

COPYRIGHT REGISTRATION OF A GROUP OF PUBLISHED IMAGES

A PRIMER

As of August 17, 2001 photographers may make group registrations of published images under newly enacted additions to the Copyright Office's regulations. Previously, such registrations were very limited by strict rules. The amended regulations are a result of cooperation between ASMP and the U.S. Copyright Office, which recognized the need to make it easier for media photographers to register their images that are most vulnerable to infringement – those that have been published. These changes in the Copyright Office's regulations have made it possible for photographers to register most, if not all, of their published images in a convenient and inexpensive manner. The benefits of registration, which include the eligibility for court awards of statutory damages and attorneys' fees, make registration an important asset in the photographer's arsenal of tools to protect the value of his or her work. Registration is a powerful tool when you have to enforce your rights, and it often determines whether you are able to file a suit for infringement. ASMP believes that it is in every photographer's best interest to register his or her images. This primer is intended to guide photographers through the process of registering groups of published images under the new regulation.

Mandatory requirements to register under the regulation are as follows.

I. The image(s) to be registered must have been published.

A. What is registration? Registration is recording of your claim to the copyright in an image with the U.S. Copyright Office. You do not have to register to own a copyright. Registration is a means of proving that you own the copyright. It is also required before you can file a lawsuit for infringement. Registration has potential value, if your work is infringed (more information on the benefits of registration at <http://www.asmp.org/information/guides/copyrightguide.html>).

B. What constitutes publication? First, let's understand what publication is not. Neither the display of photographs in public or private places nor the transmitting of your work to a place where it will be displayed constitutes publication. "Display" is different from "publication." The U.S. Copyright Law states: " 'Publication' is the distribution of copies ... of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies... to a group of persons for purposes of further distribution, public performance or public display, constitutes publication." Under this definition the normal uses of media photography in objects like magazines, books, brochures, and advertisements constitute publication. Offering images to your stock agency "for purposes of further distribution" should usually also be considered publication. The placement of an image on the World Wide Web constitutes publication.

II. One copy of each image to be registered must be deposited.

A. What is an acceptable copy of an image for purposes of deposit? The copy of the image to be deposited must be a copy of the actual image that was published. Note, it is not necessary to deposit a copy of the image AS PUBLISHED, so copies of the work in which your images were published are NOT required. They are acceptable but not required.

B. Is a deposit copy mandatory? YES, no exceptions.

C. What formats are acceptable for registration? The Copyright Office has specified the acceptable format by the following language in the regulation: "photographs must be deposited in one of the following formats (listed in the Library's order of preference):

(A) Digital form on one or more CD-ROMs (including CD-RW's) or DVD-ROMs, in one of the following formats: JPEG, GIF, TIFF, or PCD;

(B) Unmounted prints measuring at least 3 inches by 3 inches (not to exceed 20 inches by 24 inches);

(C) Contact sheets;

(D) Slides, each with a single image;

(E) A format in which the photograph has been published (e.g., clippings from newspapers or magazines);

(F) A photocopy of each of the photographs included in the group, clearly depicting the photograph, provided that if registration is made pursuant to Sec. 202.3(b)(9) for group registration of photographs, the photocopy must be either a photocopy of an unmounted print measuring at least 3 inches by 3 inches (not to exceed 20 inches by 24 inches) or a photocopy of the photograph in a format in which it has been published, and if the photograph was published as a color photograph, the photocopy must be a color photocopy;

(G) Slides, each containing up to 36 images; or

(H) A videotape clearly depicting each photograph.”

III. The copyright claimant in all of the photographs must be the same.

A. Who is the copyright claimant? The person who owns the copyright in the images is the copyright claimant. This is the photographer unless he or she has transferred the copyright to another party or performed a Work For Hire (more information on Work For Hire at <http://www.asmp.org/information/guides/copyrightguide.html>). You do not have to be a citizen of the USA to register images with the U.S. Copyright Office.

B. Can you submit the work of other photographers on your registration, if you own the copyright to their images? No, you cannot. All the photographs registered in the group must be the work of one photographer.

IV. The registration fee must accompany the application and deposit.

A. What is the amount of the registration fee? The fee is \$30.00 (U.S.).

B. What is the application? The application is The Copyright Office Form VA, which must be completed carefully. Instructions for completing this form and copies of the form can be found at the ASMP's website <http://www.asmp.org/information/guides/registration.html> or at the U.S. Copyright Office's website: <http://www.loc.gov/copyright/reg.html> under the heading “Visual Arts, Drawings, Photographs, Sculpture,..”

