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14 UNITED STATES DISTRICT COURT  
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
16 WESTERN DIVISION

17 RON TERRY,  
18 Plaintiff,  
19 v.  
20 AMAZON.COM, INC., ET AL.,  
21 Defendants.

No. 2:23-cv-01440-FLA-AGR

**NOTICE OF FILING RESPONSE OF  
THE REGISTER OF COPYRIGHTS TO  
REQUEST PURSUANT TO 17 U.S.C.  
§411(b)(2)**

Honorable Fernando L. Aenlle-Rocha  
United States District Judge

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1 PLEASE TAKE NOTICE that the United States Copyright Office, by and through  
2 undersigned counsel, hereby responds to the question posed pursuant to 17 U.S.C.  
3 Section 411(b)(2), in the Court’s Order dated September 30, 2024 (ECF 101).

4 The Amended Complaint in this action asserts a claim for copyright infringement  
5 (ECF 21). The Court, by its Order dated September 30, 2024, sought the views of the  
6 Register of Copyrights pursuant to 17 U.S.C. § 411(b)(2) as to whether certain alleged  
7 inaccuracies in the application would have caused the Register to refuse registration, had  
8 those inaccuracies been known to the Register at that time. The Response of the Register  
9 of Copyrights to the question posed by the Court is attached hereto as Exhibit A and  
10 filed herewith.

11 Dated: January 8, 2025

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RON TERRY,  
Plaintiff,  
vs.  
AMAZON.COM, INC., *et al.*,  
Defendants.

Case No. 2:23-cv-01440-FLA (AGRx)  
**RESPONSE OF THE REGISTER  
OF COPYRIGHTS TO REQUEST  
PURSUANT TO 17 U.S.C.  
§ 411(b)(2)**

On September 30, 2024, pursuant to 17 U.S.C. § 411(b)(2), the Court requested advice from the Register of Copyrights (the “Register”) on the following question:

[W]hether inaccuracies in the application for Copyright Registration No. PA 1-708-284 (including: (1) that the application was a single application for two separate and distinct audiovisual works; and (2) inaccuracies related to the deposit copies of the work, if any were provided), if

1  
RESPONSE OF THE REGISTER OF COPYRIGHTS

1 known would have caused the Register of Copyrights to  
2 refuse registration.<sup>1</sup>

3 The Register hereby submits her response. Based on the legal standards and  
4 examining practices set forth below, had the U.S. Copyright Office (“Copyright  
5 Office” or “Office”) known prior to registration that the application was intended  
6 to cover two separate and distinct audiovisual works, it would not have refused  
7 registration. Instead, it would have registered (and did) the published version of  
8 the work. Had the Office been aware of any confusion about the scope of the  
9 registration, it may have engaged in further correspondence with the applicant.  
10 Based on the Office’s review of the deposit and registration record, there are no  
11 inaccuracies related to the deposit copies of the work.

12 **BACKGROUND**

13 **I. Examination History**

14 A review of the records of the Copyright Office reveals that on September 4,  
15 2009, the Office received an application, filing fee, and DVD-R deposit copy to  
16 register a motion picture titled “Bo Diddley’s Rock n Roll All-Star Jam” (the  
17 “Work”). The application identified Ron Terry as the sole author of and copyright  
18 claimant for the Work, and stated that the Work was completed in 1985 and was  
19 unpublished. After learning that the Work appeared to be for sale on the internet, a  
20 registration specialist corresponded with Mr. Terry to request that he provide the  
21 date and nation of the Work’s publication.<sup>2</sup> The registration specialist also  
22 requested that Mr. Terry provide one complete copy of the best edition of the  
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24 <sup>1</sup> Order Req. the Reg. of Copyrights Advise the Court Regarding Copyright  
25 Registration No. PA 1-708-284 at 5 (Sept. 30, 2024) (“Order”), ECF No. 101.

26 <sup>2</sup> Email from U.S. Copyright Office to Ron Terry (Aug. 18, 2010).

