



ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559

PROPOSED RULES; NOTICE OF PUBLIC HEARING

37 CFR Part 202

ACQUISITION AND DEPOSIT OF UNPUBLISHED TELEVISION TRANSMISSION PROGRAMS; PROPOSED RULEMAKING AND NOTICE OF PUBLIC HEARING

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket RM 82-1]

Acquisition and Deposit of Unpublished Television Transmission Programs; Proposed Rulemaking and Notice of Public Hearing

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed rules; notice of public hearing.

SUMMARY: This notice of proposed rulemaking and of a public hearing is issued to inform the public that the Copyright Office of the Library of Congress is considering the adoption of new regulations implementing sections 407(e) and 408(b) of the Copyright Law. Section 407(e) provides the authority for the Library of Congress to obtain copies of fixed, unpublished transmission programs, either by making off-the-air copies or by demanding copies from the owner of the right of transmission in the United States in the form of a permanent transfer, a loan for copying, or a sale. Section 408(b) permits the off-the-air copies to be used for copyright registration purposes.

The effect of the proposed regulation

is to provide mechanisms for making off-the-air copies and for demanding copies of unpublished transmission programs. In addition, requirements are established under which copies so acquired may be used in the registration process.

DATES: The public hearing will be held on March 24, 1982 in Washington, D.C. Anyone desiring to testify should submit a written request to present testimony by March 17, 1982, to the address set forth below. To assist the Copyright Office in scheduling witnesses, we urge the public scrupulously to observe the date for requesting time to testify, even if written statements are submitted later. Ten copies of written statements must be received by the Copyright Office by 4:00 p.m., March 19, 1982. Written comments submitted without a request to testify are welcome; five copies should be received in the Copyright Office on or before April 24, 1982.

ADDRESSES: Hearing location: The hearing will be held on March 24, 1982, at the James Madison Building of the Library of Congress, First and Independence Avenue, S.E., Washington, D.C. in the Assembly Room on the sixth floor, LM-649, beginning at 9:30 a.m.

Written requests to present testimony and ten copies of written statements or of supplemental statements, or five copies of written comments

unaccompanied by a request to testify, should be submitted as follows: Library of Congress, Department DS, Washington, D.C. 20540; or, if by hand to: Office of the Copyright General Counsel, Room 407, James Madison Memorial Building, First and Independence Avenue, S.E., Washington, D.C.

All requests to testify should clearly identify the individual or group desiring to testify and the amount of time requested. The Copyright Office will try to contact all witnesses to confirm the time of their appearances.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20540 (202) 287-8380.

SUPPLEMENTARY INFORMATION: Section 407(e) of the Copyright Act (Title 17, United States Code) gives the Library of Congress authority to obtain copies of unpublished transmission programs which have been transmitted to the public in the United States. That authority may be exercised in two different ways: by making fixations of transmission programs directly from transmissions to the public (off-the-air copying) and by demanding that copies be supplied by the owner of United States transmission rights.

Section 408(b) of the Copyright Act provides that copies acquired by the Library of Congress, under section

407(e) "otherwise than by deposit" may be used to satisfy the deposit requirement of the registration process.

The Copyright Office proposes to implement these sections by the addition of one new section to the regulations of the Office. Proposed § 202.22 sets out procedures for both means of acquiring copies, states rules for the disposition and use of such copies after their acquisition, and provides methods for using such copies as registration deposits. In addition, it permits the Library of Congress to institutionalize the acquisition of such copies by agreements which modify the provisions herein. The proposed regulation does not exercise the authority conferred by section 407(e). For example, it does not cover radio transmissions.

Among the concerns voiced during the drafting and enactment of section 407(e) was one involving the ultimate use to which the copies acquired under the proposed regulation would be put. Subsection (e) of the proposed regulation is designed to guarantee that the acquisition of copies by the Library does not lead either to the proliferation of copies outside the Library or to the public performance of the copyrighted works contained in the transmission programs.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

We propose to amend Part 202 of 37¹ CFR Chapter II by adding a new § 202.22 to read as follows:

§ 202.22 Acquisition and deposit of unpublished television transmission programs.

