



# ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559-6000

## NOTICE OF PROPOSED RULEMAKING.

### "BEST EDITION" OF PUBLISHED COPYRIGHTED WORKS FOR THE COLLECTIONS OF THE LIBRARY OF CONGRESS

The following excerpt is taken from Volume 61, Number 222 of the *Federal Register* for Friday, November 15, 1996 (p. 58497)

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#### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 202

#### [Docket No. 96-6]

#### "Best Edition" of Published Copyrighted Works for the Collections of the Library of Congress

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Proposed Rulemaking.

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**SUMMARY:** The Copyright Office of the Library of Congress is proposing amendments to the regulations regarding the deposit of the "best edition" of published motion pictures. The purpose of the proposed rule is to remove the "most widely distributed gauge" as a selection factor of the "best edition" and add new videotape formats to the prioritized list of material preferences based on current industry practices.

**EFFECTIVE DATE:** Comments should be received on or before December 6, 1996.

**ADDRESSES:** If sent BY MAIL, ten copies of written comments should be addressed to Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366. If BY HAND, ten copies should be brought to: Office of the General

Counsel, Copyright Office, James Madison Memorial Building, Room LM-407, First and Independence Avenue, S.E., Washington, D.C. 20540.

#### FOR FURTHER INFORMATION

**CONTACT:** Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

#### SUPPLEMENTARY INFORMATION:

Sections 407 and 408 of title 17, United States Code, require that for published works the copies or phonorecords deposited in the Copyright Office be of the "best edition." "The 'best edition' of a work is the edition, published in the United States, at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes," 17 U.S.C. 101.

"When two or more editions of the same version of a work have been published, the one of the highest quality is generally considered to be the 'best edition.'" 37 CFR 202, APP. B. The Copyright Office has published regulations that set out the Library's specific criteria on what is the best edition. See generally 37 CFR 202.19, 202.20 and Appendix B to Part 202 - "Best Edition" of Published Copyrighted Works for the Collections of the Library of Congress. These regulations give the selection criteria to be applied in determining the best edition of each of several types of materials, these criteria list formats in descending order of importance. Id. The criteria for "Motion Pictures" is set forth in 37 CFR 202, APP. B III.

For a number of years, the Library of Congress has used "gauge in which most widely distributed" as a high ranking preference in its selection of both film print and videotape. At its inception, this criterion permitted the Library to acquire copies that met the Library's standards for archival quality while working to the benefit of the motion picture industry as well. Copies originally deposited to meet this criterion were typically 35mm prints rather than the more limited 70mm prints and 3/4" videotapes rather than the 2" videotape broadcast medium.

Over the years, the application of this criterion began to work against the archival interests of the Library. The primary reason for this change has been the wide use of VHS 1/2" videotape. For the last ten years, when two or more tape gauges have been distributed, the VHS 1/2" videotape typically has been the most widely distributed and therefore under the Library's criteria, the best edition. The Library does not consider this particular 1/2" gauge to represent an acceptable archival quality medium. The Library has concluded that use of the "most widely distributed gauge" in the area of film prints is now detrimental to the interests of the Library of Congress.

During this same period, the 1" videotape became the industry standard as the broadcast gauge, and the 2" gauge became almost obsolete. The 1" gauge is less expensive and bulky than the 2" gauge and is an excellent archival medium. At this time, therefore, the 1" format is the highest quality format in the videotape medium.

The television industry is currently widely using several new 1/2" videotape formats, including the Betacam and the D-2 cassette, because of their high quality. These formats were not available when the best edition criteria were developed. The Library has determined that both of these formats meet its archival standards and are superior to the 3/4" videotape.

The Office is, therefore, proposing to amend its regulations to remove the "gauge in which most widely distributed" as a criterion in Appendix B, III and to add the new high quality videotape formats.

**List of Subjects in CFR Part 202**

Claims, Copyright, Deposit and registration of claims to copyright.

**Proposed Regulations**

In consideration of the foregoing, the Copyright Office amends part 202 of 37 CFR in the manner set forth below:

**Part 202 - [Amended]**

**Appendix B To Part 202--"Best Edition" Of Published Copyrighted Works For The Collections Of The Library Of Congress**

1. The authority citation for part 202 continues to read

Authority: 17 U.S.C. 702.

2. In part 202. App. B, "III. Motion Pictures" is revised to read:

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*III. Motion Pictures*

Film medium is considered a better quality than any other medium. The formats under "film" and "videotape" are listed in descending order of preference:

A. Film

1. Preprint material with special arrangement.
2. 35mm positive prints.
3. 16mm positive prints.

B. Videotape

1. One-inch open reel tape.
2. Betacam cassette.
3. D-2 cassette.
4. Videodisc.
5. Three-quarter inch cassette.
6. One-half inch VHS cassette.

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Dated: November 4, 1996  
**Marybeth Peters,**  
*Register of Copyrights.*

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

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