claim to copyright even though there is a reasonable doubt about the ultimate action which might be taken under the same circumstances by an appropriate court with respect to whether (1) the material deposited for registration constitutes copyrightable subject matter, or whether (2) the other legal and formal requirements of the statute have been met.

This policy has long been followed. As a practical matter, it permits the Copyright Office to process applications more quickly, and shifts to the courts the resolution of such doubts. The problem with a "rule of doubt" registration is that the registration loses its prima facie effect and the burden of proof shifts to the plaintiff. This is particularly burdensome regarding the issue of copyrightability.¹

When registration is made under the Rule of Doubt, or when reasonable doubt exists about certain matters relevant to the application, the Copyright Office may send a letter to the claimant cautioning that the claim may not be valid and stating the reason for that cautionary warning. Such a cautionary or warning letter may, where appropriate, also suggest that the problem may exist for future works and point out how it can be avoided, if apparent to the Copyright

[Section 22:3]

¹Superchips Inc. v. Street & Performance Electronics Inc., 61 U.S.P.Q.2d (BNA) 1589, 2001 WL 1795939 (M.D. Fla. 2001).

Office.

§ 22:4 Examination process—Examination of the application

Research References

West's Key Number Digest, Copyrights and Intellectual Property
Ⓒ50.15, 50.16

When the Copyright Office determines that the material deposited constitutes copyrightable subject matter, and that the other legal and formal requirements of the copyright law have been met, it will register the claim and send to the applicant a certificate of registration under the seal of the Copyright Office.¹

The date of the registration will be the date on which the complete application was received by the Copyright Office.

If the Copyright Office has questions about the registration material, or determines for any of various reasons that the material is unacceptable, the claimant will be notified.

§ 22:5 Examination process—Examination of the application—Variances

Research References

West's Key Number Digest, Copyrights and Intellectual Property
Ⓒ50.15, 50.16

Generally, the Copyright Office will disregard variances in the registration materials that are deemed to be immaterial. A variance exists when contradicting information is presented in the registration materials. For example, the application may name John Thomas James as the author, but the deposited materials may show the author's name as Jon T. Thomas. The Copyright Office will accept the application.

§ 22:6 Examination process—Examination of the application—Material variances

Research References

West's Key Number Digest, Copyrights and Intellectual Property
Ⓒ50.15 to 50.20

If the Copyright Office determines that the variance is ma-

[Section 22:4]

¹17 U.S.C.A. § 410(a).

terial but not substantial, and can be resolved for purposes of registration, the Copyright Office will annotate the application to show the varying information. An annotation is a statement added to the application by the Copyright Office to amplify the record of facts affecting the copyright claim. Annotations are made for the following purposes:

- (1) To reflect certain variances.
- (2) To add missing information, for example, from the deposit, from a continuation sheet, or a rider to the application, or from a previous application, a letter from the applicant, a telephone conversation, or a personal interview.
- (3) To add comments to the application, for example, to note an antedated copyright notice, to note overlapping claims, to note a reference by the claimant to previous correspondence as a "previous registration," to note references to other documents, or to note grants of special relief.
- (4) Where authorized by the claimant, or where otherwise appropriate, to correct or delete errors in the application form.

As an example of a variance that is material but not substantial, and which will be resolved by an annotation, assume that the title of the work on a phonorecord deposited for registration is "The Quick Brown Fox," and that the application gives the title as "The Brown Quick Fox." The Copyright Office will annotate the application to reflect the title appearing on the phonorecord.

As another example, assume that the title on copies of a text deposited with the application form is "On Nuclear Rearmament," but the application gives the title as "No Nuclear Rearmament." The Copyright Office will annotate the application to reflect the title appearing on the deposited Material.

§ 22:7 Examination process—Examination of the application—Substantial variances

Research References

West's Key Number Digest, Copyrights and Intellectual Property
⌘50.15 to 50.20

Where the variance is deemed to be substantial by the Copyright Office, it will communicate with the applicant. For

example, the application may give the name of the author as Mary Smith but the name of the author stated on the deposited text is "Jane Doe." In the absence of information that one of the names is pseudonym or that the work was made for hire, the Copyright Office will ask the applicant to explain the variance in the author's name.

§ 22:8 Examination process—Refusals to register

Research References

West's Key Number Digest, Copyrights and Intellectual Property
©50.15, 50.16

Any case in which the Register of Copyrights determines that in accordance with Copyright Act, material deposited does not constitute copyrightable subject matter, or that the claim is invalid or defective for any reason, the Copyright Office will refuse registration and will notify the applicant in writing of the reasons for such refusal.¹

Examples of unregistrable material include:

- (1) Published works ineligible because of the nationality of the author or place of first publication.²
- (2) Works not fixed in a tangible medium of expression.
- (3) Sound recordings fixed before February 15, 1972.³
- (4) Works that are not original works of authorship.⁴
- (5) Works whose term of copyright has expired.
- (6) Works of the United States government.⁵
- (7) Certain works that unlawfully employ preexisting copyrighted material.⁶
- (8) Musical arrangements made under a compulsory license without the express consent of the copyright owner of the preexisting work.⁷

[Section 22:8]

¹17 U.S.C.A. § 410(b).

²17 U.S.C.A. § 104(b).

³See 17 U.S.C.A. § 301(c).

⁴See 17 U.S.C.A. § 102(a).

⁵See 17 U.S.C.A. §§ 101 and 105.

⁶See 17 U.S.C.A. § 103(a).

⁷See 17 U.S.C.A. § 115.