

Announcement

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

PROPOSED RULEMAKING

DEPOSIT REQUIREMENTS

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[1410-03]

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 202]

[Docks: RM 77-11]

DEPOSIT REQUIREMENTS

Proposed Rulemaking

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed Rules.

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 new regulations implementing the deposit requirements of sections 407 and 408 of the Act for General Revision of the Copyright Law. These requirements involve the mandatory deposit of copies or phonorecords of published works for the collections of the Library of Congress, and the deposit of material to accompany applications for copyright registration of both unpublished and published works. The effect of the proposed regulations is: (a) To exempt certain categories of published works from mandatory deposit for the Library of Congress under section 407; (b) to establish requirements governing the nature of the mandatory deposit to be made in all other cases under section 407; and (c) to establish the nature of the deposit to be made as part of copyright registration.

DATES: All comments should be received on or before December 12, 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. 22202.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Under section 407 of the first section of Pub. L. 94-553 (90 Stat. 2541), the owner of copyright, or of the exclusive right of publication, in a work published with notice of copyright in the United States is required to deposit two copies (or, in the case of sound recordings, two phonorecords) of the work in the Copyright Office for the use or disposition of the Library of Congress. The deposit is to be made within three months after such publication. Failure to make the required

deposit does not affect copyright in the work, but may subject the copyright owner to fines and other monetary liability if the failure is continued after a demand for deposit is made by the Register of Copyrights. Qualifying these general provisions, section 407 also provides that the Register of Copyrights "may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories."

Under section 408 of the Act deposit of material is also required in connection with applications for copyright registration of both unpublished and published works. After establishing general rules governing the nature of the required deposit, this section also authorizes the Register of Copyrights to prescribe qualifying regulations governing "the nature of the copies or phonorecords to be deposited" and to "require or permit . . . the deposit of identifying material instead of copies or phonorecords (or) the deposit of only one copy or phonorecord where two would normally be required . . ."

The deposit requirements of sections 407 and 408 are theoretically independent of each other. For example, mandatory deposit of a non-exempt work under section 407 may be required for the collections of the Library of Congress even if the copyright owner does not seek registration for the work under section 408. Under certain conditions, however, copies or phonorecords used to satisfy the mandatory deposit provisions of section 407 may simultaneously be used to serve as the deposit accompanying an application for registration under section 408.

We propose to implement sections 407 and 408 by the addition of three new sections to the regulations of the Copyright Office. Proposed § 202.19 would exempt certain works which the Library of Congress neither needs nor wants from the mandatory deposit requirements of section 407, and would also establish requirements governing the nature of the deposit to be made in non-exempt cases. Proposed § 202.20 would establish requirements governing the nature of the deposit to be made in all cases for the purpose of copyright registration under section 408. Proposed § 202.21 would set forth special requirements governing the nature of photographs or similar identifying material required or permitted to be deposited in lieu of actual copies in certain cases.¹

The proposed regulations are generally self-explanatory but a few provisions deserve special comment:

¹ Concurrent with the proposed addition of § 202.21 we propose to revoke § 202.16 of the current Copyright Office regulations, which deals with the same subject. Revocation of portions of other current regulations to be replaced by proposed § 202.19 and § 202.20 will be made in a later proceeding.

1. *"Best Edition"*. The Act generally requires that deposits of published works under both sections 407 and 408 represent the "best edition" of the work. The "best edition" is defined in section 101 of the statute as "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." It is important to recognize that this represents a change from the current law under which the deposit for a published work is to represent the best edition as first published. Under the new definition of "best edition", the appropriate deposit for a published work may represent a choice from among a larger number of varying "editions" of a work all published before the date of deposit.

In order to assist the public in complying with the "best edition" requirements of the new law, the Library of Congress has adopted a policy statement entitled "Best Edition of Published Copyrighted Works for the Collections of the Library of Congress". This statement, which will become effective on January 1, 1978, establishes specific criteria for selecting the "best edition" from among two or more published editions of the same version of the same work. Although the Library's determination of these criteria is not a part of this proceeding, a copy of the statement is reproduced as an appendix to this notice in order to give a complete picture of the proposed deposit requirements.

In an effort to avoid any confusion concerning the word "edition", the proposed regulations (§ 202.19(b) (1) (iii)) specify that "where differences between two or more 'editions' of a work represent variations in copyrightable content, each edition is considered a separate version, and hence a different work . . . and criteria of 'best edition' based on such differences do not apply."

2. *Motion Picture Deposits*. Because of special problems related to cost, number of available copies, and security from unauthorized performance, under current law applicants for registration of motion pictures have had the option of entering into a special written agreement with the Library of Congress. Under this so-called "Motion Picture Agreement", most deposits are returned to the applicant for registration, subject to recall by the Library during a specified term. After further consideration of its motion picture acquisition practices, and experience with the agreement, the Library of Congress has concluded that it will be able to make definitive selections for its collections within thirty days from deposit, that copies not selected can be returned promptly, and that it will be unnecessary to require that returned copies be held for a period of possible recall. These conclusions are reflected in proposed §§ 202.19(d) (2) (ii) and 202.20(c) (2) (ii). The proposed regulations will not affect previously registered motion pictures still covered by existing Motion Picture Agreements.

