

Announcement

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

ADOPTION OF REGULATION

FILING OF AGREEMENTS BETWEEN COPYRIGHT OWNERS AND PUBLIC BROADCASTING ENTITIES

The following excerpt is taken from Volume 42, No. 61 of the Federal Register for Wednesday, March 30, 1977 (pp. 16776-77).

Title 37—Patents, Trademarks and Copyrights

CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

[Docket RM 76-1; Rules Doc. B]

PART 201—GENERAL PROVISIONS

Filing of Agreements Between Copyright Owners and Public Broadcasting Entities
AGENCY: Library of Congress, Copyright Office.

TITLE: Final Regulation.

SUMMARY: This regulation opens the public records of the Copyright Office to the filing of agreements between public broadcasting entities and certain copyright owners, and establishes the formal requirements governing the nature of the document to be filed. The regulation is intended to implement sections 118(b)(2) and 118(e)(1) of Pub. L. 94-553 (90 Stat. 2541), the Act for General Revision of the Copyright Law.

EFFECTIVE DATE: This regulation takes effect on April 29, 1977.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

On November 15, 1976 a proposal was published in the FEDERAL REGISTER to adopt a new regulation § 201.9 pertaining to the filing of agreements between copyright owners and public broadcasting entities, 41 FR 50300. The proposed regulation was designed to implement: section 118(b)(2) of Pub. L. 94-553, under which license agreements between one or more owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works, and one or more public broadcasting entities, are to be given effect in lieu of any determination by the Copyright Royalty Tribunal established under the new law, provided that "copies of such agreements are filed in the Copyright Office within thirty days of execu-

tion in accordance with regulations that the Register of Copyrights shall prescribe"; and section 118(e)(1) of that law, under which terms and rates of royalty payments agreed to among owners of copyright in nondramatic literary works and public broadcasting entities are to be effective "upon filing in the Copyright Office, in accordance with regulations that the Register of Copyrights shall prescribe."

A number of comments were received in response to the proposed regulation. Several comments raised questions or made suggestions that warranted changes from the proposed regulation.

A discussion of the major substantive comments received follows:

1. The Authors League of America, Inc., the Association of American Publishers, and the Public Broadcasting Service all expressed concern that because proposed § 201.9(a) referred in general terms to "licenses and other agreements pertaining to terms and rates of royalty payments negotiated between one or more copyright owners and one or more public broadcasting entities," the regulation might be interpreted to require the recording of every individual license between a single owner of copyright in a nondramatic literary work and a single public broadcasting entity.

The parties asserted that section 118(e)(1) of the Act does not in language or in purpose require recordation of individual licenses for public broadcast use of nondramatic literary works, and that section 118(e)(1) was designed to provide a record of terms and rates agreed to among groups of copyright owners in nondramatic literary works and public broadcasting entities for purposes of the antitrust exemption contained in that section. The parties also noted that proposed § 201.9(a) might encompass agreements related to subject matter (e.g., dramatic works) falling entirely outside of section 118 of the new law.

Proposed § 201.9 was intended only to open the records of the Copyright Office to the recording of documents, and to establish the formal requirements concerning the nature of the documents

submitted. It was not intended to require the recording of any document, or to determine what documents are required to be filed under the conditions of the Act. These are matters established by section 118 of the Act itself. In consideration of the comments referred to, § 201.9(a) has been changed to replace the blanket reference to "licenses and other agreements . . ." quoted above with language conforming to paragraphs (b) and (c) of section 118 of the Act. Whether any particular agreement must be recorded as a condition to its taking effect will remain a matter for application of the statute.

Together with this change, we have added a new paragraph (iv) to § 201.9(a). This paragraph requires that documents submitted for recording under section 118 be so identified, in order to enable the Office to catalog these documents separate from other recorded papers.

2. Several comments urged deletion of the proposed requirements (§ 201.9(a)(1)) that the original instrument be submitted for recording unless it is "not available" and the submitted copy is accompanied by an "explanation" of the failure to supply an original. After further consideration of the reference to filing "copies" in section 118(b)(2) of the Act and the general recording provisions of section 205 we have decided to omit these requirements. However, where a copy is submitted in lieu of an original a certification that it is a true copy will still be required.

In a related vein, two comments suggested that as there may be multiple "originals" of a document, references to "the original" should be changed to "an original". The regulation has been modified to conform to this suggestion.

3. One comment raised the possibility of confusion arising from the Act's reference to "filing" and the regulation's reference to "recording". In order to avoid any such uncertainty, paragraphs (a) and (c) of the regulation have been revised to make it clear that submitted documents will be filed in the records of the Office upon their recordation.

4. One comment suggested that the Copyright Office establish a regulation under which remitters might obtain a formal receipt for documents submitted under proposed § 201.9 by accompanying the submission with a self-addressed postcard identifying the document. This suggestion warrants consideration. However, it has implications going beyond the subject matter of the proposed regulation and requires consideration of the in-process systems to be developed by the Office under the new Act. Accordingly, action on this suggestion will be deferred.

5. One comment suggested that the regulation expressly refer to agreements negotiated between the parties' "representatives". As section 118 of the Act itself makes several references to "copyright owners" and "public-broadcasting entities" without expressly mentioning their "representatives", and as the regulation does refer to the signatures of the parties' representatives, this modification is considered unnecessary.

6. One comment suggested that proposed § 201.9(a) (iii), which required that the document submitted for recordation "include any schedules, appendixes, or other attachments referred to in the instrument as being a part of it", be modified "to the effect that * * * attachments may be incorporated by reference in the agreement so long as the attachments are clearly identified." This suggestion has not been adopted. Where a schedule, appendix or similar attachment is actually referred to in the document as being a part of it, the recorded document should include the schedule, appendix or attachment in order to provide a record that is complete according to its terms. However, where another instrument is merely "incorporated by reference" in the document submitted for recording, inclusion of that instrument is not required.

In consideration of the foregoing, Part 201 of 37 CFR Chapter II is amended by adding a new § 201.9 to read as follows:

§ 201.9 Recordation of agreements between copyright owners and public broadcasting entities.

(a) License agreements voluntarily negotiated between one or more owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works, and one or more public broadcasting entities, and terms and rates of royalty payments agreed to among owners of copyright in nondramatic literary works and public broadcasting entities, will be filed in the Copyright Office by recordation upon payment of the fee prescribed by this section. The document submitted for recordation shall meet the following requirements:

(1) It shall be an original instrument of agreement; or it shall be a legible photocopy or other full-size facsimile reproduction of an original, accompanied by a certification signed by at least one of the parties to the agreement, or an authorized representative of that party, that the reproduction is a true copy;

(2) It shall bear the signatures of all persons identified as parties to the agreement, or of their authorized agents or representatives;

(3) It shall be complete on its face, and shall include any schedules, appendixes, or other attachments referred to in the instrument as being part of it; and

(4) It shall be clearly identified, in its body or a covering transmittal letter, as being submitted for recordation under 17 U.S.C. 118.

(b) For a document consisting of six pages or less covering no more than one title, the basic recordation fee is \$5 if recorded before January 1, 1978 and \$10 if recorded after December 31, 1977; in either case an additional charge of 50 cents is made for each page over six and each title over one.

(c) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee, have been received in the Copyright Office. A document is filed in the Copyright Office and a filing in the Copyright Office takes place on the date of recordation. After recordation the document is returned to the sender with a certificate of record.

(17 U.S.C. 307, and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-558: §§ 118; 708; 709(11).)

Dated: March 23, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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