

Announcement

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

INTERIM REGULATION

PART 202--REGISTRATION OF CLAIMS TO COPYRIGHT

COPYRIGHT REGISTRATIONS

The following excerpt is taken from Volume 43, No. 3 of the Federal Register for Thursday, January 5, 1978 (pp. 965-7).

Please note the interim regulations are effective January 1, 1978, however, comments can be received on or before March 31, 1978.

[1410-03]

[Docket RM 77-18]

PART 202--REGISTRATION OF CLAIMS TO COPYRIGHT

Copyright Registrations

AGENCY: Library of Congress, Copyright Office.

ACTION: Interim regulation.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting an interim regulation to implement sections 408 and 409 of the Act for General Revision of the Copyright Law. These sections pertain to copyright registration. The effect of the interim regulations is to establish requirements governing the classification of works for copyright registration and the form and content of applications for copyright registration. These regulations are issued on an interim basis in order to allow persons to apply for and secure copyright registration immediately on and after the effective date of the statute, while permitting full public comment before the issuance of final regulations.

DATES: The interim regulations are effective on January 1, 1978. Comments should be received on or before March 31, 1978.

ADDRESSES: Five copies of all written comments should be provided, if by hand, to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Crystal Mall Building No. 2, Room 519, Arlington, Virginia, or, if by mail to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Caller No. 2999, Arlington, Va. 22202.

Copies of all written comments will be available for public inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, in the Public Information Office of the Copyright Office, Room 101, Crystal Mall,

Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va.

FOR FURTHER INFORMATION, CONTACT:

Jon Baumgarten, General Counsel,
Copyright Office, Library of Congress,
Washington, D.C. 20559, 703-557-8731.

SUPPLEMENTARY INFORMATION: Paragraph (a) of section 408 of the first section of Pub. L. 94-553 (90 Stat. 2541) provides that "at any time during the subsistence of copyright in any published or unpublished work, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the Copyright Office" an application for registration, together with the necessary fee and deposit. Paragraph (c) of that section authorizes the Register of Copyrights to "specify by regulation" the administrative classes into which works are to be placed for purposes of registration. Section 409 provides that the application for registration "shall be made on a form prescribed by the Register of Copyrights" and include certain specified items of information, as well as "any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright."

We are implementing these provisions by the revision of § 202.3 of the regulations of the Copyright Office. In order to allow persons to apply for and secure copyright registration immediately upon and after the effective date of the new Copyright Act, this regulation is effective on January 1, 1978. However, we do wish to give the public full opportunity to comment on the regulations, and to give both the public and the Copyright Office the benefit of experience with the new application forms before issuing final regulations. Accordingly, the regulation is issued on an interim basis and com-

ments will be received until the date set forth above. Final regulations will be issued after the close of the comment period.

The interim regulation is essentially self explanatory; however, the following points should be noted:

(1) In a Notice of Inquiry published on September 16, 1977 (42 FR 48944) we raised certain issues related to registration. Prompted by the implications of that Notice, several comments, including a persuasive practical and legal analysis prepared by the Authors League of America, Inc., strongly urged that the copyright "claimant" to be identified in an application and registration under section 409(c) of the Act not be equated with the owner of one or more, but less than all, of the rights under a copyright. We agree with the view expressed in these comments; we do not believe that the concept of "divisibility of copyright" was intended to allow the owner of an individual right or rights to claim, or appear to claim, on our records, ownership of the entire copyright. As pointed out in the comments, such a result would lead to a misleading and inaccurate public record, and subvert the purpose of the registration system. Accordingly, interim § 202.3(a) (3) makes clear that the copyright "claimant" for purposes of copyright registration is the author of the work for which registration is sought, or a person or organization that has obtained ownership of all rights under the copyright initially belonging to the author.

(2) In the same Notice of Inquiry, we stated that the general rule envisioned by the new Act, as under the current law, was that only one registration should be made for the same version of a particular work. Although a few comments questioned this principle, we believe that the history, language and structure of the statute is clear on the point, and we adhere to the position expressed. Indeed, the allowance of multiple registrations for the same work

would thoroughly confuse the public record designed to be made by the registration system, and would serve no purpose under the definition of "claimant". Moreover, as explained in the Notice, the allowance of multiple registrations could be taken to suggest that, in view of the inducements to registration offered by the statute, the owner of each particular right would be forced, as a practical matter, to make registration to enforce that right. This was certainly not the intention of the statute. Accordingly, interim § 202.3(b)(6) adopts the principle of "one basic registration per work," and sets forth the exceptions to that principle discussed in the Advance Notice.

(3) Section 408(c)(2) of the Act directs the Register of Copyrights to establish regulations permitting a single registration, on the basis of a single application and fee, for a group of contributions to periodicals by the same individual author in certain cases. These regulations, which essentially follow the conditions set forth in the statute, are incorporated in paragraph (b)(5) of interim § 202.3. Also, interim § 202.3(b)(3), which is based on existing Copyright Office practices, provides for a single registration, as a single work and with a single fee, of "collections" of unpublished works and multiple copyrightable elements included in a single published work. However, we have reserved for implementation in a separate proceeding, the possibility of providing for "a single registration for a group of related works" under paragraph (c)(1) of section 408. We invite comments and suggestions as to the types of related works that could appropriately be covered by group registration under section 408(c)(1), together with suggestions as to the deposit and registration requirements that might be applicable in these cases.