As an additional change from current requirements, the proposed regulations do not require that deposits of videotape copies be accompanied by photographic reproductions.

3. *Certain Pictorial and Graphic Works*: Section 407(c) of the Act provides:

[Copyright Office] regulations shall provide either for complete exemption from the deposit requirements of this section, or for alternative forms of deposit aimed at providing a satisfactory archival record of a work without imposing practical or financial hardships on the depositor, where the individual author is the owner of copyright in a pictorial, graphic, or sculptural work and (1) less than five copies of the work have been published, or (ii) the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies of the best edition of the work burdensome, unfair, or unreasonable.

Sculptural works are completely exempt from the mandatory deposit requirements of section 407 under proposed § 202.19(c) (6) and are subject to the deposit of photographs or like reproductions instead of actual copies for copyright registration under proposed § 202.20(c) (2) (ix). A problem arose, however, in establishing special deposit provisions for pictorial and graphic works where, as specified in the statute, "the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies . . . burdensome, unfair, or unreasonable." After careful consideration, we concluded that it would not be practical or reasonable to establish specific "monetary values" as a condition for special treatment. Instead, proposed § 202.19(d) (2) (iv) provides for the deposit of only one copy or, alternatively, photographs or like reproductions in lieu of an actual copy, in any case where an individual author is the owner of copyright in a pictorial or graphic work and the work is published and sold or offered for sale in a limited edition consisting of no more than one hundred numbered copies. In order not to discourage the artist-copyright owner from seeking the benefits of copyright registration for works of this sort, a similar provision is made in proposed § 202.20(c) (2) (iv), although not required by the Act. In individual or particular cases not falling within this one-hundred copy category, paragraph IV. C. 2 of the Library of Congress Best Edition Statement (permitting deposit of one copy outside of a numbered series) or, in appropriate cases, special relief under proposed §§ 202.19(e) and 202.20(d) may also lessen the burden of deposit.

4. *Secure Tests*. In developing the proposed regulations we have considered the special problems of confidentiality faced by creators and administrators of so-called "secure tests", that is, testing materials which are not marketed and which are administered, returned, and retained

under secure conditions.² This category encompasses numerous tests used in connection with admission to educational institutions, high school equivalency, placement in or credit for undergraduate and graduate course work, awarding of scholarships, and professional certification. The Library of Congress does not require such works for its collections and, together with other tests, they are exempt from mandatory deposit by proposed § 202.19(c) (8).

We have also concluded that, although secure tests should be deposited in the Copyright Office for examination incident to registration under section 408, their retention by the Office and availability for public inspection could severely prejudice the future utility, quality, and integrity of the materials. Accordingly, proposed § 202.20(c) (2) (vi) provides that only one copy of any test need be deposited for registration, and that "[i]n the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination, provided that sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit". Additionally, as a matter of practice, special arrangements can be made for the examination of such materials under strict conditions of security and in the presence of a representative of the copyright owner.

5. *Special Relief.* In developing the proposed regulations it became apparent that it would not be possible to establish categorical rules, exemptions, or alternatives to cover all cases where the general deposit provisions of the statute might cause unnecessary hardship. In individual cases the specific acquisition policies of the Library of Congress, or the examining and archival requirements of the Copyright Office, may not be such as to require deposit of a non-exempt work, or to demand strict compliance with the general "two copy", "complete" and "best edition" standards of the statute, where to do so would impose an undue burden or cost on a copyright owner. As a clear example, a photocopy or "lesser" edition of a work may be sufficient where the "best edition" is no longer available.

In order to allow proper disposition of these cases without undermining the copyright owner's obligation to comply with section 407 or 408, proposed §§ 202.19 (c) and 202.20(d), permit specified requests to be made for "special relief." These provisions are intended primarily to benefit the public. They are in keeping with legislative direction that the deposit provisions be kept flexible "so that there

²Our consideration of this matter was prompted by correspondence from Educational Testing Service. Their position has been supported by the American College Testing Program, The College Entrance Examination Board, The American Council on Education, and nineteen other examining boards and councils including, for example, the Law School Admission Council, the National Board of Medical Examiners, the Federation of State Medical Boards, and the National Conference of Bar Examiners.

will be no obligation to make deposit where it serves no purpose, so that only one copy or phonorecord may be deposited where two are not needed, and so that reasonable adjustments can be made to meet practical needs in special cases." H.R. Rep. 94-1476, 94th Cong., 2d Sess., Sept. 3, 1976 at 151; S. Rept. No. 94-473, 94th Cong., 1st Sess., Nov. 20, 1975 at 134.

6. *Phonorecords as Deposits of Recorded Literary, Dramatic, or Musical Works.* Under the new Act, where a musical, dramatic, or literary work has been fixed by means of the sounds embodied in an audio disk or audio tape, the disk or tape is a "phonorecord", rather than a "copy", of the recorded musical, dramatic, or literary work. (It is also a "phonorecord" of the separate sound recording resulting from the fixation.) Additionally, the public distribution of phonorecords, in the United States or abroad, is a publication of the recorded work (and of the sound recording).

