

Announcement

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

FINAL REGULATION

WARNING OF COPYRIGHT FOR USE BY LIBRARIES AND ARCHIVES

The following excerpt is taken from Volume 42, No. 221 of the Federal Register for Wednesday, November 16, 1977 (pp. 59264-5).

[1410-03]

Title 37—Patents, Trademarks, and Copyrights

CHAPTER II—COPYRIGHT OFFICE,
LIBRARY OF CONGRESS

[Docket RM 77-5]

PART 201—GENERAL PROVISIONS

Warning of Copyright for Use by Libraries
and Archives

AGENCY: Library of Congress, Copy-
right Office.

ACTION: Final Regulation.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting a new regulation pertaining to the use by libraries and archives of certain warnings of copyright in connection with their photo-duplication and related activities. The regulation is adopted to implement sections 108(d) (2) and 108(a) (7) of the Act for General Revision of the Copyright Law. The effect of the regulation is to prescribe the content, form, and manner of use of the warnings of copyright identified in those sections.

EFFECTIVE DATE: January 1, 1978.

**FOR FURTHER INFORMATION CON-
TACT:**

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. 94-553 (90 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 copyrighted 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."

On March 30, 1977, we published in the FEDERAL REGISTER (42 FR 16838) an Advance Notice of Proposed Rulemaking, inviting public comment to assist the Office in considering alternative forms of warning. After considering the comments received in response to the Advance Notice, on August 17, 1977 we published in the FEDERAL REGISTER (42 FR 41387) a Notice of Proposed Rulemaking to add a new § 201.14 to the regulations of the Copyright Office.

Twelve initial and reply comments were received in response to the Notice of Proposed Rulemaking. While most comments received recommended some modification of the proposed regulation, several suggestions were technical in nature or sought clarification of the proposed language. After careful consideration, we have decided to promulgate proposed § 201.14 with few substantive changes. A discussion of the major comments follows.

1. *The short form of warning.* In the proposed rulemaking, we noted that the primary purpose of the warning is to caution a user who has acquired a copy from a library or archives under section 108 as to that user's responsibilities under the copyright law. We specifically invited comment upon our proposal for a short warning, rather than an extensive one incorporating the numerous conditions governing the library's and archive's own obligations under paragraphs (a), (d), (e), and (g) of section 108. Although one comment proposed expanding the warning in significant detail, we have decided to adhere to our original conclusion that the "warning" should be precisely that: a brief, cautionary statement alerting the user that the making of a reproduction by a library or ar-

chive, and the subsequent use of the reproduction, are subject to the copyright law. Such a warning is an inappropriate device to set out accurately or meaningfully all of the institutional limitations and requirements of § 108.

2. *Conditions under which photocopies or other reproductions can be furnished; use of reproductions.* A number of comments raised questions concerning the second paragraph in the text of the proposed warning, which read:

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.

Several questions centered around uncertainty as to whether the phrase "certain conditions" in the first sentence referred to use "for private study, scholarship, or research", or suggested additional statutory conditions not specified in the warning itself (namely, those in paragraphs (a), (d), (e), and (g) of section 108, referred to earlier). This latter interpretation is correct and the final regulation has been revised to make this clear.

A number of comments also questioned the failure to include a reference either generally to "fair use" or to certain illustrative usages set out in section 107 of the copyright law (criticism, comment, news reporting, and teaching). Since the test of user liability under section 108 (1) (2), both for request for, and later uses of, reproductions made under section 108(d) is activity which exceeds the limits of "fair use" under section 107, and not solely use for purposes "other than private study, scholarship, or research", we have also revised the second sentence of the above-quoted paragraph.

3. *Other issues.* Several comments objected to the proposed specification of type sizes and cardboard stock. However, these specifications are helpful in providing certainty to the task of designing and printing the warnings and offer appropriate assurances that the warnings will serve their purpose. We have modified the provision that the warning be reproduced on cardboard stock to require that it be reproduced on "heavy paper or other durable material". We have also adopted one suggestion that a citation to title 17 of the United States Code be included in the warning.

The proposed regulation is adopted with changes, as set forth below:

Part 201 of 37 CFR Chapter II is amended by adding a 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 (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be 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 heavy paper or other durable material 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 comprehensi-

ble 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 predominantly 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: November 10, 1977.

WALDO H. MOORE,
Assistant Register of Copyrights
for Registration.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc.77-33111 Filed 11-15-77;8:45 aml