



# ANNOUNCEMENT

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

## FINAL RULE

### DEPOSIT OF FOREIGN WORKS

The following excerpt is taken from Volume 56, Number 229 of the Federal Register for Wednesday, November 27, 1991 (p. 60064)

#### LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 91-13]

#### Deposit of Foreign Works

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

**ACTION:** File rule.

**SUMMARY:** The Copyright Office of the Library of Congress is issuing a final regulation which permits, in the case of works first published outside the United States, the deposit of either one complete copy or phonorecord of the work as first published or one complete copy of the best edition, for purposes of registration under 17 U.S.C. 408.

**EFFECTIVE DATE:** November 27, 1991.

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

**SUPPLEMENTARY INFORMATION:** In the case of works first published outside the United States, Copyright Office regulations have required the deposit of one complete copy or phonorecord of the work as first published for registration of a claim to copyright under section 408 of the Copyright Act, title 17 of the United States Code. For works first published in the United States, the required deposit is the best edition. This difference in the regulations has led to confusion about the correct deposit. The best edition is often submitted for registration of foreign works.

The Copyright Office is amending § 202.20(c)(1)(iv) of its regulations to permit the deposit, in the case of registration for works first published outside the United States, of either one copy or phonorecord of the first published edition or one copy or phonorecord of the best edition. No change was necessary in § 202.19 of the regulations governing mandatory deposit under section 407 of the Act for the Library of Congress. Of course, deposits made under amended § 202.20(c)(1)(iv) for registration will continue to meet the deposit requirements of section 407 for the Library. Deposit for the Library, where the foreign work is published in the United States and no registration has been made, will continue to require the deposit of the best edition.

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.<sup>1</sup>

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.

#### Final Regulation

In consideration of the foregoing, part 202 of title 37 of the Code of Federal Regulations 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: Sections 702, 90 Stat. 2451; 17 U.S.C. 702. §§ 202.19, 202.20, and 202.21 are also issued under 17 U.S.C. 407 and 408.

2. In § 202.20, paragraph (c)(1)(iv) is revised to read as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

- (c) . . . .
- (1) . . . .

(iv) In the case of works first published outside of the United States, one complete copy or phonorecord of the work either as first published or of the best edition. For purposes of this section, any works simultaneously first published within and outside of the United States shall be considered to be first published in the United States.

<sup>1</sup> Error; line should read: "ACTION: Final rule."

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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.

Dated: November 12, 1991.  
**Ralph Oman,**  
*Register of Copyrights.*

Approved by:  
**James H. Billington,**  
*The Librarian of Congress.*

[FR Doc. 91-28423 Filed 11-28-91; 8:45 am]  
BILLING CODE 1410-87-01

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