This terminology has particular significance under section 407 of the Act. Under that section, the mandatory deposit requirements extend only to "copies" of all types of works except sound recordings, and to "phonorecords" of sound recordings; they do not apply to "phonorecords" of literary, dramatic, or musical works. Accordingly, where a musical, dramatic, or literary work is published in the United States only as embodied in phonorecords, it is not subject to mandatory deposit. Although this exclusion results from operation of the statute rather than from discretionary or regulatory action, it is included as an "exemption" in proposed § 202.19 (c) (4) for the purposes of clarity and completeness. The proposed section also makes clear that there is no "exemption" from the mandatory deposit requirements for the owner of copyright in the sound recording as a separate work. For example, the composer or publisher of a musical composition published only in the form of phonorecords is not subject to mandatory deposit for the work under section 407, but the record company claiming copyright in the sound recording also embodied in the phonorecord is required to make a deposit.

In the case of copyright registration under section 408, we considered whether to exercise our authority to regulate the "nature of the deposit" by requiring

³For the purpose of deposit (and registration), the public distribution of phonorecords is a publication of the recorded work even if the work is created by a national of a foreign country belonging to the Universal Copyright Convention ("UCC") or if the distribution occurs in such a country. A contrary definition of "publication" in Article VI of the Convention applies only to that term "as used in this Convention". The rule that public distribution of phonorecords is a publication of the recorded work for the purpose of determining the nature of the deposit (and for registration generally) is not inconsistent with any use of "publication" under the Convention, or any Convention obligation to treat published or unpublished works in a specified manner.

visually-perceptible copies to be deposited in all cases. We have decided not to do so.

In recent years, and with increasing frequency, certain musical, dramatic, and narrative works are initially fixed in the form of phonorecords. For example, tape studio music (electronic, "concrete", and tape-music), synthesizer music, and computer-produced music, all creations of the past two decades, are created directly or indirectly on tape. A large number of "pop" artists and jazz musicians compose by performing the work and simultaneously recording it. Dramatic works and literary works, including lectures and other instructional materials, are often initially preserved on tape. The phonorecord is frequently the initial, and sometimes the only, fixation. While these works theoretically can be transcribed into some kind of visually perceptible copy for the purpose of deposit, the transcription is extremely difficult and unsatisfactory in some cases and impractical in others. For some songwriters and small audio-visual producers, for example, it is a substantial financial burden to require a work to be notated or transcribed.

Accordingly, the deposit required for copyright registration of recorded literary, dramatic, or musical works is left by proposed § 202.20 to follow the general requirements of the statute pertaining to the deposit of "copies or phonorecords". Specifically:

(a) If the work is unpublished and has been fixed in phonorecords, but has not been transcribed or notated in the form of copies, the deposit of a phonorecord will be accepted (§ 202.20(c) (1) (i)).

(b) If the work is unpublished and has been fixed in both copies and phonorecords, the deposit of either a phonorecord or a copy will be accepted (§ 202.20(c) (1) (ii)). In such cases applicants will be encouraged to deposit whatever form best represents the work of authorship for which copyright is being claimed.

(c) If the work was first published outside of the United States, the deposit should represent the form (copy or phonorecord) in which the work was first published (§ 202.20(c) (1) (iv)).

(d) If the work was first published in the United States and, at the time of deposit, has been published in this country only in the form of phonorecords, the deposit of the "best edition" of the phonorecord will be accepted (§ 202.20 (c) (1) (iii)).

(e) If the work was first published in the United States and, at the time of deposit, has been published in this country in the form of both copies and phonorecords, the appropriate deposit depends upon which is the "best edition" (§ 202.20 (c) (1) (iii)). In such cases, the Library of Congress Best Edition Statement (paragraph VIII.B.) requires deposit of the copy as the "best edition".

⁴Criteria for selection of the "best edition" from among varying phonorecord configurations are set forth in paragraph V of the Library of Congress Best Edition Statement.

7. Deposit, for Copyright Registration, of Works First Published Before January 1, 1978. As noted earlier, the deposit provisions of the current copyright law generally require the deposit of the work first published. This results from the principle that copyright is currently secured upon first publication in compliance with certain formalities. Under the new Act, however, "first publication" is not relevant to securing copyright (which attaches upon creation) and failure to comply with formalities can later be cured. Accordingly, except in the case of works first published abroad, the new Act generally requires deposits for copyright registration to represent the "best edition" published at any time before the date of application and deposit.

This general requirement is, however, qualified by Transitional and Supplementary Sec. 103 of Pub L. 94-553: "This Act does not provide copyright protection for any work that goes into the public domain before January 1, 1978." Under section 410(b) of the Act, the Copyright Office is charged to refuse applications for registration of public domain works. Accordingly, in order to give the Office an adequate opportunity to examine applications for registration of works published before January 1, 1978 to determine if they have entered the public domain (for example, by reason of publication without notice), proposed § 202.20(c) (1) (ii) requires that the deposit in such cases represent the work as first published.

