

**INTERSECTION OF ESTATE ISSUES AND COPYRIGHT LAW:
A LONG AND WINDING ROAD**

**COPYRIGHT INHERITANCE ISSUES
AND TEXAS PROBATE**

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COPYRIGHT INHERITANCE ISSUES AND TEXAS PROBATE

I. INTRODUCTION

From legends like Willie Nelson and George Strait to shooting stars Kelly Clarkson and Los Lonely Boys, Texas has become the place that entertainers call “home.” Along with entertainers, the supporting music industry in Texas is experiencing unprecedented growth. According to the Texas Music Office, almost 600 record labels, 300 music publishers, and 10,000 songwriters operate in Texas.¹ In addition to the music industry, visual and graphic artists, screenwriters, animators, and computer programmers have settled themselves, and their ownership rights to intellectual property, in Texas. Many economic and cultural indicators suggest this trend will continue.

This economic growth is reflected in the increasing value of the intellectual property interests. A songwriter may only look as far as the recent value of the Sony/ATV publishing catalog, which is estimated to be worth one billion dollars.² Although this catalog represents some of the most popular songs³ of modern music, most Texas intellectual property owners will realize an increasing value of their property interests over time.

Once owners recognize the current or potential value of their intellectual property, it would be wise to listen to Benjamin Franklin who once said “In this world nothing can be said to be certain, except death and taxes.” This truth demands that a prudent intellectual property owner identify all potential interests, look toward the future, and prepare a written estate plan that transfers intellectual property rights to others in the most economically efficient manner.

Although many intellectual property owners will prepare an estate plan, many others will likely die without preparing a will or other written instrument directing the distribution of assets. As the world loses these talented intellectual property owners,

Texas lawyers will be faced with identifying, valuing, and distributing intellectual property rights to heirs. One of these rights is a copyright.

A. Overview

This article intends to provide the entertainment lawyer and non-probate practitioner with a general overview of the following topics: 1) creation, ownership, and rights in a copyrightable work⁴; 2) copyright transfers; 3) copyright terms and renewals; 4) copyright termination; 5) characterization in a community property state; 6) Texas probate processes; and 7) effectuating transfers of ownership to heirs with the United States Copyright Office and performance royalty organizations.

II. COPYRIGHT CREATION, RIGHTS, REGISTRATION, AND INITIAL OWNERSHIP

A. Creation

An author creates a copyrightable⁵ work⁶ when the author fixes an idea in a tangible form. “Fixing” an idea in tangible form could include any of the following circumstances: lyrics written on a napkin; lyrics typed into a word processor and saved as a document; the digital recording of a singer and her guitar on a computer hard drive or portable recorder; the physical drawing of a cartoon character; original creation of computer code progression; or, processing a simple photograph.

B. Rights

The “copyright” is a package of legal rights initially owned by an author upon creation of a copyrightable work. These rights can be generally stated to include the right to 1) reproduce the work; 2) prepare derivative works; 3) distribute copies; 4) perform the work in public, including digital transmission; and, 5) display the work in public. *See* 17 U.S.C. §106. These exclusive rights are subject to Fair Use, Educational Use, and other limitations and exceptions identified in 17 U.S.C. §§107–122.

C. Registration

Although the simple creation of a work provides these exclusive rights, registering a work with the United States Copyright Office affords maximum protection of the copyright laws, both civil and criminal. These laws include rights to assert infringement actions in federal court⁷, injunctive remedies, statutory damages, and recovery of attorney fees. 17 U.S.C. §§501-509.

D. Initial Ownership

The copyright in a work protected under the 1976 Copyright Act⁸ vests initially in the author or authors of the work. 17 U.S.C. §201(a). The authors of a joint work are co-owners of copyright in the work. *Id.* When a work is a work made for hire, absent an express written agreement, the copyright is almost always vested in the employer or other person for whom the work was prepared.⁹ 17 U.S.C. §201(b).

III. COPYRIGHT TRANSFERS

A copyright or any of the individual sub-rights can be transferred in whole or in part during life or at death. 17 U.S.C. §201(d). A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent. 17 U.S.C. §204.

During life, it has become standard practice for a successful songwriter to transfer some or all of a copyright to a publishing company, a screenplay author to transfer all of a copyright to a film production company, and a computer programmer to transfer a copyright to a business in order to fully exploit a copyright. As such, negotiating the transfer of rights in a copyright during the life of an author is likely the most common legal transaction an entertainment lawyer will encounter when representing authors or business entities desiring to obtain such rights.

