

Announcement

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

PROPOSED RULEMAKING

METHODS OF AFFIXATION AND POSITION OF THE COPYRIGHT NOTICE

The following excerpt is taken from Volume 42, No. 247 of the Federal Register for Friday, December 23, 1977 (pp. 64374-8).

[1410-03]

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 77-14]

METHODS OF AFFIXATION AND POSITIONS OF THE COPYRIGHT NOTICE

Proposed Rulemaking

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking is issued to inform the public that the Copyright Office of the Library of Congress is considering adoption of a new regulation implementing section 401(c) of the Act for General Revision of the Copyright Law. That section directs the Register of Copyrights to "prescribe by regulation, as examples, specific methods of affixation and positions of the copyright notice on various types of works" that will satisfy the requirement that the copyright notice "be affixed to the copies in such manner and location as to give reasonable notice of

the claim of copyright." The effect of the proposed regulation is to provide examples of methods of affixation and positions for the guidance of persons seeking to affix the notice in a manner and location that will comply with the statutory requirements.

DATES: All comments should be received on or before January 20, 1978.

ADDRESSES: Interested persons should submit five copies of the written comments, if by mail to: Office of the General Counsel, Copyright Office, Library of Congress, Caller No. 2999, Arlington, Va. 22202; or if by hand to: Office of the General Counsel, Copyright Office, Library of Congress, Room 519, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va. 22202.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:
Section 401 of the first section of Pub. L.

94-553 (90 Stat. 2541) establishes the basic requirements for the notice of copyright to appear on "visually-perceptible copies."¹ Section 401(a) provides generally² that:

¹ The requirements for the copyright notice to appear on "phonorecords of sound recordings" are contained in section 402, a provision to some extent paralleling section 401. Subsection (c) of section 402 provides that "the notice shall be placed on the surface of the phonorecord, or on the phonorecord label or container, in such manner and location as to give reasonable notice of the claim of copyright." Unlike section 401, section 402 contains no provision under which the Register of Copyrights is called upon to issue regulations setting forth methods of affixation and positions of notice on various types of sound recordings. This proposed rule therefore deals only with notices under section 401: That is, notices on "publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device." It should be noted that the notice requirements of section 402 apply only to sound recordings considered as copyrightable works in themselves; for musical, dramatic, and literary works that are issued to the public in the form of phonorecords, there is no requirement for a copyright notice to appear on the phonorecords.

Whenever a work protected under this title is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section shall be placed on all publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device.

Subsection (b) of section 401 sets out the required form of notice for visually perceptible copies (generally, the symbol "©," the word "Copyright," or the abbreviation "Copr.," the year of first publication, and the name of the owner of copyright).

"Position of notice" is dealt with in section 401(c). It provides:

The notice shall be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright. The Register of Copyrights shall prescribe by regulation, as examples, specific methods of affixation and positions of the notice on various types of works that will satisfy this requirement, but these specifications shall not be considered exhaustive.

In commenting on this subsection, both legislative reports on the Copyright Act of 1976⁸ declared:

By providing simply that the notice "shall be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright," subsection (c) follows the flexible approach of the Universal Copyright Convention. The further provision empowering the Register of Copyrights to set forth in regulations a list of examples of "specific methods of affixation and positions of the notice on various types of works that will satisfy this requirement" will offer substantial guidance and avoid a good deal of uncertainty. A notice placed or affixed in accordance with the regulations would clearly meet the requirements but, since the Register's specifications are not to "be considered exhaustive," a notice placed or affixed in some other way might also comply with the law if it were found to "give reasonable notice" of the copyright claim.

The provision of the Universal Copyright Convention ("U.C.C.") referred to in the legislative reports is found in paragraph 1 of Article III of the Convention signed at Geneva in 1952 (and revised without change on this point at Paris in 1971). This paragraph reads as follows:

1. Any Contracting State which, under its domestic law, requires as a condition of copyright, compliance with formalities such as deposit, registration, notice, notarial certificates payment of fees or manufacture or publication in that Contracting State, shall regard these requirements as satisfied with

⁸This general requirement for notice of copyright on visually-perceptible copies is expanded by section 403, dealing with publications incorporating United States Government works; it is also amplified by section 404, with respect to contributions to collective works, and it is qualified by sections 405 and 406, which concern omissions and errors in notice.