8. Mandatory Deposit and Acquisition of Unpublished Transmission Programs. Although the mandatory deposit provisions of section 407 of the Act are generally limited to published works, section 407(e) does permit the Register of Copyrights to establish regulations governing the acquisition of copies or phonorecords of unpublished transmission (broadcast) programs for the Library of Congress. These regulations will be the subject of a separate proceeding.

APPENDIX.—"BEST EDITION" OF PUBLISHED COPYRIGHTED WORKS FOR THE COLLECTIONS OF THE LIBRARY OF CONGRESS

The Copyright Law (Title 17, United States Code) requires that copies of phonorecords deposited in the Copyright Office be of the "best edition" of the work. The law states that "The 'best edition' of 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."

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. In judging quality, the Library of Congress will adhere to the criteria set forth below in all but exceptional circumstances.

Where differences between editions represent variations in copyrightable content, each edition is a separate version and "best edition" standards based on such differences do not apply. Each such version is a separate work for the purposes of the Copyright Law.

Appearing below are lists of criteria to be applied in determining the best edition of each of several types of material. The criteria are listed in descending order of importance.

In deciding between two editions, a criterion-by-criterion comparison should be made. The edition which first fails to satisfy a criterion is to be considered of inferior quality and will not be an acceptable deposit. For example, if a comparison is made between two hardbound editions of a book, one a trade edition printed on acid-free paper and the other a specially bound edition printed on average paper, the former will be the best edition because the type of paper is a more important criterion than the binding.

Under regulations of the Copyright Office, potential depositors may request authorization to deposit copies or phonorecords of other than the best edition of a specific work (e.g., a microform rather than a printed edition of a serial).

I. PRINTED TEXTUAL MATTER

- A. Paper, Binding, and Packaging:**
1. Archival-quality rather than less-permanent paper.
 2. Hard cover rather than soft cover.
 3. Library binding rather than commercial binding.
 4. Trade edition rather than book club edition.
 5. Sewn rather than glue-only binding.
 6. Sewn or glued rather than stapled or spiral-bound.
 7. Stapled rather than spiral-bound or plastic-bound.
 8. Bound rather than looseleaf, except when future looseleaf insertions are to be issued.
 9. Slipcased rather than nonslipcased.
 10. With protective folders rather than without (for broadsides).
 11. Rolled rather than folded (for broadsides).
 12. With protective coatings rather than without (except broadsides, which should not be coated).

- B. Rarity:**
1. Special limited edition having the greatest number of special features.
 2. Other limited edition rather than trade edition.
 3. Special binding rather than trade binding.

- C. Illustrations:**
1. Illustrated rather than unillustrated.
 2. Illustrations in color rather than black and white.

- D. Special Features:**
1. With thumb notches or index tabs rather than without.
 2. With aids to use such as overlays and magnifiers rather than without.

- E. Size:**
1. Larger rather than smaller sizes. (Except that large-type editions for the partially-sighted are not required in place of editions employing type of more conventional size.)

II. PHOTOGRAPHS

- A. Size and finish, in descending order of preference:**
1. The most widely distributed edition.
 2. 8 x 10-inch glossy print.
 3. Other size or finish.
- B. Unmounted rather than mounted.**
- C. Archival-quality rather than less permanent paper stock or printing process.**

III. MOTION PICTURES

- A. Film rather than another medium. Film editions are listed below in descending order of preference.**
1. Preprint material, by special arrangement.
 2. Film gauge in which most widely distributed.

3. 35 mm rather than 16 mm.
 4. 16 mm rather than 8 mm.
 5. Special formats (e.g., 65 mm) only in exceptional cases.
 6. Open reel rather than cartridge or cassette.
 7. Videotape rather than videodisc. Videotape editions are listed below in descending order of preference.
1. Tape gauge in which most widely distributed.
 2. Two-inch tape.
 3. One-inch tape.
 4. Three-quarter-inch tape cassette.
 5. One-half-inch tape cassette.

IV. OTHER GRAPHIC MATTER

- A. Paper and Printing:**
1. Archival quality rather than less-permanent paper.
 2. Color rather than black and white.
- B. Size and Content:**
1. Larger rather than smaller size.
 2. In the case of cartographic works, editions with the greatest amount of information rather than those with less detail.
- C. Rarity:**
1. The most widely distributed edition rather than one of limited distribution.
 2. In the case of a work published only in a limited, numbered edition, one copy outside the numbered series but otherwise identical.
 3. A photographic reproduction of the original, by special arrangement only.
- D. Text and Other Materials:** 1. Works with annotations, accompanying tabular or textual matter, or other interpretative aids, rather than those without them.
- E. Binding and Packaging:**
1. Bound rather than unbound.
 2. If editions have different binding, apply the criteria in I.A.2-I.A.7, above.
 3. Rolled rather than folded.
 4. With protective coatings rather than without.

