ANNOUNCEMENT

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

FINAL REGULATION

ACQUISITION AND DEPOSIT OF UNPUBLISHED TELEVISION TRANSMISSION PROGRAMS

The following excerpt is taken from Volume 48, Number 160 of the Federal Register for Wednesday, August 17, 1983 (pp. 37204-37210)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket RM 82-1]

Acquisition and Deposit of Unpublished Television Transmission Programs

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting new regulations implementing section 407(e) and the second sentence of section 408(b) of the Copyright Act. Section 407(e) authorizes the Library of Congress to obtain copies of fixed, unpublished transmission programs, either by making off-the-air copies or by demanding copies from the owner of the right of transmission in the United States in the form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The effect of the regulation is to provide a mechanism for making off-the-air copies and for demanding copies of unpublished transmission programs.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.

EFFECTIVE DATE: August 17, 1983.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, Department D.S., Library of Congress, Washington, D.C. 20540, Telephone: (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407(e) of the Copyright Act (title 17, United States Code) gives the Library of Congress authority to obtain copies of unpublished transmission programs which have been fixed and transmitted to the public in the United States. That authority may be exercised in two different ways: by making fixations of 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.

On February 4, 1982, we published in the **Federal Register** (47 FR 5259) a notice of proposed rulemaking inviting written public comment and announcing a public hearing on our proposal to implement sections 407(e) and 408(b). In that notice we proposed the addition of one new section to the regulations of the Copyright Office, § 202.22, which set out procedures for both means of acquiring copies, stated rules for the disposition and use of such copies after their acquisition, and provided methods of using such copies as registration deposits. In addition, it permitted the Library of Congress to institutionalize the acquisition of such copies by agreement which might modify the provisions included.

Six written comments were received in response to the notice of proposed rulemaking, and representatives of two organizations who submitted written comments testified at the hearing held on March 24, 1982. After careful consideration, we have decided to make one major change in the proposed regulations, and to clarify several matters of concern expressed in the written comments and testimony.

1. *Presumption of Unpublished Status*: Two of the comments objected to the language of § 202.22(c)(4) which would have allowed the Library to presume that any television program transmitted to the public in the United States by a network or a noncommercial educational broadcast station (as defined in 47 U.S.C. 397) has been fixed but not published.

The Motion Picture Association of America (MPAA) contended that the presumption is inaccurate for most of the works produced by its members since most motion pictures appearing on television are published and as a matter of practice have been so registered with the Copyright Office. The MPAA also described 407(e) procedures as "redundant" with regard to its members who are signatories to the Motion Picture Agreement with the Library since, in signing the Agreement, MPAA members agree to deposit published motion pictures under either 17 U.S.C. 407 or 408 and, in fact, regularly register and deposit copies in the Copyright Office. The MPAA asserted that its

members automatically register their filmed entertainment as published works based on delivery of a print to a network for television exhibition, that they register films no later than the time of distribution for syndicated television exhibition, and that they regularly deposit theatrical motion pictures in their best edition. In sum, the MPAA asserts that the provisions of the Motion Picture Agreement, along with other deposit practices regularly followed by the industry, are sufficient to allow the Library to acquire the motion pictures of MPAA members; the Association therefore asks for a change in the presumption or an exception for its members.

A comment from the Columbia Broadcasting System stated that the presumption was inaccurate with regard to the television programs of CBS, asserting that networks have long regarded their programs as published and that the Copyright Office has accepted such assertions in applications for copyright registration.

For the reasons discussed below, the Copyright Office has decided to amend the presumption of nonpublication, and has made it applicable only to programming transmitted by noncommercial broadcast stations. Commercial network programming will be treated the same as independent station programming—that is, the specific notification procedure of § 202.22(c)(8) applies.

The presumption of nonpublication set forth in § 202.22(c)(4) must be viewed in the context of the Library's acquisition goals, which this regulation is intended to serve pursuant to 17 U.S.C. 407(e). The Library specifically lacks a significant collection of noncommercial educational broadcast materials, the type of programs normally broadcast by member stations of the Public Broadcasting System, and is interested in using off-air taping to fill this particular gap. The Library does not envision taping basic/pay cable and satellite transmissions at this time, and the regulation accordingly makes no provision for this. At a later time, we may amend the regulations to cover cable transmissions. The Library expects to tape programs transmitted by commercial broadcast stations, either network or independent, only in special situations and on an individual basis.