Furthermore, the 1976 Copyright Act specifically provides that a copyright may be bequeathed by will or pass as personal property by the applicable laws of intestate succession. 17 U.S.C. §204.

As a result, a copyright can be owned jointly, held in trust, transferred for remuneration or by gift during life or transferred at death. A copyright is intangible personal property that can be titled in the name of one or more person or entity, much like real property. The general idea to remember is that a copyright is transferred like any other tangible asset of your estate.

IV. COPYRIGHT TERMS AND RENEWALS

A. Limited Protection

Authors are given the exclusive rights identified in Section II, above, for only a limited time after which the work falls into the public domain and may be copied without permission of the author or copyright owner. For various reasons, the scope of which is outside this article, two different sets of copyright laws apply to modern day copyright issues. Although both sets of laws could generally be referred to as the current Copyright Act, when discussing terms and renewals, it is common to refer to the first set of laws as the “1976 Copyright Act” and the second set of laws the “1909 Copyright Act.”

B. 1976 Copyright Act

The first set, the 1976 Copyright Act, applies to a work created on or after January 1, 1978 or created before this date and was neither published nor registered prior thereto. If the 1976 Copyright Act applies, then the copyright protection lasts for the life of the author plus 70 years. 17 U.S.C. §302(a). However, if the work is one made for hire, then the copyright endures for a term of 95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first. *Id.*

C. 1909 Copyright Act

The second set of laws, the 1909 Copyright Act, applies to those works created and published or created and registered prior to January 1, 1978. For these works, the 1909 Copyright Act and revisions apply. 17 U.S.C. §304(a).

Under the 1909 Copyright Act, there were two permitted copyright terms. The first copyright term lasted for 28 years. 17 U.S.C. §304(a)(1)(A). The second copyright term was called a “renewal” term and lasted another 28 years.

Under the 1909 Copyright Act, a renewal application must have been filed in the 28th year of copyright protection to renew the rights and prevent the work from falling into the public domain. Subsequent revisions to the 1909 Copyright Act eliminated the requirement to file a renewal application. Nonetheless, filing a renewal application is prudent because it affords the owner the benefits of maintaining a federal registration.¹⁰ 17 U.S.C. §304(a)(3)(A).

The 1998 Sonny Bono Copyright Term Extension Act revisions further provide that works existing in their first term under the 1909 Copyright Act on January 1, 1978 shall last for the initial 28 years and then shall be renewed for 67 years, for a total of 95 years. 17 U.S.C. §304(a)(1). In addition, the 1998 revisions provide that a work already in its renewal term on October 27, 1998 shall be protected by copyright for 95 years from publication.¹¹ 17 U.S.C. §304(b).

D. Practice Tip

The general principle to be gleaned from a discussion about copyright terms and renewals is that close attention must be paid to creation, publication, and registration of a copyright in order to accurately determine an author’s or heir’s rights in, and deadlines to renew, a copyright.

V. COPYRIGHT TERMINATION RIGHTS

A. Right to Recapture – Pre 1978

The 1976 Copyright Act added 19 years to the term of existing copyrights, for a total 75 years of protection. Congress further allowed authors or assignees to terminate a grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978 17 U.S.C. §304(c). This allowed the “recapture” of a copyright for the additional 19 years. However, this provision does not apply to works made for hire or transfers made by will or operation of law.

B. Window of Opportunity

Termination of the grant may be effected at any time during a period of five years beginning at the end of 56 years from the date copyright was originally secured, or beginning on January 1, 1978, whichever is later. For those copyrights whose termination rights expired prior to January 1, 1978, a termination right exists at any time during a five year period beginning 75 years from the date the copyright was originally secured. *See* 17 U.S.C. §304(d).

C. Proper Notice Required

Notices must be sent within another window of time by all authors, heirs, or rights holders to all grantees, their successors or assigns and filed in the Copyright Office.

D. Right to Recapture – Post 1978

A similar termination right exists for grants executed after January 1, 1978. 17 U.S.C. §203. For these grants, the five year window begins 35 years from the date of execution of the grant. 17 U.S.C. §203(a)(3). If the grant concerns publication of the work, then the period begins 35 years from the date of publication or 40 years from the date of transfer, whichever is earlier. *Id.*

E. Practice Tip

In summary, termination rights allow authors or heirs to recapture rights granted to third parties. However, the procedures are highly complex and are fraught with technical prerequisites to obtaining a successful termination of a grant. The practitioner must be able to make her client aware of these rights and identify and communicate the windows of opportunity at the client's request.