(a) *General.* This section prescribes rules pertaining to the acquisition of copies of unpublished television transmission programs by the Library of Congress under section 407(e) of Title 17 of the United States Code, as amended by Pub. L. 94-553. It also prescribes rules pertaining to the use of such copies in the registration of claims to copyright under section 408(b)(2).

(b) *Definitions.* For the purposes of this section:

(1) The terms "copies," "fixed," "publication," and "transmission program" and their variant forms, have the meanings given to them in section 101 of Title 17.

(2) "Title 17" means Title 17 of the United States Code, as amended by Pub. L. 94-553.

(c) *Off-the-air copying.*

(1) Library of Congress employees acting under the general authority of the Librarian of Congress may make a fixation of an unpublished television

transmission program directly from a transmission to the public in the United States, in accordance with section 407(e) (1) and (4) of Title 17 of the United States Code. The choice of programs selected for fixation shall be based on the Library of Congress acquisition policies in effect at the time of fixation. Specific notice of an intent to copy a transmission program off-the-air will ordinarily not be given. In general, the Library of Congress will seek to copy off-the-air a substantial portion of the programming transmitted by noncommercial educational broadcast stations as defined in section 397 of Title 47 of the United States Code, and will copy off-the-air selected programming transmitted by commercial broadcast stations, both network and independent.

(2) Upon written request addressed to the Chief, Motion Picture, Broadcasting and Recorded Sound Division by a broadcast station or other owner of the right of transmission, the Library of Congress will inform the requestor whether a particular transmission program has been copied off-the-air by the Library.

(3) The Library of Congress will not knowingly copy off-the-air any unfixed or published television transmission program under the copying authority of section 407(e) of Title 17 of the United States Code.

(4) The Library of Congress is entitled under this paragraph (c) to presume that a television program transmitted to the public in the United States by a noncommercial educational broadcast station as defined in section 397 of title 47 of the United States Code, or by a nationwide television network in the United States, has been fixed but not published.

(5) The presumption established by paragraph (c)(4) of this section may be overcome by written declaration and submission of appropriate documentary evidence to the Chief, Motion Picture, Broadcasting and Recorded Sound Division, either before or after off-the-air copying of the particular transmission program by the Library of Congress. Any written submission shall contain: (i) Identification, by title and time of broadcast, of the transmission program in question;

(ii) A brief statement declaring either that the program was not fixed or that it was published at the time of transmission;

(iii) If it is declared that the program was published at the time of transmission, a brief statement of the facts of publication, including the date and place thereof, the method of publication, the name of the owner of

the right of first publication, and whether the work was published in the United States with notice of copyright; and

(iv) The actual handwritten signature of an officer or other duly authorized agent of the organization which transmitted the program in question.

(6) A declaration that the program was unfixed at the time of transmission shall be accepted by the Library of Congress, unless the Library can cite evidence to the contrary, and the off-the-air copy will either be

(i) Erased; or

(ii) Retained, if requested by the owner of copyright or of any exclusive right, to satisfy the deposit provision of section 408 of Title 17 of the United States Code.

(7) If it is declared that the program was published at the time of transmission, the Library of Congress is entitled under this section to retain the copy to satisfy the deposit requirement of section 407(a) of title 17 of the United States Code, unless the Library is notified in writing by the owner of copyright or of the exclusive right of publication that the work has never been published in the United States with notice of copyright.

