

# Preregistration

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# Preregistration

## 1601 What This Chapter Covers

This Chapter provides information on the U.S. Copyright Office’s practices and procedures for [preregistration](#).

A pre-registration “allows the author of a work vulnerable to predistribution infringement to enforce her exclusive rights in court before obtaining [a] registration or refusal” from the Copyright Office. *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 889 (2019). This procedure is primarily intended to address situations where copyrighted works are “distributed illegally via the Internet BEFORE they are even made available for sale to the public [which] severely undercuts the ability of copyright holders to receive fair and adequate compensation for their works.” 151 CONG. REC. S495 (daily ed. Jan. 25, 2005) (statement of Sen. Hatch).

For general information on the Office’s practices and procedures for registration, see the following Chapters:

- [Chapter 200](#): An Overview of the Registration Process
- [Chapter 300](#): Copyrightable Authorship: What Can Be Registered
- [Chapter 400](#): Who May File an Application
- [Chapter 500](#): Identifying the Work(s) Covered by the Registration
- [Chapter 600](#): Examination Practices
- [Chapter 1400](#): Applications and Filing Fees
- [Chapter 1500](#): Deposit

## 1602 What Is Preregistration?

In cases involving the infringement of a United States work, copyright registration is a prerequisite for filing an infringement action and for seeking an award of statutory damages and attorney’s fees. See 17 U.S.C. §§ 101, 411(a), 412. Often, copyright owners do not seek registration until the work has been completed and distributed to the public, which may limit the remedies that may be available in cases involving “prerelease” infringement. See H.R. REP. NO. 109-33, pt. 1, at 4 (2005), reprinted in, 2005 U.S.C.C.A.N. 220, 223.

To address this concern, Congress created [preregistration](#) — a procedure that allows certain copyright owners to file an action for infringement and seek statutory damages and attorney’s fees in cases where the work was infringed *before* the copyright owner completed the work and released it to the public. See 17 U.S.C. § 408(f)(1)-(2); see also

[Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,286 \(July 22, 2005\)](#); [Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,905-06 \(Oct. 27, 2005\)](#).

## 1603 Eligibility Requirements

“If a copyright owner is preparing to distribute a work of a type vulnerable to predistribution infringement . . . the owner may apply for preregistration.” *Fourth Estate Public Benefit Corp.*, 139 S. Ct. at 885.

A work of authorship must satisfy the following criteria to qualify for this option:

- The work must be a [motion picture](#); a [sound recording](#); a musical composition; a [literary work](#) being prepared for [publication](#) in book form; a [computer program](#); a videogame; or a photograph that is intended to advertise or market a particular product or service;
- The work must be [copyrightable](#);
- The author must have begun to create the work;
- The work must be [unpublished](#); and
- The work must be in the process of being prepared for commercial distribution.

[37 C.F.R. § 202.16](#). A work that satisfies all of these requirements is eligible for preregistration, regardless of whether it is intended to be distributed in a physical or electronic format. *See* [37 C.F.R. § 202.16\(b\)\(3\)](#); *see also* [Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,287 \(July 22, 2005\)](#); [Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,905-06 \(Oct. 27, 2005\)](#). These requirements are discussed in Sections [1603.1](#) through [1603.5](#).

If the work described in the application does not meet these requirements, the Office will reject the application. The Office typically receives fewer than 2,000 applications for preregistration each year (compared with more than half a million applications for registration), and the Office rejects many of these applications because the work is not eligible for this procedure.

### 1603.1 Works That Are Eligible for Preregistration

Congress directed the [Register of Copyrights](#) to issue [preregistrations](#) for any work of authorship that falls within a class of works that has had a history of infringement prior to the authorized commercial distribution by the copyright owner. [17 U.S.C. § 408\(f\)\(1\)-\(2\)](#). The Office determined that there has been a substantial history of prerelease infringement involving the following classes of works:

- [Motion pictures](#).
- [Sound recordings](#).

- Musical compositions.
- [Literary works](#) being prepared for [publication](#) in book form.
- [Computer programs](#) (including videogames).
- Advertising or marketing photographs.

[37 C.F.R. § 202.16\(b\)\(1\)](#). A work of authorship must fall within one or more of these classes to be eligible for preregistration. The Office will refuse an application for preregistration if the work does not appear to fall within any of these classes.