F. Copyright Law Meets Texas Probate

What do renewal and termination rights have to do with Texas probate? In Texas, a person has a right to determine who will receive his or her property upon death. TEX. PROBATE CODE §37. However, federal copyright law preempts state testate and intestate law in regards to 1) who inherits the right to renew copyright terms; and, 2) who inherits the right to terminate transfers and licenses granted by the author. 17 U.S.C. §301.

1. In general, for copyrights in their first term on January 1, 1978, renewal rights vest in the following persons in last year of the initial term of a copyright: (1) the author; (2) if the author is dead, the author's surviving spouse and children, as a class; (3) if there are no surviving spouse or children, the author's executor under his or her will; and (4) if the author left no will, the author's next of kin under state law. 17 U.S.C. §304(a)(1)(C). Thus, an author who dies before the vesting of renewal rights cannot direct in a will or other instrument who is to receive his renewal right when it vests.

2. Similarly, in regards to terminating licenses or grants executed prior to January 1, 1978, where an author is dead, his or her termination interest is owned, and may be exercised, only by the following rights holders:

(A) The widow or widower owns the author's entire termination interest unless there

are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest.

(B) The author's surviving children, and the surviving children of any dead child of the author, own the author's entire termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them.

(C) The rights of the author's children and grandchildren are in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(D) In the event that the author's widow or widower, children, and grandchildren are not living, the author's executor, administrator, personal representative, or trustee shall own the author's entire termination interest.

17 U.S.C. §304(c)(2).

3. For those copyrights whose termination rights expired prior to January 1, 1978 without terminating, then the termination right to recapture the last 20 years of the copyright vests in (1) the author; (2) if the author is dead, the author's surviving spouse and children, as a class; (3) if there are no surviving spouse or children, the author's executor under his or her will; and (4) if the author left no will, the author's next of kin under state law. 17 U.S.C. §304(d).

As such, the attorney preparing an estate plan or dealing with a deceased's copyright interest must have sufficient knowledge to identify and navigate through the copyright renewal and termination minefield and advise her client accordingly.

VI. CHARACTERIZATION OF COPYRIGHT AS SEPARATE OR COMMUNITY PROPERTY?

A. Texas is a Community Property State

In probate proceedings and estate tax evaluations, one must inventory and value property belonging to the estate of a deceased individual. In calculating value, one must look to the character of the property in question. Texas is one of nine community property states. Because Texas is a community property state, a decedent's property should be characterized as either separate or community.

B. Community Property - General Rules

The general rule is that, absent a valid written agreement to the contrary, property acquired after marriage is characterized as community property, meaning it belongs to both spouses equally. *See* TEX. FAM. CODE §3.002.

Separate property is often identified as that property that a spouse acquired before marriage or acquired during marriage by gift, devise, or descent. *See* TEX. FAM. CODE §3.001.

Additionally, one must keep in mind that income or growth realized from separate property, including separate intellectual property, is presumed to be community property. *See Alsenz v. Alsenz*, 101 S.W.3rd 648, 653 (Tex.App.—Houston [1st Dist.] 2003, pet. denied).

Thus, the entertainment lawyer - estate practitioner must analyze the character of property at death much the same as a divorce. Although the separate versus community characterization is briefly discussed in this article, the limited scope of this article requires that additional discussion be reserved for a later date.

C. Practice Tip

The general principle to remember from this brief discussion is that an attorney representing an executor or heirs of a decedent's estate should properly characterize estate intellectual property as separate or community and value it accordingly.

VII. TEXAS PROBATE

In the author's opinion, the primary purposes of Texas probate proceedings are to: 1) identify and transfer title to a decedent's real and personal property; 2) address claims of the decedent's creditors; and, 3) determine a decedent's heirs for proper distribution of property. If a copyright is the only asset to be transferred, the potential probate client will demand the most efficient and effective method of transferring title to obtain ownership of a copyright. This article is written for the non-probate practitioner and will briefly identify and comment on the most common methods of effectuating a transfer of title to intellectual property under Texas testate and intestate law.

