



# ANNOUNCEMENT

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

## FINAL REGULATIONS

### 37 CFR PART 201

#### GENERAL PROVISIONS; IMPORT STATEMENTS

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#### LIBRARY OF CONGRESS

##### Copyright Office

##### 37 CFR Part 201

[Docket RM 77-15]

##### General Provisions; Import Statements

**AGENCY:** Library of Congress, Copyright Office.

**ACTION:** Final Regulations.

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**SUMMARY:** This notice is issued to advise the public that the Copyright Office of the Library of Congress hereby adopts a final regulation to implement section 601(b)(2) of the Copyright Act of 1976, title 17 of the United States Code, as amended by Pub. L. 94-553 (90 Stat. 2541). This provision of the Act permits importation into the United States of two thousand copies of certain copyrighted works not manufactured in the United States or Canada, which would otherwise be prohibited from importation by section 601(a) of the Act. In order to import the copies, the importer must present to the United States Customs Service an import statement issued under the seal of the Copyright Office. This final regulation establishes requirements governing the issuance of such import statements.

**EFFECTIVE DATE:** March 20, 1981.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

**SUPPLEMENTARY INFORMATION:** Section 601 of the Copyright Act of 1976, title 17 of the United States Code, as amended by Pub. L. 94-553 [hereafter referred to as the current Act] provides that, as a general rule, the printed copies of a work "consisting preponderantly of nondramatic literary material that is in the English language" must be manufactured in the United States or Canada in order to be imported lawfully and distributed publicly in the United States. There are a number of exceptions to this general prohibition on importation. One exception permits the importation of up to two thousand copies of a foreign edition upon presentation to the Customs Service of an "import state" issued by the Copyright Office to the copyright owner, or a person designated by the owner.

On January 4, 1978 (23 FR 771), the Copyright Office issued § 201.8 of the regulations on an interim basis, to establish the requirements for issuance of import statements under the current Act. Interested parties were given until March 31, 1978 to comment. The Office received comments from the Association of American Publishers, Inc., and the Authors League of America, Inc.

1. *Two thousand copies limit.* In the

preamble to the interim regulation on import statements, the Copyright Office took the position that two thousand copies of a work could be imported only if registration were made for the work under section 408 of the current Act. If the work were registered before January 1, 1978 under the ad interim provisions of the former law (title 17, U.S. Code, in effect on December 31, 1977), the Office originally believed that the 1500 copies limitation of the former law would apply. A work could not be re-registered under section 408 of the current Act simply to permit importation of 500 additional copies.

The Association of American Publishers (AAP) urged that a work first published and registered with the Copyright Office before 1978 should be re-registered under section 408 of the current Act to permit issuance of an import statement and importation of 2000 copies "undiminished by the number of copies that may have been imported under the pre-1978 import statement." The AAP argued that registration of ad interim works under section 22 of the former law was an *ultra vires* action by the Copyright Office. The former statute referred to "a request for reservation of the copyright" rather than registration. Since AAP argued, ad interim "registration" was an *ultra vires* action, registration may now be made under section 408 of the current Act.

The Office has reconsidered the decision to apply a 1500 copies limit to works registered for ad interim copyright under the former statute. The Office now believes that the reference in section 601(b)(2) of the current Act to registration "under section 408" need not be read limitatively. It is arguable that the purpose of Congress in referring to registration under section 408 can be satisfied fully by a registration made under the former statute.

The Copyright Office will accordingly issue an initial import statement or an additional import statement, whichever is appropriate, to permit importation up to a maximum of 2000 copies for a work otherwise eligible for importation of copies under section 601 of the current Act whether registration was made before or after January 1, 1978. We have so provided in § 201.8(a) (1) and (3).

Since the Office has not reached this decision for the reasons advanced by the AAP, we have not adopted their proposal that works registered under the ad interim provisions of the former statute shall be entitled to importation of 2000 copies in addition to copies already imported under an import statement issued before January 1, 1978. The final regulation sets a maximum of 2000 copies for importation under authority of an import statement, irrespective of when the work was first copyrighted and registered.

