

Announcement

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

FINAL REGULATIONS

PART 202-REGISTRATION OF CLAIMS TO COPYRIGHT DEPOSIT REQUIREMENTS

The following excerpt is taken from Volume 43, No. 2 of the Federal Register for Wednesday, January 4, 1978, (pp. 763-771).

[1410-03]

Title 37—Patents, Trademarks, and
Copyrights

CHAPTER II—COPYRIGHT OFFICE,
LIBRARY OF CONGRESS

[Docket Rm 77-11]

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT DEPOSIT REQUIREMENTS

AGENCY: Library of Congress, Copy-
right Office.

ACTION: Final regulations.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting 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of the Library of Congress, and the deposit of material to accompany applications for copyright registration of both unpublished and published works.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 to all other cases under section 407; and (c) to establish the nature of the deposit to be made as part of copyright registration.

EFFECTIVE DATE: January 1, 1978.

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 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 Con-

gress 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.

On November 16, 1977, we published in the FEDERAL REGISTER (42 FR 59302) a notice of proposed rulemaking inviting public comment on our proposal to implement sections 407 and 408. In that notice we proposed the addition of three new sections to the regulations of the Copyright Office: (i) proposed § 202.19 exempted certain works which the Library neither needs nor wants from the mandatory deposit requirements of section 407, and also established requirements governing the nature of the deposit to be made in cases where the exemption does not apply; (ii) proposed § 202.20 established requirements governing the nature of the deposit to be made in all cases for the purpose of copyright registration under section 408; and (iii) proposed § 202.21 set forth special requirements governing the nature of photographs or other identifying material required or permitted to be deposited in lieu of actual copies in certain cases.

Thirty-five comments were received in response to the notice of proposed rulemaking. After careful consideration, we have decided to make several changes in the proposed regulations to broaden exemptions under the regulations and to provide for an even wider scope of identifying material permitted as deposit. A discussion of the major comments appears below. Because we do not want to impede the prompt making of registrations and deposits under the new Act, these regulations are effective on January 1, 1978, the effective date of Pub. L. 94-553.

1. *Musical Compositions Published Only by Rental, Lease, or Lending.* A number of comments pointed out that, in the case of musical compositions published by rental of scores for performances, only a limited number of copies are available for distribution; often only manuscript copies exist. This makes the mandatory deposit of two copies with full score and parts both burdensome and expensive. We have added § 202.19 (d) (2) (v) and modified § 202.20 (c) (2) (i) to reduce the number of required deposit copies from two to one in the case of musical compositions published by the rental, lease, or lending, rather than sale, of copies. Moreover, a complete set of parts need not be deposited in these cases; the definitions of "complete" in § 202.19 (b) (2) and § 202.20 (b) (2) have been modified to allow deposit of a full score or, in appropriate cases, a conductor's score only. The Library of Congress Best Edition Statement (paragraph VI.A) has also been modified on this point.

2. *Unpublished Television Transmission Programs.* Several comments urged that the regulations permit deposit of identifying material, rather than actual copies, in connection with copyright registration of unpublished television transmission programs of various types (e.g., "local", "sports", "network"). We agree that, at the present time, it should be sufficient for purposes of registration to deposit identifying material not only for unpublished television programs, but also for all unpublished motion pictures. We have modified §§ 202.20 (c) (2) (ii) and 202.21 (g) accordingly. However, requests for exemption of certain broadcast programs that may be considered "published" in certain circumstances (other than by reason of off-air taping licenses; see item 3 below) have not been accepted. These provisions for deposit of identifying material of unpublished motion pictures, and the general treatment of transmission programs for deposit purposes, are essentially provisional and will be reviewed in connection with the formulation of regulations implementing section 407 (e) of the Act in the near future.

One of the comments expressed concern as to whether registration of unpublished television transmission programs would be considered a prerequisite to claiming compulsory license fees for cable retransmission under § 111 of the statute. In issuing these regulations we are merely dealing with the form of deposit, and are in no sense suggesting the legal necessity for making copyright registration under section 408 in any case.

3. *Television Transmission Programs Published Only By Grant of Off-Air Taping Licenses to Educators.* Two of the comments expressed concern that licenses granted to nonprofit institutions for off-air taping might constitute "publication" of otherwise unpublished television transmission programs. It was asserted that these licenses are granted for a modest fee, that the licensing of television programming for classroom and similar purposes is growing, and that mandatory requirements for the deposit of actual copies might inhibit this development. We agree with these assertions. In the event that such licensing may be considered a "publication" (an issue which these regulations do not determine), we have added § 202.19 (c) (13) to exempt such works from the mandatory deposit requirements. For purposes of registration, § 202.20 (b) (6) treats these works as unpublished motion pictures.