*Examples:*

- The U.S. Copyright Office will accept an application to preregister a [motion picture](#). However, the Office will refuse to preregister a treatment, screenplay, storyboard, or shooting script for a motion picture because these types of works do not fit within the statutory definition of a “motion picture.” See [17 U.S.C. § 101](#) (defining motion pictures as “[audiovisual works](#) consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any”).
- As a general rule, a preregistration for a motion picture covers any sounds that may be embodied in that work (*i.e.*, the soundtrack). However, the U.S. Copyright Office may question an application that asserts a [claim](#) in both a motion picture and a [sound recording](#), because the soundtrack for a motion picture does not fit within the statutory definition of a “sound recording.” See [17 U.S.C. § 101](#) (defining sound recordings as “works that result from the [fixation](#) of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work ...”).
- A work of fiction or nonfiction that is intended to be published in book form (*i.e.*, hardback books, paperback books, ebooks, and the like) may be eligible for preregistration, even if the work contains material that would be ineligible for preregistration on its own, such as drawings, illustrations, or other two-dimensional artwork.
- A work of fiction or nonfiction that is intended to be published in book form may be eligible for preregistration, even if the work will be published exclusively online. However, the U.S. Copyright Office will not accept an application to preregister a website, because websites are not published in “book form.”
- A personal journal or a daily diary would be considered a [literary work](#), but these types of works are not eligible for preregistration, because in most cases, they are not intended to be published, nor

are they intended for commercial distribution. *See* Sections [1603.4](#) and [1603.5](#).

- The U.S. Copyright Office will accept an application to preregister a [computer program](#) that is intended for commercial distribution. However, the Office will refuse to preregister a claim in the HTML code for a website, because HTML code is a markup language rather than a computer programming language, and thus coding in HTML generally does not result in a computer program.
- A photograph that is intended to advertise or market a particular product or service may be eligible for preregistration, but a family portrait or a photograph taken on a personal vacation would not.
- A photograph of a famous celebrity caught in an embarrassing situation would not be eligible for preregistration, because this type of work does not advertise or market a particular product or service.

For a definition and general discussion of the types of works that are eligible for preregistration, see [Chapters 700, 800, and 900](#).

*See generally* [Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,288 \(July 22, 2005\)](#); [Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,906 \(Oct. 27, 2005\)](#).

### **1603.2 The Work Must Be Copyrightable**

The U.S. Copyright Office will not entertain an application for [preregistration](#) unless the work constitutes [copyrightable](#) subject matter under [Section 102\(a\)](#) of the Copyright Act. [37 C.F.R. § 202.16\(c\)\(2\)](#).

### **1603.3 A Portion of the Work Must Be Fixed**

Copyright law protects “original works of authorship [fixed](#) in a tangible medium of expression” but it does not extend to “any idea, procedure, process, system, method of operation, concept, principle, or discovery.” [17 U.S.C. § 102\(a\), \(b\)](#). A work of authorship is not eligible for [preregistration](#) unless the author began to create the work on or before the date that the application is submitted to the U.S. Copyright Office, and unless at least a portion of the work has been fixed in a tangible medium of expression as of that date. *See* [37 C.F.R. § 202.16\(b\)\(2\)\(ii\)](#). The amount of material needed to satisfy this requirement varies depending upon the nature of the work:

- If the work is a [motion picture](#), the filming of the work must have commenced.
- If the work is a [sound recording](#), the recording of the sounds must have begun.
- In the case of a musical composition, at least some of the work must have been fixed either in the form of musical notation or in a copy or phonorecord embodying a performance of some or all of the work.

- In the case of a literary work being prepared for [publication](#) in book form, the actual writing of the text of the book must be underway.
- For a [computer program](#), at least some portion of the [source code](#) or [object code](#) must have been fixed.
- For an advertising or marketing photograph, the photograph must have been taken. In the case of a group of photographs intended for simultaneous publication, at least one of the photographs in the group must have been taken.

[37 C.F.R. § 202.16\(b\)\(2\)\(ii\)\(A\)-\(F\)](#). Although a portion of the work must be fixed in a tangible medium of expression in order to seek preregistration, the [applicant](#) should not submit a copy or phonorecord of the work or any portion of the work with the application for preregistration. For a discussion of this issue, see Section [1606.7](#).

#### **1603.4 The Work Must Be Unpublished**

[Preregistration](#) protects [unpublished](#) works that are being prepared for commercial distribution. See [17 U.S.C. § 408\(f\)\(1\)](#). Therefore, the U.S. Copyright Office will not entertain an application for preregistration unless the work is unpublished as of the date that the application is submitted. The Copyright Act defines [publication](#) as “the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.” [17 U.S.C. § 101](#). In addition, “offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication.” For example, a [sound recording](#) is considered published if it has been offered to a group of disc jockeys for purposes of public air play, and a [motion picture](#) is considered published if it has been delivered to a number of distributors for purposes of theatrical exhibition. See [Preregistration of Certain Unpublished Copyright Claims](#), 70 Fed. Reg. 42,286, 42,287 (July 22, 2005).

