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### What are the benefits to registering the copyright?

The benefits are twofold. First, in order to file a lawsuit for copyright infringement, you have to register the copyright. It's required by the Copyright Act. See 17 U.S.C. § 411(a); see the U.S. Copyright Office's Circular 92, *Registration and civil infringement actions*. Note, however, that registration is not required for victims who wish to bring a lawsuit and choose to forego the copyright claim. Those victims may wish to simply rely on state law claims like invasion of privacy, confidentiality, emotional distress, harassment, and stalking. This decision – whether to include a copyright claim or rely solely on state law – is a tactical decision you and your attorney can make.

Second, a speedy registration of your copyright may give you more leverage against infringers. A timely registration can enable the copyright owner to collect enhanced damages, including statutory damages ranging from \$750 to \$150,000, for each work that is infringed, and attorneys' fees. See [Circular 92, Remedies for infringement](#).

### How do I register the copyright?

You do not need to be a lawyer to register your copyright, though an attorney can be helpful in cases where many works need to be registered, and/or where you may want to block out parts of the image for privacy reasons (called “redacting”) is desired. There are two ways to register:

Hard copy (by mail). Go to the U.S. Copyright Office website [www.copyright.gov](http://www.copyright.gov) and download the proper [form](#). For photographs, complete Form VA. For videos, complete Form PA. The fee is \$85 to register by paper.

Online registration (upload). There is also an option to complete registration through the electronic Copyright Office (eCO) at [www.copyright.gov](http://www.copyright.gov) for a reduced fee of \$35.

### What steps are included in the registration process?

Whether you register by mail or online, every copyright application requires the first three steps, and if you are registering a nonconsensual porn work, we recommend that you consider a fourth step – submitting a Request for Special Relief.

1. Complete application.
  - a. See *Minimizing Disclosure Of Personal Information* (below).
  - b. See *Determining Whether The Work Is Published Or Unpublished* (below).
2. Make payment.
3. Send the work you're registering – Either (a) upload a digital copy of your work (for certain categories of works only) or (b) print out a shipping slip to be attached to your work for delivery by the U.S. Postal Service.
  - a. See *Sending A Redacted Copy* (below).
4. If redacting, see *Requesting Special Relief* (below).

### Minimizing Disclosure Of Personal Contact Information

Your copyright registration is a public record that is searchable online through the Copyright Office records database. (The

deposit itself, the nonconsensual porn photo or video, is not currently made available online, but remains a public record). See the U.S. Copyright Office's [FAQs](#), *Privacy: Copyright Public Records*. Keep the public record-ness of your form in mind when providing information, including the title of the work and your personal information. Choose bland titles for your work(s) like, "photographs," "series," or "compilation" followed by numbers. You may use a P.O. box or law firm as the mailing address.

### Determining Whether The Work Is Published Or Unpublished

The copyright forms are fairly straightforward, requesting information like: name, address, and phone number. However, there is one Q&A that can be counterintuitive, and that is: Has the work been published? The answer is, it depends, and it's up to the applicant to determine. See [Circular 66](#), *Copyright Registration For Online Works, Determining if Your Work Is Published or Unpublished*.

In our experience, nonconsensual porn works are frequently unpublished works. Here's why.

- The Copyright Act defines "publication" as "distribution of copies . . . of a work to the public. . ." 17 U.S.C. § 101. Although the term "public" is not defined in the Act, the House Report explains that "the public" in this context refers to persons "under no explicit or implicit restrictions with respect to disclosure of its contents." H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 138 (1976); see also Nimmer on Copyright § 4.13[B], 4-72 & n.20 (2015). Most nonconsensual porn content is privately shared, and therefore, likely not a "publication."
- In the case of a self-portrait, the victim probably owns the copyright, and a "publication" must be authorized by the copyright owner. An act of infringement does not "publish" an otherwise unpublished work. See, e.g., *Zito v. Steeplechase Films, Inc.*, 267 F. Supp. 2d 1022, 1026 (N.D. Cal. 2002) (adopting the position that the act that commences infringement does not publish an otherwise unpublished work).

Whether a work is published or unpublished can affect a variety of copyright issues. For example:

- A copyright owner is entitled to statutory damages when a copyright is infringed after it is registered; but for published works, if a registration is filed within three months following the first publication, statutory damages are also available back to the publication date.
- Unauthorized uses of unpublished works are less likely to be considered "fair uses" (a possible defense in copyright cases, albeit rarely a successful defense in a typical revenge porn situation).
- The deposit requirements are different. Generally, you must submit copies representing the entire work being registered. For unpublished works, you may submit one complete copy of the work - subject to the Redaction and Special Relief modifications described below. For published works, you generally submit two complete copies of the best edition. See the U.S. Copyright Office [Help: Deposit Requirements](#).

Whether a work has been "published" can be a subtle and fact-dependent issue that you should consider seeking the advice of a lawyer on if you are uncertain.

