



ANNOUNCEMENT

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

PROPOSED RULE

STATEMENTS IDENTIFYING ONE OR MORE AUTHORS OF AN ANONYMOUS OR PSEUDONYMOUS WORK; STATEMENTS OF THE DATE OF DEATH OF AN AUTHOR, OR THAT AN AUTHOR IS STILL LIVING; REGISTRY OF VITAL INFORMATION CONCERNING AUTHORS

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LIBRARY OF CONGRESS

Copyright Office
[CFR Part 201]

[Docket RM 79-1]

Statements Identifying One or More Authors of an Anonymous or Pseudonymous Work; Statements of the Date of Death of an Author, or That an Author is Still Living; Registry of Vital Information Concerning Authors

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rule.

SUMMARY: The purpose of this notice is to inform the public that the Copyright Office of the Library of Congress is considering the adoption of regulations to implement section 302 of the Copyright Act of 1976 (17 U.S.C. 302). That section provides for the recording in the Copyright Office of two types of statements: (1) statements revealing the identity of particular authors of anonymous and pseudonymous works; and (2) statements as to whether particular authors are still living and, if the date of the authors' deaths. The effect of filing a statement of the first type may be to change the basis for calculating the term of copyright protection of works by the particular author, and thus to change the duration of copyright in those works. The effect

of filing a statement of the second type may be to deprive potential users of a copyrighted work of a statutory presumption, under which a particular author is presumed to have been dead for at least fifty years. The proposed regulation establishes requirements governing the form, content, and recordation of statements filed under section 302 of the Copyright Act, sets forth the persons entitled to file these statements, and establishes a special registry of these statements and of other vital information concerning authors.

DATES: Initial comments should be received on or before October 1, 1979. Reply comments should be received on or before October 15, 1979.

ADDRESSES: Interested persons should submit five copies of their written comments, if by mail, to: Office of the General Council, Copyright Office, Library of Congress, Caller No. 2999, Arlington, Virginia 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, Virginia.

Copies of all comments received will be available for inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, in the Public Information Office of the Copyright Office, Room No. 101, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel,

Copyright Office, Library of Congress, Washington, D.C. 20559, (703) 557-8731.

SUPPLEMENTARY INFORMATION:

1. The Basic Statutory Term of Copyright

The Copyright Act of 1976 (title 17 of the United States Code, 90 Stat. 2541) establishes a new system for computing the length of the copyright term for two types of works: (1) works created on or after January 1, 1978; and (2) works created before January 1, 1978, but neither published nor copyrighted before that date. The basic copyright term for both of these types of works¹ is the life of the author and fifty years after the author's death; for works of joint authorship the term ends fifty years after the death of the last surviving author. There are three major exceptions to this general rule of basing the copyright term on the life of the author: (1) anonymous works;² (2) pseudonymous works,³ and (3) works

¹ The basic term for works created on or after January 1, 1978, is provided in section 302 of the Act (17 U.S.C. § 302). The term for works created but neither published nor copyrighted before 1978 is provided in section 303 (17 U.S.C. § 303). Section 303 also establishes minimum terms of protection for the works it covers: copyright in a work created but not in the public domain or copyrighted before 1978 will last at least until the end of 2002, and if the work is published between 1978 and 2002 the copyright will last through 2027.

² An "anonymous work" is defined in section 101 of the Copyright Act (17 U.S.C. § 101) as "a work on the copies or phonorecords of which no natural person is identified as author."

³ A "pseudonymous work" is defined in section 101 of the Act (17 U.S.C. § 101) as "a work on the copies or phonorecords of which the author is identified under a fictitious name."

made for hire. For works of these three types—that is, works whose authorship is not revealed or whose “author” is not an individual—section 302(c) of the statute establishes a term of 75 years from publication or 100 years from creation, whichever is shorter.

