



ANNOUNCEMENT

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

FINAL RULES

REGISTRATION OF CLAIMS TO COPYRIGHT DEPOSIT OF CD-ROM FORMAT

The following excerpt is taken from Volume 96, Number 185 of the Federal Register for Thursday, September 19, 1991 (p. 47402)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 91-8]

Registration of Claims to Copyright:
Deposit of CD-ROM Format

AGENCY: Library of Congress, Copyright
Office.

ACTION: Final rules.

SUMMARY: The Copyright Office of the Library of Congress is amending its regulations governing the deposit for copyright registration of works fixed in a CD-ROM format, pursuant to section 408 of the Copyright Act. The proposed amendments require the deposit of the best edition CD-ROM package of any work, including the accompanying operating software, instruction manual, and a printed version, if available.

EFFECTIVE DATE: October 21, 1991.

FOR FURTHER INFORMATION CONTACT:
Dorothy Schrader, (202) 707-8380.

SUPPLEMENTARY INFORMATION: Under section 408 of the Copyright Act of 1976, title 17 of the United States Code, the Register of Copyrights is authorized to specify by regulation the nature of the copies or phonorecords to be deposited for various classes of works. Pursuant to the authority granted to the Register in section 408(c), which authorizes the Register to require or permit for particular classes the deposit of identifying materials instead of copies or phonorecords, the Copyright Office regulations at 37 CFR 202.20(c) require the deposit of identifying portions of certain works embodied in a machine-readable format in lieu of machine-readable copies.

At the time this regulation was implemented in 1973, machine-readable copies were not widely marketed to the public-at-large and for this reason the Library of Congress decided not to acquire such copies for its collections, and exempted machine-readable copies from mandatory deposit for use of the Library under section 407. Since that time, great changes have occurred. As a result of their great popularity, machine-readable computer software and databases are in wide demand. In response to these public needs, the Library of Congress established a Machine-Readable Collections Reading Room to provide access to standard reference materials and computer programs available in machine-readable form.

On October 18, 1989 the Copyright Office published final regulations (54 FR 42295) revoking the exemption from mandatory deposit of certain machine-readable copies under section 407 for use of the Library of Congress. The amended rules require the deposit of the best edition CD-ROM package under section 408 for copyright registration for any work reproduced in CD-ROM format. The regulations regarding mandatory deposit pursuant to section 407 are also adjusted to parallel the change in the deposit for registration.

Under the amended rules, where a work has been fixed in a CD-ROM format, the deposit for registration shall consist of the complete CD-ROM package, including the accompanying software and instruction manual, and a printed version of the work, if available. A complete copy of a published work includes all of the elements comprising the applicable unit of publication of the work, including elements that, if considered separately, would not be

copyrightable subject matter or could be the subject of a separate registration.

These amendments are issued to clarify that a CD-ROM package, whenever available, is the preferred form of deposit for the works embodied therein, both for registration and mandatory deposit. The CD-ROM package is emerging as a major format for dissemination of important information and reference works. The Library of Congress needs to add this format to the national collection for the benefit of the public and the Congress.

The deposit requirements for automated databases, compilations, statistical compendia and the like are not changed if the works are available only on-line, or if they are not available in a CD-ROM format. The deposit for most machine-readable works will continue to be one copy of identifying portions of the work, reproduced in visually perceptible form.

The Machine-Readable Reading Room displays a warning of copyright to advise readers about the restrictions of the copyright law.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which 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, of 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.¹

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

Copyright registration: Computer technology; Databases.

Final Rules

In consideration of the foregoing, part 202 of 37 CFR, chapter II is amended in the manner set forth below.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: Sec. 702, Pub. L. 94-553, 90 Stat. 2541 (17 U.S.C. 702).

2. Section 202.19(c)(5) is revised to read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

(c) . . .

(5) Automated databases available only on-line in the United States. The exemption does not include the following: automated databases distributed in the form of machine-readable copies (such as magnetic tape or disks, CD-ROM formats, punch cards, or the like); computerized information works in the nature of statistical compendia, serials, and reference works; works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films and works published in any variety of microform); works published in visually perceptible form but used in connection with optical scanning devices; and works reproduced in CD-ROM formats.

3. Section 202.20(c)(2)(vii) introductory text is revised to read as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

(c) . . .

(2) . . .

(vii) *Computer programs and databases embodied in machine-readable copies other than CD-ROM format.* In cases where a computer program, database, compilation, statistical compendium, or the like, if unpublished is fixed, or if published is published only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, semiconductor chip products, or the like) other than a CD-ROM format, from which the work cannot ordinarily be perceived except with the aid of a machine or device, the deposit shall consist of:

§ 202.20 [Amended]

4. The heading and the first sentence of § 202.20(c)(2)(viii) introductory text are revised to read as follows:

(c) . . .

(2) . . .

(viii) *Machine-readable copies of works other than computer programs, databases, and works fixed in a CD-ROM format.* Where a literary, musical, pictorial, graphic, or audiovisual work, or a sound recording, except for works fixed in a CD-ROM format and literary works which are computer programs, databases, compilations, statistical compendia or the like, if unpublished has been fixed or, if published, has been published only in machine-readable form, the deposit must consist of identifying material.

§ 202.20 [Amended]

5. Section 202.20(c)(2)(ix) is revised to read as follows:

(c) . . .

(2) . . .

(ix) *Copies containing both visually-perceptible and machine-readable material other than a CD-ROM format.* Where a published literary work is embodied in copies containing both visually-perceptible and machine-readable material, except in the case of a CD-ROM format, the deposit shall consist of the visually-perceptible material and identifying portions of the machine-readable material.

§ 202.20 [Amended]

6. Section 202.20 is amended by adding a new paragraph (c)(2) (xvii) to read as follows:

(c) . . .

(2) . . .

(xvii) *Works fixed in a CD-ROM format.* (A) Where a work is fixed in a CD-ROM format, the deposit must consist of one complete copy of the entire CD-ROM package, including a complete copy of any accompanying operating software and instructional manual, and a printed version of the work embodied in the CD-ROM. If the work is fixed in print as well as a CD-ROM, a complete copy of a published CD-ROM package includes all of the elements comprising the applicable unit of publication, including elements that if considered separately would not be copyrightable subject matter or could be the subject of a separate registration.

(B) In any case where the work fixed in a CD-ROM package cannot be viewed on equipment available in the Examining Division of the Copyright Office, the Office will seek an appropriate deposit in accordance with paragraph (d) of this section, in addition to the deposit of the CD-ROM package.

Dated: August 6, 1991.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 91-22532 Filed 8-18-91; 8:45 am]

SELLING CODE 0-10-91-01

¹ 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. 708(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.

¹ Error: line should read: "(xviii) Works fixed in a CD-ROM"