⁸S. Rep. No. 94-473, 94th Cong., 1st Sess., Nov. 20, 1975, at 127; H.R. Rep. No. 94-1476, 94th Cong., 2d Sess., Sept. 3, 1976, at 144.

respect to all works protected in accordance with this Convention and first published outside its territory and the author of which is not one of its nationals, if from the time of the first publication all the copies of the work published with the authority of the author or other copyright proprietor bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.

The legislation enacted in 1954 to permit U.S. adherence to the U.C.C. (68 Stat. 1030, effective September 16, 1955) amended section 9 of the Copyright Code (17 U.S.C.) to allow use of the flexible U.C.C. notice on copies of foreign works qualifying under the Convention.

In 1957 the second session of the Intergovernmental Copyright Committee (established under Article XI of the Universal Copyright Convention) adopted an "Advisory Statement" expressing the view that the following positions of the copyright notice would generally satisfy the provisions of Article III, paragraph 1, of the Convention:

In the case of *books or pamphlets*, on the title page or the page immediately following, or at the end of the book or pamphlet, in the case of a *single sheet*, on either of the sides, in the case of *printed music*, on the title page or first page of music, or at the end of the printed music, in the case of *newspapers, magazines or other periodicals*, under the main title or the "masthead", in the case of *maps, prints, or photographs*, on their face side, either on the title or the margin) or on the margin, in the case of *independent parts of a whole* (if a separate copyright is claimed in the independent parts), under the title of the independent part, in the case of *motion pictures*, on the frames which carry its title (whether appearing at the beginning or the end) or *credits* * * *

This advisory opinion included, in its list of acceptable locations, all of the specific positions provided for U.S. works in the Copyright Code then in effect, and also included a number of other acceptable locations.

We propose to implement section 401(c) of the Act by adding a new § 201.20 to the regulations of the Copyright Office. Proposed § 201.20 includes as acceptable locations: (1) All of the locations specified in the U.S. copyright law in effect before 1978; (2) all of the locations listed in the IGC Advisory Opinion of 1957; and (3) additional examples. Based on the Copyright Office's experience in examining copyright notices as part of the registration system in effect since 1909, these additional examples represent an effort to identify methods of affixation and positions that will, in actual practice, give "reasonable notice of the claim of copyright."

Proposed regulation. We propose to amend Part 201 of 37 CFR, Chapter II by adding a new § 201.20 to read as follows:

*Records of the Second Session of the Intergovernmental Copyright Committee (IGC/II/25, 1957) at 19, 22.

§ 201.20 Methods of affixation and positions of the copyright notice on various types of works.

(a) *General.* (1) This section specifies examples of methods of affixation and positions of the copyright notice on various types of works that will satisfy the notice requirement of section 401(c) of title 17 of the United States Code, as amended by Pub. L. 94-553. A notice considered "acceptable" under this regulation shall be considered to satisfy the requirement of that section that it be "affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright." As provided by that section, the examples specified in this regulation shall not be considered exhaustive of methods of affixation and positions giving reasonable notice of the claim of copyright.

(2) The provisions of this section are only applicable to works first published on or after the effective date of this section. The adequacy of a copyright notice on works first published before such date shall be determined by the law in effect at the time of first publication.

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

(1) The terms "audiovisual works", "collective works", "copies", "device", "fixed", "machine", "motion picture", "pictorial, graphic, and sculptural works", and their variant forms, have the meanings given to them in section 101 of title 17.

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

(3) In the case of a work consisting preponderantly of leaves on which the work is printed or otherwise reproduced on both sides, a "page" is one side of a leaf; where the preponderance of the leaves are printed on one side only, the terms "page" and "leaf" mean the same.