2. Converting the Term of Anonymous and Pseudonymous Works

Section 302(c) of the Act (17 U.S.C. § 302(c)) establishes a procedure for converting the 75- and 100-year terms for anonymous and pseudonymous works to the ordinary life-plus-fifty-years term by disclosing the author's identity in certain records of the Copyright Office. The statute provides: “If, before the end of [the 75- or 100-year] term, the identity of one or more of, the authors of an anonymous or pseudonymous work is revealed in the records of a registration made for that work under subsections (a) or (d) of section 408, or in records provided by this subsection, the copyright in the work endures for [the standard term of life-plus-fifty years], based on the life of the author or authors whose identity has been revealed.”

Thus, under the statute, there are three places where revealing the identity of one or more authors of an anonymous or pseudonymous work will change the length of the copyright term: (1) in the records of copyright registration for the work under section 408(a) of the statute and section 202.3 of the Copyright Office Regulations; (2) in the records of a supplementary registration for the work under section 408(d) of the statute and section 201.5 of the Copyright Office Regulations; and (3) in special records established under section 302(c) of the statute and the regulations proposed in this notice of proposed rulemaking. With respect to these special records, section 302(c) of the statute provides: “Any person having an interest in the copyright in an anonymous or pseudonymous work may at any time record, in records to be maintained by the Copyright Office for that purpose, a statement identifying one or more authors of the work; the statement shall also identify the person filing it, the nature of that person's interest, the source of the information recorded, and the particular work affected, and shall comply in form and content with requirements that the Register of Copyrights shall prescribe by regulation.”

This notice proposes the addition of a new § 201.21 to the Regulations of the Copyright Office, to establish requirements governing the form, content, and recordation of these statements, and setting forth the persons entitled to file them.

3. Records and Presumption as to Author's Death

Subsections (d) and (e) of section 302

of the Copyright Act are intended to deal with the practical problem of computing the term of copyright for works by authors who, although identified by name, are obscure or unknown. Since works of this sort are not “anonymous” or “pseudonymous,” the length of the copyright term must be based on the date of the author's death, but this date may be difficult to establish where biographical information is scanty or lacking. Section 302 seeks to answer this problem in two ways: by setting up in the Copyright Office a registry of vital information concerning authors, and by establishing presumptions concerning the date of an author's death that can be relied on in the absence of contrary information in the Copyright Office's records.

Specifically, section 302(d) provides: “any person having an interest in a copyright may at any time record in the Copyright Office a statement of the date of death of the author of the copyrighted work, or a statement that the author is still living on a particular date.” The form and content of the statement is to comply with Copyright Office Regulations, and the statement must identify “the person filing it, the nature of that person's interest, and the source of the information recorded.” The Register of Copyrights is made responsible for maintaining “current records of information relating to the death of authors of copyrighted works,” based on the recorded statements and also, “to the extent the Register considers practicable, on data contained in any of the records of the Copyright Office or in other reference sources.”

Section 302(e) ties these Copyright Office records in with a presumption concerning the date of an author's death. After a stated period—75 years from publication or 100 years from creation, whichever occurs earlier—anyone who obtains certification from the Copyright Office that its records show nothing to indicate that the author is living or died less than 50 years before, is entitled to rely on a presumption that the author has been dead for more than 50 years. Thus, assuming that it is the lifespan of the author in question that controls the length of the copyright, anyone who in good faith relies on this presumption can use the work as if it is in the public domain and will have a “complete defense to any action for infringement.”

This notice proposes to include in the new § 201.21 of the Regulations of the Copyright Office, to be issued under section 302(c) of the statute, additional requirements governing the form, content, and recordation of statements filed under section 302(d), and setting forth the persons entitled to file them.

4. Copyright Office Registry of Vital Information Concerning Authors

Both subsection (c) and (d) of section 302 require the Copyright Office to

establish and maintain records concerning the identity and dates of death of authors, based upon the statements recorded under those subsections. Subsection (d) also gives the Register of Copyrights discretionary authority to compile obituary data from other Copyright Office records and general reference sources. This notice proposes including, in the new § 201.21 of the Regulations of the Copyright Office, a provision establishing a special registry for these purposes, describing its organization and scope, and setting forth conditions governing the issuance of certified reports under section 302(e). The word “vital” in the name of the registry is intended to have the same meaning as in the phrase “vital statistics,” namely, information about the identity, lifespan, and death of authors.

