Copyright Registration of Computer Programs

August 31, 2013

The Copyright Office defines "computer programs" as "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result." For a longer explanation of the process, you can access Circular 61 at the Copyright Office website.

Copyright registration protects the expression of the computer program in source code. It does not protect the function of the software or the ideas behind it. This is the subject of patent protection (a lot more expensive and controversial for software).

A registration of copyright in an HTML computer program will protect the HTML code, and can protect the user-interface of the program, but will not protect any separate content, such as text or graphics, that are added and can be continually changed.

The filing fee for an application for copyright registration is $35.00. Assuming the application is accepted, you will receive a registration certificate from the U.S. Copyright Office in approximately 4 months from the date of filing.

VERSIONS. Each separate version of a particular computer program should be registered separately, provided the version has sufficient new or revised content (e.g. new features) and is not merely error corrections or debugging. (Register Version 2.0, but not necessarily Version 1.2.).

NATURE OF AUTHORSHIP Describe the aspects of the computer program for which you are claiming to own the copyright. In this regard, it is not appropriate to describe the features or functions of the program. Simply state the portion of the program for which you claim copyright ownership. This could include statements such as:

- Computer Program;
- Entire Text of Computer Program;
- Entire Program Code;
- Text of User's Manual and Computer Program; etc.

Whether screen displays are also protectible has been at issue in the courts. The Copyright Office has stated that a single registration is sufficient to protect screen displays to the extent screen displays are protectible. As such, "Entire Work" or "Computer Program" would be sufficient to include a claim to the screen displays.

YEAR OF CREATION Provide the year of creation and the exact date of first publication for the program or the particular version thereof. If materials included as the deposit requirement contain multiple dates, the Copyright Office will question whether the program is appropriately described as a new program or subsequent version. In the event you would like to include multiple dates within the copyright notice or other portion of the code for the purpose of tracking internal revisions or the history of the program, you should disclose this information in a cover letter to accompany your application materials. This will assist the Copyright Office in its review of your application and will likely speed up the review process.

DERIVATIVE WORK This space must be completed only if the program or version is a derivative work. A derivative work is something that is not entirely a new creation, but rather incorporates portions of material that is either in the public domain or was previously copyrighted such as subroutines, modules, textual images, etc. Subsequent versions of a computer program are prime examples of derivative works since they incorporate portions of the original, previously created program.

In the event a particular program is a derivative work, the previously existing material that is used must be disclosed. This may be as simple as "Previous Version." The new material that has been added must also be disclosed. It is this new material that will qualify for the copyright protection, since the pre-existing material has already been copyrighted or resides in the public domain. The Copyright Office has indicated that acceptable statements for the description of new material in Space 6b can include:

- Revised Computer Program;
- Editorial Revisions;
- Revisions and Additional Text;
- New Programming Text; etc.

You should *not* include descriptions such as debugging, error corrections, or new or altered functions of the revised computer program, because these items would not qualify for copyright protection.

DEPOSIT REQUIREMENT The deposit requirement is the most complicated portion of registering the copyright in a computer program. An application generally must include two copies of the work for which you seek registration, except where the work is unpublished, in which case only one copy is required. For published works, one of the deposit copies is sent to the Library of Congress and becomes publicly available. Software is "published" when copies are made available to the public, even if only in object code form or over the web.

The portion of the computer code that is submitted needs to be carefully delineated since any claim to trade secret materials may be lost if you allow them to be available to the public when the deposit copy is sent to the Library of Congress. There are several deposit options that depend upon the length of the code, the format in which it appears, as well as whether the code contains any trade secrets. These options are set forth below.

COMPUTER PROGRAM WITH NO TRADE SECRETS

▪Generally, send the first 25 pages and the last 25 pages of source code printed in PDF format, together with the page containing the copyright notice. (Determining what constitutes the "first" and "last" 25 pages is really up to you – just remember that what you are submitting has to be adequate for the Copyright Office to know what it is registering, and for you to be able to prove what the program was in the event that you are enforcing your rights against an infringer later).

▪For a program that is less than 50 pages in length, send one copy of the entire source code.

▪For a revised version of a program that has been previously published, registered or is in the public domain, send the page that contains the copyright notice and one of the following:

(1) if the revisions occur throughout the entire program, send the first and last 25 pages of source code, or

(2) if the revisions are not contained in the first and last 25 pages, send any 50 pages that are representative of the revised material.

COMPUTER PROGRAM WITH TRADE SECRETS

▪Send a cover letter explaining that you are claiming copyright ownership in materials that contain trade secrets, the page containing the copyright notice, and one of the following:

NEW COMPUTER PROGRAM

(1) First 25 and last 25 pages of source code with the portions containing trade secrets blacked out;

(2) First 10 and last 10 pages of source code with no portions blacked out;

(3) First 25 and last 25 pages of object code plus any 10 or more consecutive pages of source code with no portions blacked out; or

(4) For programs that are 50 pages or less in length, the entire source code with the portions containing trade secrets blacked out.

REVISED COMPUTER PROGRAM

▪(1) If the revisions are contained in the first and last 25 pages of source code, send any one of the four options for new computer programs listed above;

▪(2) If the revisions are not contained in the first and last 25 pages of source code, send 20 pages of source code containing the revisions with no portions blacked out; or

▪(3) If the revisions are not contained in the first and last 25 pages of source code, send any 50 pages of source code containing the revisions with the portions containing trade secrets blacked out.

ADDITIONAL CONSIDERATIONS FOR ALL APPLICATIONS

▪If the computer program is accompanied by a published user's manual or other printed instructions or documentation, you must also include one complete copy of all the printed materials with the deposit requirement.

▪Where a specific claim to screen displays is made for the Nature of Authorship, you must also include identifying material for the screen displays, such as print outs, photographs or drawings that clearly show the screens. If the screens are produced in the user's manual, the manual will be sufficient. Please note, however, that blank forms and typical menu screens are not copyrightable and should not be claimed. Additionally, in the event pictorial or graphic aspects predominate the screen display(s), it may be more appropriate to seek registration of the screen display(s) with a separate form using Form PA for audiovisual works.

▪For a computer program embodied in a CD-ROM, send the entire package including the operating software and a complete copy of any accompanying instructions or manuals as well as a printed version of the appropriate pages of the software's source code.

▪Whenever you choose to submit a portion of source code that has been blacked out to protect trade secrets, the blacked out portions of the submitted materials must be proportionately less than the information that is disclosed, and the portion that is visible must represent an appreciable amount of the entire source code.