If an import statement was issued before 1978, the regulation establishes a slightly different procedure for the issuance of additional import statements, depending upon whether the original import statement is returned to the Copyright Office by an appropriate Customs Service official before or after the effective date of this regulation. If the statement is returned by the Customs Service after the effective date of this regulation, the Office will issue an additional import statement automatically which will include an additional 500 copies (one time only), representing the difference between the 2000 copies and 1500 copies limits of the current Act and the former law respectively. However, if the original import statement was returned before the effective date of this regulation, the Office will issue an additional import statement only upon the request of the copyright owner.

Because several years may have passed since the 1500 copies were imported originally, the copyright owner may have no need for an additional import statement permitting importation of an additional 500 copies. If a need exists, the Office will issue this additional import statement upon request and without payment of a fee. We considered but rejected a procedure

under which the Copyright Office would review the files and issue additional import statements without request for works of which 1500 copies were already imported. However, we concluded that the cost to the public of providing this free service would substantially outweigh any benefit to the copyright owners who may wish to import an additional 500 copies.

The Office has rejected the arguments of the AAP regarding importation of an additional 2000 copies of ad interim works because there is no justification in the current Act or its legislative history for this result.

Unless another exemption is applicable, the current Act specifies in section 601(b)(6) that, except for the few copies imported under governmental authority or essentially for personal use by individuals or by a charitable or religious organization, "no more than two thousand copies of any one such work, which have not been manufactured in the United States or Canada" shall be publicly distributed in the United States. Section 601(b)(2) itself provides that "a total of no more than two thousand copies of any one such work shall be allowed entry" into the United States under an import statement. This language is unambiguous, but, if there were any doubt, the legislative history is clear that Congress intended to impose a maximum of 2000 copies for importation under an import statement. Proposals for a higher limit on importation (3500 copies) were considered and clearly rejected by Congress during copyright revision. H. Rep. No. 83, 90th Cong., 1st Sess. (1967) at page 135.

The Copyright Office also finds no support for the AAP's argument that the registration practices of the Office with respect to ad interim copyright under the former statute were *ultra vires*. In this instance, the reference in section 22 of the former statute to "a request for the reservation of the copyright" is ambiguous. The ad interim procedure of obtaining a temporary copyright by "reservation" was unique. The legislative history of the last amendment to the ad interim sections [Act of June 3, 1949 (63 Stat. 153), sections 22 and 23] constitutes explicit support for the administrative practice of the Copyright Office, which regarded registration as the act that satisfied the statutory reference to "a request for the reservation of the copyright." H. Rep. No. 238, 81st Cong., 1st Sess. (1949) at pages 3-4.

This administrative interpretation was applied by the Copyright Office consistently from the inception of ad interim copyright in the Act of March 3, 1905 (33 Stat. 1000). The Office sees no reason for concluding that an

administrative practice of 72 years duration, which represented a reasonable interpretation of the applicable statutes, should now be considered an *ultra vires* action.

**2. Registration as a pre-condition.**  
While the Copyright Office has concluded that the particular reference to section 408 in section 601(b)(2) need not be construed as a limitation upon the Office in issuing import statements, the Office continues to believe that registration, whether made before or after January 1, 1978, must either precede or take place simultaneously with the issuance of the import statement. The congressional reference in section 601(b)(2) to the act of registration must be given some meaning.

We also know of no authority in the current Act, or in the legislative history, that would authorize re-registration of the same version of a published work already registered for full term copyright merely to facilitate issuance of an import statement. The general bases upon which more than one registration may be made for the same version of a work is regulated by in 37 CFR 202.3 (interim) (43 FR 965). In this final import statement regulation, the Copyright Office affirms the principle that registration of the claim to copyright must be made as a condition for issuance of the import statement. Duplicate registration will not be made merely to justify issuance of an import statement. Re-registration is rendered unnecessary, in any event, by our decision to issue the import statement up to a maximum of 2000 copies based upon a pre-1978 registration.

