



ANNOUNCEMENT

from the Copyright Office, Library of Congress,
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

INTERIM REGULATION WITH REQUEST FOR COMMENTS.

NOTICE TO LIBRARIES AND ARCHIVES OF NORMAL COMMERCIAL EXPLOITATION OR AVAILABILITY AT REASONABLE PRICE

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 98-13]

Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulation with request for comments.

SUMMARY: The Copyright Office of the Library of Congress is issuing interim regulations and requesting comment on the requirements by which a copyright owner or its agent may provide notice to libraries and archives that a published work in the final 20 years of its extended term of copyright is subject to normal commercial exploitation or that a copy or phonorecord of the work can be obtained at a reasonable price. The Office is issuing interim regulations in order to have the notice requirements in place on January 1, 1999. Final regulations will be promulgated following the Office's review of public comments.

EFFECTIVE DATE: The interim regulations are effective January 1, 1999. Comments must be submitted on or before February 15, 1999. Reply comments must be submitted on or before April 1, 1999.

ADDRESSES: An original and fifteen copies of the comments shall be delivered to: Office of the General Counsel, Copyright Office, LM-403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C., or mailed to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

FOR FURTHER INFORMATION

CONTACT: David O. Carson, General Counsel, or Jennifer L. Hall, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Facsimile: (202) 707-8366.

SUPPLEMENTARY INFORMATION: Background

On October 27, 1998, President Clinton signed into law the Sonny Bono Copyright Term Extension Act ("the Act"), Public Law 105-298, 112 Stat. 2827 (1998). The Act amended the copyright law, title 17 United States Code, to extend for an additional 20 years the term of copyright protection in the United States. With respect to the extended 20-year term, the Act added a limited new exemption for certain libraries and archives in section 108(h) of the copyright law. Under new section 108(h), during the last 20 years of any term of copyright protection of a published work, a library or archives (including a nonprofit educational institution functioning as such), may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that certain conditions set forth in the law do not apply. 17 U.S.C. 108(h)(1). Specifically, no reproduction, distribution, display, or performance is authorized under the subsection if: (A) the work is subject to normal commercial exploitation; (B) a copy or phonorecord of the work can be obtained at a reasonable price; or (C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies. *Id.* 108(h)(2). The new exemption does not apply to unpublished works. *Id.* 108(h)(1). It also does not apply to subsequent uses by users

other than the library or archives. *Id.* 108(h)(3).

Under the interim regulations set forth at 37 CFR 201.39, copyright owners may file with the Copyright Office a Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price. The Notice shall be accompanied by a filing fee of \$50 for the first work, and \$20 for each additional work, made payable in check, money order or bank draft to the Register of Copyrights. The Office will not provide printed forms for the Notices, but will provide a required format, which is set out in Appendix A to this notice and will be available from the Copyright Office website (<http://lcweb.loc.gov/copyright>). The regulations specify that the Notice must be provided on 8 1/2 x 11 inch paper with a one-inch margin.

Copyright owners or their agents may file the Notice at any time during the work's extended 20-year term, and thereafter a library or archives could not claim the exemption with respect to the identified work. Until such notice is filed, however, a library or archive is free to use a published work in its last 20 years of copyright term as provided under section 108(h) unless its reasonable investigation otherwise reveals that the work is subject to normal commercial exploitation or availability at a reasonable price. The Office is inquiring whether the final regulations should permit copyright owners to file a Notice for a work before its extended term begins and, if so, how much sooner.

Due to the nature of the filing as a representation by the copyright owner that a particular work is subject to normal commercial exploitation or reasonable availability, the Notice to Librarians and Archives cannot be a one-time filing to cover the entire 20-year period. Instead, copyright owners will need to refile the Notice periodically (e.g., every five years) in order to reassert the facts of commercial availability or reasonable price with respect to the work. For purposes of the interim regulations, the Office is requiring a

declaration under penalty of perjury by the copyright owner or its agent that the work identified is subject to normal commercial exploitation, or that a copy or phonorecord of the work is available at a reasonable price. The Office is also requiring contact information for the person or entity that can provide information concerning the work's normal commercial exploitation or availability at a reasonable price. Additional information concerning the work's commercial availability may be provided, but is not required. The Office is inquiring whether the Notice should require additional information with respect to a work's commercial availability.

