



ANNOUNCEMENT

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

FINAL REGULATIONS

37 CFR Parts 201 and 202

CATALOG OF COPYRIGHT ENTRIES; PREPARATION OF CATALOG CARD; RECORDATION OF AGREEMENTS BETWEEN COPYRIGHT OWNERS AND PUBLIC BROADCASTING ENTITIES; COPYRIGHT NOTICE; PICTORIAL, GRAPHIC, AND SCULPTURAL WORKS

The following excerpt is taken from Volume 46, Number 124 of the Federal Register for Monday, June 29, 1981 (pp. 33248-9).

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

**Catalog of Copyright Entries;
Preparation of Catalog Card;
Recordation of Agreements Between
Copyright Owners and Public
Broadcasting Entities; Copyright
Notice; Pictorial, Graphic, and
Sculptural Works**

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulations.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting final regulations that amend §§ 201.9, 202.2, and 202.10, and remove § 201.3, 201.7, 202.12, 202.14, and 202.18.¹ Section 201.9(b) is amended to remove a provision that is no longer applicable. Section 202.2 is amended to state directly the copyright notice requirements and to make them applicable for the interim, pending new

regulations, to work published before² January 1, 1978. Section 202.10 is amended by changing its heading and adding to it the text of former §§ 202.12 and 202.14, that are being removed. Sections 201.3, 201.7, and 202.18 are obsolete and are being removed.

EFFECTIVE DATE: July 1, 1981.

FOR FURTHER INFORMATION CONTACT:

Dorothy Schrader, General Counsel,
Copyright Office, Library of Congress,
Washington, D.C. 20559, Telephone (202)
287-8380.

SUPPLEMENTARY INFORMATION: (1)

Catalog of Copyright Entries. The Copyright Catalog is still available, but the parts and prices given are no longer correct. Therefore, section 201.3 is being removed. Information regarding published catalogs may be obtained from the Information and Reference Division of the Copyright Office.

(2) *Preparation of Catalog Card.* Since a catalog card is no longer required to accompany a work of foreign origin, as it was under section 215 of the 1909 Copyright Act, section 201.7 is obsolete. Therefore, we are removing section

201.7 from the Copyright Office regulations.

(3) *Recordation of Agreements between Copyright Owners and Public Broadcasting Entities.* It is no longer possible to record such agreements before January 1, 1978, and the fee to be charged for agreements recorded before that date in § 201.9(b) may, therefore, be removed.

(4) *Copyright Notice.* Sections 401 and 402 of the Copyright Act of 1976 provide that notice is required whenever a work or sound recording "protected under this title is published in the United States or elsewhere by authority of the copyright owner." Although the notice is still required on all publicly distributed copies or phono records under the³ Copyright Act of 1976, copyright is not immediately lost in a work published without notice, as was true under the 1909 Copyright Act. Copyright may be secured by registration before publication or within five years of publication. However, works published before January 1, 1978, are still governed by the notice provisions and regulations applicable under the 1909 Act, and it is important that this be reflected in the

¹Error; line should read:
"§§ 201.3, 201.7, 202.12, 202.14,
and 202.18."

²Error; line should read:
"regulations, to works published before"

³Error; line should read:
"copies or phonorecords under the"

regulations. Section 202.2 is amended to indicate that it is applicable only to works published before January 1, 1978. In a later proceeding we will propose regulations relating to the notice requirement for works first published on or after January 1, 1978.

Another change concerns the reference to works eligible for ad interim registration found in § 202.2(a)(3). Since the 1976 Act eliminated ad interim copyright, section 202.2(3) is amended to correct the⁴ implication that ad interim registration can still be made, but nevertheless retain its force for works first published abroad before January 1, 1978.

(5) *Pictorial, Graphic, and Sculptural Works*. Since the headings of §§ 202.10, 202.12, 202.14 and certain statements in them refer to classes of works under the 1909 Act, amendments are necessary to eliminate such references. The heading of § 202.10 is changed. Sections 202.12 and 202.14 are removed as such but their textural content is added to § 202.10.