#### **1603.5 The Work Must Be Intended for Commercial Distribution**

To be eligible for [preregistration](#), the work of authorship must be in the process of being prepared for commercial distribution. See [17 U.S.C. § 408\(f\)\(1\)](#); [37 C.F.R. § 202.16\(b\)\(2\)\(ii\)](#). To satisfy this requirement, the [applicant](#) must certify that the work is being prepared for commercial distribution and that there is a reasonable expectation that the work will be commercially distributed to the public. See [37 C.F.R. § 202.16\(b\)\(2\)\(i\)](#).

### **1604 Preregistration Distinguished from Registration**

#### **1604.1 Preregistration Is a Temporary “Placeholder” for an Actual Registration**

A [preregistration](#) is merely a placeholder for or a prelude to an actual registration. Specifically, a preregistration allows a copyright owner to institute an infringement action “before the Register has granted or refused registration” if: (i) the work has been preregistered prior to [publication](#), and (ii) the work is registered within three months after its first publication. *Fourth Estate Public Benefit Corp.*, 139 S. Ct. at 892. However, if

an infringement occurred within two months after the first publication of the work, the application, deposit, and filing fee must be received in proper form within one month after the copyright owner learned of the infringement or within three months after the first publication of the work (whichever is earlier). *See* 17 U.S.C. §§ 408(f)(3), 411(a), 412.

If a preregistered work is not registered within the prescribed time period, a district court must dismiss any action involving an infringement that occurred before or within two months after the first publication of that work. *See* 17 U.S.C. § 408(f)(4). If the infringement began more than two months after the first publication of a preregistered work, this rule does not apply. In other words, the failure to register a preregistered work before the deadline specified in Sections 408(f)(4)(A) and (B) of the Copyright Act will not prevent a copyright owner from registering that work and pursuing an infringement action, provided that the infringement occurred more than two months after the first publication of that work. *See generally* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,286-87, 42,290 (July 22, 2005); Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,905 (Oct. 27, 2005).

#### 1604.2 Uses of Preregistration

A [preregistration](#) is not a registration. Nor is it a substitute for a registration. It “serves only as a preliminary step prior to a full registration.” *Fourth Estate Public Benefit Corp.* 139 S. Ct. at 888 (internal quotation omitted).

As discussed in Section [1604.1](#), preregistration allows certain copyright owners to satisfy the requirements of Sections [411\(a\)](#) and [412](#) of the Copyright Act by notifying the U.S. Copyright Office that the work is being prepared for commercial distribution. Copyright owners may benefit from this procedure if they have started to create a work of authorship that has not yet been completed, and if it is likely that a third party may infringe that work before it has been released to the public. But to preserve the benefits of this procedure, the copyright owner must seek an actual registration for the work promptly after it has been published or infringed. *See id.* at 888.

There are certain features that preregistration does not possess. Unlike a registration, a preregistration does not constitute *prima facie* evidence of the validity of the copyright or the facts stated in the application for preregistration or in the notification of preregistration. Moreover, the fact that a work has been preregistered does not create any presumption that the Office will register the work if the [applicant](#) subsequently submits an application for registration. 37 C.F.R. § 202.16(c)(13); *see also* Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,286, 42,289-90 (July 22, 2005).

Preregistration is neither a prerequisite nor a precondition for copyright owners who wish to register their works with the Office. In other words, an original work of authorship may be registered regardless of whether that work has been preregistered or not.



If an applicant submits an application to register a work that has been preregistered, the application may or may not be assigned to the same [registration specialist](#) who examined the application for preregistration. However, the specialist will not compare the information provided in the application for registration with the preregistration record to determine whether it is consistent with the information provided in the application for preregistration.

### **1605 Preregistration for a Sound Recording Distinguished from a Preregistration for a Musical Composition**

As a general rule, a [preregistration](#) for a [motion picture](#) extends to any sounds that may accompany that work, because a soundtrack falls within the statutory definition of a “motion picture.” *See* [17 U.S.C. § 101](#) (stating that: “‘Motion pictures’ are audiovisual works” and that “‘Audiovisual works’ are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any”). A preregistration for a sound recording does not, in and of itself, constitute a preregistration of the musical works that may be embodied in that recording. *See* [H.R. REP. NO. 109-33, pt. 1, at 5 \(2005\)](#), *reprinted in* 2005 U.S.C.C.A.N. 220, 224. However, a [claimant](#) that owns the copyright in both a sound recording and a musical work embodied within that recording may preregister both the sound recording and the musical work with the same application. *See* [Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,288, 42,290 \(July 22, 2005\)](#).