Because any number of works may share the same title, a copyright owner choosing to file a Notice to Libraries and Archives under these regulations will be required to identify his or her works by reference not only to the work's title, but also to the type of work (e.g., music, motion picture, book, photograph,

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illustration, map, article in a periodical, painting, sculpture, sound recording, etc.); the edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, English translation of French text); the author's name; the year of first publication; the year the work first secured federal copyright through publication with notice or registration; and the renewal registration number (except for foreign works in which copyright is restored pursuant to 17 U.S.C. 104A). The original copyright registration number may be provided but is not required. If a work is untitled, then the copyright owner will be required to provide a brief description of the work (e.g., black-and-white photo of train station in Cleveland, Ohio, 1923). The Notice must identify the copyright owner or the owner of exclusive rights on whose behalf the Notice is filed. If the copyright owner is not owner of all rights, then the Notice must specify the rights owned (e.g., the right to reproduce/distribute/ publicly display/ publicly perform the work or to create a derivative work). Information on how the Office can contact the person submitting the notice is required. The Office is inquiring whether a new or amended Notice should be required if the copyright owner transfers or assigns rights in the work to another party or publisher, or if the information reported in a Notice otherwise changes.

To accommodate copyright owners who wish to file Notices for a number of published works, a single Notice may be filed for a group of works that have entered their final 20 years of copyright term. Such a filing will be permitted for a filing fee of \$50 for the first work and \$20 for each additional work, provided that: (1) all the works are by the same author; (2) all the works are owned by the same copyright owner or owner of the exclusive rights therein (and if the claimant is

not owner of all rights, the claimant must own the same rights with respect to all works in the group); (3) all the works first secured federal copyright in the same year, through either publication with notice or registration as an unpublished work; (4) all the works were first published in the same year; (5) the person or entity that the Copyright Office should contact concerning the Notice is the same for all the works; and (6) the person or entity that Libraries and Archives may contact concerning the work's normal commercial exploitation or availability at reasonable price is the same for all the works. Each of these conditions for group filing is necessary to properly identify the works, to facilitate processing of the Notices, and to make the information available for public inspection in a timely manner. The first work in a group will be identified using the same required format used for all Notices to Libraries and Archives, which will indicate whether the filing is a group, but each additional work in the group will be identified on a separate continuation sheet. The required format for the continuation sheet is set out in Appendix A to this notice and will be available from the Copyright Office website. The information in the Notices will be entered into the Copyright Office History Documents (COHD) file, which is publicly available, both at the Copyright Office and through the Copyright Office website (<http://lcweb.loc.gov/copyright>).

Because the extension of copyright term was effective upon enactment of the Act and because all terms of copyright run to the end of the calendar year in which they would otherwise expire, 17 U.S.C. 304, the first works to be affected by term extension are those whose terms of protection would have expired on December 31, 1998. These include works that secured copyright in 1923 and were properly renewed in 1950-51, as well as certain foreign works whose copyrights were restored under 17 U.S.C. 104A. The additional 20 years of copyright protection for these works will commence on January 1, 1999. That date is the first date on which libraries and archives are entitled to exploit those works under the new section 108(h) exemption. In order to have regulations governing Notice to Libraries and Archives in place on that date, the Copyright Office is establishing interim regulations effective on January 1, 1999, and requesting comments for consideration before promulgating final regulations.

Questions for Public Comment

The Copyright Office is requesting public comment on the following:

1. For how long should a Notice to Libraries and Archives be effective? Should a copyright owner be required to refile the Notice to Libraries and Archives periodically? If so, what is the preferable time period?

2. Should copyright owners be permitted to file the Notice to Libraries and Archives prior to the commencement of the final 20 years of copyright term? If so, how long before the commencement of the final 20 years should they be permitted to file the Notice?

3. Should the final regulations require that new Notices to Libraries and Archives be filed upon adoption of the final regulations, or should Notices filed pursuant to the interim regulations remain valid? The answer to this question is likely to depend on whether the final regulations require more information in the Notices than is required by the interim regulations.

4. Besides the information set forth in §201.39(c) of the interim regulations, should a copyright owner provide any additional information in a Notice to Libraries and Archives? Should any of the information required or requested under the interim regulations not be required or requested under the final regulations? Should any of the optional information be required, or any of the required information made optional?

