



Professional Photographers
of America

**“How to Protect and Register Your Images”
Questions & Answers**

General Copyright Protections

Q: Is having metadata embedded into the digital files helpful?

A: Embedding metadata into your image files is like putting your studio’s fingerprint onto the work. Metadata becomes a component of the file properties and is an “invisible” way for you to mark them. You can use it as an alternative to placing a watermark on the file. Bearing in mind that the metadata cannot be viewed as readily as your watermark, you will need to decide the most appropriate method of marking your work once you’ve decided how it will be used.

Q: Is it OK to put the copyright mark on all the images you post to websites or blogs; even if only a few of them have been registered?

A: Unlike the use of the ® registered trademark symbol, using the © copyright symbol is not contingent upon you registering the image. In fact, PPA encourages you to always mark your work using the formal copyright notice, which consists of the copyright symbol (the abbreviation or word Copyright is also acceptable), the year of creation and the copyright owner’s name. As a result, your copyright notice might look like one of the following: Copyright 2009. Smith Photography; Copr. 2009. Jane Smith Photography; or © 2009. John Smith.

When marking images that appear online or are distributed electronically, you might also consider using a more prominent watermark. As discussed in the webinar, this could be your studio logo or another marking of your choice that identifies yourself as the copyright owner and will make an infringer think twice about using it without your consent.

Q: Is there a place I can get a watermark once I register my images? Will PPA provide me with one?

A: Your imaging software should allow you to create a watermark and a function that will make it easy to place into your image files. To set this up or determine whether your program can support this process, you will need to consult the software manual, the company’s website, or the program’s “Help” function.

General Registration

Q: Do I really have to apply for copyright of my work?

A: Once it's created, it's copyrighted. The law does not require you register your work with the U.S. Copyright Office. In fact, we understand that registering your work can be a time-consuming and costly process. Of course, not registering your images will limit your ability to prosecute copyright infringement. Whether or not to register an image is a decision that each photographer will need to make for themselves, although PPA would encourage you to register every image you create. One thing to keep in mind is that images that remain unregistered or are not registered within the appropriate amount of time will not have the same level of copyright protection as those images you have formally registered with the Copyright Office.

Q: When is it wise to register your work instead of letting the marked image stand on its own?

A: PPA would encourage you to take the time to register every image you create. We recognize that registration can be a time-consuming and costly process; however, not registering your images will limit your ability to prosecute copyright infringement. In fact, only 1% of photographers register their work.

Whether or not to register an image is a decision that each photographer will need to make for herself. One thing to keep in mind when determining which works you would like to register is that the images that remain unregistered (or are not registered within the appropriate time frame) are not eligible for the same level of copyright protections as those images you have formally registered with the Copyright Office.

Q: What is the difference between registering an image that was published yesterday, vs. registering one that was published two years ago?

A: The difference lies in your ability to be eligible to elect the recovery of statutory damages should you need to pursue an infringement suit in federal courts. Promptly registering an image that was published yesterday means that you would be within your 90-day registration window, so any infringement between the time of publication and your registration arriving in the hands of the Copyright Office would likely be covered retroactively. On the other hand, if you waited two years before registering that same image, you would not be eligible to collect statutory damages if the image was infringed between its publication and your registration submission.

Q: Why must I register my work within 90 days?

A: While the law does not require you register your work, it does require that you register your work within 90 days of creation (or publication, if published) in order to be eligible to collect statutory damages and attorney’s fees.

Remember, your 90-day window begins the instant an image is created if you are registering unpublished images. When registering published images, you have 90 days from the day the images was first published. Registrations that occur outside this 90-day window do not provide for retroactive protection under the law. For example, if you register your image on the 120th day after creation and later find it was infringed on day 91, your registration will only provide the second tier of protection going forward...beginning on day 120.

Q: What is the maximum time limit to register your images?

A: There’s no statute of limitations on registering your images. There is, however, a 90-day registration window that you must adhere to for your work to be considered registered in the event you suffer an infringement. Remember that this clock begins the moment the image is created (if unpublished) or published.

Q: When registering older images (like 5 years worth), can you submit them all at once? Do you have to submit them by year?

A: While you can submit a number of years worth of images to the Copyright Office at any time, keep the following in mind: you must group the images by year, you must still classify the works as either published or unpublished, and you must adhere to the registration requirements in effect at the time the images were created. Whenever you are registering “older” works, it is advisable to contact the U.S. Copyright Office directly (202-707-3000) or visit their website (www.copyright.gov) for guidance.

Q: Can photos that were published a number of years ago be registered? Can I do it online using the eCO system?

A: You can always register your images no matter how long ago they were created or published. You simply need to ensure that they are appropriately catalogued and that you have met the registration requirement in effect at the time the image was created. If you wish to register the works using the eCO system, you need to ensure that the work or collection of works meets the registration criteria found at www.copyright.gov/eco/.

Q: Once an image is registered with the U.S. Copyright Office, will I receive something I can present to a licensee or copyright infringer to serve as proof of copyright ownership?

A: Yes. Once your application has been validated and approved, you will receive a “Certificate of Registration.” This certificate is a copy of your application that has been embossed with the Copyright Office Seal and the date your application was determined complete—often the same date it arrived at the Copyright Office for review. This certificate will arrive by mail no matter which of the three methods you use, so be sure you have provided correct contact information.

Copyright Infringement

Q: Can the image be registered once the infringement occurs?

A: Yes, you can register your image at anytime. If the infringement has occurred before the initial 90-day window has lapsed, your registration will likely apply retroactively. The added benefit of registering after an infringement is that you know that this particular image is being circulated in some manner and the possibility that it may be infringed again in the future could increase. This time if the image is registered, you will have additional leverage when sitting down at the bargaining table.

