



ANNOUNCEMENT

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

FINAL REGULATIONS

REGISTRATION OF CLAIMS TO COPYRIGHT; GROUP REGISTRATION OF DAILY NEWSPAPERS

The following excerpt is taken from Volume 57, Number 170 of the Federal Register for Tuesday, September 1, 1992 (pp. 39615-39616)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 92-4]

Registration of Claims to Copyright; Group Registration of Daily Newspapers

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is adopting a new regulation that permits group registration of daily newspapers. Publishers of newspapers taking advantage of the new procedure will be allowed to register all issues of a given title published with issue dates in one calendar month on the basis of one application, a deposit of microfilm of the registered issues, and a fee of \$40. The amendments implement a portion of of the Copyright Act of 1976, relating to the deposit requirements for copyright registration.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION: Under the Copyright Act of 1976, 17 U.S.C. 407, the owner of copyright, or of the exclusive right of publication, in a work published in the United States is required to deposit two copies 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 the

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.

Section 408 of title 17 of the United States Code requires deposit of material in connection with applications for registration of claims to copyright in unpublished and published works. Subsection 408(c)(1) of title 17 of the United States Code authorizes the Register of Copyrights to establish by regulation the nature of the deposit that is required. These regulations may require or permit "a single registration for a group of related works."

In 1990, the Copyright Office implemented special procedures for group registrations of serials at 37 CFR 202.3(b)(5)(55 FR 50556). The new procedure covered weekly and monthly serials published within a three-month period. Serials published on a daily basis were not covered.

Shortly after the new procedure was implemented, the Newspaper Association of America approached the Copyright Office and the Library about establishing a group registration privilege for daily newspapers. Because of the expense of registering individual issues, currently most daily newspapers are not registered in the Copyright Office. While the lack of registration does not invalidate copyright, it does limit the availability of certain remedies should infringement occur.

The Library of Congress studied carefully the advantages of group registration from the standpoint of securing acquisitions to the collections. Currently, the Library purchases microfilm copies of selected daily newspapers. If these microfilm copies can be secured on a timely basis through copyright

deposit, a substantial cost savings will accrue to the Library.

With these considerations in mind, the Copyright Office is implementing group registration procedures for daily newspapers on the basis of a single application, fee, and microfilm deposit. The regulations and the new procedures will be applied prospectively only to the issues of newspapers first published on or after the effective date. New form GDN will be used to cover issues of the same newspaper title published with issue dates in one calendar month. The dates of publication space on the form must specify the first and last issue dates of the works covered by the group registration application.

The deposit must consist of positive, 35mm silver halide microfilm meeting the Library's best edition criteria that reproduces in their entirety all issues published as final editions with issue dates in the designated calendar month. While the final edition of the daily newspapers must be included in the microfilm deposit, the claim to copyright and the deposit may also include earlier editions published the same day in a given metropolitan area served by the newspaper. The privilege of including these earlier editions does not apply, however, in the case of national or regional distribution beyond a given metropolitan area. Registration must be sought within three months from the date of publication of the last issue included in the group registration application.

The fee for the registration service is a nonrefundable filing fee of \$40, which is the approximate cost of providing the service.

The regulation is issued without inviting public comment for these reasons: The regulation confers a positive benefit on the public affected; the regulation establishes an optional procedure only; and the Copyright

Office prepared the regulation based on its experience in administering group registration of serials.

With respect to the Regulatory Flexibility Act, the Copyright Office 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 a 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 (5 U.S.C. 551 et seq. and 5 U.S.C. 701 et seq.) 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.¹

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small business.

List of Subjects in 37 CFR Part 202

Claims, Copyright, Newspapers and Magazines.

Final Regulations

In consideration of the foregoing, the Copyright Office is amending part 202 of 37 CFR, chapter II in the manner set forth below.

PART 202 - [AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: Section 702, 90 Stat. 2541, 17 U.S.C. 702; 202.3 is also issued under 17 U.S.C. 407 and 408.

§ 202.3 [Amended]

2. In § 202.3 paragraphs (b)(6) and (7) are redesignated as paragraphs (b)(7) and (8) respectively.

3. Section 202.3(b)(6) is added to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(6) *Group registration of daily newspapers.*

(i) Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that, on the basis of a single application, microfilm deposit, and filing fee, a single registration may be made for a group of daily newspapers published in a microfilm format if the following conditions are met:

(A) Registration covers a full month of issues of the same newspaper title published with issue dates in one calendar month.

(B) A completed GDN application form is submitted.

(C) A publication date is specified designating the first and last day that issues in the group were published.

(D) A deposit is made of positive, 35mm silver halide microfilm meeting the Library's best edition criteria that includes all issues

published as final editions in the designated calendar month. In addition to the final edition of the daily newspaper, the claim to copyright and the deposit may also include earlier editions published the same day in a given metropolitan area served by the newspaper, but may not include national or regional editions distributed beyond a given metropolitan area.

(E) A nonrefundable filing fee of \$40 is included with the submission, or charged to an active deposit account.

(F) Registration is sought within three months after the publication date of the last issue included in the group.

(ii) As used in this regulation, newspapers means serials which are classified as newspapers under the policy document "Newspapers Received Currently in the Library of Congress," which is administered by the Newspaper Section of the Serials & Government Publications Division of the Library of Congress. In general, serials classified as newspapers are serials mainly designed to be a primary source of written information on current events, either local, national, or international in scope. A newspaper contains a broad range of news on all subjects and activities and is not limited to any specific subject matter. Newspapers are intended either for the general public or for a particular ethnic, cultural, or national group.

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Dated: August 5, 1992.

Ralph Oman,
Register of Copyrights.

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

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Billing Code 1410-07-F

¹The 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.