Moreover, the Office has adopted a practice which will be reflected at a later time in the final regulations on registration. The Copyright Office will consider registration of a claim to copyright under section 408 for a work under ad interim copyright on December 31, 1977, even though such registration is not necessary to extend the ad interim copyright to full term. (The copyright is extended by operation of law under Sec. 107 of the Transitional and Supplementary Provisions of the current Act.)

This practice is consistent with the philosophy of interim regulation 37 CFR 202.3, which is premised on the general rule that one registration should be made for the entire term of copyright in a given work. If the Office did not permit registration for works under ad interim copyright on December 31, 1977, the copyright claimant would hold a certificate of registration limited on its face to a five-year copyright. For several reasons, it may be important for the claimant to hold a certificate of registration showing the existence of a

full-term copyright. The Copyright Office is prepared to make such registration for works under ad interim copyright on December 31, 1977.

In the case of works eligible for ad interim copyright on December 31, 1977 but unregistered on that date, SEC. 107 of the Transitional and Supplementary Provisions of the current Act also extends the copyright by operation of law. Since no registration was made under the former law, we think it has always been clear that the Copyright Office would register such works under the current Act.

3. *Application of the importation provisions of the current Act to works published before January 1, 1978.* The Association of American Publishers urged in its comments that where a work subject to the manufacturing requirements of the old law satisfies the manufacturing requirements of the current Act, or is exempt from the importation prohibition of the current Act, "no import statement will be required and copies of such work may be imported in unlimited quantities." The Authors League in its comments agreed with this observation of the AAP and stated that "regardless of when a work was manufactured, there can be no limit on the importation of copies if Section 601 permits importation at the time when the copies will enter the United States—either because of the exemptions provided in clauses (b)(1) or (7), or because the copies were manufactured in Canada." The Authors League added that it is "essential that the Regulation makes it clear that these provisions of Section 601, and clauses (d) and (e) apply to works published before as well as after January 1, 1978."

To the extent that these comments refer to unlimited importation of foreign reprint editions of works originally published in compliance with the manufacturing clause of the prior Copyright Act and under copyright in the United States on December 31, 1977, the Copyright Office agrees with the comments. Nothing in the interim import statement regulation was intended to preclude or limit importation of reprint editions of a work under United States copyright where the less onerous manufacturing requirements of the current Act are satisfied, or where such work is exempt from the importation prohibition of the current Act. The Office has added a new paragraph (4) to section 210.8(a) to specify that a work is eligible for importation of an unlimited number of copies in three cases, including the cases where the manufacturing requirements of the current Copyright Act are satisfied and where the work is exempt under section 601(b).

Under the current Copyright Act, the importation prohibition is tied to the manufacturing requirements of section 601 of the Act. The importation provisions of the former law have been abrogated by the current Copyright Act. The rightfulness of entry of copies into the United States, as far as the copyright law is concerned, is governed by the manufacturing requirements and importation provisions of sections 601 and 602 of the current Act.

We emphasize that we are discussing only the right to import copies of a work under the importation provisions of the Copyright Act. If the copies are barred entry by other statutes or regulations of the Customs Service outside the scope of the copyright law, the Office is not in anyway attempting to regulate entry of such copies.

Our amended final regulation also clarifies that if a work is *not protected* by the current Copyright Act, copies may also be imported in unlimited numbers, as far as the copyright law is concerned. Thus, in the case of a work first published before January 1, 1978 in violation of the manufacturing requirements of the former law<sup>1</sup> (title 17 of the United States Code in effect on December 31, 1977), it is the position of the Copyright Office that no copyright was secured in the work because of failure to satisfy a mandatory condition of copyright. (If ad interim copyright was secured but the mandatory United States edition was not manufactured within five years of first publication abroad, then again copyright was lost by failure to satisfy a mandatory condition of copyright.) Copyright was secured or lost at the time of first publication under the former law (except for works seeking ad interim copyright under section 22 of the prior Act). The current Act does not protect any work that was in the public domain before January 1, 1978.