In addition, the Office acknowledges that a high percentage of the works produced by the members of the MPAA, which the Library needs—especially theatrically-released films—is deposited under the terms of the Motion Picture Agreement. A random check of current television series programs and films made specifically for television showed that the deposit practices for these types of works are less satisfactory than those for theatrical films since deposits are made more sporadically and in a less timely fashion. Nonetheless, a significant percentage of these works is also registered under the present system. Theatrical films, made-for-TV films, and television series are generally registered as published. The Library recognizes the cooperation of the MPAA's members and the networks, especially, in acquisitions made through the present deposit system.

Programs transmitted initially by noncommercial broadcast stations are, the Office believes, more likely to be unpublished than published; hence the presumption is directed to programs transmitted by these stations. PBS and its member stations apparently hold the same view since very few of their works are deposited under the mandatory deposit provision of 17 U.S.C. 407, or registered as published under section 408.

As provided in § 202.22(c)(3), the Library will not knowingly tape unfixed or published works off the air. Acquisitions staff in the Library are conversant with the publication practices of commercial networks and of the members of the MPAA, and this knowledge and expertise will be utilized to avoid casual off-air taping of published works acquired routinely through the deposit and registration system. In addition, the regulation establishes other safeguards. Section 202.22(c)(6) provides that unless the Library can cite contrary evidence, a program will be erased or used for registration at the owner's option upon simple declaration of prior nonfixation. Section 202.22(c)(7) provides that upon declaration by the copyright owner that a work was published at the time of transmission, the tape will be used to satisfy the mandatory deposit provision of 17 U.S.C. 407(a). Both provisions turn any mistakes in taping programs off-the-air to the advantage of the copyright owner.

The Office believes that the amendment eliminating commercial network programs from the presumption of nonpublication means that the procedure for rebuttal of the presumption will be seldom invoked. In light of the change, we do not accept the contention of the MPAA that the rebuttal provision is burdensome and unworkable. The rebuttal consists merely of an informal writing containing the minimum information necessary to explain the circumstances of publication (or nonfixation) of the work, and we believe it imposes no undue burden. If the presumption of nonpublication is overcome and the work is shown to have been published with notice of copyright in the United States, the Library is entitled to a deposit copy under 17 U.S.C. 407(a), and this requirement will be satisfied at no cost to the copyright owner for the making of the copy. The rebuttal provision regarding nonpublication serves to clarify the basis on which the Library is entitled to obtain a copy for the collections, and the rebuttal provision regarding fixation serves to facilitate registration if the claimant so wishes.

Finally, the presumption of nonpublication has been established, in addition, as a matter of administrative convenience for the Library in implementing 17 U.S.C. 407(e). The Copyright Office has no intention to modify, and we are confident that the regulation does not modify, the statutory definition of publication in any way. The regulation has no effect on a copyright owner's rights under sections 108, 109, or 412 of the statute. The definition of publication in 17 U.S.C. 101 is controlling. The regulation establishes the presumption of non-publication for these purposes only and as an administrative device of convenience only. It thus facilitates an election by the copyright owner, under which the Library can acquire a copy of a transmitted program, as published with notice or in unpublished form. (The Library is entitled to acquire a copy of a transmission program in either case.) The Library will ordinarily accept at its face value the transmitter's declaration as to whether the work is published or unpublished.

2. *Use of copies acquired through taping or written demand for registration.* PBS requested an expansion of § 202.22(f), which provides that a copy taped off-the-air or demanded in writing by the Library may be used to satisfy the deposit requirement for copyright registration. PBS wishes to use such a copy to satisfy the deposit requirement for a *published* work in cases where the program is later published with no significant change in copyrightable content.

The statute mandates that a deposit copy of a published work shall be the "best edition" of that work. In many cases the quality of a copy made by taping off-the-air will be inferior to the quality of a best edition copy of the work when published. The Library of Congress wishes to adhere as consistently as possible to the statutory requirement of the best edition, to obtain the best quality copies possible for its collections. Adopting the change requested by PBS would also create additional administrative burdens in

phrase in the regulation. The "owner of the right of transmission in the United States" clearly refers to the scope of the particular license a braodcasting station [2] holds. Nationwide network transmissions and broadcasts of sporting events on a local basis are both included in that phrase.