V. PHONORECORDS

- A. Disc rather than tape.**
- B. With special enclosures rather than without.**
- C. Open-reel rather than cartridge.**
- D. Cartridge rather than cassette.**
- E. Quadraphonic rather than stereophonic.**
- F. True stereophonic rather than monaural.**
- G. Monaural rather than electronically rechanneled stereo.**

VI. MUSICAL COMPOSITIONS

- A. Fullness of Score:** 1. **Vocal music:** a. With orchestral accompaniment—
- i. Full score and parts, if any, rather than conductor's score and parts, if any.
 - ii. Conductor's score and parts, if any, rather than condensed score and parts, if any.
- b. Unaccompanied: Open score (each part on separate staff) rather than closed score (all parts condensed to two staves).
2. **Instrumental music:**
- a. Full score and parts, if any, rather than conductor's score and parts, if any.
 - b. Conductor's score and parts, if any, rather than condensed score and parts, if any.
- B. Printing and Paper:** 1. Archival-quality rather than less-permanent paper.
- C. Binding and Packaging:**
1. Special limited editions rather than trade editions.
 2. Bound rather than unbound.
 3. If editions have different binding, apply the criteria in I.A.2-I.A.12, above.
 4. With protective folders rather than without.

A. *Related Materials*: 1. With indexes, study guides, or other printed matter rather than without.

B. *Permanence and Appearance*:

1. Silver halide rather than any other emulsion.

2. Positive rather than negative.

3. Color rather than black and white.

C. *Format (newspapers and newspaper-formatted serials)*: 1. Reel microfilm rather than any other microform.

D. *Format (all other materials)*:

1. Microfiche rather than reel microfilm.

2. Reel microfilm rather than microform cassettes.

3. Microfilm cassettes rather than micro-opaque prints.

E. *Size*: 1. 35 mm rather than 16 mm.

VIII. WORKS EXISTING IN MORE THAN ONE MEDIUM

Editions are listed below in descending order of preference.

A. Newspapers, dissertations and theses, newspaper-formatted serials:

1. Microform.

2. Printed matter.

B. All other materials:

1. Printed matter.

2. Microform.

3. Phonorecord.

(Effective: January 1, 1978.)

PROPOSED REGULATIONS

We propose to amend Part 202 of 37 CFR, Chapter II as follows:

§ 202.16 [Revoked]

1. By revoking § 202.16; and
2. By adding new §§ 202.19, 202.20, and 202.21, to read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

(a) *General*. This section prescribes rules pertaining to the deposit of copies and phonorecords of published works for the Library of Congress under section 407 of title 17 of the United States Code, as amended by Pub. L. 94-553. The provisions of this section are not applicable to the deposit of copies and phonorecords for purposes of copyright registration under section 408 of title 17, except as expressly adopted in § 202.20 of these regulations.

(b) *Definitions*. For the purposes of this section:

(1) (i) 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.

(ii) Criteria for selection of the "best edition" from among two or more published editions of the same version of the same work are set forth in the statement entitled "Best Edition of Published Copyrighted Works for the Collections of the Library of Congress" (hereafter referred to as the "Best Edition Statement") in effect at the time of deposit. Copies of the Best Edition Statement are available upon request made to the Acquisitions and Processing Division of the Copyright Office.

(iii) Where no specific criteria for the selection of the "best edition" are estab-

lished in the Best Edition Statement, that edition which, in the judgment of the Library of Congress, represents the highest quality for its purposes shall be considered the "best edition". In such cases: (A) When the Copyright Office is aware that two or more editions of a work have been published it will consult with other appropriate officials of the Library of Congress to obtain instructions as to the "best edition" and (except in cases for which special relief is granted) will require deposit of that edition; and (B) when a potential depositor is uncertain which of two or more published editions comprises the "best edition", inquiry should be made to the Acquisitions and Processing Division of the Copyright Office.

(iv) Where differences between two or more "editions" of a work represent variations in copyrightable content, each edition is considered a separate version, and hence a different work, for the purpose of this section, and criteria of "best edition" based on such differences do not apply.

(2) A "complete" copy includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph (c) of this section. In the case of sound recordings, a "complete" phonorecord includes the phonorecord, together with any printed or other visually perceptible material published with such phonorecord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container).

(3) The terms "copies", "collective work", "device", "fixed", "literary work", "machine", "motion picture", "phonorecord", "publication", "sound recording", and "useful article", and their variant forms, have the meanings given to them in section 101 of title 17.

(4) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94-553.

(c) *Exemptions from deposit requirements*. The following categories of material are exempt from the deposit requirements of section 407(a) of title 17:

(1) Diagrams and models illustrating scientific or technical works or formulating scientific or technical information in linear or three-dimensional form, such as an architectural or engineering blueprint, plan, or design, a mechanical drawing, or an anatomical model.

(2) Greeting cards, picture postcards, and stationery.

(3) Lectures, sermons, speeches, and addresses when published individually and not as a collection of the works of one or more authors.

(4) Literary, dramatic, and musical works published only as embodied in phonorecords. This category does not exempt the owner of copyright, or of the exclusive right of publication, in a sound recording resulting from the fixation of such works in a phonorecord from the

applicable deposit requirements for the sound recording.

(5) Literary works, including computer programs and automated data bases, published only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be visually perceived except with the aid of a machine or device. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films and works published in any variety of microfilm), and works published in visually perceivable form but used in connection with optical scanning devices, are not within this category and are subject to the applicable deposit requirements.