### **1606 Completing the Application**

To preregister a work, the [applicant](#) must submit an application through the U.S. Copyright Office’s electronic preregistration system. (The Office will not accept a paper application for preregistration.) To access this system, the applicant should go to the following link on the Office’s website ([www.copyright.gov/prereg/](http://www.copyright.gov/prereg/)), then click the “Continue” button which appears next to the phrase “Start the preregistration process (Electronic Form PRE).”

In the application, the applicant must provide certain information about the work of authorship, such as the date the author started to create the work and the date the work is expected to be completed. These requirements are discussed in Sections [1606.2](#) through [1606.10](#). The information provided in the application should be based on the information available at the time the application is submitted to the Office.

*See* [37 C.F.R. § 202.16\(c\)\(3\)](#); *see also* [Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,289, 42,290 \(July 22, 2005\)](#); [Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,906 \(Oct. 27, 2005\)](#).

#### **1606.1 Confidentiality and Privacy Concerns**

[Section 705](#) of the Copyright Act requires the [Register of Copyrights](#) to prepare and maintain “records of deposits, registrations, recordations, and other actions” taken by the U.S. Copyright Office, and states that these records “shall be open to public inspection.” [17 U.S.C. § 705\(a\), \(b\)](#).

Any information that the [applicant](#) provides in an application for [preregistration](#) will appear in the preregistration record for that work. The preregistration record will be available to the public upon request, and the U.S. Copyright Office will post the information that appears in the notification of preregistration in the online record for the work, which will be available to the public through the Office’s website. Because these records are open to the public, an applicant should not provide information on the application if the author, [claimant](#), and/or applicant do not wish to make that information public, including confidential information or personally identifiable information. *See* [Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,906 \(Oct. 27, 2005\)](#).

## 1606.2 Type of Work

As discussed in Section [1603.1](#), there are six classes of works that are eligible for [preregistration](#). The [applicant](#) should select the type of work that is most appropriate for the work that the applicant intends to preregister. Specifically, the applicant should check one or more of the boxes that appear on the Types of Work screen, depending on whether the work is a musical composition, a [sound recording](#), a literary work intended to be published in book form, a [computer program](#), a videogame, a [motion picture](#), or an advertising or marketing photograph.

The applicant may preregister two or more works with one application if the works are owned by the same [claimant](#) and if the works will be published on the same date in the same [unit of publication](#). In this situation, the applicant should check the boxes that describe each work that the applicant intends to preregister. However, if the applicant intends to preregister two or more works that will be distributed on different dates, the applicant must submit a separate application for each work. *See* [37 C.F.R. § 202.16\(c\)\(4\)](#); *see also* [Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42,286, 42,290 \(July 22, 2005\)](#).

### *Examples:*

- River Rock Records commissioned twelve musical compositions that have been embodied in a number of sound recordings. River Rock owns the copyright in both the musical compositions and the sound recordings. All of these works will be published for the first time on the same compact disc. The applicant may preregister these works together by checking the boxes marked “Sound Recording” and “Musical Composition.”
- Disco Fever Publishing owns a music video and a [sound recording](#) that has been remixed from a previously published recording. The music video and the remixed sound recording will be published for the first time as a set consisting of a DVD and a super audio compact disc. The applicant may preregister both of these works by checking the boxes marked “Sound Recording” and “Motion Picture.”
- Lean Machine LLC is developing a new videogame. The packaging for this videogame will feature several photographs that are

intended to market the product. The applicant may preregister both the videogame and the photographs by checking the boxes marked “Computer Program (may include videogame)” and “Advertising or Marketing Photograph.”

- Tween Publishing is preparing three novels that will feature the same recurring characters. All three novels may be preregistered with the same application and filing fee if the entire series is expected to be published in the same [unit of publication](#) on the same day. If each novel is expected to be published on a different date, a separate application and filing fee would be required for each work.
- Scintillating Studio is developing a pilot for a new television program and the network has ordered twelve additional episodes. The applicant should submit a separate application for the pilot and each additional episode in the series, because each episode will be released on a different date.

### 1606.3 Title

The [applicant](#) should provide the current title of the work in the box that appears on the Title screen. The U.S. Copyright Office will accept a “working title,” even if it is not expected to be the title of the work when it is distributed to the public. *See Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 61,905, 61,906 (Oct. 27, 2005).*

If the work is a musical composition or [sound recording](#) that will be published in an album, the applicant should provide the title of the album on the Title screen. The titles of the individual songs and/or tracks (if they are known) should be provided on the Additional Title(s) screen.