A. Testate Distributions – Will Exists

A testate distribution is one governed by a decedent's valid last will and testament. The following methods of probate are available to those persons who have a valid will on the date of his or her death.

1. Application for Muniment of Title

a. Effect

A Muniment of Title Order transfers a decedent's interest in property to the distributees named in a valid will without the appointment of a personal representative and administration of an estate. TEXAS PROBATE CODE §89A-C. Obtaining a Muniment of Title Order is less expensive and faster alternative to the more common request for Letters Testamentary and formal appointment of a representative of an estate.

b. Criteria

One may choose to probate a valid will as a Muniment of Title so long as the following major criteria are met:

- ✓ the estate of the decedent owed no debts other than those secured by liens on real property;
- ✓ there is no necessity for an administration of the estate; and,
- ✓ the applicant meets the additional technical criteria listed in TEXAS PROBATE CODE §89B.

c. General Procedure

In most cases, a Muniment of Title proceeding will require the filing of an application along with a filing fee and attorney attendance at single hearing. The only additional court involvement is the filing of an affidavit of fulfillment of terms of the will, which must be filed by the applicant within 180 days of the date of the Muniment of Title order. This requirement is often waived where the applicant is the sole distributee under the will being probated. TEXAS PROBATE CODE §89C(d).

d. Time Restrictions

The general rule in Texas is that a will may not be presented for probate more than four years after the decedent's date of death. However, a Muniment of Title proceeding may be used to probate a will if four years have expired since the decedent's death and the applicant was not in default for failing to present the will for probate within the four years allowed by law. TEXAS PROBATE CODE §73.

e. Practice Tip

Attorneys using a Muniment of Title order to transfer property interests should be aware that many third-parties outside (and inside) of Texas are unfamiliar with this type of order and may initially request to see the traditional "Letters Testamentary" simply because this is their company's policy. Accordingly, the practitioner should contact the legal departments of these third

parties who will transfer title to the beneficiaries and confirm prior to the filing of a probate proceeding that the company will accept a Muniment of Title to transfer title to those identified in the will. Failing to do so may result in additional time and costs to convert a Muniment of Title proceeding to the more formal proceeding of requesting Letters Testamentary.

2. Application for Letters Testamentary

a. Effect

In contrast to the Muniment of title proceeding, an application for the issuance of Letters Testamentary is the most familiar and traditional method of transferring title of a deceased individual's interest in real and personal property. This method is most often used when the decedent had debt and an administration is needed to handle the creditor's claims. The effect of obtaining Letters Testamentary is the appointment of a fiduciary, identified as the Executor of the Estate of the [Decedent] who is authorized to round up the probate and non-probate property of the decedent, value it, resolve creditor claims, and distribute the property to the beneficiaries. TEXAS PROBATE CODE §76.

b. General Procedure

In most cases, a proceeding for the issuance of Letters Testamentary will require the filing of an application along with a filing fee and attorney attendance at single hearing. *See* TEXAS PROBATE CODE §81. Unlike the Muniment of Title, the application for Letters Testamentary requires the appointment of an executor, who is a fiduciary, to gather estate probate assets, appraise their values, file an inventory and appraisal of estate assets, notify creditors and beneficiaries, pay debts, distribute assets to the beneficiaries. *See* TEXAS PROBATE CODE §178-88. This can be done as an independent (without court supervision or approval) or as a dependent administration (action requiring court approval). *See* TEXAS PROBATE CODE

§89B. Obviously, an independent administration costs less. However, there are situations where a dependent administration and court approval of an executor's actions is desired. Due to the preparation and filing of an inventory, appraisal and list of claims, this method of probate is more expensive and less private. Nonetheless, it is the most complete and secure method to handle an estate.

3. Family Settlement Agreement

All parties interested in an estate of a deceased person may enter into a family settlement agreement memorializing their agreement to settle current or anticipated disputed issues. Texas courts favor Family Settlement Agreements and will enforce them. *Shepard v. Ledford*, 962 S.W.2d 23, 32 (Tex. 1997).

All persons who have an actual or potential interest in the settlement of the dispute must join in the family settlement agreement. The agreement may be filed in the county records.

It is often prudent to file a lawsuit over the dispute and resolve it by a family settlement agreement. Such action lends strength to any claim that the settlement was entered into to merely avoid taxes.

A sample family settlement agreement is attached as **Appendix A**.