1 Work, the required deposit for published motion pictures.<sup>3</sup> On November 1, 2010,  
2 the Office received a DVD copy of “Chuck Berry & Bo Diddley’s Rock ‘n Roll  
3 All-Star Jam” as the best edition of the published Work. After further  
4 correspondence with the registration specialist, Mr. Terry stated that the Work was  
5 first published on July 30, 1990, in the United States.<sup>4</sup> The Office accepted  
6 Mr. Terry’s representations as true and accurate. Therefore, on November 30,  
7 2010, it registered “Chuck Berry & Bo Diddley’s Rock ‘n Roll All-Star Jam,”  
8 registration number PA0001708284, with an effective date of registration  
9 (“EDR”)<sup>5</sup> of September 4, 2009.

10 **II. The Court’s Request**

11 Mr. Terry commenced this action on February 25, 2023.<sup>6</sup> He alleges that  
12 Defendant Amazon.com, Inc. (“Amazon”) infringed his copyright in two motion  
13 pictures that were registered under number PA0001708284: “Chuck Berry & Bo  
14 Diddley’s Rock ‘n Roll All Star Jam” (“Video 1”) and “Bo Diddley’s Rock and Roll  
15 Jam” (“Video 2”).<sup>7</sup> Both videos consist of footage from an October 25, 1985  
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19 <sup>3</sup> *Id.* Subsequently, the registration specialist repeated their request for information  
20 regarding the Work’s publication date and the proper deposit of the Work. Email  
21 from U.S. Copyright Office to Ron Terry (Oct. 15, 2010).

22 <sup>4</sup> Email from U.S. Copyright Office to Ron Terry (Nov. 16, 2010).

23 <sup>5</sup> The EDR is the date that the Office received a completed application, the correct  
24 deposit copy, and the proper filing fee. 17 U.S.C. § 410(d).

25 <sup>6</sup> Compl. at 1 (Feb. 25, 2023), ECF No. 1; Am. Compl. at 1 (Mar. 16, 2023),  
26 ECF No. 21.

<sup>7</sup> Am. Compl. at 7. As reflected here, litigation and registration documents use  
several variations of the videos’ titles.

1 concert in Irvine, California.<sup>8</sup> Although not identical, they “include some of the  
2 same portions of the concert.”<sup>9</sup>

3 Mr. Terry alleges that Amazon infringed his copyright for each motion  
4 picture by making them available on Amazon Prime Video and/or Amazon  
5 Marketplace without authorization. For Video 1, he asserts that despite a 2018  
6 agreement settling a previous infringement claim, Amazon resumed making the  
7 motion picture available on Amazon Prime Video and Amazon Marketplace.<sup>10</sup>  
8 For Video 2, Mr. Terry asserts that Amazon made it available on Amazon Prime  
9 Video.<sup>11</sup>

10 Amazon denied the infringement claims and asserted counterclaims.<sup>12</sup> On  
11 February 16, 2024, in a motion for summary judgment, it argued that “Plaintiff  
12 c[ould not] prove infringement by any accused product because he did not produce,  
13 and concede[d] he does not have, a copy of what he registered with the Copyright  
14 Office that could be compared to the accused items.”<sup>13</sup>

15 Mr. Terry asked the court to consider the deposits associated with  
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20 <sup>8</sup> Order at 1–2.

21 <sup>9</sup> *Id.* at 2. The parties did not reasonably dispute these facts.

22 <sup>10</sup> Am. Compl. at 4–6.

23 <sup>11</sup> *Id.* at 6.

24 <sup>12</sup> Answer, Defenses, and Countercls. of Amazon in Resp. to Pl.’s First Am.  
25 Compl. at 2–4, 6–14 (Mar. 27, 2023), ECF No. 22. Defendant filed a third  
26 counterclaim alleging breach of the parties’ 2018 agreement. *Id.* at 13–14.