Major League Baseball also commented that, although Congress clearly intended written demands to be made on broadcasters rather than the owner of the underlying copyright, such as baseball clubs, they suggested that written demands should be made on the baseball clubs prior to retransmission because baseball clubs may retain copies of the programs (when fixed) only for a period of two weeks.

The Library intends to make written demands only upon the owner of the right of tramsmission in the U.S. and not on the owner of copyright in the underlying transmission program. Ordinarily, the Library will not make written demands on the baseball clubs themselves. In any event if no copy of the transmission program exists at the time the demand for deposit is made, the Library has missed its opportunity to obtain the copy. The Library on future occasions would probably elect to tape the sports program off the air, rather than risk erasure of the copy before a demand can issue.

The owner of the right of transmission in the U.S., when served with a written demand under § 202.22(d), has the option of giving a copy to the Library, lending a copy for reproduction by the Library, or selling a copy at a price not to exceed the cost of reproducing and supplying the copy. Subsection (d)(4) limits the price to the cost to the Library of reproducing and supplying the copy. PBS commented that, since the costs in question are those of the copyright owner supplying the copy the copyright owner should determine the costs.

It is likely that costs set by the Library would be lower than those set by the owner of the U.S. transmission right. However, since the choice of one of the three options rests with the owner of the right of transmission, if costs for the third option were left to that same entity, they could be set artificially low, or at least give rise to dispute.

PBS asked also that the Library give an assurance, commensurate with the one asked of a depositor when loaning a copy for reproduction by the Library under § 202.22(d)(5), that a copy loaned for reproduction will be kept in good condition for the duration of the loan. As noted above, the choice of one of the three options offered under subsection (d) rests with the owner of the right of transmission. Concerns about the treatment of the loaned copy should be taken into account when electing one of the three options. However, where the owner chooses the option of loaning a copy to the Library for reproduction, the Library will establish the duration of the loan and make suitable arrangements, at its discretion, for care of the copy.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[3]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 202

Claims to copyright, Copyright, Copyright Office, Registration requirements.

Final Regulation

PART 202—[AMENDED]

(1) In consideration of the foregoing, Part 202 of 37 CFR Chapter II is amended 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 copywright, under section 408(b)(2).

(b) *Definitions.* For 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. The term "network station" has the meaning given it in section 111(f) of Title 17.

(2) "Title 17" means Title 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 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,

[3] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

[2] Error; line should read:
"particular license a broadcasting station"

Broadcasting and Recorded Sound Division, either before or after off-the-air copying of the particular transmission program by the Library of Congress. Such written submission shall contain:

(i) The 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 is 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 commercial broadcast stations shall not do so without notifying the transmitting organization or its agent that such activity is taking place. In the case of network stations, the notification will be sent to the particular network. In the case of any other commercial broadcasting station, the notification will be sent to the particular broadcast station that has transmitted, or will transmit, the program. 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.

(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 presume, 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 of a request to adjust 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' use;

(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 retained if the notice is received prior to transmission.

(4) With respect to paragraph (d)(3)(ii) of this section, 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, lent, or sold under paragraph (d) of this section shall be of sound physical condition as described in Appendix A to this section.

(6) *Special Relief.* In the case of any demand made under paragraph (d) 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 407(e)(1) of Title 17 of the United States Code and paragraph (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

holding and handling materials, correspondence, and the like.

For these reasons, the Office has decided not to adopt the change suggested by PBS. However, the Library is willing to consider accepting an unpublished copy acquired under § 202.22 as a deposit for the work after publication, unchanged in copyrightable content, on a case-by-case basis, under the special relief provisions set forth in § 202.22(d)(6).

3. *Specific notification of off-air taping to commercial networks and independent commercial broadcast stations.* Four comments spoke to various aspects of the specific notification procedure of § 202.22(c)(8). As originally proposed, this clause provided that a notice of intent to tape off-the-air would be given only to independent commercial broadcast stations. In accordance with the decision to remove programming transmitted by commercial networks from the presumption of nonpublication, the Office has amended § 202.22(c)(8) to include the commercial networks. The notice will be sent to a central office at each commercial network (ABC, CBS, and NBC) and this will constitute notification to the network, network-owned stations, and affiliates. Notice will be given prior to broadcast time if possible, but no later than fourteen days after the taping off the air by the Library.

The Public Broadcasting System requested that notification also be given to noncommercial broadcast stations, to facilitate using taped copies for registration purposes under § 202.22(f)(1) and asserted that administrative inconvenience to the Library would be offset by directing the notifications to PBS rather than to individual member stations. PBS offered in return to assist the Library in its off-air taping procedures by providing advance notification of transmission of PBS-distributed programs.