4. *Multimedia Kits.* One comment pointed to the high cost of copies of multimedia kits, and urged us to require deposit of only one copy rather than two under both §§ 202.19 and 202.20. After considering the Library of Congress' acquisition policies, we have accepted this suggestion. Sections 202.19 (c) (2) (vi) and 202.20 (c) (2) (i) (G) have been added to permit deposit, for both the Library of Congress and copyright registration, of

only one copy of multimedia kits prepared for use in systematic instructional activities. The term "systematic instructional activities" is intended to have the same meaning as in sections 101 and 110(2) of the Act. See H.R. Rep. No. 94-1476, 94th Cong., 2d Sess., Sept. 3, 1976 at 83, 121; S. Rep. No. 94-473, 94th Cong., 1st Sess., Nov. 20, 1975 at 75, 105.

5. *Preprint Materials.* The meaning of the language "preprint material, by special arrangement" in the Library of Congress Best Edition Statement concerning motion pictures raised some question in the comment letters. "Preprint material" is a whole range of film production material (including, but not necessarily limited to, outtakes) that is in addition to the material included in final version of a published film. As a matter of a complete archival record for motion pictures that it considers of major importance, the Library of Congress values this material and is occasionally able to secure it for the collections by special arrangement with its owners. This wording is present in the Best Edition Statement to indicate its value to the Library of Congress in special cases where these arrangements have been made, and is not intended to suggest that the deposit of preprint material is to be required as a matter of course.

A second comment regarding the Best Edition Statement for motion pictures requested confirmation that, if a work is most widely distributed in the form of 16mm film copies, copies of that gauge are considered the best edition of the work even if 35mm or larger copies have also been distributed. We confirm this interpretation. The "film gauge in which most widely distributed" (item 2 of the Best Edition Statement for motion pictures) is intended to take precedence over the listing of specific gauges and formats (items 3-6) which follow that general statement.

6. *Advertising Matters Published In Connection With Motion Pictures.* One comment asked that § 202.19 (c) (7) be revised to include a specific exemption for advertising material published in connection with motion pictures. After considering this comment and the proposed language, we have modified that section to make clear its application to advertising matter published in connection with the "rental, lease, lending, licensing, or sale" of all "works of authorship" as well as of articles and services. The special deposit provision of § 202.20 (c) (2) (v) has been similarly changed.

7. *Motion Picture Agreement.* Several arguments were advanced in favor of retaining the current motion picture agreement, which allows return of deposit copies subject to later recall by the Library of Congress. This is, of course, not basically a matter of copyright deposit but a matter of a negotiated contract between copyright owners and the Library of Congress. At the same time, however, the existence of the agreement affects the operation of the deposit

system, and for this reason the Copyright Office agrees that the question of retaining the agreement should remain the subject of active consideration. Because of the urgent need to publish these deposit regulations, we are issuing them without providing for the possibility of a motion picture agreement. However, we emphasize that this is not intended to foreclose the possibility of negotiation of new agreements in the immediate future.

8. *Literary Works Published Only in Machine-Readable Form.* Proposed § 202.19(c) (5) provided an exemption from deposit for literary works, including computer programs and automated data bases, published only in the form of machine-readable copies. One comment noted that a work published in the United States only in machine-readable form, but published simultaneously abroad in hard copy, would not qualify under that exemption. To meet this point, we have revised the section to make the exemption applicable to such works if published in the United States only in the form of machine-readable copies. Proposed § 202.20(c) (2) (vii) has been similarly amended. As several comments also questioned the meaning of the term "file" in proposed § 202.20(c) (2) (vii), we have added a definition of that term.

A number of comments raised other issues relating to the deposit requirements for registration of machine-readable works. We recognize that the application of our requirements to the rapidly developing technology of storing and retrieving information may require further refinement. At the present time, however, we consider it appropriate to develop further experience with the regulations before considering additional amendments.

9. *Deposit of Identifying Material For Published Pictorial or Graphic Works.* One of the conditions for the deposit of identifying material in lieu of copies of published pictorial or graphic works in proposed §§ 202.19(d) (2) (iv) and 202.20(c) (2) (iv) was that a "limited" edition consist of no more than one hundred numbered copies. Several comments suggested that this number was not consistent with the practices of graphic artists. These sections have been amended to raise the limit to three hundred numbered copies (the highest figure suggested in the comments).

10. *Soundtracks.* New §§ 202.20(c) (x) and 202.21(f) have been added for cases where separate registration is desired for a work fixed or published only as embodied in a motion picture soundtrack. Under these sections, the applicant for registration of such works may submit specified representations of the work (essentially, a transcription or phonorecord of the work, with certain additional material) in lieu of an actual copy of the entire motion picture. A new § 202.19(c) (11) has also been added to specify that

works published only as embodied in motion picture soundtracks are not subject to mandatory deposit under section 407 of the Act; this section makes it clear, however, that the exemption does not apply to the motion picture as a whole.