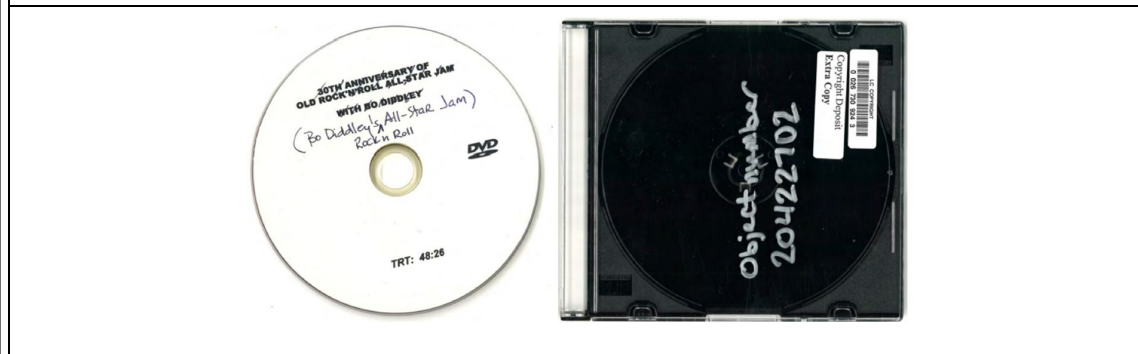
<sup>13</sup> Amazon’s Notice of Mot. and Mot. for Summ. J. of No Copyright Infringement  
at 2 (Feb. 16, 2024), ECF No. 50.

1 PA0001708284—two DVDs and “authenticating papers.”<sup>14</sup> Scans of the DVDs  
2 and their packaging are copied below.

3 **Video 1 – “Chuck Berry & Bo Diddley’s Rock and Roll All Star Jam”**



15 **Video 2 – “Bo Diddle’s Rock and Roll Jam”**



24 <sup>14</sup> Opp’n to Amazon’s Mot. for Summ. J. at 7–10 (Mar. 14, 2024), ECF No. 60.  
25 See generally Pl.’s Req. for Judicial Notice of Pl.’s Copyright and Related Original  
26 Copyright Deposit for Copyright Registration (Apr. 3, 2024), ECF No. 67.

1 Amazon disputed Mr. Terry’s “characterization of the documents,” arguing that  
2 they “do not purport to be the deposit submitted with any particular copyright  
3 registration.”<sup>15</sup>

4 On September 13, 2024, the Court ordered both parties to submit  
5 supplemental briefing on whether there was “any reason the court should not ask  
6 the Register of Copyrights whether the inaccurate information provided in this case  
7 (including that the application was for two separate, stand-alone, published  
8 audiovisual works), if known, would have caused the Register of Copyrights to  
9 refuse registration?”<sup>16</sup>

10 Within its September 30, 2024, Order, the Court found that “[t]here appear  
11 to be inaccuracies in Plaintiff’s application”:

- 12 1. First, Mr. Terry “did not submit separate applications for Videos 1 and 2;”<sup>17</sup>  
13 and
- 14 2. Second, Mr. Terry “does not appear to have provided two deposit copies of  
15 either Video to the Copyright Office, as required by  
16 17 U.S.C. § 408(b)(2).”<sup>18</sup>

17 The Court referred the matter to the Register, seeking advice on whether the  
18 alleged inaccuracies, if known, would have caused her to refuse registration.<sup>19</sup>

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20 <sup>15</sup> Amazon’s Resp. to Pl.’s Req. for Judicial Notice at 1 (Apr. 3, 2024), ECF No.  
21 68. Defendant also claimed that judicial notice supported its motion for summary  
22 judgment. *Id.* at 1–2.

23 <sup>16</sup> Order for Suppl Briefing Regarding Def.’s Mot. for Summ. J. at 4 (Sept. 13,  
2024), ECF No. 97; *see also* Order at 5 (similar).

24 <sup>17</sup> Order at 2–3, 5.