5. Specific Issues Raised by Proposed Regulations

a. Persons entitled to file. Both subsections (c) and (d) of section 302 of the statute give the right to file the statements referred to in those subsections to “any person having an interest in the copyright.” The legislative history of section 302 casts little or no light on the intended scope of this phrase, and it might be argued that, in a sense, a potential user wishing copyright restrictions on a work to end as soon as possible has “an interest in the copyright.” However, the use of the term “interest” elsewhere in the copyright statute (sections 203, 304, 501(b), 602(b), and 603(b)) suggests a narrower interpretation, involving at least some right in the nature of a property right under the copyright. Moreover, where there has been a deliberate decision to conceal the author's identity by anonymous or pseudonymous publication, it is certainly arguable that only someone with a significant property interest in the copyright should be able to disclose the author's identity and thereby change the term of protection in a given work. The phrase “any person having an interest in the copyright” is used in parallel provisions in subsections (c) and (d) of section 302, and should clearly be given identical interpretations.

Our proposed regulations adopt a fairly broad interpretation of “an interest,” encompassing beneficial ownership as well as legal title; partial as well as undivided rights; future, contingent, and conditional rights and expectancies as well as vested and absolute rights; and nonexclusive rights under a contract or license as well as exclusive rights under an assignment or absolute transfer. This interpretation is based on three conclusions: (1) that a person must have some proprietary interest in a copyright to be entitled to file a statement under section 302 (c) and (d); (2) that a person having a

proprietary interest can be assumed to have some direct knowledge or access to direct knowledge about the author of the copyrighted work; and (3) that, as indicated in paragraph (c), below, no independent verification of the information given in a statement is necessary or appropriate.

We invite detailed comments on this interpretation, on the conclusions underlying it, and on the proposed regulations embodying it. Specifically: Is our interpretation of "interest" too broad or too narrow? Should nonexclusive licensees be entitled to file? Should persons with a nonproprietary "interest" in a copyright (that is, persons who want to use a copyrighted work and see an advantage in putting the identity or death date of the author on record under section 302 (c) or (d)) be entitled to file? If so, should there be any safeguards to ensure the validity of the information put on record? In this connection, we call attention to an alternative proposal involving verification of information in statements, which is outlined below in paragraph (c) and on which we would also appreciate comments.

b. Form and content of statements. The Copyright Office considered the possibility of providing standardized forms for the filing of statements under section 302 (c) and (d), but decided against it because of the many variables involved and the lack of any experience with records of this sort. We plan to review this decision later on, after we have had some opportunity to evaluate the system in operation and to determine whether the volume of work justifies the use of automated storage and retrieval techniques.

Under the proposed regulations, a statement would be required to include the name, address, and handwritten signature of the person signing it, together with a declaration attesting that the facts given are true to that person's best knowledge and belief.

One of the items specifically required to be included in statements filed under subsection (c) of section 302 is "the particular work affected"; our proposed regulations would permit more than one anonymous or pseudonymous work to be identified in a single statement, but would preclude the recordation of blanket statements (such as "Robert Rusk" is the real name of the author of all works listing the pseudonym "William Robinson" as author"; or "Richard Ian Blaney" is the author of all works published in the "Continental School of Gourmet Cooking" series"). Since subsection (d) of section 302 does not require identification of individual works, the proposed regulations would permit, but not require, identification of specific titles in connection with statements of dates of death or statements that particular authors are still living. However, since the person

filing the statement must have "an interest in a copyright," statements submitted under section 302(d) would have to identify the copyright or copyrights in which the person filing it has an interest.