Sec. 107 of the Transitional and Supplementary Provisions of the current Act clearly preserves and extends the copyright in works either eligible for ad interim copyright on December 31, 1977 or actually under ad interim copyright on that date. The very fact of this "saving clause," which by its terms

<sup>1</sup> By "violation of the manufacturing requirements," we mean that a work subject to the manufacturing requirements of section 16 of the prior Act was manufactured abroad by processes mentioned in section 16 and that the work was ineligible for United States copyright under either the Universal Copyright Convention or section 22 of the prior Act (or, if eligible for such ad interim copyright, registration was either not timely made or the ad interim copyright was not extended to full term by manufacture of a United States edition within the five year period of ad interim protection). We exclude from this phrase works covered by Sec. 107 of the Transitional and Supplementary Provisions of the current Act.

applies only to works not already in the public domain, supports the position of the Copyright Office regarding the manufacturing requirements of the former law and their impact on works first published before 1978.

It is not our purpose in this explanation of the final import statement regulation to elucidate all of the reasoning and authorities that support our interpretation of the manufacturing clause of the prior Copyright Act. The Copyright Office position is well-known. In the only holdings directly on point, the courts agreed that the manufacturing clause of the prior Act was a condition of copyright. *Hoffenberg v. Kaminsstein*, 396 F. 2d 684 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 913 (1968) and *Imperial Toy Corp. v. Ringer*, 203 U.S.P.Q. 696 (D.C.D.D. Cal. 1977).

If a work is not protected by the current Copyright Act, there is no limit on the number of copies that may be imported, as far as the copyright law is concerned. The Copyright Office will not issue an import statement if the work is unprotected by the current Copyright Act.

4. *Customs disputes.* As explained above, an import statement is not needed to import copies of a copyrighted work where it is either outside the scope of the manufacturing requirements of the current Act, or exempt by section 601(b) of the Act from the general prohibition of paragraph (a) of the same section. However, in case of a dispute between the Customs Service and the copyright owner, the Copyright Office will, upon the request of the copyright owner, issue an import statement to permit the importation of 2000 copies in these two situations.

The effect of requesting an import statement in a case where an unlimited number of copies may be imported under section 601 is not known. The request should not be made lightly since it might be interpreted as an admission that the right to import copies is limited, and this may conceivably bar entry of more than 2000 copies in any future attempts to import copies.

The Copyright Office is willing to issue the import statement, at the request of the copyright owner, where an unlimited right of importation exists in the two cases specified in section 201.8(a)(4) (i) and (ii) of the regulations because, in our experience, copyright owners sometimes face emergency situations in dealing with importation of copies. Rather than delay importation in order to resolve a dispute with the Customs Service, they may prefer to obtain immediate entry of 2000 copies under an import statement. The Copyright Office sees no copyright or

<sup>1</sup> Error; line should read: "section 201.8(a) to specify that a work is"

public policy reason to refuse to issue an import statement in these circumstances.

In consideration of the foregoing, the import statement regulation is amended as set forth in full below.

Part 201 of 37 CFR Chapter II is amended by revising § 201.8 to read as follows:

**§ 201.8 Import statements.**

(a) *General.* (1) Upon receipt of a proper request under paragraph (b) of this section, and a fee of \$3, the Copyright Office will issue an initial import statement for a work consisting preponderantly of nondramatic literary material that is in the English language, copies of which are to be imported into the United States under section 601(b)(2) of title 17 of the United States Code, as amended by Pub. L. 94-553, whether registration has been made for the work before, on, or after January 1, 1978, provided no import statement has been issued previously for the same version of the work.

(2) After the issuance of an initial import statement for a work in accordance with a request made under paragraph (b) of this section, and upon receipt of a statement from an appropriate official of the United States Customs Service showing importation of less than two thousand copies of a work, the Copyright Office will issue an additional import statement permitting importation of the number of copies representing the difference between the number of copies already imported and two thousand copies. Additional import statements under this paragraph (a)(2) will be issued without request and shall not require payment of a fee.