V. The application form (VA) must be properly completed.

A. What are the critical factors in completing form VA? To be accepted by the Copyright Office, the form must be completed properly. Please make special note of the following requirements, which are MANDATORY for the completion of form VA for the purpose of group registration of published images.

1. In space 1 at TITLE OF THIS WORK you must enter the following words: “GROUP REGISTRATION / PHOTOS.”

2. In space 1 at PREVIOUS OR ALTERNATIVE TITLES you must insert the approximate number of images included with the application, for example, you might state: “app. xx photographs” where xx is the approximate number of images included.

3. In space 3b you must insert a date of publication according to the rules of the regulation (see next question).

B. What are the rules for recording the date of publication (space 3b of form VA)?

The regulation requires recording the date of publication differently for different circumstances. The regulation orders:

1. If the photographs were all published on the same date: “the date of publication must be identified in space 3b of the application.”

2. If the photographs were not all published on the same date: “the range of dates of publication (e.g., January 1-December 31, 2001) must be provided in space 3b of the application, and the date of publication of each photograph within the group must be identified either on the deposited image or on a continuation sheet, in such a manner that for each photograph in the group, the date of publication can be identified. A special continuation sheet for registration of a group of photographs shall be made available by the Copyright Office.” [Note: it is not available as of the time of this writing].

3. If each photograph within the group was first published within three months before the date on which an acceptable application, an acceptable deposit, and the applicable fee are received in the Copyright Office: “the applicant may, simply state the range of dates of publication (e.g., February 15-May 15, 2001) in space 3b of the application, without specifically identifying the date of publication of each photograph in the group either on the deposited image or on a continuation sheet.”

ASMP’s Advice on Timely Registration

To obtain the full benefits of registration, images must be registered either before an infringement takes place or within 3 months after the date of first publication. If one registers within the 3 months period, the registration will provide full benefit, even if an infringement has occurred prior to the actual registration. This means that photographers should adopt a routine of registering periodically and on a regular basis to take advantage of the 3 months window and the benefits that go along with it.

In paragraph V.b.3.) above, the regulation makes a special allowance for images that are registered within the 3 months period, by allowing that the required publication dates may be a range of the three month period. This eliminates the need to track and record the publication dates of the works individually. This means less administrative hassle for the photographer. This “range of dates” is much simpler to record than “specifically identifying the date of publication of each photograph in the group.” So, ASMP’s advises that photographers register their images within the “3 months after the date of first publication” period.

In doing so, keep in mind that a day can make all the difference in the world. Registration is made on the day that the Copyright Office receives your application. So, if your application for a three months period arrives two days after the close of that period, you have not met the requirement. Remember that the works published from at the start of the period are older than those published at the close. For example, if your application were for images published during the period of February 15-May 15, 2001 but was not received at the copyright office till May 17th, you would have missed the ninety day

period by two days since the registration calendar started turning on February 15. DO NOT MAKE THAT ERROR. It could be costly.

ASMP recommends that photographers register their images more frequently than the maximum allowance of three months. In fact we recommend every two months to be very safe. This allows time for the application to be received at the Copyright Office and for you to receive the customary acknowledgement from the Office. Additionally, it allows some time act if the registration has not been received at the Office or misplaced by the office. We recommend that you send all registration applications to the Copyright Office by a carrier that offers proof of deliver. U.S. priority mail offers proof of deliver for a nominal additional charge over the postage fee, and allows you to confirm the delivery via an 800 phone number or via the WWW.

In the event you accept this recommendation you will be registering six times a year. The annual costs of the registrations will be \$180. It could be the best insurance you will ever buy.

Conclusion

This regulatory change took nine years to accomplish. The Copyright Office has indicated a willingness to make more changes to simplify registration of all types of creative works in the future, including the ability to make registrations under this regulation over the Internet. If photographers are to be taken seriously in these future efforts, it is critical that they use this liberalized registration process to show that they appreciate and respond to efforts made on their behalf. Please begin a routine process of registering your published images. It will not only insure you in case of future infringements, but it will also assure that your voice will be heard in efforts to gain more improvements in copyright policy.

More Information on Copyright

Additional information on Copyright can be found at the following URLs.

Copyright Guide For Photographers: <http://www.asmp.org/information/guides/copyrightguide.html>

U.S. Copyright Office Home page: <http://www.loc.gov/copyright>

General information on registering photographs: <http://www.asmp.org/information/guides/pdf/fl107.pdf>

Application and instructions for form VA: <http://www.asmp.org/information/guides/pdf/formvai.pdf>

Group registration amendment: <http://www.loc.gov/copyright/fedreg/2001/66fr37142.html>