CBS similarly asked that network-owned commercial broadcast stations, around fifteen in number, be notified. The Motion Picture Association of America asked that the underlying owner of copyright in the transmission program, as the real party in interest, also be notified. Major league baseball agreed with the MPAA's request, citing the desirability of taking advantage of the possibility of using Library-taped copies for registration.

The Library is willing to consider special agreements with PBS, and others, as provided in § 202.22(g). Under such agreements the Library may be willing to assume the administrative burden of special notification to PBS, as the representative of member stations, with the understanding that PBS will facilitate the Library's off-air taping process by providing the Library with notice of PBS-distributed programs in advance of transmission or with a special satellite feed. We continue to believe that, pending the conclusion of any such special agreements, the Library cannot undertake the administrative burden of specific notification to PBS. The Library intends to tape a substantial number of PBS programs, and the regulation itself constitutes sufficient notification to PBS stations.

It would also be impractical and administratively burdensome to notify the owners of copyright in the transmission programs. Frequently, the Library has no direct knowledge of the owner of copyright in the programs and the identity could be ascertained, if at all, only at substantial cost. Unpublished works need not contain a copyright notice and, even if a copyright notice were present, an address normally would not appear with the name of the copyright owner. The statute sets forth a simple scheme that will enable the Library to develop a national collection of television programming at modest cost to the Library and no cost to copyright owners, in the case of off-air taping. The Office believes that notifications sent to the commercial networks (as agents for network-owned and affiliated broadcast stations) or to owners of U.S. transmission rights (i.e., broadcast organizations) are the most practical method of carrying out the statutory scheme. Transmitting organizations can in turn inform the owners of copyright.

Section 202.22(c)(9) allows a notification to encompass 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 to cover all episodes comprising one title if they are scheduled to be broadcast within a period of not more than two months. The MPAA suggested in passing remarks that the legislative history precludes such a notification. The prohibition against "blanket" *demands* discussed on page 152 of the 1976 House Report 94-1476 [1], However, refers solely to the demand procedure which has been implemented in § 202.22(d). That comment has no relevance to the special notification of off-air taping established by § 202.22(c)(8).

One comment asked whether network-owned stations, or stations owned by chain broadcasters, are included in the definition of "independent commercial broadcast station." The question has lost its significance in view of the change regarding the presumption of nonpublication. However, we clarify that, by "independent commercial broadcast station," we mean a station which is neither network-owned nor network-affiliated.

As set out in 17 U.S.C. 111(f), a "network station" is a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of that station's typical broadcast day. The Office has amended § 202.22(b) to include the term "network station" as defined in 17 U.S.C. 111(f). Currently, only the American Broadcasting System, the Columbia Broadcasting System, and the National Broadcasting System constitute networks under this definition.

4. *Written demands for deposit.* Although the MPAA acknowledged that the statute allows written demands under section 407(e) to be made against the owner of the right of transmission in the U.S., they commented that the presumption that a tramsmitting organization is the owner of the U.S. transmission right may not be true and that, in any case, the demand should also be sent to the owner of copyright in the underlying transmission program as the real party in interest.

The statute states unequivocally that any written demand under section 407(e) is to be made on the owner of the right of transmission in the United States. The Library is not required to take on the additional burden of seeking out the owner of copyright in the underlying transmission program as well. As noted above, determining the identity of that owner could be difficult, if not impossible. It is reasonable to assume that the broadcaster is the owner of the U.S. transmission right. Otherwise, the tramsmission is presumable [1] unauthorized, which rarely occures in the United States. If the demand is not directed to the proper entity, the broadcaster can notify the Office of that fact.

Major League Baseball explained that in the case of baseball broadcasts the primary market of the transmitting organization is frequently limited in geographic area within the United States and asked that the phrase "owner of the right of transmission in the United States" be defined expressly to include the owners of local transmission rights. We see no need to define the statutory

[1] H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. (1976).

[1] Error; line should read:
"transmission is presumable"

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 instant 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) of Title 17 of the United States Code 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, 702)

Dated: August 4, 1983.

David Ladd,

Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

(2) Part 202 of 37 CFR Chapter II is amended by adding Appendix A to read as follows:

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 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, erasure, 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 mechnanical 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.

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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