### 1606.4 Author

The [applicant](#) should provide the full name of the author or authors of the work on the Authors screen. For the purposes of [preregistration](#), the author is the person or organization who is expected to be named as the author when (and if) the applicant submits an application to register the work.

As a general rule, the author is the person (or persons) who actually created the material covered by the copyright [claim](#). *See Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989)* (“[T]he author is the party who actually creates the work, that is, the person who translates an idea into a [fixed](#), tangible expression entitled to copyright protection.”). However, there is an exception to this rule. If the work described in the application for preregistration is a [work made for hire](#), the person who created that work is not necessarily the author. Instead, the employer or other person for whom the work was prepared is considered the author if:

- The work was created by an employee acting within the scope of his or her employment, or

- The work was specially ordered or commissioned as a work made for hire and fits within one of the nine categories of works listed in the statutory definition.

[17 U.S.C. § 101](#) (definition of “work made for hire”). For a general discussion of Works Made for Hire, see [Chapter 500](#), Section 506.

If the work is expected to be published as a [pseudonymous](#) work, the applicant may provide the author’s real name or the author’s pseudonym (or both). A work is considered to be a pseudonymous work if the author will be identified on [copies](#) or [phonorecords](#) of the work under a fictitious name and the author’s real name will not appear anywhere on the copies or phonorecords. If the author’s real name is expected to appear anywhere on the copies or phonorecords, the work is not considered a pseudonymous work, even if the author does not wish to reveal his or her identity in the preregistration record and even if the author is generally known by his or her pseudonym. In this situation the author’s real name should be provided in the application. For a detailed discussion of pseudonymous works, see [Chapter 600](#), Section 615.2.

### **1606.5 Copyright Claimant**

The applicant should provide the full legal name and address of the [copyright claimant](#) on the [Claimants](#) screen. For the purposes of [preregistration](#), the claimant is the person or organization who is expected to be named as a claimant when (and if) the applicant submits an application to register the work.

For purposes of registration, the claimant is either the author of the work or a person or organization that has obtained ownership of all rights under the copyright that initially belonged to the author. [37 C.F.R. § 202.3\(a\)\(3\)](#). No other person or organization is entitled to be named as a claimant in an application for copyright registration.

If the author is not the same person or organization as the claimant, the applicant need not provide a [transfer statement](#) explaining how the claimant obtained ownership of all rights under the copyright that initially belonged to the author (although this information is required in an application for registration).

For a detailed discussion of claimants and [transfers](#), see [Chapter 600](#), Sections 619 and 620.

### **1606.6 Key Dates**

The [applicant](#) should identify the date that the author started to create the work, the date that the work is expected to be completed, and the date that the commercial distribution of the work is expected to begin. This information should be provided in the boxes that appear on the Key Dates screen.

#### **1606.6(A) Date of Creation**

The [applicant](#) should identify the date that the author started to create the work. Specifically, the applicant should provide the month and year that the work was first [fixed](#) in a tangible medium of expression. Identifying the specific day that the first [fixation](#) occurred is encouraged, but not required. If the applicant cannot identify the

exact date of creation, the applicant should provide a good faith estimate and check the box marked “Approximate.”

The criteria for establishing the date of creation vary depending upon the nature of the work:

- If the work is a [motion picture](#), the date of creation is the date that filming began.
- If the work is a [sound recording](#), the date of creation is the date that recording sessions began.
- If the work is a musical composition, the date of creation is the date that the author began to write down or record the music and/or lyrics.
- If the work is a [literary work](#) that is expected to be published in book form, the date of creation is the date that the actual writing of the text of the book began.
- If the work is a [computer program](#), the date of creation is the date that the author began to write the code for the program.
- If the work is a videogame, the date of creation is the date that the author began to fix the visual aspects of the work.
- If the work is an advertising or marketing photograph, the date of creation is the date that the photograph was taken. If the applicant intends to preregister a group of photographs that are intended to be published together, the date of creation is the date that the author took the first photograph that will be included within the group.

#### **1606.6(B) Expected Date of Completion**

The [applicant](#) should identify the date that the work is expected to be completed. Specifically, the applicant should provide the month and year that the work is expected to be [fixed](#) in the final form that is intended for commercial distribution. Identifying the specific day that the work is expected to be finished is encouraged, but not required. If the applicant cannot identify the expected date of completion, the applicant should provide a good faith estimate and check the box marked “Approximate.”

If the work is substantially finished except for the final editing, the applicant should provide the month and year that the final editing is expected to be complete. In the case of a [motion picture](#), the applicant may provide the date when principal photography is expected to be completed.