(6) Three-dimensional sculptural works, and any works published only as reproduced in or on jewelry, dolls, toys, games, plaques, floor coverings, wallpaper and similar commercial wall coverings, textile and other fabrics, packaging material, or any useful article. Globes, relief models, and similar cartographic representations of area are not within this category and are subject to the applicable deposit requirements.

(7) Prints, labels, and other advertising matter published in connection with the sale or advertisement of articles of merchandise or services.

(8) Tests, and answer material for tests, when published separately from other literary works.

(9) Works first published as individual contributions to collective works. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the collective work as a whole from the applicable deposit requirements for the collective work.

(d) *Nature of required deposit*. (1) Subject to the provisions of paragraph (d)(2) of this section, the deposit required to satisfy the provisions of section 407(a) of title 17 shall consist of (i) in the case of published works other than sound recordings, two complete copies of the best edition; and (ii) in the case of published sound recordings, two complete phonorecords of the best edition.

(2) In the case of certain published works not exempt from deposit requirements under paragraph (c) of this section, the following special provisions shall apply:

(i) In the case of published three-dimensional cartographic representations of area, such as globes and relief models, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(ii) In the case of published motion picture, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section. Any deposit for a published motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. Unless selected by the Library of Congress for addition to its collections within thirty

days from the date the deposit is received in the Copyright Office, all copies of motion pictures deposited under this section will be returned to the depositor by the Copyright Office, without right of recall.

(iii) In the case of any published work deposited in the form of a hologram, the deposit shall be accompanied by: (A) Two sets of precise instructions for displaying the image fixed in the hologram; and (B) two sets of identifying material in compliance with § 202.21 of these regulations and clearly showing the displayed image.

(iv) In any case where an individual author is the owner of copyright in a published pictorial or graphic work and (A) less than five copies of the work have been published, or (B) the work has been published and sold or offered for sale in a limited edition consisting of no more than one hundred numbered copies, the deposit of one complete copy of the best edition of the work or, alternatively, the deposit of photographs or other identifying material in compliance with § 202.21 of these regulations, will suffice in lieu of the two copies required by paragraph (d) (1) of this section.

(e) *Special relief.* (1) In the case of any unpublished work not exempt from deposit under paragraph (c) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation: (i) Grant an exemption from the deposit requirements of section 407(a) of title 17 on an individual basis for single works or series or groups of works; or (ii) permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the two copies or phonorecords required by paragraph (d) (1) of this section; or (iii) permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3) Requests for special relief under this paragraph shall be made in writing to the Chief, Acquisitions and Processing Division of the Copyright Office, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reason: why the request should be granted.

(f) *Submission and receipt of copies and phonorecords.* (1) All copies and phonorecords deposited in the Copyright Office will be considered to be deposited only in compliance with section 407 of title 17 unless they are accompanied by: (i) An application for registration of claim to copyright, or (ii) a clear written request that they be held

for connection with a separately forwarded application. Copies or phonorecords deposited without such an accompanying application or written request will not be connected with or held for receipt of separate applications, and will not satisfy the deposit provisions of section 408 of title 17 or § 202.20 of these regulations. Any written request that copies or phonorecords be held for connection with a separately forwarded application must appear in a letter or similar document accompanying the deposit; a request or instruction appearing on the packaging, wrapping or container for the deposit will not be effective for this purpose.

(2) All copies and phonorecords deposited in the Copyright Office under section 407 of title 17, unless accompanied by written instructions to the contrary, will be considered to be deposited by the person or persons named in the copyright notice on the work.

(3) Upon request by the depositor made at the time of the deposit, the Copyright Office will issue a Certificate of Receipt for the deposit of copies or phonorecords of a work under this section. Certificates of Receipt will be issued in response to requests made after the date of deposit only if the requesting party is identified in the records of the Copyright Office as having made the deposit. In either case, requests for a Certificate of Receipt must be in writing and accompanied by a fee of \$2. A Certificate of Receipt will include identification of the depositor, the work deposited, and the nature and format of the copy or phonorecord deposited, together with the date of receipt.

§ 220.20 Deposit of copies and phonorecords for copyright registration.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published and unpublished works for the purpose of copyright registration under section 408 of title 17 of the United States Code, as amended by Pub. L. 94-553. The provisions of this section are not applicable to the deposit of copies and phonorecords for the Library of Congress under section 407 of title 17, except as expressly adopted in § 202.19 of these regulations.

(b) *Definitions.* For the purposes of this section:

(1) The "best edition" of a work has the meaning set forth in § 202.19(b)(1) of these regulations.

(2) A "complete" copy or phonorecord of an unpublished work is a copy or phonorecord representing the entire copyrightable content of the work for which registration is sought. A "complete" copy or phonorecord of a published work includes all elements comprising the applicable unit of publication of the work. In the case of a contribution to a collective work, a "complete" copy or phonorecord is the entire collective work including the contribution or, in the case of a newspaper, the entire section including the contribution. In the case of published sound recordings, a "com-

plete" phonorecord has the meaning set forth in § 202.19(b)(2) of these regulations.