Q: If once a work is created it was considered copyrighted, why can't I take proof that the images are mine into a court of law, especially if I have a copy of the RAW file?

A: Copyright law requires that you register your work before pursuing a legal suit. Ensuring that your images are not only registered, but registered in a timely manner, will give you additional leverage in resolving an infringement issue before taking legal action. The primary reason is that federal registration of your photographs allows you ask for statutory damages, legal and court fees, and lost income. To an infringer, the idea that a judge and jury might side with you, as the copyright owner, encourages them to work amicably toward a resolution.

Electronic Copyright Office (eCO)

Q: Once the submission is processed, is a verification or confirmation document sent or do I access it via my eCO account?

A: Yes, you will receive a Certificate of Registration from the U.S. Copyright Office. This consists of a printout of the registration information embossed with an official seal. This will arrive once your application has been processed and determined to be complete.

Q: To speed up uploading, may low-resolution images and small files be sent online to the Copyright Office? Or is it better to send high-resolution files?

A: You may submit low-resolution files; however, be sure that the smaller file size doesn't compromise the image quality. This will enable you to maximize the number of image files you can submit in a one-hour upload window. This being said, you can take as many upload sessions as needed to load the entire group of image files. If your upload does require multiple sessions, bear in mind that you will need to log back into your registration account...so make sure you save as you go! For the latest information concerning file constraints and upload times, it is best to consult with the U.S. Copyright Office eCO Tip Sheet available at <http://www.copyright.gov/eco/tips.pdf>.

Published vs. Unpublished Registration

Q: What does “published” and “unpublished” mean?

A: The distinction between “published” and “unpublished” works is made in the 1976 Copyright Act. According to the Section 101 of U.S. Copyright Law, “publication” is defined as *“the distribution of copies or phonorecords [sound recordings] of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public performance or display of a work does not of itself constitute publication.”* As a result, an unpublished work would be one that has not been distributed to the public.

When classifying your images for registration, it is up to you to determine whether or not the work is deemed “published” or “unpublished.” There is a fine line that is drawn here with respect to photography since images may be distributed to clients along with their friends and family. There is also the potential for these works to appear on studio websites, blogs, and other online locations, which you might choose to consider a form of publication.

Q: Do published works get filed separately from unpublished on the eCO?

A: Yes. No matter which registration method you choose, published and unpublished images may never appear on the same application form.

Q: Can I use the eCO to register both published and unpublished works?

A: Yes, although you cannot put them on the same application. As of now, you can use eCO to register a single published or unpublished image, a collection of unpublished works created by the same photographer, or multiple published works included in a single publication created by the same photographer. You can find step-by-step instructions in PPA's [Guide to Registration Using eCO](#). You should also check the [U.S. Copyright Office](#) website to find out the latest requirements for using the eCO system.

Q: I have images displayed on my website and blog. Are they considered being published?

A: When classifying your images for registration, it is up to you to determine whether or not the work is deemed “published” or “unpublished.” There is a fine line that is drawn here with respect to photography since images may be distributed to clients along with their friends and family.

When you post works to your studio website, blog(s) and other publicly accessible online locations (i.e., not a password-protected proof gallery), you might choose to consider a form of publication. This area is not clearly defined because images on your site may only be made available for brief periods of time or may cycle through on a pre-determined basis. On the other hand, if your images appear in an e-newsletter, online journal, or other document with a clearly fixed publication date, you can declare those images as published with greater certainty.

Q: What are the benefits of registering an image as "published" vs. "unpublished"?

A: In terms of collecting damages, the law draws a distinction between “registered” and “unregistered” works, not their “published” and “unpublished” status. As a result, there are no damage incentives for registering under one status versus the other.

Q: I understand we can submit images as unpublished and then resubmit the same images a published. Am I required to resubmit published images to be eligible for full copyright protection?

A: Whether published or unpublished, there is not a requirement for you to register your work. PPA would encourage you to register both published and unpublished versions of your images to ensure that each is eligible for the additional protections available under the law.

Single and Multiple Image Registration

Q: What is the maximum number of images allowed per application?

A: The answer depends on the registration method you are using and the type of images you are submitting (published vs. unpublished). When registering published images using form Gr/PPh/CON, you must limit yourself to 750 per application. If you're registering unpublished images (eCO, Form CO) there is no maximum. This said, when using the eCO system, you will want to be mindful of the number of files you are uploading and the number of 60-minute upload sessions it will require.

Q: Is there a way to cover a breadth of photography or works, or do you need to fill out individual applications for each work or image?

A: The U.S. Copyright Office does allow registrants (or "claimants") to place two or more images on a single application. This said, when registering multiple works on a single application, you will need to organize them according to a highly specific set of guidelines.

You must first divide images into two categories: "published" and "unpublished." Remember, you cannot register published and unpublished images on a single application. Once you have divided images into these categories, you must then divide the images by year. When using the eCO or Form CO registration systems, there are additional image grouping restrictions. You can find the most up-to-date restrictions as they apply to photographs in the U.S. Copyright Office's fact sheet, titled "Copyright Registration of Photographs," at <http://www.copyright.gov/fls/fl107.pdf>.

Q: If I photograph 10 sessions in a week, can I register all images on a single application or do I have to pay 10 registration fees?

A: You can register the works both ways. If you have 10 sessions in a single week, you can register your images immediately following each session as unpublished works. This would prove a costly option as you would end up paying 10 times the amount had you waited until the end of the week and registered all 10 sessions on a single application.

Remember that when registering your work, you must distinguish between published and unpublished images. As this is the case, if any of your work is slated to be published, you may find it helpful to wait and determine which of those images will appear in publications (or on your website). This will save you from submitting duplicate registration applications for those images you previously registered as unpublished.