#### **1606.6(C) Expected Date of Commercial Distribution**

The [applicant](#) should identify the date that the commercial distribution of the work is expected to begin. Specifically, the applicant should provide the year that [copies](#) or [phonorecords](#) of the work in its complete and finished form are expected to be distributed to the public. Identifying the month and day that copies or phonorecords of the work are expected to be distributed is encouraged, but not required. When an application for [preregistration](#) is submitted at an early stage of the creative process, the

anticipated release date is at best a prediction, rather than a binding commitment. *See Preregistration of Certain Unpublished Copyright Claims*, 70 Fed. Reg. 61,905, 61,906 (Oct. 27, 2005). Therefore, if the applicant cannot identify the expected date of commercial distribution, the applicant should provide a good faith estimate and check the box marked “Approximate.”

As discussed in Section 1603.4, the work must be **unpublished** as of the date that the application is submitted. An application will be questioned if the date of expected commercial distribution is the same as the date that the application is received in the U.S. Copyright Office, but an application received the day before the expected date of commercial distribution will be accepted.

### **1606.7 Description of the Work**

The **applicant** should not submit a copy or phonorecord of the work or any portion of the work with the application for **preregistration**. Instead, the applicant should provide a detailed description that reasonably identifies the work.

The description should be based on the information available at the time the application is submitted, and it should contain no more than 2,000 characters (including spaces and punctuation marks). At a minimum, the description should be sufficiently detailed and specific to satisfy a court in a copyright infringement action that the allegedly infringed work is, in fact, the work described in the application for preregistration. Merely reciting the title of the work or the type of work (*e.g.*, “**motion picture**” or “**sound recording**”) is not sufficient.

Because the description will be made available to the public through the U.S. Copyright Office’s website, the applicant should not include any portion of the work in that description, such as the lyrics for a song or the lines of code for a **computer program**.

The specific requirements for describing a motion picture, sound recording, musical composition, book, computer program, videogame, or advertising or marketing photograph, are discussed in Sections 1606.7(A) through 1606.7(F).

*See 37 C.F.R. § 202.16(c)(6); see also Preregistration of Certain Unpublished Copyright Claims*, 70 Fed. Reg. 42,286, 42,289, 42,290 (July 22, 2005).

#### **1606.7(A) Motion Pictures**

In the case of a **motion picture**, the description should include: the subject matter of the work; a summary or outline of the plot; the names of the director and the primary actors; the principal location of filming; and any other information that would assist in identifying the work being preregistered. 37 C.F.R. § 202.16(c)(6)(i).

#### **1606.7(B) Sound Recordings**

In the case of a **sound recording**, the description should include: the subject matter of the work(s) recorded; the genre of the work(s) recorded (*e.g.*, classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz); the title(s) and composer(s) of any musical compositions embodied in the sound recording; the

name(s) of the performer or performing group(s) featured in the recording; the principal location of the recording; and any other information that would assist in identifying the work being preregistered, such as the name of the record label that is expected to distribute the work. [37 C.F.R. § 202.16\(c\)\(6\)\(ii\)](#).

#### **1606.7(C) Musical Compositions**

In the case of a musical composition, the description should include: the subject matter of the lyrics (if any); the genre of the work (*e.g.*, classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz); and any other information that would assist in identifying the work being preregistered. In particular, if the musical composition will be included in a [sound recording](#) or a [motion picture](#) that is being prepared for commercial distribution, the description should include the name of the performer(s) featured in the recording, the name of the record label or motion picture that is expected to distribute the work, and the principal location of the recording. [37 C.F.R. § 202.16\(c\)\(6\)\(iii\)](#).

#### **1606.7(D) Books**

In the case of a literary work being prepared for [publication](#) in book form, the description should include: the genre of the book (*e.g.*, biography, novel, history) and a brief summary of the work, including the subject matter (*e.g.*, a biography of President George W. Bush, a history of the war in Iraq, a fantasy novel); a description of the plot, primary characters, events, or other key elements of the content of the work (if known); and any other information that would assist in identifying the work being preregistered, such as whether it is a later edition or revision of a previous work. [37 C.F.R. § 202.16\(c\)\(6\)\(iv\)](#).

#### **1606.7(E) Computer Programs and Videogames**

In the case of a [computer program](#), the description should include: the nature, purpose, and function of the program; the programming language that the author used to write the program; whether the program has been created with any particular organization or structure; the form in which the program is expected to be published (*e.g.*, as an online-only product); and the identities of the person(s) involved in the creation of the program. In addition, the description should indicate whether there are previous versions of the program, and if so, the description should identify those versions.

