

Announcement

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

PROPOSED RULEMAKING

VOLUNTARY LICENSE TO PERMIT REPRODUCTION OF NONDRAMATIC LITERARY WORKS SOLELY FOR USE OF THE BLIND AND PHYSICALLY HANDICAPPED

The following excerpt is taken from Vol. 42, No. 192 of the Federal Register for Tuesday, October 4, 1977 (pp. 53980-81).

[1410-03]

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 77-10]

NONDRAMATIC LITERARY WORKS

Voluntary License To Permit Reproduction Solely for Use of the Blind and Physically Handicapped

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking is issued to inform the public that the Copyright Office of the Library of Congress is considering adoption of a new regulation designed to implement section 710 of the Act for General Revision of the Copyright Law. This section directs the Register of Copyrights to establish procedures by which the owner of copyright in nondramatic literary works may, at the time of copyright registration, grant the Library of Congress a license to reproduce and distribute the work for the use of the blind and physically handicapped. The effect of the proposed regulation is to establish the terms and conditions of these

licenses.

DATES: Initial comments should be received on or before October 21, 1977. Reply comments on or before November 4, 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. 2999, Arlington, Va. 22202, or, if by hand, to: Office of the General Counsel, Copyright Office, Library of Congress, Room 519, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

One of the major programs of the Library of Congress is to provide Braille editions and special sound recordings of readings of works for the exclusive use of the blind and physically handicapped. In an effort to simplify and speed up the

copyright procedures that are a necessary part of this program, section 710 of the first section of Pub. L. 94-553 (90 Stat. 2541) provides for the establishment of a voluntary licensing system to be tied in with copyright registration. Section 710 directs the Register of Copyrights, after consultation with the Division for the Blind and Physically Handicapped of the Library of Congress, to establish forms and procedures by which the copyright owner of a nondramatic literary work may, at the time of copyright registration, grant a license to the Library of Congress. This license would permit the Library "to reproduce the work by means of Braille or similar tactile symbols, or by fixation of a reading of the work in a phonorecord, or both, and to distribute the resulting copies and phonorecords solely for use of the blind and physically handicapped." We propose to give copyright owners the opportunity to grant licenses under section 710 by including, on the application form for registration of nondramatic literary works (Form TX), a statement with "check off" boxes. The statement would make clear that, by checking off

one of the boxes and signing the application, the copyright owner would be granting a nonexclusive license to the Library of Congress without the need for further paperwork. We also propose that the terms and conditions of the license be set forth in a new § 201.15 of the regulations of the Copyright Office.

The proposed regulation adopts a definition of "blind and physically handicapped" from 2 U.S.C. 135(a), as amended, and Library of Congress regulations issued under that provision. That definition identifies persons eligible for special Library loan services as "blind and other physically handicapped readers certified by competent authority as unable to read normal printed material as a result of physical limitations, under regulations prescribed by the Librarian of Congress for this service." The pertinent regulations of the Library of Congress (36 CFR 701.11) are as follows:

(b) *Eligibility criteria.* (1) The following persons are eligible for such service:

(i) Blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter if visual field subtends an angular distance no greater than 20 degrees.

(ii) Persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material.

(iii) Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.

(iv) Persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

(2) In connection with eligibility for loan services "competent authority" is defined as follows:

(i) In cases of blindness, visual disability, or physical limitations "competent authority" is defined to include doctors of medicine, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, caseworkers, counselors, home teachers, and superintendents). In the absence of any of these, certification may be made by professional librarians or by any person whose competence under specific circumstances is acceptable to the Library of Congress.

(ii) In the case of reading disability from organic dysfunction, competent authority is defined as doctors of medicine who may consult with colleagues in associated disciplines.

Proposed regulation. We propose to amend Part 201 of 37 CFR, Chapter II by adding a new § 201.15 to read as follows:

§ 201.15 Voluntary license to permit reproduction of nondramatic literary works solely for use of the blind and physically handicapped.

(a) *General.* (1) The "blind and physically handicapped" are persons eligible for special loan services of the Library of Congress, as designated by section 135a of title 2 of the United States Code as amended by Pub. L. 89-552 and regulations of the Library of Congress issued under that section.

(2) This section, and any license granted or exercised under this section, applies only to nondramatic literary works which have previously been published with the consent of the copyright owner.

(b) *Form.* The Copyright Office provides the following form as part of applications for registration of claim to copyright in nondramatic literary works (Form TX):

REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED PERSONS

Signature of this form at space 10 and a check in one of the boxes here in space 8, constitutes a nonexclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both.

---- Copies only; ---- Phonorecords only;
---- Copies and phonorecords.

(c) *Terms and conditions.* A copyright owner who consents to the use of a copyrighted work by the Library of Congress for the use of the blind and physically handicapped may accomplish this purpose by checking the appropriate box on the application form, by signing the application form as a whole, and by submitting the application for copyright registration to the Copyright Office. The copyright owner thereby grants a nonexclusive license to the Library of Congress with respect to the work identified in the application, under the terms and conditions set forth in this section.

(1) The work may be reproduced only by or on behalf of the Library of Congress.

(2) The work may not be reproduced in any other form than Braille (or similar tactile symbols), or by a fixation of a reading of the work in phonorecords specially designed for use of the blind and physically handicapped, or both, as designated by the copyright owner on the application form.

(3) Such copies and phonorecords of the work may be distributed by the Library of Congress solely for the use of the blind and physically handicapped under conditions and guidelines provided by the Division for the Blind and Physically Handicapped of the Library of Congress.

(4) In the case of any conflict with any other right or license given by the copyright owner to the Library of Congress pertaining to the work, the terms and conditions most favorable to the Library of Congress for the benefit of the blind and physically handicapped shall govern.

(5) Copies and phonorecords reproduced and distributed under this license will contain identification of the author and publisher of the work, and copyright notice, as they appear on the copies or phonorecords deposited with the application.

(6) This license is nonexclusive, and the copyright owner is in no way precluded from granting other nonexclusive

licenses with respect to reproduction for the use of the blind and physically handicapped or other exclusive or nonexclusive licenses or transfers with respect to production or distribution for other purposes.

(7) All responsibility for the clearing and exercise of the rights granted is that of the Library of Congress.

(d) *Duration of license.* (1) The license is effective upon the effective date of registration for the work and, subject to the conditions and procedures stated in paragraph (d)(2) of this section, continues for the full term of copyright in the work provided in section 302 of title 17 of the United States Code as amended by Pub. L. 94-553.

(2) Termination of the license may be accomplished by the copyright owner at any time by submitting a written statement of intent to terminate, signed by the copyright owner or by the duly authorized agent of the copyright owner, to the Division for the Blind and Physically Handicapped of the Library of Congress. Termination will become effective 90 days after receipt of the written statement, or at a later time set forth in the statement. Upon the effective date of termination the Library of Congress will be prohibited from reproducing additional copies of phonorecords of the work, or both, without the consent of the copyright owner, but copies or phonorecords, or both, reproduced under authority of the license before the effective date of termination may continue to be utilized and distributed under the terms of the license after its termination.

(17 U.S.C. 207, and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-533: § 702; § 710.)

Dated: September 27, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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