



# ANNOUNCEMENT

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

## PROPOSED REGULATIONS

### REGISTRATION OF CLAIMS TO COPYRIGHT; REGISTRATION AND DEPOSIT OF DATABASES PROPOSED REGULATION

The following excerpt is taken from Volume 52, Number 192 of the Federal Register for Monday, October 5, 1987 (pp. 37167-37170)

#### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 202

[Docket No. RM85-4A]

#### Registration of Claims to Copyright; Registration and Deposit of Databases Proposed Regulations

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Proposed regulations.

**SUMMARY:** The Copyright Office of the Library of Congress issues this notice to advise the public that it is considering adopting a new regulation that would permit group registration of an automated database, including revisions and updates, 37 CFR 202.3(b)(4), and would make changes in existing regulations for the registration and deposit of databases. The proposed amendments would implement a portion of section 408 of the Copyright Act of 1976, title 17 of the U.S. Code. This section embodies the deposit requirements for copyright registration. These amendments would not only formalize the procedure now being used by the Copyright Office for the deposit and registration of databases but would

also permit the group registration of a single database and revisions and updates of the database, even though published at different times.

**DATES:** All comments should be received on or before December 4, 1987.

**ADDRESSES:** Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 287-8380.

**SUPPLEMENTARY INFORMATION:** Under the Copyright Act of 1976, Title 17, U.S. Code, copyright may ordinarily subsist<sup>1</sup> in an automated database either as an original compilation or as some other original work of authorship. Databases provide special problems for copyright deposit and examination, however, because many of them are constantly changing or the updates may consist of small increments of information. To the extent the basic database and the updates are copyrightable, questions arise as to how best to register the claims.

Under current practice, the Office essentially allows the claimant to determine how frequently to register updates of a database, but does not allow grouping of separately published updates on a single registration. Special relief provisions already provide some flexibility in deposit requirements. See H.R. Rep. 94-1476, 94th Cong., 2d Sess. 151 (1976). The specific provision relating to the registration of machine-readable databases is found in 37 CFR 202.20(c)(2)(vii)(B), while the special relief provision is § 202.20(d).

Pursuant to 17 U.S.C. 103, "copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material."

The Copyright Act of 1976 encourages registration by conferring special benefits on the registrant. Registration is a prerequisite to suit, 17 U.S.C. 411(a); if the registration is made before publication or within five years of first publication, the certificate of registration is *prima facie* evidence of the facts it states and of the validity of the copyright, 17 U.S.C. 410(c); and by registering the work within three months of the publication, the copyright owner

<sup>1</sup> Error; line should read:  
"the Copyright Act of 1976,  
title 17, U.S."

preserves the right to claim statutory damages and discretionary counsel fees. 17 U.S.C. 412.

Section 408 of the statute requires deposit of material in connection with applications for copyright registration of unpublished and published works. Subsection 408(c)(1) authorizes the Register of Copyrights to specify classes into which works may be placed for purposes of deposit and registration. One of the alternatives is "a single registration for a group of related works."

When the Copyright Office issued its 1978 deposit regulations, several comments requested special provisions for group registration of revisions and updates of automated databases. 43 FR 763 (January 4, 1978). At that time the Office invited 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 those cases. The possibility of providing for "a single registration for a group of related works," however, was "reserved for implementation in a separate proceeding," if any. 43 FR 965 (January 5, 1978). Whether to allow any group registrations is discretionary with the Copyright Office except in the case of certain published contributions to periodicals, 17 U.S.C. 408(c), and the Office has elected not to exercise this discretionary authority to date.

On February 14, 1985 (50 FR 6208), the Copyright Office requested public comment on proposed amendments to the regulations governing deposit. In their response to this request, the Association of American Publishers (AAP) and the Information Industry Association (IIA) commented specifically on the deposit and registration of databases. AAP stated that the Copyright Office should develop regulations to meet the problems of deposit for dynamic databases subject to regular revision, expansion, or other change. AAP proposed regulations that would permit a single "group" registration for varying versions (enhancements, updates, and other modifications) of a database, and related databases, published within a twelve-month period, or any lesser period within twelve months, on the basis of a single deposit and application. AAP also urged that deposit material reflect reasonable portions of output, rather than "raw data" or the like, and that the Office should relax deposit requirements in the case of successively ("group") registered revisions.