The statute requires all statements to disclose the source of the information given, and the proposed regulations would require a clear statement of that source. A declaration that the source of the information is the personal knowledge of the person signing the statement would be acceptable, if accompanied by a description of how the personal knowledge was obtained. If the information is derived from documentary material (such as affidavits, death certificates, obituaries, etc.), the statement would be required to describe the material and to "give enough information about its nature, content, and location as fully to identify it." Alternatively, copies of the documentary material could be attached for recording with the statement, but would not be required in any case.

c. The Question of Verification. A point on which we are particularly anxious to have comments is the question of whether the Copyright Office should seek to verify—from its own records and from the vast body of reference information available in the library of Congress—the information given in the statement as filed. Should the regulations make clear that the Copyright Office will not seek to verify the factual accuracy of the information in any statement, and will merely put it on public record for whatever legal effect it is later determined to have? Alternatively, should the regulations permit, but not require, the Office to seek to verify the information, and to notify the person filing the statement of any conflicting or contrary information? Or should the Copyright Office be required to seek to verify the information in every case? Should the Office ever refuse to record a statement on the ground that the verification process has shown the information it gives to be untrue?

As indicated above in paragraph (a), our proposed regulations are based on an interpretation of the statute under which only persons having some sort of proprietary interest in a copyright can file statements; since persons with a proprietary interest can be assumed to have knowledge about the author, no verification is necessary. We also have doubts as to whether the Office should put itself in the position of undertaking verification as a routine matter in some or all cases. The proposed regulations would not preclude the Office from questioning the information in a document when there are valid reasons to do so. However, the Office would not be required to make searches for verification purposes as a condition of recording statements in any case; and,

even where the Office has raised questions, it could not refuse recordation if the person requesting recordation reaffirms the request.

In the course of our initial review of this whole question we considered the possibility of adopting a broader interpretation of the phrase "any person having an interest in the copyright," coupled with more rigid requirements concerning documentation and verification of the information being placed on record. Under this possible alternative, the provisions of the proposed regulations would still apply to statements filed by persons claiming and identifying some sort of proprietary interest in a copyright. However, the Office would also accept for recordation statements filed by persons having a nonproprietary "interest"—that is, some identifiable advantage or benefit deriving from the status of the copyright in a particular work. In most cases, of course, this "interest" would be in seeing the copyright end as soon as possible so that the work could be used without restrictions.

Assuming that the Office accepted statements from persons having nonproprietary "interests" of this sort, what should be the conditions for recordation? Under the alternative proposal, these statements would not only have to meet the requirements for statements signed by persons with proprietary interests, but would also have to include, as the source of the information given, identifiable and readily verifiable documentation. A mere declaration of personal knowledge would not be sufficient for this purpose. Under this alternative, the documentary material on which the information is based would have to be reproduced in the statement itself or would have to be clearly identified as to source, location, and content; and the Copyright Office would not record the statement in the registry without attempting to verify the information and making the results of this verification process a part of the record. We invite comments on this possible alternative approach.

d. The Registry of Information Concerning Authors. As we interpret section 302, the Copyright Office has a legal obligation to set up special registries consisting of statements filed under subsections (c) and (d), and may, in its discretion, expand "the information relating to the death of authors of copyrighted works" in the registry on the basis of other copyright, bibliographic, and general reference sources. It is arguable that the building up of obituary records by the Copyright Office itself is premature, since, under section 303 of the statute, no copyright term based on the life of the author will expire before the end of 2002. Nevertheless, we believe there may be cases where, even in advance of 2002, the death date of the author could be relevant information for various

purposes. And, in any case, we believe it would be simpler and more efficient to build these records contemporaneously rather than retrospectively. We are therefore proposing to establish a single registry for recording documents under both subsections (c) and (d) of section 302, and to identify, as part of the Copyright Office's obligation with regard to the registry, the building of obituary records concerning authors. We invite comments on this question, and we are particularly anxious to learn of bodies of information of this type already in existence.