B. Intestate Distributions – No Will

An intestate distribution is one governed by the Texas intestacy laws because no valid will exists. *See* TEXAS PROBATE CODE §37, §38, and §45. The following methods of probate are most commonly used for those persons who do not have a valid will on the date of his or her death.

1. Family Settlement Agreement.

As mentioned above, all interested parties may enter into a family settlement agreement concerning the distribution of the property in an estate. However, it is prudent to first have a court determine who the legal heirs of a decedent are prior to entering into a family settlement agreement. This action

can prevent future liability to the unknown heir climbing out of the woodwork to collect a share of the estate. Once again, it is prudent to confirm with the person or entity granting a title transfer that a Family Settlement Agreement will suffice to transfer title.

2. Small Estate Affidavit.

When dealing with intestacy, the most simple and least costly means of transferring title to personal property through the probate system is the preparation and filing of a Small Estate Affidavit. *See* TEXAS PROBATE CODE §137.

a. Effect

A Small Estate Affidavit, when approved by the court, adjudicates the identity of a decedent's heirs and their respective shares of the decedent's property. *See* TEXAS PROBATE CODE §138.

b. Procedure

The Small Estate Affidavit is filed with the Probate Clerk along with a death certificate and reviewed by the court for conformance with the law. Upon meeting the statutory requirements, the affidavit is approved by the court without a hearing and an Order Approving the Small Estate Affidavit is often prepared and filed by the court. The Order declares the distributees right to receive property of the decedent, to the extent that those assets exceed the liabilities of the estate.

c. Limitations of Use

Practitioners should note that a Small Estate Affidavit is only available in a solvent estate; i.e., when the assets of the decedent's estate, exclusive of homestead and exempt property, exceed the known liabilities of the estate. Furthermore, the estate's non-exempt assets (including cash) cannot exceed \$50,000.00. Exempt assets are those exempt from forced execution under Chapter 42 of the Texas Property Code and that pass by will or intestacy to decedent's surviving spouse, minor child or

unmarried child who lived in the decedent's home. A Small Estate Affidavit does not transfer title to real property that is not a homestead. *See* TEXAS PROBATE CODE §137(b).

Although a Small Estate Affidavit does not adjudicate the separate or community character of property, it can contain specific factual data used to later characterize the property.

Because all of the distributees must sign the affidavit, this method often fails to work where family members cannot cooperate in the execution of the document and subsequent payment of debts and distribution of assets. In this scenario, a mediation may be considered before moving forward with alternative methods of intestate probate.

A sample Small Estate Affidavit is attached to this article as **Appendix B**.

3. Determination of Heirship.

a. Effect

A Determination of Heirship is a judicial determination of the lawful heirs of a decedent who died without a will and the shares that each inherits. *See* TEXAS PROBATE CODE §48-56.

b. Process

Although only one applicant is needed, all of the decedent's known heirs must be made a party to the proceeding. *See* TEXAS PROBATE CODE §49. If some heirs do not formally join in the proceeding, they must waive service or have accepted service of citation by registered or certified mail. *See* TEXAS PROBATE CODE §50. The citation must be posted and a citation on unknown heirs must be published in the county of the proceeding. *Id.*

c. Ad Litem Required

Furthermore, the court must appoint an attorney ad litem to represent the interests of unknown heirs and heirs with a disability. *See* TEXAS PROBATE CODE §53.

d. Hearing

After the applicable notice periods expire and the attorney ad litem investigates the applicant's claims, a hearing is held to present testimony by two disinterested witnesses as to the life and family history of the decedent. The attorney ad litem then testifies as to the efforts and results of her investigation into the family history.

e. Judgment Declaring Heirs

Assuming no surprises, the court issues a judgment based on the evidence presented declaring the names and addresses of the decedent's heirs and their respective interests in the real and personal property of the decedent. Provided there is no necessity for an administration (meaning two or more debts against the estate or otherwise need for a representative), the court's order will provide sufficient authority for the transfer of decedent's property to the declared heirs. *See* TEXAS PROBATE CODE §55.

A Determination of Heirship is useful to clarify heirs after four years have passed since the decedent's death.

C. Pre-Death Planning Techniques

Several techniques are available to avoid probate or reduce the public information disclosed in probate proceedings. These techniques are outside the scope of this article, but include revocable and irrevocable trust agreements, community property survivorship agreements, and transfers of intellectual property interests to business organizations having business succession and/or dissolution plans.