If the work is a videogame, the description should include the foregoing information, along with the subject matter of the game; the overall object, goal, or purpose of the game; the name(s) of the character(s) in the game (if any); and the general setting and surrounding depicted in the game.

[37 C.F.R. § 202.16\(c\)\(6\)\(v\)](#).

#### **1606.7(F) Photographs**

In the case of advertising or marketing photographs, the description should include the subject matter depicted in the photographs, including the particular product, event, public figure, or other item or occurrence which the photograph is intended to advertise



or market. To the extent possible and applicable, the description should provide additional information that will assist in identifying the work, such as: the party for whom the photographs were taken; the approximate time period when the photographs were taken; the approximate number of photographs that may be included in the group; any events associated with the photograph (*e.g.*, New York Fashion Week Fall 2011; North American International Auto Show 2012; Baselworld 2013); and the location and physical setting or surroundings depicted in the photographs. In addition, the [applicant](#) may provide a general description of the photograph (*e.g.*, lighting, background scenery, positioning of the subject matter depicted in the photograph) and any locations and events (if applicable) associated with the photographs (*e.g.*, Super Bowl XXXIX). [37 C.F.R. § 202.16\(c\)\(6\)\(vi\)](#).

#### **1606.8 Notification**

On the Notification & Certification screen the [applicant](#) should provide the email address to which the notification of [preregistration](#) should be sent.

#### **1606.9 Certification**

On the Notification & Certification screen the [applicant](#) will be asked to certify the application. Specifically, the applicant should provide the first and last name of the individual who is certifying the application and should check the box labeled “I agree.” By checking this box, the applicant certifies that he or she is the author, the [copyright claimant](#), the owner of one or more [exclusive rights](#) of the work described in the application, or the [authorized agent](#) of the author, copyright claimant, or owner of exclusive rights. In addition, the applicant certifies that the work is being prepared for commercial distribution, that he or she has a reasonable expectation that the work will be commercially distributed to the public, and that the information given in the application is correct to the best of his or her knowledge. [37 C.F.R. § 202.16\(c\)\(8\)](#); *see also Preregistration of Certain Unpublished Copyright Claims*, 70 Fed. Reg. 61,905, 61,906 (Oct. 27, 2005).

[Certifications](#) are an important part of the [preregistration](#) procedure. The following acts constitute a crime that is punishable pursuant to Title 18, Section 1001 of the U.S. Code: knowingly and willfully falsifying, concealing, or covering-up a material fact; making any materially false, fictitious, or fraudulent statement or representation; or making or using any false writing or document knowing that it contains any materially false, fictitious, or fraudulent statement or entry in an application for preregistration.

#### **1606.10 Filing Fee**

The current [filing fee](#) for an application for [preregistration](#) is set forth in the U.S. Copyright Office’s [fee schedule](#) under the heading “Preregistration of certain unpublished works.” For information concerning the methods for paying this filing fee, see [Chapter 1400](#), Sections 1403.4 and 1403.5.

The Office will not refund the filing fee under any circumstances. Nor will the Office credit the fee toward the filing fee for an application for a basic registration, even if the [applicant](#) intended to submit an application for registration but submitted an application for preregistration by mistake. *See* [37 C.F.R. § 202.16\(c\)\(5\)](#).



## 1607 Examination Guidelines

Because a [preregistration](#) does not constitute *prima facie* evidence of the validity of the copyright or the facts stated in the notification of preregistration, the [registration specialist](#) conducts only a limited review of an application for preregistration. Specifically, the specialist will ascertain whether the work described in the application falls within one of the classes of works that have had a history of infringement prior to authorized commercial release (as determined by the [Register of Copyrights](#)) and whether the [applicant](#) provided all of the necessary information specified in the application.

As a general rule, the registration specialist will not pass judgment on the adequacy of the written description of the work. However, the description is an important part of the preregistration record, and it is important to recognize that this record cannot be corrected, amended, or supplemented once the U.S. Copyright Office has issued a notification of preregistration. *See* Section [1612](#). In an action for infringement of a preregistered work, the court may evaluate the written description to determine whether it actually describes the work that allegedly has been infringed, taking into account the information available when the application was submitted and taking into account the applicant's legitimate interest in protecting confidential information concerning the work.

*See* [37 C.F.R. § 202.16\(c\)\(6\)-\(7\)](#); *see also* [Preregistration of Certain Unpublished Copyright Claims](#), 70 Fed. Reg. 42,286, 42,289-90 (July 22, 2005).

## 1608 Notification of Preregistration

If the application for [preregistration](#) has been approved, the U.S. Copyright Office will issue a notification of preregistration to the person or organization named in the application as the correspondent. The Office will send the notification to the email address that the [applicant](#) provided on the Notification & Certification section of the application.