(3) The terms "copy", "collective work", "device", "fixed", "literary work", "machine", "motion picture", "phonorecord", "publication", "sound recording", and "useful article", and their variant forms, have the meanings given to them in section 101 of title 17.

(4) A "secure test" is a non-marketed test regularly administered under supervision at specified centers on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. For these purposes a test is not marketed if copies are not sold but is distributed and used in such a manner that ownership and control of copies remain with the test sponsor or publisher.

(5) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94-553.

(c) *Nature of required deposit.* (1) Subject to the provisions of paragraph (c)(2) of this section, the deposit required to accompany an application for registration of claim to copyright under section 408 of title 17 shall consist of:

(i) In the case of unpublished works, one complete copy or phonorecord.

(ii) In the case of works first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.

(iii) In the case of works first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.

(iv) In the case of works first published outside of the United States, whenever published, one complete copy or phonorecord of the work as first published. For the purposes of this section, any works simultaneously first published within and outside of the United States shall be considered to be first published in the United States.

(2) In the case of certain works, the special provisions set forth in this clause shall apply. In any case where this clause specifies that one copy or phonorecord may be submitted, that copy or phonorecord shall represent the best edition, or the work as first published, as set forth in paragraph (c) (1) of this section.

(f) *General.* In the following cases the deposit of one complete copy or phonorecord will suffice in lieu of two copies or phonorecords: (A) Published three-dimensional cartographic representations of area, such as globes and relief models; (B) published diagrams illustrating scientific or technical works or formulating scientific or technical information in linear or other two-dimensional form, such as an architectural or engineering blueprint, or a mechanical drawing; (C) published greeting cards, picture postcards and stationery; (D) lectures, sermons, speeches, and addresses published individually and not as a collection of the works of one or

more authors; and (E) published contributions to a collective work.

(ii) *Motion pictures.* In the case of published motion pictures, the deposit of one complete copy will suffice in lieu of two copies. The deposit for any published or unpublished motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. Unless selected by the Library of Congress for addition to its collections within thirty days from the effective date of registration, all copies of motion pictures deposited under this section will be returned to the applicant by the Copyright Office, without right of recall.

(iii) *Holograms.* In the case of any work deposited in the form of a hologram, the copy or copies shall be accompanied by: (A) Precise instructions for displaying the image fixed in the hologram; and (B) photographs or other identifying material complying with § 202.21 of these regulations and clearly showing the displayed image. The number of sets of instructions and identifying material shall be the same as the number of copies required.

(iv) *Certain pictorial and graphic works.* In any case where an individual author is the owner of copyright in a pictorial or graphic work and (A) the work is unpublished, or (B) less than five copies of the work have been published, or (C) the work has been published and sold or offered for sale in a limited edition consisting of no more than one hundred numbered copies, the deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of actual copies. As an alternative to the deposit of such identifying material, in any such case the deposit of one complete copy will suffice in lieu of two copies.

(v) *Commercial prints and labels.* In the case of prints, labels, and other advertising matter published in connection with the sale or advertisement of articles of merchandise or services, the deposit of one complete copy will suffice in lieu of two copies. Where the print or label is published in a larger work, such as a newspaper or other periodical, one copy of the entire page or pages upon which it appears may be submitted in lieu of the entire larger work. In the case of prints or labels physically inseparable from a three-dimensional object, identifying material complying with § 202.21 of these regulations must be submitted rather than an actual copy or copies.

(vi) *Tests.* In the case of tests, and answer material for tests, published separately from other literary works, the deposit of one complete copy will suffice in lieu of two copies. In the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination: *Provided*, That sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit.

(vii) *Machine-readable works.* In cases where an unpublished literary work is fixed, or a published literary

work is published, only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be perceived except with the aid of a machine or device,³ the deposit shall consist of:

(A) For published or unpublished computer programs, one copy of identifying portions of the program, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes, "identifying portions" shall mean either the first and last twenty-five pages or equivalent units of the program if reproduced on paper, or at least the first and last twenty-five pages or equivalent units of the program if reproduced in microform, together with the page or equivalent unit containing the copyright notice, if any.

(B) For published and unpublished automated data bases, compilations, statistical compendia, and other literary works so fixed or published, one copy of identifying portions of the work, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes, "identifying portions" shall mean either the first and last twenty-five pages or equivalent units of the work if reproduced on paper, or at least the first and last twenty-five pages or equivalent units of work if reproduced on microform, or, in the case of automated data bases comprising separate and distinct data files, representative portions of each separate data file consisting of either 50 complete data records from each file or the entire file, whichever is less. (In the case of revised versions of such data bases, the portions deposited must contain representative data records which have been added or modified.) In any case where the deposit comprises representative portions of each separate file of an automated data base as indicated above, it shall be accompanied by a typed or printed descriptive statement containing: The title of the data base; the name and address of the copyright claimant; the name and content of each separate file within the data base, including the subject matter involved, the origin(s) of the data, and the approximate number of individual records within the file; and a description of the exact contents of any machine-readable copyright notice employed in or with the work and the manner and frequency with which it is displayed (e.g., at user's terminal only at sign-on, or continuously on terminal display, or on printouts, etc.). If a visually-perceptible copyright notice is placed on any copies of the work (such

³ Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform), and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category.

as magnetic tape reels) or their container, a sample of such notice must also accompany the statement.