### Sending A Redacted Copy To Satisfy Registration Deposit Requirements

You may be thinking, "to stop strangers from seeing pictures of my naked body, I have to send more strangers more pictures of my naked body?" *Last Week Tonight with John Oliver*: U.S. Territories, Youtube (Jun. 21, 2015), <https://www.youtube.com/watch?v=PuNIwYsz7PI> (discussing copyright law to combat cyber exploitation at 8'50"). If you want the benefits of copyright registration, then yes. Copyright registration is a process of making a record of authorship and ownership of works, which requires a copy to document the authorship in question. In certain cases, however, the Copyright Office can grant special relief from the regular deposit requirement, allowing an alternate deposit rather than the one required by regulation.

In nonconsensual porn cases, the Copyright Office may consider redacted deposits accompanied by a special relief request. We do not know the odds of success - we only know that it has happened before. There may also be downsides to this process. For example, if the Copyright Office does not accept the proposed redacted copy, the effective date of registration for the application may be bumped to a later date, the date on which the Copyright Office receives the application with an acceptable copy and payment. See [Compendium](#) of U.S. Copyright Office Practices, Third Edition, 1508.8(B) *How to Request Special Relief* (If the request is denied . . ."). But, for those of you interested in giving it a try, here are some practice pointers.

#### Sending A Redacted Video:

1. Complete copyright application Form PA (Performing Arts).
2. Send a redacted copy of the entire video. There must be sufficient content visible to identify the work, examine copyrightability, and verify plausible authorship by the claimant.
3. Make payment.
4. Submit a Request for Special Relief that the Copyright Office accept the redacted video as sufficient to satisfy the deposit requirement. Special relief requests are handled on a case-by-case basis and are not granted automatically.
5. The effective date of registration for this application will be the date of receipt of the PA application with copy and payment.

#### Sending A Redacted Photo:

1. Complete copyright application Form VA (Visual Arts).
2. Send a redacted copy of the photo. There must be sufficient content visible to identify the work, examine copyrightability, and verify plausible authorship by the claimant.
3. Make payment.
4. Submit a Request for Special Relief that the Copyright Office accept the redacted photo as sufficient to satisfy the deposit requirement. Special relief requests are handled on a case-by-case basis and are not granted automatically.
5. The effective date of registration for this application will be the date of receipt of the VA application with copy and payment.

For step-by-step instructions on how to submit the request using the electronic registration system or by mail, by courier, or by hand, see the [Compendium of U.S. Copyright Office Practices, Third Edition, 1508.8\(B\) How to Request Special Relief](#). “If the request is granted and if the work is approved for registration, a member of the Registration Program will add an annotation to the certificate of registration indicating that the work was registered under a grant of special relief.” *Id.*

**What to Include In a Request for Special Relief:** A request for special relief (i.e., a request that you be allowed to submit a redacted deposit) must be made in writing and must include the specific reason(s) why the request should be granted. Here are some reasons why the request should be granted in nonconsensual porn cases:

- The content is highly sensitive and of a personal nature.
- The content was not intended for public dissemination. Its dissemination has been and is used to exploit the victim in violation of her privacy and without her consent.
- The requirement of an unredacted deposit would require yet another forced disclosure of information of the utmost intimacy.
- The victim is particularly vulnerable to the harms of disclosure given what she has already been through.
- The forced disclosure is precisely the harm that is to be litigated against should litigation against the perpetrator commence; yet, this would be incurred here, at the hands of the Copyright Office, were the victim not provided special relief.
- There is no public interest in forced disclosure of an unredacted deposit of the nonconsensual porn content. It is not in the public interest because the work is of a highly intimate and private nature, and because if it appealed to any interest, that interest would be purely prurient.
- Applicant only seeks registration as to the visible portions of the submitted copy.

*How much of the photo or video can you block out?* We cannot attempt to quantify the amount of the photo that must remain visible because the determination of copyrightable expression is not based on an arbitrary formula. The U.S. Copyright Office has replied to at least one nonconsensual porn lawyer that there must be “sufficient content visible to identify the work, examine copyrightability, and verify plausible authorship by the claimant.” Whether a particular deposit meets this standard will be determined on a case-by-case basis.

Please note that when submitting a redacted deposit, your registration will only extend to the visible (non-redacted) portions of your deposit. So, the more of the work that is visible, the greater your copyright protection (but the less your privacy protection).

At the end of the process, if your registration is successful, a search on the Copyright Office records database should yield a result that looks something like the following.

<b>Type of Work:</b>	Visual Material
<b>Registration Number / Date:</b>	VAu_____
<b>Application Title:</b>	[Compilation].
<b>Title:</b>	[Series 001-002].
<b>Description:</b>	Electronic file (eService)
<b>Copyright Claimant:</b>	Address: c/o [Insert Law Firm].
<b>Date of Creation:</b>	[Date created].
<b>Authorship on Application:</b>	[Your name].
<b>Rights and Permissions:</b>	[Law Firm].
<b>Copyright Note:</b>	C.O. correspondence. Regarding deposit: Applicant submitted a redacted copy, asserting personal privacy concerns. Registration extends only to the visible portions of the submitted copy. The Office makes no judgment as to the <u>copyrightability</u> of the redacted material. Regarding registration of multiple works: registered as unpublished collection.