5. Under the final regulations, what information should a copyright owner provide with respect to a work's normal commercial exploitation and/or availability at a reasonable price? Is it sufficient to require (1) a declaration under penalty of perjury by the copyright owner that a work is subject to normal commercial exploitation or availability at a reasonable price; and (2) contact information where libraries and archives may obtain further information on the work's exploitation or availability; and to provide an option for additional information concerning the work's commercial availability?

6. If, after filing a Notice to Libraries and Archives, the copyright owner transfers or assigns a work, or transfers or assigns rights in a work, should the new copyright owner or its agent be required to submit a new or amended Notice? Should the regulations otherwise require the filing of an amended Notice in the event of a change in any information reported in the Notice?

7. Are there types of works (e.g., individual contributions to a periodical or other collective work that may not have been separately registered) which will present particular issues or problems that must be specifically addressed in the regulations? What are those problems and how should they be addressed? Should any additional information be required with respect to such works?

List of Subjects in 37 CFR Part 201

Copyright.

Interim Regulations

For the reasons set forth in the preamble, Part 201 of Title 37 of the Code of Federal Regulations is amended to read as follows:

PART 201--GENERAL PROVISIONS

1. The authority for Part 201 continues to read as follows:

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Authority: 17 U.S.C. 702.

2. Section 201.39 is added to read as follows:

§201.39 Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price.

(a) General. This section prescribes rules under which copyright owners or their agents may provide notice to qualified libraries and archives (including a nonprofit educational institution that functions as such) that a published work in its last 20 years of copyright protection is subject to normal commercial exploitation, or that a copy or phonorecord of the work can be obtained at a reasonable price, for purposes of section 108(h)(2) of title 17 of the United States Code.

(b) Format. The Copyright Office provides a required format for a Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price, and for continuation sheets for group notices. The required format is set out in Appendix A to this section, and are available from the Copyright Office website (<http://lcweb.loc.gov/copyright>). The Copyright Office does not provide printed forms. The Notice shall be in English (except for an original title, which may be in another language), typed or printed legibly in dark ink, and shall be provided on 8 1/2 x 11 inch white paper with a one-inch margin.

(c) Required Content. A "Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price" shall be identified as such by prominent caption or heading, and shall include the following:

(1) The acronym NLA in capital, and preferably bold, letters in the top right-hand corner of the page;

(2) A check-box just below the acronym NLA indicating whether continuation sheets for additional works are attached;

(3) The title of the work, or if untitled, a brief description of the work;

(4) The author(s) of the work;

(5) The type of work (e.g., music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.);

(6) The edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, translation, French version). If there is no information relating to the edition or version of the work, the notice should so state;

(7) The year of first publication;

(8) The year the work first secured federal copyright through publication with notice or registration as an unpublished work;

(9) The copyright renewal registration number (except this information is not required for foreign works in which copyright is restored pursuant to 17 U.S.C. 104A);

(10) The name of the copyright owner (or the owner of exclusive rights);

(11) If the copyright owner is not the owner of all rights, a specification of the rights owned (e.g., the right to reproduce/distribute/publicly display/publicly perform the work or to prepare a derivative work);

(12) The name, address, telephone number, fax number (if any) and e-mail address (if any) of the person or entity that the Copyright Office should contact concerning the Notice;

(13) The full legal name, address, telephone number, fax number (if any) and e-mail address (if any) of the person or entity that Libraries and Archives may contact concerning the work's normal commercial exploitation or availability at reasonable price; and

(14) A declaration made under penalty of perjury that the work identified is subject to normal commercial exploitation, or that a copy or phonorecord of the work is available at a reasonable price.

(d) Additional content. A Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price may include the following:

(1) The original copyright registration number of the work; and

(2) Additional information concerning the work's normal commercial exploitation or availability at a reasonable price.

(e) Signature. The Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price shall include the signature of the copyright owner or its agent. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Notice, and by the date of signature.