25 <sup>18</sup> *Id.*

26 <sup>19</sup> *Id.*



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**ANALYSIS**

**I. Relevant Statutes, Regulations, and Agency Practices**

An application for copyright registration must comply with the requirements of the Copyright Act set forth in 17 U.S.C. §§ 408(a), 408(d), 409, and 410. Regulations governing applications for registration are codified at 37 C.F.R. §§ 202.1 to 202.24. Further, principles that govern how the Office examines registration applications are set out in the *Compendium of U.S. Copyright Office Practices* (“*Compendium*”), an administrative manual that instructs agency staff regarding their statutory and regulatory duties and provides expert guidance to copyright applicants, practitioners, scholars, courts, and members of the general public regarding Office practices and related principles of law.<sup>20</sup> Because Plaintiff submitted his application for registration in August 2009, the governing principles the Office would have applied are set forth in the *Compendium of U.S. Copyright Office Practices, Second Edition*.<sup>21</sup> Any new or pending supplementary registration applications are governed by the current version, the *Compendium of U.S. Copyright Office Practices, Third Edition*.<sup>22</sup>

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<sup>20</sup> The Office publishes regular revisions of the *Compendium of U.S. Copyright Office Practices* to reflect changes in the law and/or Office practices, which are provided for public comment prior to finalization. The most recent version of the *Compendium* was published in January 2021.

<sup>21</sup> U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES (2d ed. 1988) (“COMPENDIUM (SECOND)”), <https://www.copyright.gov/history/comp/compendium-two-1988-chap600-1900.pdf>.

<sup>22</sup> U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES (3d ed. 2021) (“COMPENDIUM (THIRD)”), <https://copyright.gov/comp3/docs/compendium.pdf>.

1           **A. Multiple Versions of the Same Work**

2           The Office generally requires that separate works be registered separately.<sup>23</sup>  
3           The Copyright Act states that “where a work is prepared over a period of time, the  
4           portion of [the work] that has been fixed at any particular time constitutes the work  
5           as of that time.”<sup>24</sup> It further states that “where the work has been prepared in  
6           different versions, each version constitutes a separate work.”<sup>25</sup>

7           Whether it is necessary to separately register each version depends, in part,  
8           on whether the work is published or unpublished. If an author prepares multiple  
9           versions of an unpublished motion picture, for instance, and publishes the most  
10          recent version, a registration for the published version will cover all the  
11          copyrightable material that appears in the deposit copy, including any unpublished  
12          expression that has been incorporated from prior versions of the same work. By  
13          contrast, if a work has been published, an earlier unpublished version can be  
14          registered only to the extent that it contains copyrightable expression not included  
15          in the published version.

16           **B. Deposit Requirements for Registration of Published Work**

17          Under section 408 of the Copyright Act, an application for registration of a  
18          published work generally must be accompanied by “two complete copies or  
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20          <sup>23</sup> See 17 U.S.C. §§ 408(a), 409 (authorizing the U.S. Copyright Office to register a  
21          single “work”); COMPENDIUM (SECOND) § 607. There are limited exceptions to this  
22          rule, including for registration of collective works, published works using the “unit  
23          of publication” option, and group registration options for works such as serials,  
24          newspapers, newsletters, contributions to periodicals, unpublished photographs,  
25          published photographs, databases, and secure test items. See 37 C.F.R.  
26          §§ 202.3(b)(5), 202.4.

<sup>24</sup> 17 U.S.C. § 101 (definition of “created”); see generally *id.* § 102(a).

<sup>25</sup> 17 U.S.C. § 101 (definition of “created”).

