



ANNOUNCEMENT

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

NOTICE OF POLICY DECISION

MANDATORY DEPOSIT OF BOOKS AND OTHER PRINTED WORKS PUBLISHED WITH NOTICE OF COPYRIGHT IN THE UNITED STATES AFTER FIRST PUBLICATION ABROAD

The following excerpt is taken from Volume 45, Number 145 of the Federal Register for Friday, July 25, 1980 (pp. 49721-49723).

LIBRARY OF CONGRESS

Copyright Office

Policy Decision Regarding Mandatory Deposit of Books and Other Printed Works

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of policy decision.

Mandatory Deposit of Books and Other Printed Works Published With Notice of Copyright in the United States After First Publication Abroad

1. Background

Under section 407 of the Copyright Act of 1976, title 17 of the United States Code, as amended by Pub. L. 94-553 (90 Stat. 2541) (hereafter, the current Act), the owner of copyright or of the exclusive right of publication in a work published with notice of copyright in the United States must deposit two copies of the work (or, in the case of sound recordings, two phonorecords) in the Copyright Office (hereafter sometimes, the Office) for the use or disposition of the Library of Congress. The regulations of the Copyright Office may exempt certain categories of material from the mandatory deposit requirements or may require the deposit of only one copy or

phonorecord with respect to particular categories. 17 U.S.C. 407(c). Regulations implementing the mandatory deposit requirements of 17 U.S.C. 407 were published in the Federal Register on September 19, 1978 (43 FR 41975) and appear as 37 CFR 202.19.

The required deposit shall be made within three months after publication with notice in the United States. Failure to deposit does not affect the copyright in the work but may subject the owner* of copyright or owner of the right of publication to fines and other monetary liability if deposit is not made after a written demand for the required deposit has been issued by the Register of Copyrights.

The mandatory deposit requirement applies to works published with notice of copyright in the United States after first publication in a foreign country (hereafter referred to as "foreign works"). This seems clear from the language of section 407 of the current Act, which refers to a "work published with notice of copyright in the United States" without limiting the application of the section to works *first* published in the United States. The relevant congressional Reports explicitly confirm this interpretation of the Act:

Although the basic deposit requirements are limited to works "published with notice of copyright in the United States," they would

become applicable as soon as a work first published abroad is published in this country through the distribution of copies or phonorecords that are either imported or are part of an American edition. (S. REP. NO. 94-473, 94th Cong., 1st Sess. (1975) at 134 and H. * REP. NO. 94-1476, 94th Cong., 2d Sess. (1976) at 151.)

Deposit of copies under the authority of the copyright statutes for the enrichment of the collections of the Library of Congress has been a significant method of acquisitions for the Library since 1870. Under former statutes, the deposit requirement was linked to copyright registration. The current Act separates mandatory deposit for the use of the Library of Congress (17 U.S.C. 407) from copyright registration (17 U.S.C. 408), although it is possible to satisfy the mandatory deposit requirement at the time of registration.

With the coming into force of the current Act (effective January 1, 1978), the Register of Copyrights instituted a policy of comprehensive enforcement of the mandatory deposit requirements. This policy led to the issuance of written demands to deposit certain books and other printed works that appeared to have been published with notice of copyright in the United States. Many owners of copyright responded favorably to these demands and complied promptly. Occasionally,

*Error; line should read:
"in the work, but may subject the owner"

*Error; line should read:
"473, 94th Cong., 1st Sess. (1975) at 134 and H."

owners of copyright responded that the work had not been published in the United States. Other persons upon whom the demands were served stated that they were neither the owner of copyright nor of the right of publication; they asserted that the owners were foreign corporations or individuals. (Sometimes, these assertions were made even though the alleged foreign copyright owner appeared to be a subsidiary of an American corporation.) A few foreign copyright owners protested the application of the mandatory deposit provisions to their works, especially where periodicals were distributed through subscriptions rather than through publication of an "American edition." Some American publishers voiced concern that enforcement of the deposit requirements against foreign publishers could lead to retaliatory measures by foreign countries.

The legal questions that arose regarding the meaning of "publication" for purposes of 17 U.S.C. 407, identification of the proper owner of copyright or of the right of publication, or the difficulties of obtaining personal jurisdiction over foreigners, could have been resolved on a case-by-case basis depending upon the particular facts. However, in order to assess the overall policy issue regarding deposit of foreign works, the Office in the latter part of 1978 undertook a review of its mandatory deposit-demand policies. Pending this review, the Office decided to refrain from issuing written demands to require the deposit of books and other printed works published with notice of copyright in the United States, notwithstanding the clear statutory authority to demand deposit. The Office did not, however, either explicitly or by implication, exempt foreign works published with notice of copyright in the United States from mandatory deposit except where registration was made under 17 U.S.C. 408. The statutory obligation has not been altered by regulation or otherwise for unregistered

foreign works as a category. The Office merely decided to take no steps to enforce the obligation through written demands or by court action.

2. Policy Decision

The Office has now completed a review of the legal and policy issues that arose in the course of enforcement of the deposit requirements against foreign works in 1978. This review has included, among other points: an analysis of the legal deposit laws of representative foreign countries; an analysis of problems associated with obtaining personal jurisdiction of foreigners; consideration of our international copyright obligations under the Universal Copyright Convention; consideration of possible retaliatory actions by foreign governments; and consideration of the benefits to the Library of Congress and the United States public at large if the collections of the Library are enriched by acquisitions of foreign works under the mandatory deposit requirements.

The Copyright Office has decided to resume a policy of enforcing the deposit requirements against foreign books and other printed works published in the United States with notice of copyright since the statutory policy is clear, and the potential benefits to the Library of Congress of enforcing the mandatory deposit provisions against foreign works are large.

3. Legal Deposit Abroad

Legal deposit laws are common in foreign countries, but are usually restricted to books or similar printed publications. Usually, the deposit requirement forms a part of the copyright statute, or part of statutes governing libraries or education. Review of a representative sample of these statutes suggests that prima facie many could be applied to works of United States origin when they are published in the foreign country. Apparently, the deposit laws are loosely enforced

against foreigners or are interpreted narrowly. See, English Copyright Act of 1911, Sec. 15 *Copinger and Skone James on Copyright* (11th ed., 1971), para. 637, page 208, regarding the United Kingdom; the National Library Act of 1968-69, c. 47, s15 and SOR/69-400, *Canada Gazette*, Part II, Vol. 103, No. 16, August 27, 1969, regarding Canada; and *Copyright Law Revision Study No. 20*, "Deposit of Copyrighted Works," (House Committee print, 1960), pages 5-7, regarding France and Italy.

4. Impact on International Copyright Obligations and Relationships

The legal deposit requirement of section 407 of the current Act is consistent with our international copyright obligations under the Universal Copyright Convention since mandatory deposit is not a condition of copyright protection under the Act. Article III of the Convention specifies that certain formalities, including deposit, must be considered satisfied by use of the Convention copyright notice if the requirement is a condition of copyright. Paragraph 3 of Article III specifically provides that deposit with a court or administrative office or both may be required as a condition of seeking judicial relief, although failure to comply with the deposit requirement must not affect the validity of the copyright.

We intend to adopt a cautious approach in issuing written demands for deposit of foreign works, and will, in due course, review the results and experience under the policy here announced.

Dated: July 11, 1980.

David Ladd
Register of Copyrights.

Approved:
Daniel J. Boorstin
The Librarian of Congress

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*Error; line should read:
"works, especially where periodicals were"