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.


FOR FURTHER INFORMATION CONTACT:

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 "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 or under the authority of the owner, a notice of copyright as provided by this section shall be placed on all publicly distributed copies from which the work can be readily copied, 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 "©" is attached to the year of publication, the name of the owner of copyright, and the notice shall be affixed to copies of the work in accordance with the provisions of Article 11 of the Universal Copyright 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, photographs, on the frames which carry the title and positions specifically indicated on the regulations of the Copyright Office, the name of the owner, the date of publication and the name and address of the publisher, in the case of a single sheet, on either of the sides, 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 frame which carries the name of the claim of copyright (whether appearing at the beginning or the end) or credits.**

This advisory opinion included, in its list of acceptable locations, the specific provisions 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 acceptable locations: (1) All of the locations specified in the U.S. copyright law in effect before 1976; (2) all of the locations listed in the "Advisory Statement," Opinion 46 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:

§ 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."

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

(1) The term "audiotrivial works," "moving works," "beats and percussion," "fixed," "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 embody it consist of multiple leaves bound, fastened, or assembled in a predetermined order, as, for example, a volume, booklet, pamphlet, or multiple page 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, 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 "front page" of the copies are the outside of the front and back covers; where there is no cover, the front page is the title page.

*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-"
(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 can be read from a distance 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, 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 last page of the main body of the work, if: (1) There are no more than ten pages between the front page and the first page of the main body of the work; and (2) 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: (1) 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 other matter on the page where it appears.

(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 otherwise be visually perceived except with the aid of a machine or device, 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 it is 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 any box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copies.

(h) Motion Pictures and Other Audiovisual Works. The following constitute examples of acceptable methods of affixation and position 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: (1) With or near the title; (2) 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 position 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 binding, mounting, 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

*Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, microstrips, 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.)


BARBARA RINGER
Register of Copyrights.

Approved:
DANIEL J. BOORSTIN
Librarian of Congress.

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