(4) A work is published in "book form" if the copies embodying it consist of multiple leaves bound, fastened, or assembled in a predetermined order, as, for example, a volume, booklet, pamphlet, or multipage folder. For the purpose of this section, a work need not consist of textual matter in order to be considered published in "book form."

(5) A "title page" is a page, appearing at or near the front of the copies of a work published in book form, on which the complete title of the work is prominently stated and on which the names of the author or authors, the name of the publisher, the place of publication, or some combination of them, are given.

(6) The meaning of the terms "front," "back," "first," "last," and "following," when used in connection with works published in book form, will vary in relation to the physical form of the copies, depending upon the particular language in which the work is written.

(7) In the case of a work published in book form with a hard or soft cover, the "front page" and "back page" of the copies are the outsides of the front and back covers; where there is no cover,

*Error; line should read: "law if it were found to "give reasonable no-"

**Error; lines should read: "side, either on the actual map or picture (but somewhere near the title or the margin) or on"

***Error; line should read: "of textual matter in order to be con-"

the "front page," and "back page" are the pages visible at the front and back of the copies before they are opened.

(8) A "masthead" is a body of information appearing in approximately the same location in most issues of a newspaper, magazine, journal, review, or other periodical or serial, typically containing information about the staff, periodicity of issues, operation, and subscription and editorial policies, of the publication.

(9) A "single-leaf work" is a work published in copies consisting of a single leaf, including copies on which the work is printed or otherwise reproduced on either one side or on both sides of the leaf, and also folders which, without cutting or tearing the copies, can be opened out to form a single leaf. For the purpose of this section, a work need not consist of textual matter in order to be considered a "single-leaf work."

(c) *Manner of Affixation and Position Generally.* (1) In all cases dealt with in this section, the acceptability of a notice depends upon its being permanently legible to an ordinary user of the work, and affixed to the copies in such manner and position that it is not concealed from view upon reasonable examination. (2) Where, in a particular case, a notice does not appear in one of the precise locations prescribed in this section but a person looking in one of those locations would be reasonably certain to find a notice in another somewhat different location, that notice will be acceptable under this section.

(d) *Works Published in Book Form.* In the case of works published in book form, a notice reproduced on the copies in any of the following positions is acceptable:

- (1) The title page, if any;
- (2) The page immediately following the title page, if any;
- (3) Either side of the front cover, if any; or, if there is no front cover, either side of the front page of the copies;
- (4) Either side of the back cover, if any; or, if there is no back cover, either side of the back page of the copies;
- (5) The first page of the main body of the work;
- (6) The last page of the main body of the work;
- (7) Any page between the front page and the first page of the main body of the work, if: (i) There are no more than ten pages between the front page and the first page of the main body of the work; and (ii) the notice is reproduced prominently and is set apart from other matter on the page where it appears;
- (8) Any page between the last page of the main body of the work and back page, if: (i) There are no more than ten pages between the last page of the main body of the work and the back page; and (ii) the notice is reproduced prominently and is set apart from the other matter on the page where it appears.

(9) In the case of a work published as an issue of a periodical or serial, in addition to any of the locations listed in paragraphs (d) (1) through (8) of this section, a notice is acceptable if it is located: (i) As a part of, or adjacent to, the masthead; or (ii) adjacent to a prominent heading, appearing at or near the front of the issue, containing the title of the periodical or serial and any combination of the volume and issue number and date of the issue.

(10) In the case of a musical work, in addition to any of the locations listed in paragraphs (d) (1) through (9) of this section, a notice is acceptable if it is located on the first page of music.

(e) *Single-Leaf Works.* In the case of single-leaf works a notice reproduced on the copies anywhere on the front or back of the leaf is acceptable.