IIA also proposed the addition of a new regulation that would permit group registration of databases if certain conditions are met. The group registration would require that works have the same copyright claimant, the same general title, and similar general content, including subject and organization. If the works are published, each must bear a separate copyright notice as first published and have the same copyright owner, and the work or works must be first published within three months prior to registration.

IIA suggested that the deposit for databases cannot serve as documentation of the complete identity of the work's content, either to show the extent of registration or the entirety of the work. IIA recommended that relevant evidence in the examination of authorship would be documentary evidence of the continuing process of creation, hard copy extracts (for example, the first and last 25 pages), and the same direct online access as is offered the customer.

IIA also advocated the use of special relief that would allow the Register of Copyrights to "permit the deposit of identifying material which does not comply with § 202.21 of these regulations."

On June 10, 1985 (50 FR 24240), the Copyright Office published a Notice of Inquiry inviting public comment on the deposit requirements for machine-readable databases including revisions and derivative works based upon previously registered databases.

In response to this Notice of Inquiry, seven commentators submitted letters to the Copyright Office. Having reviewed both the original proposals and the comments, the Copyright Office has decided to propose group registration of certain databases and their updates. It invites comments on the details of the registration and deposit proposals.

### 1. Group Registration for Automated Databases

As noted in the original IIA proposal, 17 U.S.C. 408(c)(1) authorizes the Register of Copyrights "to specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration \* \* \*. The regulations may require or permit \* \* \* a single registration for a group of related works." Five of the commentators supported the group registration of databases; three emphasized the burden of registering under the present regulations, which require multiple registrations for dynamic databases. One commentator noted the virtual impossibility of registering their daily updates under the present regulations. The attorney for the Online Computer Library Center (OCLC) emphasized the uncertainty of what is

covered in the OCLC registrations, which are currently made on a monthly basis.

Three responses addressed what the minimum frequency period should be for the registration of group works. Initially IIA had supported a three month period on the grounds that it would "(1) spur claimants to register as soon as possible, so as to retain all of the remedies provided by the statute and (2) avoid unnecessary confusion, because three months is a period already of significance under the Act as the grace period under Section 412(2) for preserving all remedies for published works." AAP maintained its earlier position that called for a twelve-month registration period but noted that those who wished to register at three-month intervals should be permitted to do so. Dunn and Bradstreet also endorsed the twelve-month registration period.

On the basis of the comments received and its own analysis of the issues, the Copyright Office has concluded that it should permit a single group registration for varying updates of a database over a three month period of time. This group registration would be limited to a single automated database and its updates. The Copyright Office finds that sufficient factors such as size, complexity and technological characteristics, exist to distinguish the automated database from other groups of related works and that these factors justify group registration for automated databases under a certain set of facts, at least on an experimental basis. The Office has selected the three month registration period to encourage earlier registration, to be consistent with other statutory provisions in the nature of a grace period, and to keep the scope of the registration within manageable proportions for purposes of judicial review. Of course, claimants may elect to apply for group registration of databases more frequently than at three-month intervals. However, if claimants seek registration of updates covering more than a three-month period, then they cannot avail themselves of the group registration option, although they could register as a single work a particular version of a database on a given day.

The Copyright Office remains concerned about the administrative costs of processing and examining related works for a single fee. It will monitor the experience with database registrations under any final regulations and revisit the issue as necessary. Because of the serious concerns about processing costs and administrative burdens in the case of group registrations, the Office will apply the database regulation narrowly and will not now apply its discretionary authority to other related works.

2 Error; line should read:  
"763 (January 4, 1978). At that time the"

3 Error; line should read:  
"proceeding, " if any. 43 FR 965 (January"

The Office does not propose a special fee for group registration of a database and its updates. The normal \$10 application filing fee applies.

## 2. Deposit Based on Reasonable Portions of Output

Under current regulations governing registration for a single-file database, applicants deposit "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." In practice, "identifying portions" is equivalent to the first and last 25 pages.

Deposit for a multi-file database calls for representative portions of each file—50 data records or the entire file, whichever is less, plus a descriptive statement containing: The title of the database; the name and address of the copyright claimant; the name and content of each separate file within the database, including subject matter, origin of data and number of separate records within each file; for published databases, a description of the exact contents of any machine-readable

copyright notice used in or with the database (plus manner and frequency of display) and a sample of any visually perceptible copyright notice affixed to the copies or container. In the case of registration for revisions of a previously registered database, the required representative portions shall reflect the copyrightable changes.