Interim Regulation. Part 202 of 37 CFR, Chapter II is amended by: (i) Revoking §§ 202.4, 202.5, 202.6, 202.7, 202.8, 202.9, 202.11, 202.13, and 202.15a in their entirety; (ii) revoking paragraphs (a) and (c) of § 202-10, paragraphs (a) and (b) of § 202.12, and paragraphs (a) and (b) of § 202.14; and (iii) revising § 202.3, on an interim basis, to read as follows:

§ 202.3 Registration of copyright.

(a) *General.* (1) This section prescribes conditions for the registration of copyright, and the application to be made for registration, under sections 408 and 409 of title 17 of the United States Code, as amended by Pub. L. 94-553.

(2) For the purposes of this section, the terms "audiovisual work", "compilation", "copy", "derivative work", "device", "fixation", "literary work", "motion picture", "phonorecord", "pictorial, graphic and sculptural works", "process", "sound recording", and their variant forms, have the meanings set forth in section 101 of title 17. The term "author" includes an employer or other person for whom a work is "made for hire" under section 101 of title 17.

(3) For the purposes of this section, a copyright "claimant" is either:

(i) The author of a work;
(ii) A person or organization that has obtained ownership of all rights under the copyright initially belonging to the author.¹

(b) *Administrative Classification and Application Forms.*—(1) *Classes of Works.* For the purpose of registration, the Register of Copyrights has prescribed four classes of works in which copyright may be claimed. These classes, and examples of works which they include, are as follows:

(i) *Class TX: Nondramatic Literary Works.* This class includes all published and unpublished nondramatic literary works. Examples: Fiction; nonfiction; poetry; textbooks; reference works; directories; catalogs; advertising copy; periodicals and serials; and compilations of information.

(ii) *Class PA: Works of the Performing Arts.* This class includes all published and unpublished works prepared for the purpose of being performed directly before an audience or indirectly by means of a device or process. Examples: Musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; and motion pictures and other audiovisual works.

(iii) *Class VA: Works of the Visual Arts.* This class includes all published and unpublished pictorial, graphic, and sculptural works. Examples: Two dimensional and three dimensional works of the fine, graphic, and applied arts; photographs; prints and art reproductions; maps, globes, and charts; technical drawings, diagrams, and models; and pictorial or graphic labels and advertisements.

(iv) *Class SR: Sound Recordings.* This class includes all published and unpublished sound recordings fixed on and after February 15, 1972. Claims to copyright in literary, dramatic, and musical works embodied in phonorecords may also be registered in this class under paragraph (b)(3) of this section if: (A) Registration is sought on the same application for both a recorded literary, dramatic, or musical work and a sound recording; (B) the recorded literary, dramatic, or musical work and the sound recording are embodied in the same phonorecord; and (C) the same claimant is seeking registration of both the recorded literary, dramatic, or musical work and the sound recording.

(2) *Application Forms.* For the purpose of registration, the Register of Copyrights has prescribed four basic forms to be used for all applications submitted on and after January 1, 1978. Each form corresponds to a class set

¹ This category includes a person or organization that has obtained, from the author or from an entity that has obtained ownership of all rights under the copyright initially belonging to the author, the contractual right to claim legal title to the copyright in an application for copyright registration.

forth in paragraph (b)(1) of this section and is so designated ("Form TX"; "Form PA"; "Form VA"; and "Form SR"). Copies of the forms are available free upon request to the Public Information Office, United States Copyright Office, Library of Congress, Washington, D.C. 20559. Applications should be submitted in the class most appropriate to the nature of the authorship in which copyright is claimed. In the case of contributions to collective works, applications should be submitted in the class representing the copyrightable authorship in the contribution. In the case of derivative works, applications should be submitted in the class most appropriately representing the copyrightable authorship involved in recasting, transforming, adapting, or otherwise modifying the preexisting work. In cases where a work contains elements of authorship in which copyright is claimed which fall into two or more classes, the application should be submitted in the class most appropriate to the type of authorship that predominates in the work as a whole. However, in any case where registration is sought for a work consisting of or including a sound recording in which copyright is claimed² the application shall be submitted on Form SR.

(3) *Registration as a Single Work.* (i) For the purpose of registration on a single application and upon payment of a single registration fee, the following shall be considered a single work:

(A) In the case of published works: All copyrightable elements that are otherwise recognizable as self-contained works, that are included in a single unit of publication, and in which the copyright claimant is the same; and

(B) In the case of unpublished works: all copyrightable elements that are otherwise recognizable as self-contained works, and are combined in a single unpublished "collection". For these purposes, a combination of such elements shall be considered a "collection" if: (1) The elements are assembled in an orderly form; (2) the combined elements bear a single title identifying the collection as a whole; (3) the copyright claimant in all of the elements, and in the collection as a whole, is the same; and (4) all of the elements are by the same author, or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element. Registration of an unpublished "collection" extends to each copyrightable element in the collection and to the authorship, if any, involved in selecting and assembling the collection.

