the American Recovery and Reinvestment Act of 2009 (the “Recovery Act
Technology Loan Guarantee Program was subsequently expanded under
Guarantee Program was established under Title XVII of the Energy Policy
which can be extremely difficult. As long as each
will thus require the identification of all co-authors,
issues often arise with respect to exclusive licenses,
sus will be considered the owner of the copyright.
Identifying authors becomes even more
are documented transfers among the related enti-
A “joint work” is a work prepared by two or more
The Part I submission provides the Dept. of Energy with a summary-
the elements of the novel to infringe the copyright in
These issues, and the five remaining issues we
many works are derivative of some other

PART ONE OF TWO

Getting rights in any copyrighted works by someone else is a complex special issue. As a threshold matter, you need to identify who the author's heirs are, and keep in mind that no matter what probate documents say, the author's plan of distribution may vary from what the copyright acts. Therefore, even if you elect to probate as a precaution, it makes no sense to hold up a lawsuit simply to determine the author's estate. Thus, in such cases, it is prudent to examine the copyright certificate to determine the author's name. If the certificate is invalid, then the copyright may be owned by the person who registered as the copyright owner. If the certificate is valid, then the copyright owner must submit a affidavit of ownership that identifies the person or entity that is the owner of the copyright in the work in question.

An owner of a copyright in a work is entitled to assign and license the copyright as long as the assignment is recorded in the Copyright Office. What about an owner of an exclusive right in copyright? If an owner of an exclusive right assigns the copyright, the assignment to the exclusive right may be restricted. In any event, if an owner of an exclusive right assigns the copyright, the assignment must be recorded in the Copyright Office. If the assignment is not recorded, the owner of the copyright will be considered an owner of an exclusive right in the work. Thus, an exclusive right owner who assigns the copyright may lose the right to transfer the exclusive right to someone else. In addition, the assignment of the copyright may also result in the loss of the owner's right to control the reproduction of the work in question.

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T he Dept. of Energy, under its Innovative Technology Loan Guarantee Program, has released a solicitation announcement that provides support for projects employing innovative energy technologies. The new program is expected to advance the commercialization of renewable energy and energy efficiency technologies that are not currently considered economically attractive projects. The Innovative Technology Loan Guarantee Program was subsequently expanded under the American Recovery and Reinvestment Act (the “Recovery Act”) to provide additional financial support for the rapid deployment of renewable energy, electric transmission and heating/cooling systems, projects; projects supported under the Recovery Act must commence construction before Sep. 30, 2011. The current solicitation addresses projects and technologies support under the Recovery Act program; the applicant, however, must pay the associated credit subsidy cost. The Recovery Act program is subject to Recovery Act reporting requirements and Buy American provisions. The Dept. of Energy is also soliciting projects under the original Section 1703 program; however, in contrast to its treatment of programs under the Recovery Act, the dept. is not subject to Recovery Act requirements and Buy American provisions.

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