(3) Any import statement issued by the Copyright Office before January 1, 1978 shall remain valid to permit the importation of the number of copies stated therein. In the case of a work under copyright on December 31, 1977, an additional import statement permitting the importation of the number of copies representing the difference between the number of copies already imported under an import statement issued before January 1, 1978 and two thousand copies will be issued by the Copyright Office:

(i) Without request or payment of a fee, if a statement from an appropriate official of the United States Customs Service showing importation of fifteen-hundred or less copies is received after the effective date of this regulation; and

(ii) Upon the request of the copyright owner, as defined in paragraph (b)(2) of this section, and without payment of a fee, if a statement from an appropriate

official of the United States Customs Service showing importation of fifteen-hundred or less copies is received before the effective date of this regulation.

(4) Except as provided by paragraph (a)(5) of this section, the Copyright Office will not issue an import statement where a work is eligible under section 601 of title 17 of the United States Code, as amended by Pub. L. 94-553, for importation in an unlimited number of copies. A work may be eligible for such importation if it is either: (i) Outside the scope of the manufacturing requirements of section 601 of title 17 of the United States Code, as amended by Pub. L. 94-553; or

(ii) Exempted by section 601(b) of title 17 of the United States Code, as amended by Pub. L. 94-553 from the importation prohibition of paragraph (a) of the same section 601; or

(iii) Unprotected by title 17 of the United States Code, as amended by Pub. L. 94-553.

(5) In case of a dispute between the United States Customs Service and the copyright owner, as defined in paragraph (b)(2) of this section, regarding eligibility of the work for unlimited importation of copies under section 601 of title 17 of the United States Code, as amended by Pub. L. 94-553, the Copyright Office will issue an import statement, upon the request of the copyright owner, to permit the entry into the United States of no more than two thousand copies of any work identified in paragraph (a)(4) (i) and (ii) of this section.

(b) *Requests for Import Statement and Issuance.* (1) Import statements will not be issued until after the effective date of registration for the work. However, a request for an import statement may be submitted simultaneously with an application for registration.

(2) Requests for import statements shall be made by the copyright owner of the work as shown in the records of the Copyright Office, or by the duly authorized agent of such owner. For the purpose of this section, the "copyright owner" is a person or organization that owns the exclusive right to import copies of the work into the United States at the time the request is made. The "copyright owner" may be either:

(i) The author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared); or

(ii) A claimant, other than the author, identified in the registration for the work; or

(iii) A person or organization that has obtained ownership of one or more exclusive rights, initially owner by the <sup>2</sup>

author, including the exclusive right to import copies into the United States.

(3) Requests for import statements shall be made on a form prescribed by the Copyright Office, and shall contain the following information:

(i) The title of the work;

(ii) The name or names of the author or authors of the work;

(iii) The name or names of the copyright claimants in the work;

(iv) The registration number, if registration has already been made for the work;

(v) The full name, mailing address, and telephone number of an individual person who may be contacted if further information is needed;

(vi) The full name and mailing address of the person or entity to whom or which the statement is to be issued; and

(vii) A certification of the request. The certification shall consist of: (A) the handwritten signature of the copyright owner of the work as shown in the records of the Copyright Office, or the duly authorized agent of such copyright owner (whose identity shall also be given); (B) the typewritten or printed name and address of such copyright owner or agent; (C) the date of signature; and (D) a statement that the person signing the request is the copyright owner or a duly authorized agent of the copyright owner, and that the Copyright Office is authorized to issue an import statement to the name and address given under paragraph (b)(3)(vi) of this section.

(4) The form prescribed by the Copyright Office for the foregoing purposes is designated "Request for Issuance of an Import Statement under § 601 of the U.S. Copyright Law (Form IS)". Copies of the form are available free upon request to the public Information Office, United States-Copyright Office, Washington, D.C. 20559.

(5) After the effective date of registration for the work named in the request, the Copyright Office will issue an import statement permitting the importation of two thousand copies of the work to the name and address given under paragraph (b)(3)(vi) of this section.

[17 U.S.C. 601(b); 702]

Dated: January 27, 1981.

David Ladd,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 81-5507 Filed 2-17-81; 8:45 am]

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<sup>2</sup>Error; line should read: "exclusive rights, initially owned by the"