1 phonorecords of the best edition.”<sup>26</sup> However, section 408 gives the Register  
2 authority to require or permit, “for particular classes [of works], . . . the deposit of  
3 only one copy . . . where two would normally be required.”<sup>27</sup>

4 The Office has exercised this authority in determining that applications to  
5 register published motion pictures only need to be accompanied by one complete  
6 copy of the best edition of the motion picture.<sup>28</sup> A “complete” copy of a published  
7 work “includes all elements comprising the applicable unit of publication of the  
8 work, including elements that, if considered separately, would not be copyrightable  
9 subject matter.”<sup>29</sup> The “best edition” is the “edition, published in the United States  
10 at any time before the date of deposit, that the Library of Congress determines to  
11 be most suitable for its purposes.”<sup>30</sup>

12 **REGISTER’S RESPONSE TO THE COURT**

13 Based on the foregoing statutory and regulatory standards and the Office’s  
14 examining practices, the Register responds to the Court’s question as follows:

15 First, had the Office known that Mr. Terry was attempting to submit a single  
16 registration application for two distinct works, that knowledge would not have  
17 altered its registration decision. The Office considered Video 1 the best edition of  
18 the published work and the deposit copy of record, and registered Mr. Terry’s  
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<sup>26</sup> *Id.* § 408(b)(2).

21 <sup>27</sup> *Id.* § 408(c)(1).

22 <sup>28</sup> 37 C.F.R. § 202.20(c)(2)(ii) (2009); COMPENDIUM (SECOND) § 806.13(b). In  
23 addition, “[a]ny deposit of a published motion picture must be accompanied by a  
24 separate description of its contents, such as a continuity, pressbook, or synopsis.”  
25 37 C.F.R. § 202.20(c)(2)(ii) (2009).

25 <sup>29</sup> 37 C.F.R. § 202.20(b)(2)(ii) (2009).

26 <sup>30</sup> 17 U.S.C. § 101 (definition of “best edition”).

1 copyright claim in that published version of the Work. It was the Office’s  
2 understanding at the time of registration that the two deposits embodied the same  
3 Work. However, had the Office known that Video 1 and Video 2 represented two  
4 separate and distinct audiovisual works, and that Mr. Terry sought registration for  
5 both works on one application, it still would not have refused registration. Rather,  
6 the Office may have clarified the scope of the registration, explaining to Mr. Terry  
7 that the registration covers the published version of the Work as embodied on  
8 Video 1.<sup>31</sup>

9 Second, the Office was aware that Mr. Terry submitted only one deposit  
10 copy, and doing so was compliant with relevant regulatory requirements.<sup>32</sup>  
11 Although section 408 generally requires two deposit copies of published works, the  
12 statute grants the Register authority to issue regulations altering this requirement.  
13 Pursuant to this authority, the Register now requires the deposit of only one  
14 complete copy of published motion pictures, like Video 1.<sup>33</sup>

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18 <sup>31</sup> Prior to issuing the Registration, the Office confirmed in correspondence with  
19 Mr. Terry that the registration would cover the motion picture as embodied on the  
20 published version of the Work titled “Chuck Berry & Bo Diddley’s Rock and Roll  
21 All Star Jam.” See Email from Jenn Wong to U.S. Copyright Office (Oct. 27,  
22 2010). This correspondence also clarified that the registration covered all elements  
23 of the Work, including the “Bo Diddley” portion of the program. *Id.*

24 <sup>32</sup> The Office also certifies that Video 1 and Video 2 are the deposit copies  
25 submitted by Mr. Terry to the Office as part of his registration application. Upon  
26 their deposit in the Copyright Office, and after the examination of Mr. Terry’s  
application, both DVDs were transferred to the Library of Congress for its  
collections. See 17 U.S.C. § 704(b), (c).


<sup>33</sup> See 37 C.F.R. § 202.20(b)(2)(ii) (2009).

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**CONCLUSION**

After review of the available facts in this action and application of the relevant law, regulations, and the Office’s practices, the Register hereby advises the Court that had the Office been aware, prior to registration, that Mr. Terry sought to cover two separate and distinct audiovisual works in the Registration, it would not have refused registration of Video 1. Additionally, based on the Office’s review of the deposit and registration record, there are no inaccuracies related to the deposit copies of the work. Mr. Terry satisfied the deposit requirement by submitting one complete copy of the best edition of the published motion picture.

Dated: January 7, 2025

  
**Shira Perlmutter**  
Register of Copyrights and Director  
of the U.S. Copyright Office