11. *Secure Tests.* One comment noted that secure tests are re-used in a variety of ways, but that the same version of a particular test is not necessarily "regularly" readministered in exactly the same form. The concern was expressed that the word "regularly" in the definition of secure test" (proposed § 202.20(b) (4)) might be interpreted to require that a particular test be administered in the same exact form on a consistently recurring basis. This was not our intention. The definition of secure test has been amended by deleting the word "regularly."

12. *Deposit For Registration of a Work First Published Abroad.* One comment noted that problems might arise from the separate deposit requirements of sections 407 and 408 with respect to works first published outside the United States. Under section 408, the deposit required for registration of such works, before or after subsequent United States publication, is "one" copy or phonorecord of the work as "first published". Under section 407, however, after domestic publication "two" copies or phonorecords of the "best edition" are required for the Library of Congress. The general philosophy underlying the deposit requirements is to provide a procedure whereby the deposit for registration and the deposit requirements for the Library of Congress can be satisfied by the same action. We do not believe it is appropriate to require a copyright owner who has secured registration of a work first published abroad to make a separate deposit under section 407. Accordingly, a new exemption from mandatory deposit has been added (§ 202.19(c) (10)).

13. *Group Registration.* Several comments requested special provisions for group registration, under section 408(c) (1) of the Act, of revisions and updates of automated data bases, works of arts, and other works. We are fully aware of economic hardship and practical difficulties in making separate registrations for certain types of related works, and we intend to formulate regulations implementing the statutory provision for group registration in the near future. We invite further comments and suggestions as to the type of related works that could be covered by group registration and the deposit and registration requirements applicable in these cases.

14. *Library of Congress Best Edition Statement.* For the guidance of the public in complying with the deposit requirements, the Library of Congress Best Edition Statement, as revised, is set forth as an appendix to this notice preceding the text of the final regulation.

15. *Other Issues.* One comment requested an exemption for a special type of machine-readable sound recording

(a kind of electronic "piano roll"). However, the acquisitions policies of the Library of Congress provide for acquiring all forms of sound recordings, even when they can be played only on very specialized equipment. Consequently, the requested exemption has not been made.

One comment suggested that unpublished works of a private nature, such as personal letters, diaries, and preliminary versions of creative works, would be a proper subject for deposit of identifying material rather than actual copies. We are sympathetic to the argument that, in certain cases, authors should not be forced to make their unpublished writings available for public inspection in order to obtain the benefits of copyright registration. However, we believe that, at least for the present, the provision for special relief under § 202.20(d) is the proper way to deal with these cases. If experience shows that an express regulation is needed to deal with the problem, we will consider suggestions for further amendments.

Because the new regulations do not require the deposit of photographic reproductions to accompany deposits of published videotape copies, one comment requested that we specifically repeal current regulation § 202.15(d). Although we planned to revoke § 202.15 in its entirety in a separate proceeding, for the purpose of clarity we have decided to do so under this Notice.

A request was made that computer programs marketed under "lease/licensing agreements" be given the same special treatment as secure tests. We feel, however, that at this time requests for such special treatment should most properly be handled as applications for special relief under § 202.20(d). As in the case of unpublished personal manuscripts, if experience shows this is insufficient further amendments will be considered at a later time.

In the preamble to our notice of proposed rulemaking, we noted that under the new Act "the public distribution of phonorecords, in the United States or abroad, is a publication of the recorded work (and of the sound recording)." We also stated that this was true "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"; and we noted that this was not inconsistent with a contrary definition of "publication" under the UCC since it did not conflict with any use of the term "publication" in the Convention, or any Convention obligation to treat published or unpublished works in a specified manner. Although one comment questioned these observations, we believe it appropriate to state our understanding of this matter as a basis for determining and explaining the operation of our regulations, and we adhere to the position expressed.

The proposed regulations are adopted, with changes, as set forth following the Appendix below.

Dated: December 29, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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 or 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.

B. 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.
4. Rolled rather than folded.
5. 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. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to full score only.)
- ii. Conductor's score and parts, if any, rather than condensed score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to conductor's score only.)

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. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to full score only.)
- b. Conductor's score and parts, if any, rather than condensed score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to conductor's score only.)

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.

VII. MICROFORMS

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.)