(f) *Contributions to Collective Works.* For a separate contribution to a collective work to be considered to "bear its own notice of copyright," as provided by 17 U.S.C. 404, a notice reproduced on the copies in any of the following positions is acceptable:

(1) Where the separate contribution is reproduced on a single page, a notice is acceptable if it appears: (i) Under the title of the contribution on that page; (ii) adjacent to the contribution; or (iii) on the same page if, through format, wording, or both, the application of the notice to the particular contribution is made clear;

(2) Where the separate contribution is reproduced on more than one page of the collective work, a notice is acceptable if it appears: (i) Under a title appearing at or near the beginning of the contribution; (ii) on the first page of the main body of the contribution; (iii) immediately following the end of the contribution; or (iv) on any of the pages where the contribution appears, if: (A) The contribution is reproduced on no more than twenty pages of the collective work; (B) the notice is reproduced prominently and is set apart from other matter on the page where it appears; and (C) through format wording, or both, the application of the notice to the particular contribution is made clear;

(3) Where the separate contribution is a musical work, in addition to any of the locations listed in paragraphs (f) (1) and (2) of this section, a notice is acceptable if it is located on the first page of music of the contribution;

(4) As an alternative to placing the notice on one of the pages where a separate contribution itself appears, the contribution is considered to "bear its own notice" if the notice appears clearly in juxtaposition with a separate listing of the contribution by full title and author: (i) On the page bearing the copyright notice for the collective work as a whole, if any; or (ii) in a clearly-identified and readily-accessible table of contents or listing of acknowledgments appearing near the front or back of the collective work as a whole;

(g) *Works Reproduced in Machine-Readable Copies.* For works reproduced in machine-readable copies (such as magnetic tapes 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,⁶ the following constitute examples of acceptable methods of affixation and position of the notice:

(1) A notice embodied in the copies in machine-readable form in such a manner that on visually perceptible printouts it appears either with or near the title, or at the end of the work;

(2) A notice that is displayed at the user's terminal at sign on;

(3) A notice that is continuously on terminal display;

(4) A permanently legible notice reproduced on a gummed or other label securely affixed to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copies.

(h) *Motion Pictures and Other Audio-visual Works.* The following constitute examples of acceptable methods of affixation and positions of the copyright notice on motion pictures and other audiovisual works: A notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it appears whenever the work is performed in its entirety, and that is located: (i) With or near the title; (ii) with the cast, credits, and similar information; (iii) at or immediately following the beginning of the work; or (iv) at or immediately preceding the end of the work.

(i) *Pictorial, Graphic, and Sculptural Works.* The following constitute examples of acceptable methods of affixation and positions of the copyright notice on various forms of pictorial, graphic, and sculptural works:

(1) Where a work is reproduced in two-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise permanently secured to the front or back of the copies, or to any backing, mounting, matting, framing, or other material to which the copies are permanently attached or in which they are permanently housed, is acceptable;

(2) Where a work is reproduced in three-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise permanently secured to any visible portion of the work, or to any base, mounting, framing, or other material on which the copies are permanently attached or in which they are permanently housed, is acceptable.

(3) Where, because of the size or physical characteristics of the material in which the copies are reproduced, it is impossible or extremely impracticable to

⁶ 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.

*Error; line should read: "same location in most issues of a news-"

**Error; line should read: "scription and editorial policies, of the"

affix a notice to the copies directly or by means of a permanent label, a notice is acceptable if it appears on a tag that is of durable material and that is attached to the copy with sufficient permanency that it will remain with the copy during the entire time it is passing through its normal channels of commerce.

(4) Where a work is reproduced in copies consisting of sheet-like or strip material bearing multiple or continuous reproductions of the work, the notice may be applied: (i) To the reproduction itself; (ii) to the margin, selvage, or reverse side of the material at frequent and regular intervals; or (iii) if the material contains neither a selvage nor a reverse side, to tags or labels attached to the copies and to any spools, reels, or containers housing them in such a way that a notice is visible during the entire time the copies are passing through their normal channels of commerce;

(5) If the work is permanently housed in a container, such as a game or puzzle box, a notice reproduced on the permanent container is acceptable.

(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: secs. 401, 702.)

Dated: December 15, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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