² A "sound recording" does not include the sounds accompanying a motion picture or other audiovisual work (17 U.S.C. 101). For this purpose, "accompanying" does not require physical integration in the same copy. Accordingly, registration may be made for a motion picture or audiovisual kit in Class PA and that registration will cover the sounds embodied in the "sound track" of the motion picture or on disks, tapes, or the like included in the kit. Separate application in Class SR is not appropriate for these elements.

(ii) In the case of applications for registration made under paragraphs (b) (3) and (b) (5) of this section, the "year in which creation of this work was completed", as called for by the application, means the latest year in which the creation of any copyrightable element was completed.

(4) *Group Registration of Related Works.* [Reserved]

(5) *Group Registration of Contributions to Periodicals.* (1) As provided by section 408(c)(2) of title 17 of the United States Code, as amended by Pub. L. 94-553, a single registration, on the basis of a single application, deposit, and registration fee, may be made for a group of works if all of the following conditions are met:

(A) All of the works are by the same author;

(B) The author of each work is an individual, and not an employer or other person for whom the work was made for hire;

(C) Each of the works first published as a contribution to a periodical (including newspapers) within a twelve-month period;

(D) Each of the works as first published bore a separate copyright notice, and the name of the owner of copyright in each work (or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner) was the same in each notice; and

(E) The deposit accompanying the application consists of one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution was first published.

(ii) An application for group registration under section 408(c)(2) of title 17 and this § 202.3(b)(5) shall consist of: (A) A basic application for registration on Form TX, Form PA, or Form VA,⁴ which shall contain the information required by the form and its accompanying instructions; (B) an adjunct form prescribed by the Copyright Office and designated "Adjunct Application for Copyright Registration for a Group of Contributions to Periodicals (Form GR/CP)", which shall contain the information required by the form and its accompanying instructions; and (C) a fee of \$10 and the deposit required by paragraph (b)(5)(i)(E) of this section.

⁴This does not require that each of the works must have been first published during the same calendar year; it does require that, to be grouped in a single application, the earliest and latest contributions must not have been first published more than twelve months apart.

⁵The basic application should be filed in the class appropriate to the nature of authorship in the majority of the contributions. However, if any of the contributions consists preponderantly of nondramatic literary material that is in the English language, the basic application for the entire group should be submitted on Form TX.

(6) *One Registration Per Work.* As a general rule only one copyright registration can be made for the same version of a particular work. However:

(i) Where a work has been registered as unpublished, another registration may be made for the first published edition of the work, even if it does not represent a new version;

(ii) Where someone other than the author is identified as copyright claimant in a registration, another registration for the same version may be made by the author in his or her own name as copyright claimant;⁶

(iii) Where an applicant for registration alleges that an earlier registration for the same version is unauthorized and legally invalid, a registration may be made by that applicant; and

(iv) Supplementary registrations may be made, under the conditions of § 201.5 of these regulations, to correct or amplify the information in a registration made under this section.

(c) *Application for Registration.* (1) An application for copyright registration may be submitted by any author or other copyright claimant of a work, or the owner of any exclusive right in a work, or the duly authorized agent of any such author, other claimant, or owner.

(2) An application for copyright registration shall be submitted on the appropriate form prescribed by the Register of Copyrights under paragraph (b) of this section, and shall be accompanied by a fee of \$10 and the deposit required under 17 U.S.C. 408 and § 202.20 of these regulations.⁷ The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of: (i) A designation of whether the applicant is the author of, or other copyright claimant or owner of exclusive rights in, the work, or the duly authorized agent of such author, other claimant, or owner (whose identity shall also be given); (ii) the handwritten signature of such author, other claimant, owner, or agent, accompanied by the typed or printed name of that person; (iii) a declaration that the statements made in the application are correct to the best of that person's knowledge; and (iv) the date of certification. An application for registration of a published work will not be accepted if the date of certifi-

⁶An "author" includes an employer or other person for whom a work is "made for hire" under 17 U.S.C. 101. This paragraph does not permit an employee or other person working "for hire" under that section to make a later registration in his or her own name. In the case of authors of a joint work, this paragraph does permit a later registration by one author in his or her own name as copyright claimant, where an earlier registration identifies only another author as claimant.

⁷In the case of applications for group registration of contributions to periodicals under paragraph (b)(5) of this section, the deposit shall comply with paragraph (b)(5)(i)(E). Only one \$10 fee is required in such cases.

cation is earlier than the date of publication given in the application.

§§ 202.4, 202.5, 202.6, 202.7, 202.8, 202.9, 202.11, 202.13 and 202.15 [Revoked]

§§ 202.10, 202.12 and 202.14 [Amended]

(17 U.S.C. 207; and under the following sections of title 17 of the U.S. Code as amended by Pub. L. 94-553: Secs. 408; 409; 410; 702.)

Dated: December 30, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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