

## **Preparing the copyright application—Completing the application form: a recommended approach**

Correct completion of the application form is important. Although copyright registrations may be corrected, courts today seem to be less receptive to explanations describing why the application form was not correctly completed; some observers believe courts to be more willing to impose penalties upon copyright owners for incorrect registrations, including cancellation of the registration and invalidation of the copyright claim, among other things. Therefore, copyright owners and their representatives should give particular attention to their copyright application forms and the information these forms present.

It is suggested that the copyright application form completed by *first* determining the information to be set forth in the last line of section 2a, the "nature of authorship" line. The Copyright Office permits this line to be left blank, but it is recommended that applicants always include this information in each application, and that they begin completion of the application form by filling out this line. Why? Because "nature of authorship" information will dictate the way the remainder of the application should be completed to correctly reflect the work. It will clarify authorship; it may well result in the use of a different title since, after completing this line, the applicant or representative may realize that the "work" being registered is different than first thought; and it will assist especially in completing sections 5 and 6 of the form.

First consider a relatively simple example: a hardcover novel. Assume that it includes text, text design (the selection of typefaces for specific parts of the book and the arrangement of those parts by page) and a glossy slip cover with text and artwork. Assume that Miss *A* wrote the novel, Mr. *B* did the book design, Ms. *C* created the artwork, and Mr. *D* the text on the slip cover. Which of these should the applicant (presumably the publisher) include in the application? Assume that the copyright claimant wishes to register its claim to copyright in all copyrightable aspects of this hardcover novel. How should form TX be completed?

Usually the author of the text, Miss *A*, would be named in section 2a of the form. The nature of her authorship might be described as "entire text of the novel." It should not be described simply as "text," for this raises the possibility that she authored only a part of the novel. It should not be described as "entire text," because this suggests that she authored the text on the slip cover as well. (If in fact that is the case, it should be made clear on the copyright application form by stating the nature of her authorship as "entire text of novel and slip cover.") After the rest of the information concerning Miss *A* in section 2a has been completed, the nature of authorship line in section 2b would then be completed. Should it identify Mr. *B* as the designer of the book? No. The design (i.e., the selection of layout and typefaces) has been determined not to be a copyrightable element of a work. Therefore, Mr. *B* would not be listed as an author.

The artwork and text on the slip cover are copyrightable, however. Therefore, in section b we would identify the artwork or illustration included in the slip cover by stating, for example, "slip cover artwork." If Ms. *C*, the artist, was not an employee of the publisher, or was not

hired specially to create the cover art, she would be identified in section 2b. However, it is far more likely that she is an employee of the publisher, or was hired specially to create the artwork on the slip cover; therefore, this artwork is a work made for hire. Assume that this is true for Mr. *D*; he is an employee of the publisher. Therefore, the publisher's name would be entered as the "name of author" in section 2b and the rest of that section would be completed to identify the publisher as the author of "slip cover artwork and text."

The information provided in sections 2a and b will now clarify how the rest of the application should be completed. The novel's title would be entered as the title of the work in section 1, the publisher would be identified in section 4, and the remaining sections completed as discussed in subsequent chapters of this book.

Now assume that instead of a work of fiction, what is being registered is a work of nonfiction which is supplemented or updated regularly, like this book. Assume further that the publisher of the law book wishes to register a claim to copyright in a revision to the book. The nature of authorship line in section 2a would be completed by including a statement such as "revisions and additions to the previous text." If the person revising the work were the original author, and that person were not an employee of the publisher or specially commissioned to write the work, the author's name would be entered on the first line of section 2a and the remaining information in that subsection would be completed to identify that person. However, if the author were an employee of the publisher, or if the revisions were created as a work made for hire, the publisher would be identified as the author. Of course, section 5 would be completed to identify the most recent previous registration of the work. Also, section 6a would be completed to identify the preexisting material, such as "Copyright Registration Practice as originally published"; section 6b would be completed with a statement such as "revisions and additions to the original text."

As a third example, assume that a computer program based substantially on a previous work in the public domain is being registered; the resulting complete computer program included as its core the previous "ABC" computer program in the public domain, and added to it considerable additional features. In such a case, the "nature of authorship" part of section 2a would be completed to identify, not "computer program," but rather, whatever elaborations were made to the preexisting program in the public domain. It is likely that these elaborations would have been written by employees of the publisher of the program, and therefore would be a work made for hire. Thus, the publisher would be identified in the other lines of section 2a and the "yes" box located at the start of the second line would be checked. Section 5 probably would be completed by simply checking the "no" box, since the previous work in the public domain very likely was never registered with the Copyright Office. Section 6 would be completed to identify the derivative nature of the work being registered by setting forth, in section a, some brief identification of the previous work in the public domain, and in section b, a statement briefly describing the preexisting work and the material added to it, such as "revisions and supplements to ABC computer program, entire text of user manual, sample programs, and utilities."

Consider now how many might have completed the copyright application form for each of these examples. For the novel, they would have simply set forth its title in the first line of section 1, identified its author in section 2a, the publisher in section 4 and a minimal amount of other material in the remaining sections. By first specifically considering each and every copyrightable element of the work, the copyright application very likely would be completed to encompass all of these elements, not simply the obvious one. For the computer program, if attention is *first* directed to the nature of authorship being claimed in the program, very likely the derivative nature of the work is going to be apparent. If instead one thinks about registering a claim simply in the "computer program," it may well be that the derivative nature of the work will be missed, and that the publisher of the work will be identified as the author of the entire program, rather than just of the embellishments to the preexisting public domain work.

Further guidance concerning completion of the copyright application form is given in subsequent chapters of this book. After the form has been completed and signed, it should be sent to the Copyright Office with the required depository material and fee.