

Dated: December 8, 2017.

Brent J. Fields,

Secretary.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 2017-9]

Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The United States Copyright Office is issuing a final rule, amending regulations that govern the deposit requirements for certain types of literary works and musical compositions. The final rule is adopted as proposed in the notice of proposed rulemaking, though the Office provides some clarification regarding the rule's application.

DATES: Effective February 16, 2018.

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SUPPLEMENTARY INFORMATION: On August 16, 2017, the Copyright Office published a notice of proposed rulemaking ("NPRM") to amend the regulations governing the deposit requirements for certain types of literary works (specifically, literary monographs) and musical compositions that are published in print formats.

Under the previous regulations, two copies of the best edition were generally needed to register these types of works and to comply with the mandatory deposit requirement. Under the new rule, copyright owners will be able to satisfy both registration deposit and mandatory deposit requirements by submitting one copy of the best edition of the work. In the case of literary monographs, the Office will retain the right to demand a second copy under

the mandatory deposit provision should the Library need it.

As part of these changes, the rule also clarifies the deposit requirements for musical compositions published *both* in print and phonorecord formats, requiring the submission of the print version for purposes of copyright registration. If, however, the musical composition is published only as a phonorecord, the applicant should submit a copy of the phonorecord.

All of these changes will improve the efficiency of registration and mandatory deposit for both the Office and copyright owners alike, ensuring that the Office has an adequate registration record and continuing to make these works available to the Library of Congress when needed for use in its collections or other disposition.

The NPRM explained in detail the rationale for the rule changes.¹ The Office solicited and received five comments, only two of which were substantive. Having reviewed and carefully considered the comments, the Copyright Office now issues a final rule identical to the proposed rule. While the Office does not believe the comments require any alteration to the rule itself, it does believe that some clarification would be helpful to both the commenters and copyright owners, and is provided here.

The Association of American Publishers ("AAP") filed a comment regarding the proposed rule as it relates to the deposit of literary monographs. While the comment appreciates that the rule "could reduce the financial burdens of publishers with respect to deposit regulations," it nevertheless does not support the rule because it takes issue with the Library's disposition of surplus works. AAP Comments at 2.

AAP appears to believe that there is no authority in the Copyright Act for the Library's disposition of surplus works and that the only authority comes from the Library's own regulations. AAP Comments at 6-7. But as discussed in the NPRM, section 704 of the Copyright Act explicitly states that "[i]n the case of published works, all copies, phonorecords, and identifying material deposited are available to the Library of Congress for its collections, or for exchange or transfer to any other library." 17 U.S.C. 704(b) (emphasis added). Furthermore, AAP's concern about the Library's disposition of surplus books would be diminished by adoption of the rule, which limits the volume of works (and thereby any surplus) coming in to the Library in the

first place. AAP concedes that the rule should have that result. AAP Comments at 2. In part, a primary goal of the rule is to lessen the burden for publishers. Accordingly, the Office chooses to move forward with the rule as is and anticipates that AAP's members will benefit significantly from the rule.

The National Music Publishers' Association ("NMPA") filed a comment in support of the rule, subject to certain clarifications pertaining to the deposit of musical compositions. Specifically, NMPA wanted to clarify that "where musical works are originally published solely as phonorecords, and such musical works are properly deposited and registered in accordance with the statutory and regulatory directives . . . that the later publication of the same musical work in the form of a 'copy' does not create an additional burden to subsequently deposit and register the work in 'copy' form." NMPA Comments at 2. The Office confirms that a later publication in the form of a "copy" does not create an additional deposit requirement.

As NMPA correctly points out, the Copyright Act defines "best edition" as "the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes." 17 U.S.C. 101 (emphasis added); NMPA Comments at 4. NMPA believes, and the Office agrees, that this definition limits a "best edition" to published works at the time of deposit—that is, at the time the deposit for copyright registration or mandatory deposit is made. NMPA Comments at 4-5. Therefore, if only a phonorecord is published at the time of deposit, a subsequently published "copy" would not be a "best edition" and not be required for deposit.

NMPA proposes language to the rule to clarify any confusion regarding subsequent publication of "copies." The Office believes that the rule in its current form along with the current definition of "best edition" is sufficient and no changes need to be made to the rule.

List of Subjects in 37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 202 as follows:

PART 202—GENERAL PROVISIONS

■ 1. The authority citation for part 202 continues to read as follows:

¹ 82 FR 38859 (Aug. 16, 2017).

Authority: 17 U.S.C. 408(f), 702.

■ 2. Amend § 202.19 as follows:

■ a. Add paragraph (b)(5).

■ b. In paragraph (d)(2)(v), remove the words “in copies only,” and add in their place “solely in copies,” and remove the words “if the only publication of copies in the United States took place by rental, lease, or lending.”

■ c. Add paragraph (d)(2)(ix).

The additions read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

* * * * *

(b) * * *

(5) The term *literary monograph* means a literary work published in one volume or a finite number of volumes. This category does not include serials, nor does it include legal publications that are published in one volume or a finite number of volumes that contain legislative enactments, judicial decisions, or other edicts of government.

* * * * *

(d) * * *

(2) * * *

(ix) In the case of published literary monographs, the deposit of one complete copy of the best edition of the

work will suffice in lieu of the two copies required by paragraph (d)(1) of this section, unless the Copyright Office issues a demand for a second copy pursuant to 17 U.S.C. 407(d).

* * * * *

■ 3. Amend § 202.20 as follows:

■ a. Revise paragraph (b)(3).

■ b. Remove paragraph (b)(4).

■ c. Redesignate paragraph (b)(5) as paragraph (b)(4).

■ d. In paragraphs (c)(2)(i)(A) through (D), remove the semicolon and add a period in its place at the end of each sentence.

■ e. Revise paragraph (c)(2)(i)(E).

■ f. In paragraphs (c)(2)(i)(F) through (I), remove the semicolon and add a period in its place at the end of the sentence.

■ g. In paragraph (c)(2)(i)(J), remove “; and” and add a period in its place at the end of the sentence.

■ h. Add paragraph (c)(2)(i)(L).

■ i. In paragraphs (c)(2)(viii)(A) through (D), remove the semicolon and add a period in its place at the end of the sentence.

■ j. In paragraphs (c)(2)(viii)(C) and (D), remove “an audiocassette or other” and add in its place “a”.

The revisions and additions read as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *

(b) * * *

(3) The terms *secure test* and *literary monograph* have the meanings set forth in §§ 202.13(b) and 202.19(b)(5).

* * * * *

(c) * * *

(2) * * *

(i) * * *

(E) Musical compositions published solely in copies or in both copies and phonorecords, provided that one complete copy (rather than a phonorecord) is deposited.

* * * * *

(L) Published literary monographs.

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Dated: December 14, 2017.

Karyn Temple Claggett,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Carla D. Hayden,

Librarian of Congress.

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