e. Certified Reports under Section 302(e). Under section 302(d), the certified reports to be issued by the Copyright Office, on which presumptions as to authors' deaths can be based, will have no legal significance until the minimum term provided by section 303 expires at the end of 2002. However, it seems probable that in the meantime the Office will be requested to supply certified search reports of information in the special registry, and we have therefore included provisions to deal with requests of this sort in the proposed regulations. A point of particular concern is this: suppose the Office is asked for a certified report stating whether its records under section 302(d) contain any information on a particular author; let us say that no statements have been filed, but the Office's search of other records (including those of the Library of Congress) reveals information showing that the author died on a particular date. Should the Office add that information to the registry and then include it in the certified report, or should it certify only to the information that was in the registry on the date it received the request?

Proposed Regulation

In consideration of the foregoing, we propose to amend Part 201 of 37 CFR, Chapter II by adding a new § 201.21 to read as follows:

§ 201.21 Statements identifying one or more authors of an anonymous or pseudonymous work; statements of the date of death of an author, or that an author is still living; registry of vital information concerning authors.

(a) Recordation of Statements. (1) Any person having an interest in the copyright in an anonymous or pseudonymous work may record, in the Copyright Office Registry provided by paragraph (e) of this section, a statement identifying one or more authors of that work.

(2) Any person having an interest in a copyright in any work may record, in the Copyright Office Registry provided by paragraph (e) of this section, a statement of the date of death of a particular author of the work in which such person has an interest, or a

statement that such an author is still living on a particular date.

(b) Persons Entitled to File. For purposes of this section any of the following persons shall be considered to have an interest in the copyright in a work:

- (1) The author of the work; or
- (2) The spouse of the author of the work; or
- (3) The widow or widower or any of the children or grandchildren of the author of the work; or
- (4) Any legal or beneficial owner of an exclusive right under copyright in the work; or
- (5) Any person claiming a future, contingent, or conditional expectancy or right of ownership in the copyright in the work, under a will or trust or under the applicable laws of intestate succession; or

(6) Any person who, on the date the statement is executed, is the nonexclusive licensee of any rights under copyright in the work.

(c) Form and Contents of Statement.

(1) The Copyright Office does not provide printed forms for the use of persons recording statements under this section.

(2) Any statement submitted for recording under this section shall be accompanied by the fee prescribed by paragraph (d) of this section, and shall contain the information specified in this paragraph:

(i) The statement shall include the name, address, and handwritten signature of the person submitting the statement, together with the date on which the signature was affixed and a declaration that the facts attested to in the statement are true to the best knowledge and belief of the person signing it.

(ii) The statement shall include a full description of the nature of the interest of the person submitting the statement, clearly showing that the person comes within one of the categories specified in subsection (b) of this section. In the case of a statement of the date of death of an author, or a statement that the author is still living, the description shall include identification of one or more works by the author in question that are covered by a copyright in which the person filing the statement has an interest.

(iii) In the case of statements identifying the authorship of anonymous or pseudonymous works, the statement shall include a separate listing of the title of each such work affected, and the copyright registration number of each such work, if known. Blanket descriptions are not acceptable for this purpose. In the case of statements of the date of death of an author, or statements that the author is living, the identification of specific works, by title or otherwise, is not required (except to show the interest of the person filing the statement, as provided in paragraph

(c)(2)(ii) of this section); however, titles of copyrighted works by the author or authors covered by the statement may be included at the option of the person filing the statement.

(iv) In the case of statements identifying the authorship of anonymous or pseudonymous works, the statement shall clearly identify one or more authors of the work or works listed in accordance with paragraph (c)(2)(ii) of this section. Where the work was pseudonymous, the identification shall clearly relate the actual identity of the author to the fictitious name used as a pseudonym. The disclosure of the identity of one or more authors of an anonymous or pseudonymous work shall include at least the full legal name of the person or persons in question and should include whatever other biographical or bibliographical data is needed to leave the author's identity in no doubt. Such data may include, among other things, dates of birth and death, addresses, names of parents, and the titles of other works by the author in question.