(6) *Notice of Use*. The 1976 Act no longer requires the recordation of notices of use; therefore, § 202.18 is obsolete and is being removed.

All of the above amendments are simply technical or clarifying in nature. Their basic purpose is to correct technical deficiencies in the regulations; the changes are not substantive. Accordingly, these amendments are issued as final regulations effective July 1, 1981, without advance notice to the public.

PART 201—GENERAL PROVISIONS

Part 201 of 37 CFR Chapter II is amended:

§§ 201.3 and 201.7 [Removed].

1. By removing § 201.3 and § 201.7 in their entirety but reserving the numbers.

2. By revising § 201.9(b) to read as set forth below:

§ 201.9 **Recordation of agreements between copyright owners and public broadcasting entities.**

(a) * * *

(b) For a document consisting of six pages or less covering no more than one title, the basic recordation fee is \$10; an additional charge of 50 cents is made for each page over six and each title over one.

(c) * * *

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

Part 202 of 37 CFR Chapter II is amended:

§§ 202.12, 202.14, and 202.18 [Reserved].

1. By removing § 202.12, § 202.14 and § 202.18, but reserving the numbers.

2. By revising § 202.2 to read as follows:

§ 202.2 **Copyright notice.**

(a) *General.*

(1) With respect to a work published before January 1, 1978, copyright was secured, or the right to secure it was⁵ copyright, at the date of publication, i.e., the date on which copies are first placed on sale, sold, or publicly distributed, depending upon the adequacy of the notice of copyright on the work at that time. The adequacy of the copyright notice for such a work is determined by the copyright statute as it existed on the date of first publication.

(2) If before January 1, 1978, publication occurred by distribution of copies or in some other manner, without the statutory notice or with an inadequate notice, as determined by the copyright statute as it existed on the date of first publication, the right to secure copyright was lost. In such cases, copyright cannot be secured by adding the notice to copies distributed at a later date.

(3) Works first published abroad before January 1, 1978, other than works for which ad interim copyright has been obtained, must have borne an adequate copyright notice. The adequacy of the copyright notice for such works is determined by the copyright statute as it existed on the date of first publication abroad.

(b) *Defects in notice.* Where the copyright notice on a work published before January 1, 1978, does not meet the requirements of Title 17 of the United States Code as it existed on December 31, 1977, the Copyright Office will reject an application for copyright registration. Common defects in the notice include, among others the following:

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) * * *

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(7) * * *

(8) * * *

(9) * * *

(10) * * *

(11) * * *

3. By revising § 202.10 to read as follows:

§ 202.10 **Pictorial, graphic, and sculptural works.**

(a) In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form. The registrability of such a work is not affected by the intention of the author as to the use of the work or the number of copies reproduced. The potential availability of protection under the design patent law will not affect the registrability of a pictorial, graphic, or sculptural work, but a copyright claim in a patented design or in the drawings or photographs in a patent application will not be registered after the patent has been issued.

(b) A claim to copyright in a scientific or technical drawing, otherwise registrable as a pictorial, graphic, or sculptural work, will not be refused registration solely by reason of the fact that it is known to form a part of a pending patent application. Where the patent has been issued, however, the claim to copyright in the drawing will be denied copyright registration.

(c) A claim to copyright cannot be registered in a print or label consisting solely of trademark subject matter or lacking copyrightable matter. While the Copyright Office will not investigate whether the matter has been or can be registered at the Patent and Trademark Office, it will register a properly filed copyright claim in a print or label that contains the requisite qualifications for copyright even though there is a trademark on it. However, registration of a claim to copyright does not give the claimant rights available by trademark registrations at the Patent and Trademark Office.

Dated: June 23, 1981.

David Ladd,
Register of Copyrights.

Approved:

William J. Welsh,
The Acting Librarian of Congress.

[FR Doc. 81-19129 Filed 6-26-81; 8:45 am]

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⁴Error; line should read:
"202.2(a)(3) is amended to correct the"

⁵Error; line should read:
"secured, or the right to secure it was lost, except for works seeking ad interim"