VIII. COPYRIGHT OFFICE AND PERFORMANCE RIGHTS ORGANIZATIONS TRANSFER PROCEDURES

As a practical matter, entertainment lawyers are often approached by heirs who need to provide probate documents to third parties in support of a claim that the heir now owns a deceased author's copyright. Two of the most common third parties in copyright title transfers are the United State Copyright Office and the domestic performance rights organizations: ASCAP, BMI, and SESAC.

1. The United States Copyright Office

The United States Copyright Office does not require notice of a transfer in a copyright. However, an heir claiming a new interest in a copyright may submit documents for recordation, such as a probate court order, with the Copyright Office to further support a claim of ownership. The Copyright Office requires that a supporting document be verified. Further, the Copyright Office merely records the document without judging the legal sufficiency of the document itself. The Copyright Office website has

2. Performance Rights Organizations

In regards to performance rights organizations (PRO) and, more specifically, songwriter royalty payments, each PRO has a department or particular persons that handle estates and heirs.

ASCAP's Estates and Claims department is the most organized. It provides procedural and informative information on its website: www.ascap.com and may be contacted via e-mail to estatesclaims@ascap.com.

The performance rights organizations have an interest in keeping accurate ownership records and work closely with heirs to achieve this goal.

These companies often require a transfer forms, the probate court order showing who receives the author's property, the will or other document supporting the royalty entitlement, and some representations and warranties by the heir representing the entitlement to royalties.

Attached as **Appendix C** to this article are samples of ASCAP and Harry Fox Agency forms for reference.

IX. CONCLUSION

In conclusion, as the Texas entertainment industry grows and Texas residents continue to create and retain ownership rights in intellectual property, Texas attorneys will increasingly encounter a decedent's estate containing intellectual property ownership in the form of an interest in a copyright.

Copyright interests are personal property and can be an extremely valuable asset. In Texas, a person has a right to determine who will receive his or her property upon death. However, federal copyright law preempts state testate and intestate law in regards to 1) who inherits the right to renew copyright terms; and, 2) who inherits the right to terminate transfers and licenses granted by the author.

Accordingly, entertainment lawyers, estate planners, and probate practitioners must identify copyright renewal and termination issues to adequately represent their clients.

In addition, entertainment lawyers will likely find themselves with a probate matter and, as such, need to have a basic knowledge of Texas probate practice and procedure to properly advise their clients and transfer title to copyrights in the least time and in a cost efficient manner.

¹ www.governor.state.tx.us/music

² http://www.businessweek.com/technology/ByteOfTheApple/blog/archives/2006/04/beatles_goin_g_d.html

³ The Sony/ATV Catalog includes over 4,000 songs from the Beatles, Bob Dylan, Stevie Nicks, Cyndi Lauper, John Mayer, and Beck.

⁴ This article is limited to a general discussion of initial copyright ownership and, although it briefly discusses renewal and termination rights, it does not, and is not, intended to thoroughly address renewal and termination rights, which are covered by another panel member.

⁵ Some works are not copyrightable. “In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” 17 U.S.C. §102(b).

⁶ The term “work” refers to a “work of authorship” as used in the Copyright Act.

⁷ 17 U.S.C. §411 provides that “no action for infringement of the copyright in any United States work shall be instituted until registration of the copyright claim has been made in accordance with this title.”

⁸ The term “1976 Copyright Act” when used in this article means the Copyright Act of 1976 and all subsequent amendments to copyright law found in 17 U.S.C. §100 et seq.

⁹ See 17 U.S.C. §201(b); providing that “in the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.”

¹⁰ Although the revisions to the 1909 Copyright Act eliminated the requirement to file a renewal application to prevent the work from falling into the public domain, there are still benefits to filing a renewal application. These benefits mirror the benefits of initial registration, such as renewal registration being prima facie evidence to the validity of the copyright of the work during the renewal term and the facts stated in the renewal, the right to bring an infringement action in federal court, statutory damages, and recovery of attorney fees. Additionally, a timely renewal application offers a right to terminate original term licenses or grants for derivative works. See 17 U.S.C. §304(a)(4)(A).

¹¹ In 1998, the Sonny Bono Copyright Term Extension Act amendment to subsection 304(b) deleted the previous language that was originally part of the 1976 Copyright Act, which continues to be relevant for calculating the term of protection for copyrights commencing between September 19, 1906 and December 31, 1949.