(f) Multiple works. A Notice to Libraries and Archives may be filed for more than one work. The first work shall be identified using the format required for all Notices to Libraries and Archives. Each additional work in the group must be identified on a separate continuation sheet. The required format for the continuation sheet is set out in Appendix B to this section, and is available from the Copyright Office website (<http://lcweb.loc.gov/copyright>). A group filing is permitted provided that:

(1) All the works are by the same author;

(2) All the works are owned by the same copyright owner or owner of the exclusive rights therein. If the claimant is not owner of all rights, the claimant must own the same rights with respect to all works in the group;

(3) All the works first secured federal copyright in the same year, through either publication with notice or registration as an unpublished work;

(4) All the works were first published in the same year;

(5) The person or entity that the Copyright Office should contact concerning the Notice is the same for all the works; and

(6) The person or entity that Libraries and Archives may contact concerning the work's normal commercial exploitation or availability at reasonable price is the same for all the works.

(g)—Filing—(1) Method of Filing. The Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price should be addressed to: NLA, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559-6000. If delivered by hand, it should be delivered during normal business hours, 8:30 a.m. to 5:00 p.m., to the Public Information Office, Room LM-401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE., Washington, DC.

(2) Amount. Each Notice shall be accompanied by a filing fee of \$50, and (if more than one work is identified in the Notice), \$20 for each additional work.

(3) Method of Payment—(i) Checks, money orders, or bank drafts. The Copyright Office will accept checks, money orders, or bank drafts made payable to the Register of Copyrights. Remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. Postal money orders that are negotiable only at a post office and international money orders are not acceptable. CURRENCY IS NOT ACCEPTED.

(ii) Copyright Office Deposit Account. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into that

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account. Deposit Account holders can charge copyright fees against the balance in their accounts instead of sending separate remittances with each request for service. For information on Deposit Accounts, visit the Copyright Office website or write: Copyright Office, Library of Congress, Washington, DC 20559-6000, and request a copy of Circular 5, "How to Open and Maintain a Deposit Account in the Copyright Office."

Appendix A to Sec. 201.39—Required format of Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price

NLA

Check box if continuation sheets for additional works are attached.

Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price

1. Title of the work (or, if untitled, a brief description of the work): _____.
2. Author(s) of the work: _____.
3. Type of work (e.g. music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.): _____.
4. Edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, English translation of French text). If there is no information available relating to the edition or version of the work, the Notice should state, "No information available": _____.
5. Year of first publication: _____.
6. Year the work first secured federal copyright through publication with notice or registration as an unpublished work: _____.
7. Copyright renewal registration number (not required for foreign works restored under 17 U.S.C. 104A): _____.
8. Full legal name of the copyright owner (or the owner of exclusive rights): _____.
9. The person or entity identified in space #8 owns:
 - all rights.
 - the following rights (e.g., the right to reproduce/distribute/publicly display/publicly perform the work or to prepare a derivative work): _____.
10. Person or entity that the Copyright Office should contact concerning the Notice:
 - Name: _____
 - Address: _____
 - Telephone: _____
 - Fax number (if any): _____
 - E-mail address (if any): _____
11. Person or entity that libraries and archives may contact concerning the work's normal commercial exploitation or availability at a reasonable price:
 - Name: _____
 - Address: _____
 - Telephone: _____
 - Fax number (if any): _____
 - E-mail address (if any): _____

Additional Content (OPTIONAL):

12. Original copyright registration number: _____
13. Additional information concerning the work's normal commercial exploitation or availability at a reasonable price: _____

Declaration:

I declare under penalty of perjury under the laws of the United States:

- that each work identified in this notice is subject to normal commercial exploitation.
- that a copy or phonorecord of each work identified in this notice is available at a reasonable price.

Signature:-----

Date:-----

Typed or printed name:-----

Title:-----

Appendix B to Sec. 201.39—Required format for Continuation Sheet NLA CON Page ____ of ____ Pages.

Continuation Sheet for NLA Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price

1. Title of the work (or, if untitled, a brief description of the work): _____.
2. Type of work (e.g. music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.): _____.
3. Edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, English translation of French text). If there is no information available relating to the edition or version of the work, the Notice should state, "No information available": _____.
4. Copyright renewal registration number (not required for foreign works restored under 17 U.S.C. 104A): _____.

Additional Content (OPTIONAL):

5. Original copyright registration number: _____.
6. Additional information concerning the work's normal commercial exploitation or availability at a reasonable price: _____.

Dated: December 21, 1998.

Marybeth Peters,
Register of Copyrights.

Approved:

James H. Billington,
The Librarian of Congress.

[FR Doc. 98-34430 Filed 12-29-98; 8:45 am]

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