(8) The Library of Congress in making fixations of unpublished transmission programs transmitted by independent commercial broadcast stations shall not do so without notifying the transmitting organization that such activity is taking place. Such notice shall, if possible, be given by the Library of Congress prior to the time of broadcast. In every case, the Library of Congress shall transmit such notice no later than fourteen days after such fixation has occurred. Such notice shall contain:

(i) The identification, by title and time of broadcast, of the transmission program in question;

(ii) A brief statement asserting the Library of Congress' belief that the transmission program has been, or will be by the date of transmission, fixed and is unpublished, together with language converting the notice to a demand for deposit under section 407(a) and (b) of Title 17 of the United States Code, if the transmission program has been published in the United States with notice of copyright.

(9) The notice required by paragraph (c)(8) of this section shall not cover more than one transmission program except that the notice may cover up to thirteen episodes of one title if such episodes are generally scheduled to be broadcast at the same time period on a regular basis, or may cover all the episodes comprising the title if they are scheduled to be broadcast within a period of not more than two months.

¹Error; line should read:
"We propose to amend Part 202 of 37"

Error; line should read:
"stations as defined in section 397 of"

(d) *Demands for deposit of a television transmission program.* (1) The Register of Copyrights may make a written demand upon the owner of the right of transmission in the United States to deposit a copy of a specific transmission program for the benefit of the Library of Congress under the authority of Section 407(e)(2) of Title 17 of the United States Code.

(2) The Register of Copyrights is entitled to press, unless clear evidence to the contrary is proffered, that the transmitting organization is the owner of the United States transmission right.

(3) Notices of demand shall be in writing and shall contain:

(i) The identification, by title and time of broadcast, of the work in question;

(ii) An explanation of the optional forms of compliance, including transfer of ownership of a copy to the Library, lending a copy to the Library for reproduction, or selling a copy to the Library at a price not to exceed the cost of reproducing and supplying the copy;

(iii) A ninety-day deadline by which time either compliance or a request for an extension or a request to restrict the scope of the demand or the method for fulfilling it shall have been received by the Register of Copyrights;

(iv) A brief description of the controls which are placed on the copies used;

(v) A statement concerning the Register's perception of the publication status of the program, together with language converting this demand to a demand for a deposit, under 17 U.S.C. 407 (a) and (c), if the recipient takes the position that the work is published; and

(vi) A statement that a "compliance copy" must be made and received if the notice is received prior to transmission.

(4) With respect to subsection (3)(ii), the sale of a copy in compliance with a demand of this nature shall be at a price not to exceed the cost to the Library of reproducing and supplying the copy. The notice of demand should therefore inform the recipient of that cost and set that cost, plus reasonable shipping charges, as the maximum price for such a sale.

(5) Copies transferred or sold under this subsection shall be in sound physical condition as defined in Appendix A to this section.

(6) *Special Relief.* In the event any demand made under paragraph (2) of this section the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation:

(i) Extend the time period provided in subparagraph (d)(3)(iii);

(ii) Make adjustments in the scope of

the demand; or

(iii) Make adjustments in the method of fulfilling the demand.

Any decision as to whether to allow such extension or adjustments shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress and shall be made as reasonably warranted by the circumstances. Requests for special relief under paragraph (d) of this section shall be made in writing to the Chief, Acquisitions and Processing Division of the Copyright Office, shall be signed by or on behalf of the owner of the right of transmission in the United States and shall set forth the specific reasons why the request shall be granted.

(e) *Disposition and use of copies.* (1) All copies acquired under this section shall be maintained by the Motion Picture, Broadcasting and Recorded Sound Division of the Library of Congress. The Library may make one archival copy of a program which it has fixed under the provisions of section 497(e)(1) of title 17 of the United States Code and subsection (c) of this section.

(2) All copies acquired or made under this section, except copies of transmission programs consisting of a regularly scheduled newscast or on-the-spot coverage of news events, shall be subject to the restrictions concerning copying and access found in Library of Congress Regulation 818-17, *Policies Governing the Use and Availability of Motion Pictures and Other Audiovisual Works in the Collections of the Library of Congress*, or its successors. Copies of transmission programs consisting of regularly scheduled newscasts or on-the-spot coverage of news events are subject to the provisions of the "American Television and Radio Archives Act" (section 170 of Title 2 of the United States Code) and such regulations as the Librarian of Congress shall prescribe.