(v) In the case of a statement of date of death of the author, the full date (month, day, and year) shall be given. In the case of a statement that the author is living on a particular date, the full date (month, day, and year) on which the author is clearly averred to be alive shall be given

(vi) In the case of all statements filed for recording under this section, the source of the information given (that is, the identify of the author, the date of the author's death, or the fact that the author is still living on a particular date, as the case may be) shall be clearly stated. If the source of the information is the personal knowledge of the person signing the statement, the statement shall so declare, and shall describe how that personal knowledge was obtained. If the source of the information is documentary (for example, published or unpublished reference works, bibliographical or biographical publications, news stories, obituary notices, books, articles, reports, manuscripts, public records, certificates, affidavits, etc.), the statement shall describe the documentary material in question and shall give enough information about its nature, content, and location as fully to identify it. Copies of documentary material may be included for recording with the statement as an alternative to describing the material in detail.

(d) *Recordation and Fee.* (1) Upon receipt of a statement which, on its face, appears to meet the requirements of this section, and which is accompanied by the fee prescribed in this subsection, the Copyright Office will record the statement in the Registry of Vital Information Concerning Authors, and will return the original statement to the sender with a certificate of record.

(2) As a general rule, the Copyright Office will not attempt to verify the information given in any statement recorded under this section, but will put it in the public record for whatever legal effect it may later be determined to have by a court of competent jurisdiction. The evidentiary weight, if any, to be given to any certificates, certified copies, or certified reports issued by the Copyright Office under this section shall similarly be a matter for judicial determination. The Copyright Office may, whenever it considers it appropriate and practicable, search its records and reference sources available in the Library of Congress with respect to information given in a statement, and may inform the person submitting the statement of the results of its search before completing recordation; however, the Copyright Office will not refuse recordation if the person submitting the statement reaffirms the request that it be recorded.

(3) For a statement consisting of six pages or less, listing no more than one title of a copyrighted work, the basic recordation fee is \$10; an additional charge of \$1 is made for each page over six and each title over one. Any documentary material attached to or incorporated in the statement will be considered a part of the statement in calculating the fee under this paragraph.

(e) *Copyright Office Registry of Vital Information Concerning Authors.* (1)

There is hereby established in the Copyright Office of the Library of Congress a Registry of Vital Information Concerning Authors, in accordance with section 302 of title 17 of the United States Code, as amended by Pub. L. 94-553.

(2) All statements recorded in the Copyright Office in accordance with paragraph (a) of this section shall be made a part of the public records of such special Registry, and all certified and uncertified copies of such records, and all certified reports concerning them, shall clearly identify them as being part of the Registry.

(3) On and after October 1, 1980, the Copyright Office will undertake to begin placing in the public records of the Registry information relating to the death of authors compiled from sources other than statements recorded under paragraph (a) of this section, as provided by section 302(d) of title 17 of the United States Code as amended by Pub. L. 94-553. Such information will be derived from Copyright Office records and catalogs, Library of Congress catalogs and bibliographic publications, and other primary and secondary biographical and bibliographical reference sources. No information concerning the death of an author will be made a part of the records of the

Registry unless it is supported by at least two documentary sources, and these sources will be clearly identified in the record in question. The information placed in the Registry under this paragraph will be maintained on a current basis and will be augmented as rapidly and as broadly as possible under existing staffing and budgetary constraints.

(4) In a case where the Copyright Office receives a request for a search of its records concerning the possible death of a particular author, if the records of the Registry contain no information on the point but, in the course of searching other records, the Office finds at least two documentary sources showing the date of the author's death, it shall add this information to the Registry in accordance with paragraph (e)(3) of this section and include this information in its search report.

(17 U.S.C. 302, 702, 705, 708(8)).

Dated: August 8, 1979.

Barbara Ringer,
Register of Copyrights.

Approved:
Daniel J. Boorstin,
The Librarian of Congress.

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