The notification will include the preregistration number that has been assigned to the [claim](#) and the effective date of the preregistration. Preregistration numbers are not based on the nature of the work (*i.e.*, a number beginning with the letters VA for a work of the visual arts or a number beginning with the letters PA for a work of the performing arts). Instead, they are numbered consecutively beginning with the prefix PRE, regardless of whether the work in question is a [motion picture](#), a [sound recording](#), a musical composition, a book, a [computer program](#), a videogame, or an advertising or marketing photograph.

The notification of preregistration will remind the correspondent that the work should be registered in a timely manner to secure the full benefit of the preregistration, and that the preregistration number should be included in the application for a basic registration to ensure that the records for the preregistration and the basic registration will be cross-referenced with each other.

The notification of preregistration is the only notice that the Office will provide to the applicant or the [claimant](#) indicating that a preregistration has been made. The Office does not issue paper certificates for preregistrations.

The Office will make the preregistration record available to the public through its [Public Catalog](#). This database is available through the Office's [website](#). Additionally, the Records, Research, and Certification Section will issue a certified copy of the notification of preregistration upon written request. For more information, see [Chapter 2400](#), Section 2407.

See [37 C.F.R. § 202.16\(c\)\(10\)-\(12\)](#); see also [Preregistration of Certain Unpublished Copyright Claims](#), 70 Fed. Reg. 42,286, 42,290 (July 22, 2005); [Preregistration of Certain Unpublished Copyright Claims](#), 70 Fed. Reg. 61,905, 61,906 (Oct. 27, 2005).

### **1609 Effective Date of Preregistration**

The effective date of a [preregistration](#) is the day on which the U.S. Copyright Office receives the [filing fee](#) and application for preregistration, which are later determined by the U.S. Copyright Office or a court of competent jurisdiction to be acceptable for preregistration. [37 C.F.R. § 202.16\(c\)\(9\)](#).

"Once 'preregistration . . . has been made,' the copyright claimant may institute a suit for infringement." *Fourth Estate Public Benefit Corp.*, 139 S. Ct. at 888 (quoting 17 U.S.C. § 411(a)). But as discussed in Section 1604.1, "[a]n infringement suit brought in reliance on preregistration risks dismissal unless the copyright owner applies for registration promptly after the preregistered work's [publication](#) or infringement." *Id.*

### **1610 Refusals**

If the [registration specialist](#) determines that the work described in the application does not constitute [copyrightable](#) subject matter, that the work is not eligible for [preregistration](#), or that the [claim](#) is invalid for any other reason, he or she will refuse to preregister the claim. The specialist will notify the [applicant](#) in writing of the refusal and will specify the reasons for his or her decision.

### **1611 No Requests for Reconsideration**

A refusal to preregister is not subject to administrative review. If an application for preregistration is refused, the U.S. Copyright Office will not entertain a [request for reconsideration](#). See [37 C.F.R. § 202.5\(a\)](#) (stating that administrative review is only available in cases involving a refusal to register a claim to copyright, a [mask work](#), or a [vessel design](#)). If the applicant disagrees with the [registration specialist's](#) decision, the applicant must submit a new application that addresses the issues identified in the refusal to preregister. If the new application is determined to be acceptable for preregistration, the effective date of preregistration will be the day on which the new application and the new [filing fee](#) were received in the U.S. Copyright Office. See Section [1609](#).

**1612 No Corrections or Cancellations**

The U.S. Copyright Office conducts only a limited review of an application for [preregistration](#), because a preregistration does not constitute *prima facie* evidence of the validity of the copyright or the facts stated in the notification of preregistration. Consequently, a preregistration will not be cancelled, corrected, supplemented, or amended once it has been entered in the [public record](#). For example, the Office will not expunge a preregistration from its records if the [applicant](#) incorrectly described the work or made other errors in the application. Nor will the Office accept an application for a [supplementary registration](#) to correct or amplify the information in the preregistration record. *See* [Chapter 1800](#), Section 1802.4.

To correct a preregistration record, the applicant may submit another application containing the corrected or omitted information. The new effective date of preregistration is the day on which the Office receives the new [filing fee](#) and the new application, which are later determined by the U.S. Copyright Office or a court of competent jurisdiction to be acceptable for preregistration. *See* Section [1609](#).

If the work has been completed, the applicant may submit an application for a basic registration that contains the correct or missing information, instead of submitting a new application for a new preregistration.

*See generally* [Preregistration of Certain Unpublished Copyright Claims](#), 70 Fed. Reg. 42,286, 42,290 (July 22, 2005).