(f) *Registration of claims to copyright.*

(1) Copies fixed by the Library of Congress under the provisions of paragraph (c) of this section may be used as the deposit for copyright registration provided that:

(i) The application and fee, in a form acceptable for registration, is received by the Copyright Office not later than ninety days after transmission of the program, and

(ii) Correspondence received by the Copyright Office in the envelope containing the application and fee states that a fixation of the instance work was made by the Library of Congress and requests that the copy so fixed be used to satisfy the registration deposit provisions.

(2) Copies transferred, lent, or sold to the Library of Congress under the provisions of paragraph (d) of this section may be used as the deposit for copyright registration purposes only when the application and fee, in a form acceptable for registration, accompany, in the same container, the copy lent, transferred, or sold, and there is an explanation that the copy is intended to satisfy both the demand issued under section 407(e)(2) and the registration deposit provisions.

(g) *Agreements modifying the terms of this section.* (1) The Library of Congress may, at its sole discretion, enter into an agreement whereby the provision of copies of unpublished television transmission programs on terms different from those contained in this section is authorized.

(2) Any such agreement may be terminated without notice by the Library of Congress.

[17 U.S.C. 407, 408]

Dated: January 25, 1982.

David Ladd,
Register of Copyrights.

Approved:

Daniel J. Boorstin,
The Librarian of Congress.

Appendix A—Technical Guidelines Regarding Sound Physical Condition

To be considered a copy "of sound physical condition" within the meaning of 37 CFR 202.22(d)(5), a copy shall conform to all of the technical guidelines set out in this Appendix.

A. *Physical Condition.* All portions of the copy that reproduce the transmission program must be:

1. *Clean:* Free from dirt, marks, spots, fungus, or other smudges, blotches, blemishes, or distortions;

2. *Undamaged:* Free from burns, blisters, tears, cuts, scratches, breaks, erasures, or other physical damage. The copies must also be free from:

(i) Any damage that interferes with performance from the tape or other reproduction, including physical damage resulting from earlier mechanical difficulties such as cassette jamming, breaks, tangles, or tape overflow; and

(ii) Any erasures, damage causing visual or audible defects or distortions or any material remaining from incomplete erasure of previously recorded works.

3. *Unspliced:* Free from splices in any part of the copy reproducing the transmission program, regardless of whether the splice involves the addition or deletion of material or is intended to repair a break or cut.

4. *Undeteriorated:* Free from any visual or aural deterioration resulting from aging or exposure to climatic, atmospheric, or other chemical or physical conditions, including heat, cold, humidity, electromagnetic fields, or radiation. The copy shall also be free from excessive brittleness or stretching, from any visible flaking of oxide from the tape base or other medium, and from other visible signs of physical deterioration or excessive wear.

³Error; line should read:
"407(e)(1) of title 17 of the United States"

⁴Error; line should read:
"that a fixation of the instant work was"

B. Physical Appurtenances of Deposit Copy:

1. Physical Housing of Video Tape Copy.
(a) In the case of video tape reproduced for reel-to-reel performance, the deposit copy shall consist of reels of uniform size and length. The length of the reels will depend on both the size of the tape and its running time (the last reel may be shorter). (b) In the case of video tape reproduced for cassette, cartridge, or similar performance, the tape

drive mechanism shall be fully operable and free from any mechanical defects.

2. "Leader" or Equivalent. The copy, whether housed in reels, cassettes, or cartridges, shall have a leader segment both preceding the beginning and following the end of the recording.

C. Visual and Aural Quality of Copy:

1. Visual Quality. The copy should be equivalent to an evaluated first generation copy from an edited master tape and must

reproduce a flawless and consistent electronic signal that meets industry standards for television screening.

2. Aural Quality. The sound channels or other portions must reproduce a flawless and consistent electronic signal without any audible defects.

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