FINAL REGULATIONS

Part 202 of 37 CFR, Chapter II is amended as follows:

§ 202.15 [Revoked]

§ 202.16 [Revoked]

1. By revoking §§ 202.15 and 202.16; and

By adding new §§ 202.19, 202.20, and 202.21, to read as follows:

§ 202.19 Deposit of published copies of 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 established 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). In the case of a musical composition published only by the rental, lease, or lending of copies consisting of a full score and parts, a full score is a "complete" copy; in the case of a musical composition published only by the rental, lease, or lending of copies consisting of a conductor's score and parts, a conductor's score is a "complete" copy.

(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 in the United States 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 microform), 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 rental, lease, lending, licensing, or sale of articles of merchandise, works of authorship, 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.

(10) Works first published outside the United States and later published in the United States without change in copyrightable content, if: (i) registration for the work was made under § 17 U.S.C. 408 before the work was published in the United States; or (ii) registration for the work was made under 17 U.S.C. 406 after the work was published in the United States but before a demand for deposit is made under 17 U.S.C. 407(d).

(11) Works published only as embodied in a soundtrack that is an integral part of a motion picture. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the motion picture from the applicable deposit requirements for the motion picture.

(12) Motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(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.

*Error; line should read: "§202.19 Deposit of published copies or"

Error; line should read: "published with such phonorecord (such as"

(ii) In the case of published motion pictures, 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 three 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.

(v) In the case of a musical composition published only by the rental, lease, or lending of copies, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(vi) In the case of published multimedia kits that are prepared for use in systematic instructional activities and that include literary works, audiovisual works, sound recordings, or any combination of such works, the deposit of one complete copy of the best edition 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 published 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 reasons 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.

§ 202.20 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 copy-

right 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 "complete" phonorecord has the meaning set forth in § 202.19(b)(2) of these regulations. In the case of a musical composition published only by the rental, lease, or lending of copies consisting of a full score and parts, a full score is a "complete" copy; in the case of a musical composition published only by the rental, lease, or lending of copies consisting of a conductor's score and parts, a conductor's score is a "complete" copy.

(3) The terms "copy", "collective work", "device", "fixed", "literary work", "machine", "motion picture", "phonorecord", "publication", "sound recording", "transmission program", 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 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 it 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.

(6) For the purposes of determining the applicable deposit requirements under this § 202.20 only, the following shall be considered as unpublished motion pictures: motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(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.

(i) *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 representing 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; (E) published contributions to a collective work; (F) musical compositions published only by the rental, lease, or lending of copies; and (G) published multimedia kits that are prepared for use in systematic instructional activities and that include literary works, audiovisual works, sound recordings, or any combination of such works.

(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 of a copy or copies 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. In the case of unpublished motion pictures (including television transmission programs that have been fixed and transmitted to the public, but have not been published), the deposit of identifying

material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of an actual copy.

(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 three 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 rental, lease, lending, licensing, or sale of articles of merchandise, works of authorship, 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 in the United States, 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,¹ the deposit shall consist of:

¹ 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.

(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: (1) "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; and (2) "data file" and "file" mean a group of data records pertaining to a common subject matter, regardless of the physical size of the records or the number of data items included in them. (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 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, car-

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 is 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) *Soundtracks.* For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, the deposit of identifying material in compliance with § 202.21 of these regulations will suffice in lieu of an actual copy or copies of the motion picture.

(xi) *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) Permit 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.* Subject to the specific provisions of paragraphs (f) and (g) of this section, 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 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.

(f) For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, identifying material deposited in lieu of an actual copy or copies of the motion picture shall consist of: (1) a transcription of the entire work, or a reproduction of the entire work on a phonorecord; and (2) photographs or other reproductions from the motion picture showing the title of the motion picture, the soundtrack credit, and the copyright notice for the soundtrack, if any. The provisions of paragraphs (b), (c), (d), and (e) of this § 202.21 do not apply to identifying material deposited under this paragraph (f).

(g) In the case of unpublished motion pictures (including transmission programs that have been fixed and transmitted to the public, but have not been published), identifying material deposited in lieu of an actual copy shall consist of either: (1) an audio cassette or other phonorecord reproducing the entire soundtrack or other sound portion of the motion picture, and a description of the motion picture; or (2) a set consisting of one frame enlargement or similar visual reproduction from each ten minute segment of the motion picture, and a description of the motion picture. In either case the "description" may be a continuity, a pressbook, or a synopsis, but in all cases it must include: (i) the title or continuing title of the work, and the episode title, if any; (ii) the nature and general content of the program; (iii) the date when the work was first first and whether or not fixation was simultaneous with first transmission; (iv) the date of first transmission, if any; (v) the running time; and (vi) the credits appearing on the work, if any. The provisions of paragraphs (b), (c), (d), and (e) of this § 202.21 do not apply to identifying material submitted under this paragraph (g).

(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.)

[FR Doc. 77-37417 Filed 12-30-77; 12:24 pm]

*Error; line should read: "fixed and whether or not fixation was"