The commentators urged that the Office not require the database deposit to serve as documentation of the complete identity of the work's content, either to show the extent of registration or the entirety of the work. Three commentators agreed with the IIA position that the focus of the deposit requirements should be on a deposit that would enable the Copyright Office to determine copyrightability. They agreed that a simplified deposit of identifying portions, e.g., the first and last 25 pages of a printout, should be sufficient.

The commentators did not agree, however, whether the deposit of identifying portions should disclose the raw data itself, or should reflect the "output" of the database.

With respect to updates, three commentators urged that the deposit should consist of a "descriptive statement" which incorporates by reference the material representations made to the Office at the time of the original registration. Then these commentators suggested that subsequent deposits should consist of new identifying material or a statement that the prior material is still representative of the database.

The Copyright Office has concluded, however, that the existing requirements for single, multi-file, and revised databases should not be reduced in the case of group registration of databases. The Office finds that, in order to determine copyrightability and develop an adequate administrative record for judicial review, it needs as much deposit material for the group registration of a database and its updates as it now receives for individual registration of databases. In summary these deposit materials are: (1) For a single-file database, 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; (2) for a multiple-file database or revised database, representative portions showing copyrightable content, accompanied by the requisite descriptive statement.

The Office therefore proposes to establish essentially a uniform set of deposit requirements, whether database registration is sought on a group basis, pursuant to the proposed new regulations, or is sought only for a given day's version of the database. The Office proposes to maintain the existing regulations, recast in form and modified as follows:

(1) For a revised database, the deposit material would be marked to show representative copyrightable changes and the descriptive statement would show the location generally of the remaining copyrightable changes, not disclosed in the deposit;

(2) For group registrations, the claimant would select a representative creation or publication date, depending on whether the work is unpublished or published, and deposit accordingly.

Current practice permits registration of encoded databases without a key or explanation of the code under the rule of doubt upon receipt of the copyright owner's written confirmation that the work as deposited represents copyrightable authorship. This practice will be maintained.

If an applicant is unable or unwilling to meet the deposit requirements because if trade secrets contained in the 5 work, the applicant can request special relief from these requirements.

Those who responded to the Notice of Inquiry did not address the special relief issue. In its original proposal of March 29, 1985, IIA supported adding an amendment to § 202.20 stating that the Register may "permit the deposit of identifying material which does not comply with § 202.21 of these regulations."

Section 202.21 establishes the general requirements for the deposit of identifying material instead of copies. In 1986, the special relief provision, § 202.20(d), was amended to allow waiver of the identifying material standards. 51 FR 6402. The special relief regulation provides sufficient recourse or those who are unable or unwilling to meet the deposit requirements. The Copyright Office will continue to consider special relief for databases that cannot meet the ordinary deposit requirements.

## 3. Copyrightability of Database Updates

For the typical automated database, consisting of a large volume of information or data, the Copyright Office can generally determine without much difficulty that the initial form or version of the database is a copyrightable work of original authorship. The determination that subsequent updates are also original works of authorship cannot be so readily made. Several different types of databases exist. Updates vary in content, nature, and frequency. In *Financial Information, Inc. v. Moody's Investor Service, Inc.*, 751 F.2d 501 (2d Cir 1984), 808 F.2d 204 (2d Cir. 1986), the Second Circuit held that the daily updates of bond rating information were not copyrightable.

In proposing group registration of automated databases and their copyrightable updates, the Copyright Office recognizes that it cannot determine by examination that each update in the group of updates registered at three months intervals is copyrightable at every point in time when information is added to the basic database. The Office seeks, however, to assure that *representative* portions of the changing database are deposited which disclose adequately the copyrightable content of the changes. The Office also provides in this proposal that the updates occurring within the three month period should be submitted for group registration only if they are individually copyrightable, that is, if each daily or less frequent update meets the statutory standard of original work of authorship.

Undoubtedly, this first administrative regulation of group registration is experimental. The Office will continue to monitor the emerging decisional law with respect to automated databases, will evaluate the administrative experience under any final regulation, and will reconsider the proper scope of, and conditions for, group registration of databases as appropriate.

With respect to the Regulatory Flexibility Act, the Copyright Office

4 Error; line should read:  
"day's version of the database. The"

5 Error; line should read:  
"because of trade secrets contained in the "

takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (Title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.<sup>1</sup>

#### List of Subjects in 37 CFR Part 202

Registration of claims to copyright, Claims to copyright, Copyright registration.

#### Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend Part 202 of 37 CFR, Chapter II.

#### PART 202—[AMENDED]

1. The authority citation for Part 202 would continue to read as follows:

**Authority:** Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §§ 202.19, 202.20 and 202.21 are also issued under 17 U.S.C. 407 and 408.

2. Section 202.3(b)(4) would be revised to read as follows:

#### § 202.3 [Amended]

\* \* \* \* \*

(b) \* \* \*  
(4) Group registration of automated databases.

(i) Pursuant to the authority granted by section 408(c)(1) of Title 17 of the United States Code, the Register of Copyrights has determined that a single registration, on the basis of a single application, deposit, and registration fee, may be made for automated databases and their updated, copyrightable versions if all of the following conditions are met:

(A) In cases where a database (or updates thereof), if unpublished, are fixed, or if published are published only in the form of machine-readable copies:

- (1) All of the updates are owned by the same copyright claimant;
- (2) All of the updates have the same collective title;
- (3) All of the updates are similar in their general content, including their subject;
- (4) All of the updates are similar in

their organization;

(5) Each of the updates, if published, bore a separate copyright notice as first published and the name of the owner of copyright in each work (or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner) was the same in each notice;

(6) Each of the updates, if published, was first published within a three-month period;

(7) Each of the updates, if unpublished, was created within a three-month period;

(8) The deposit accompanying the application complies with § 202.20(c)(2)(vii)(B).

(B) [Reserved for works other than automated databases].

(ii) Registration may be made for both a database published on a single date and for subsequent copyrightable updates of the earlier material, including added, incremental updates. An application for group registration of automated databases under section 408(c)(1) of Title 17 and this subsection shall consist of:

(A) A basic initial application for registration of an automated database on Form TX, which shall contain the information required by the form and its accompanying instructions;

(B) In the case of updates of a previously registered automated database, an adjunct form prescribed by the Copyright Office and designated "Adjunct Application for Registration of Updates of Automated Databases" (Form GR/DB), which shall contain the information required by the form and its accompanying instructions and shall comply with all the conditions of this subsection;

(C) A filing fee of \$10; and

(D) The deposit required by § 202.20(c)(2)(vii)(B).

3. Section 202.20(c)(2)(vii)(B) would be revised to read as follows:

#### § 202.20 [Amended]

\* \* \* \* \*

(c) *Nature of required deposit.*

(1) \* \* \*

(2) \* \* \*

(vii) \* \* \*

(B) For published and unpublished automated databases, 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 generally mean either the first and last 25 pages or equivalent units of the work if reproduced on paper or in microform.

(2) "Data file" and "file" shall mean a group of data records pertaining to a

common subject matter regardless of their size or the number of data items in them.

(3) If the work is an automated database comprising separate or distinct data files, "identifying portions" shall instead consist of 50 complete data records from each data file or the entire data file, whichever is less, and the descriptive statement required by paragraph (c)(2)(vii)(B)(4).

(4) In the case of a revised or updated version of a database, the claimant shall deposit identifying portions that contain 50 representative pages or equivalent units, or representative data records, which have been marked to disclose the copyrightable revisions added on at least one representative publication date if published or one representative creation date, if unpublished, and shall also deposit a brief typed or printed descriptive statement containing the notice of copyright information required under "(5)" or "(6)" immediately below and:

(i) The title of the database;

(ii) A subtitle, date of creation or publication, or other information, to distinguish any separate or distinct data files for cataloging purposes;

(iii) The name and address of the copyright claimant;

(iv) For each separate file, its name and content, including its subject, the origin(s) of the data, and the approximate number of data records it contains; and

(v) In the case of a revised or updated version of an automated database, information as to the nature and frequency of changes in the database and some identification of the location within the database or the separate data files of the copyrightable changes.

(5) For a copyright notice embodied in machine-readable form, the statement shall describe exactly the visually perceptible content of the notice which appears in or with the database, 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.).

(6) If a visually perceptible copyright notice is placed on any copies of the work (or on magnetic tape reels or containers therefor), a sample of such notice must also accompany the statement.

\* \* \* \* \*

Dated: September 17, 1987.

Ralph Oman,  
Register of Copyrights.

Approved by:  
James H. Billington,  
The Librarian of Congress.

[FR Doc. 87-22958 Filed 10-2-87; 8:45 am]

BILLING CODE 1410-07-M

<sup>1</sup> The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (*i.e.*, "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.