(viii) *Works reproduced in or on sheet-like materials.* In the case of any unpublished work that is fixed, or any published work that is published, only in the form of a two-dimensional reproduction on sheet-like materials such as textile and other fabrics, wallpaper and similar commercial wall coverings, carpeting, floor tile, and similar commercial floor coverings, and wrapping paper and similar packaging material, the deposit shall consist of one copy in the form of an actual swatch or piece of such material sufficient to show all elements of the work in which copyright is claimed and the copyright notice appearing on the work, if any. If the work consists of a repeated pictorial or graphic design, the complete design and at least one repetition must be shown. If the sheet-like material in or on which a published work has been reproduced has been embodied in or attached to a three-dimensional object, such as wearing apparel, furniture, or any other three-dimensional manufactured article, and the work has been published only in that form, the deposit must consist of identifying material complying with § 202.21 of these regulations instead of a copy.

(ix) *Works reproduced in or on three-dimensional objects.* In the following cases where the deposit of an actual copy of the work would not lend itself to shelving or flat storage, the deposit must consist of identifying material complying with § 202.21 of these regulations instead of a copy or copies: (A) Any three-dimensional sculptural work, including any illustration or formulation of artistic expression or information in three-dimensional form, including statues, carvings, ceramics, moldings, constructions, models, and maquettes (but not including works reproduced by intaglio or relief printing methods on two-dimensional materials such as paper or fabrics); and (B) any two-dimensional or three-dimensional work that, if unpublished, has been fixed or, if published, has been published only in or on jewelry, dolls, toys, games, or any three-dimensional useful article. However, where the work has been fixed or published in or on a useful article that comprises one of the elements of the unit of publication of an educational or instructional kit which also includes a literary or audiovisual work, a sound recording, or any combination of such works, the requirement of this paragraph for the deposit of identifying material shall not apply.

(x) *Oversize deposits.* In any case where the deposit otherwise required by this section exceeds ninety-six inches in any dimension, identifying material complying with 202.21 of these regulations must be submitted instead of an actual copy or copies.

(d) *Special relief.* (1) In any case the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation: (i) Per-

mit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the one or two copies or phonorecords otherwise required by paragraph (c) (1) of this section; or (ii) permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force and the archival and examining requirements of the Copyright Office.

(3) Requests for special relief under this paragraph may be combined with requests for special relief under § 202.19 (e) of these regulations. Whether so combined or made solely under this paragraph, such requests shall be made in writing to the Chief, Examining Division of the Copyright Office, shall be signed by or on behalf of the person signing the application for registration, and shall set forth specific reasons why the request should be granted.

(e) *Use of copies and phonorecords deposited for the Library of Congress.* Copies and phonorecords deposited for the Library of Congress under section 407 of title 17 and § 202.19 of these regulations may be used to satisfy the deposit provisions of this section if they are accompanied by an application for registration of claim to copyright in the work represented by the deposit, or connected with such an application under the conditions set forth in § 202.19(f)(1) of these regulations.

§ 202.21 Deposit of identifying material instead of copies.

(a) *General.* In any case where the deposit of identifying material is permitted or required under § 202.19 or § 202.20 of these regulations, the material shall consist of photographic prints, transparencies, photostats, drawings, or similar two-dimensional reproductions or renderings of the work, in a form visually perceivable without the aid of a machine or device. In the case of pictorial or graphic works, such material shall reproduce the actual colors employed in the work. In all other cases, such material may be in black and white or may consist of a reproduction of the actual colors.

(b) *Completeness; number of sets.* As many pieces of identifying material as are necessary to show clearly the entire copyrightable content of the work for which deposit is being made, or for which registration is being sought, shall be submitted. Except in cases falling under the provisions of § 202.19 (d) (2) (iii) or § 202.20 (c) (2) (iii) with respect to holograms, only one set of such complete identifying material is required.

(c) *Size.* All pieces of identifying material must be of uniform size. Photographic transparencies must be 35 mm.

in size, and must be fixed in cardboard, plastic, or similar mounts to facilitate identification, handling, and storage. All other types of identifying material must be not less than 5 x 7 inches and not more than 9 x 12 inches, but preferably 8 x 10 inches. Except in the case of transparencies, the image of the work must be either lifesize or larger, or if less than lifesize must be at least four inches in its greatest dimension.

(d) *Title and dimensions.* At least one piece of identifying material must, on its front, back, or mount, indicate the title of the work and an exact measurement of one or more dimensions of the work.

(e) *Copyright notice.* In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Where necessary because of the size or position of the notice, a separate drawing or the like showing the exact appearance and content of the notice, its dimensions, and its specific position on the work shall be submitted.

(17 U.S.C. 207, and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-553: §§ 407, 408, 702.)

Dated: November 9, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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