

Announcement

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

PROPOSED RULEMAKING

WARNING OF COPYRIGHT FOR USE BY LIBRARIES AND ARCHIVES

The following excerpt is taken from Volume 42, No. 159 of the Federal Register for Wednesday, August 17, 1977 (pp. 41437-38).

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 77-5]

WARNING OF COPYRIGHT FOR USE BY LIBRARIES AND ARCHIVES

Proposed Rulemaking

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking is issued to advise the public that the Copyright Office of the Library of Congress is considering adoption of a new regulation designed to implement a section of the Act for General Revision of the Copyright Law, pertaining to the use and display by libraries and archives of certain warnings of copyright in connection with their photoduplication and related activities. The new regulation would establish requirements governing the content and manner of use of these warnings. Interested members of the public are invited to participate in the making of the new regulation by submitting relevant written views, arguments or other comments.

DATES: Initial comments should be received on or before September 2, 1977. Reply comments on or before September 16, 1977.

ADDRESSES: Interested persons should submit five copies of their written comments, if by mail, to: Office of the General Counsel, Copyright Office, Library of Congress, Caller No. 2989, Arlington, Virginia 22202, or, if by hand, to: Office of the General Counsel, Copyright Office, Library of Congress, Room 519, Crystal Mall, Bldg. No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

FURTHER INFORMATION CONTACT:

Jon Baumgarten, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559. 703-557-8731.

SUPPLEMENTARY INFORMATION: Sections 108(d) and 108(e) of the first section of Pub. L. 553 (96 Stat. 2541) set forth conditions under which specified libraries and archives, or their employees acting within the scope of their employment, may make and distribute single copies and phonorecords of certain copyright works, or parts of works, without the consent of the copyright owner. Among other conditions specified in the Act, the library or archive must "display prominently, at the place where orders [for copies or phonorecords] are accepted, and include on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation." We propose that these requirements be established by the addition of a new § 201.14 to the regulations of the Copyright Office.

On March 30, 1977, by Advance Notice of Proposed Rulemaking (61 FR 14933), we invited public comment, views, and information to assist the Office in considering alternative forms of warning. Proposed § 201.14 adopts elements of several of the comments received. Several comments raised matters not directly touched upon in the proposed regulation. These and other matters are discussed immediately below.

(1) *Machine Warnings.* A number of comments assumed that the proposed regulation would deal with the "notice" to be used in connection with unsupervised reproducing equipment (e.g., coin-operated machines) under section 108 (f) (1) of the Act. However, that section specifically refers to a "notice that the making of a copy may be subject to the copyright law" and does not require any further regulatory determination of the contents of the notice. Accordingly, the proposed regulation deals only with the warnings of copyright prescribed by sections 108 (d) and (e).

(2) *Notice of Copyright.* For similar reasons, the proposed regulation does not deal with the "notice of copyright" prescribed in section 108(a) (3) of the Act.

(3) *Purpose.* In preparing the proposed regulation we have considered that the primary purpose of the warnings is to advise the library's or archives' patrons of restrictions on the use of any copy provided, rather than to advise libraries and archives, or their staffs, of their own obligations under the Act. Accordingly, although we gave serious consideration to the use of a longer form of warning for order forms which would incorporate various conditions of sections 108 (d), (e) and (g) of the Act, we finally decided to propose the shorter warning set forth in proposed § 201.14. We specifically invite comments on this decision.

(4) *Interlibrary Loan Forms.* Several comments related to whether the warning of copyright required to be placed on order forms applies to so-called "Interlibrary Loan" (ILL) request forms used to supply photocopies of journal articles and the like. In connection with our conclusion as to the purpose of the warnings, we do not believe that the warning should be mandatory if an ILL form is used exclusively by and among employees of libraries and archives. However, if an ILL form is in whole or in part filled out by the patron, or if a copy of the ILL form is given to the patron along with the material requested, the use of the prescribed warning would appear to be required under the Act.

(5) *Explanatory and Interpretative Material.* Several comments referred to the desirability of providing additional explanatory or interpretative material, in pamphlet form or the like, for the use of library staff, patrons, or both. It is reasonable to assume that use of the proposed warnings will generate questions by library patrons directed to library staff. Although the Copyright Office will be distributing informational material about the new Copyright Act, the material will generally be declarative, rather than interpretative, of the new law. Accordingly, we urge libraries, archives, and their associations, together with legal counsel, to prepare more specific material for the guidance of staff and patrons.

(6) *Language.* One comment suggested that the warnings be given in more than one language. The proposed regulation requires that the warnings be "comprehensible" and we assume that libraries and archives will take appropriate steps to render the warnings in such manner as to reflect the linguistic backgrounds of their usual patrons.

(7) *Music.* Several comments related to the reproduction of music. As sections 108 (d) and (e) do not apply to music, we have not dealt specifically with this type of work. At the same time, there does not appear to be any inconsistency between the language of the proposed regulation and the limitations on unauthorized reproduction of music.

Copies of all comments received will be available for inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, in the Public Information Office of the Copyright Office, Room No. 101, Crystal Mall, Bldg. No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

Proposed regulation. We propose to amend Part 201 of 37 CFR Chapter II by adding new § 201.14 to read as follows:

§ 201.14 Warnings of copyright for use by certain libraries and archives.

(a) *Definitions.* (1) A "Display Warning of Copyright" is a notice under paragraphs (d) (2) and (e) (2) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the "Display Warning of Copyright" is to be displayed at the place where orders for copies or phonorecords are accepted by certain libraries and archives.

(2) An "Order Warning of Copyright" is a notice under paragraphs (d) (2) and (e) (2) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the "Order Warning of Copyright" is to be included on printed forms supplied by certain libraries and archives and used by their patrons for ordering copies or phonorecords.

(b) *Contents.* A Display Warning of Copyright and an Order Warning of Copyright shall consist of a verbatim reproduction of the following notice, printed in such size and form and displayed in such manner as to comply with paragraph (c) of this section:

NOTICE

WARNING CONCERNING COPYRIGHT RESTRICTIONS

- The copyright law of the United States governs the making of photocopies or other reproductions of copyrighted material.
- Photocopies or other reproductions can be furnished only under certain conditions, if they will be used solely for private study, scholarship, or research. Use of the reproduction for other purposes may make the user liable for copyright infringement.
- This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

(c) *Form and Manner of Use.* (1) A Display Warning of Copyright shall be printed on cardboard stock in type at least 18 points in size, and shall be displayed prominently, in such manner and location as to be clearly visible, legible and comprehensible to a casual observer within the immediate vicinity of the place where orders are accepted.

(2) An Order Warning of Copyright shall be printed within a box located prominently on the order form itself, either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in type size no smaller than that used predominately throughout the form, and in no case shall the type size be smaller than 8 points. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

(17 U.S.C. 207, and under the following sections of Title 17 of the U.S. Code as amended by Pub. L. 94-553: 108; 702.)

Dated: August 9, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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