



ANNOUNCEMENT

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

FINAL RULE

37 CFR Part 202

REGISTRATION OF CLAIMS TO RENEWAL OF COPYRIGHT

The following excerpt is taken from Volume 46, Number 232 of the Federal Register for Thursday, December 3, 1981 (pp.58671-3).

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket RM 77-17A]

Registration of Claims to Renewal of Copyright

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is adopting a final rule with respect to renewal registration practices and procedures under section 304(a) of the Copyright Act of 1976, title 17 of the United States Code. That section pertains to claims to renewal copyright in works for which first term copyright subsisted on January 1, 1978. The effect of the proposed regulation is to prescribe conditions for the registration of such claims to renewal copyright.

EFFECTIVE DATE: December 3, 1981.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

On October 6, 1981, there was published in the Federal Register (46 FR 49145) a notice of a proposed rule governing registration of claims to renewal copyright under section 304(a) of the Copyright Act of 1976, title 17 of

the United States Code. Interested persons were given 30 days in which to comment on the proposed rule.

One comment letter was received, which opposed adoption of that portion of the proposed rule governing renewal registration for works eligible for United States copyright under the Universal Copyright Convention (U.C.C.), as implemented in title 17 of the United States Code in effect on December 31, 1977. Specifically, the comment suggested that original term registration should be required for U.C.C. works as a condition for securing renewal term registration. The comment also objected to the provision for renewal registration for U.C.C. works without deposit of a complete copy, under certain circumstances.

The Copyright Office agrees that original term registration could be required for U.C.C. works, consistent with our U.C.C. obligations, as a condition precedent for renewal registration (not, of course, as a condition of protection for the original term itself). However, a comment submitted during an earlier phase of this rulemaking proceeding (Federal Register notice of January 5, 1978, 43 FR 964; see the discussion of this point at 46 FR 49146) argued that original term registration should not be required of any renewal claimant. While the Copyright Office rejected and continues to reject that contention, we concluded that some accommodation for U.C.C. works would be appropriate in view of the history and spirit of the U.C.C. and

the unfamiliarity of foreigners with our registration requirements.

The Copyright Office notes that the proposed rule clearly requires deposit of one complete copy, if available, to accompany a renewal claim for a U.C.C. work not registered for the original term. It is only if the deposit copy is *unavailable* that resort can be had to alternative forms of submission to substantiate the existence of the copyright. Rather than deal with such cases under the special relief provision of 37 CFR 202.20(d), the Office has proposed a specific rule as part of this renewal registration regulation. It is anticipated that the provision for alternative forms of submission will be invoked rarely.

The comment also suggested that the Office provide by regulation for acceptance of renewal applications by hand-delivery until twelve midnight on December 31. The Office in fact does make special arrangements for Library of Congress special police to accept renewal applications until midnight on December 31. However, these arrangements require the cooperation of staff not under the control of the Copyright Office, and we have decided not to specify such arrangements in a Copyright Office regulation.

Accordingly, the proposed rule is hereby adopted without change and is set forth below.

(17 U.S.C. 304, 205, 702, and 708) **

Dated: November 16, 1981.

*Error; line should read:
"The effect of the regulation is"

**Error; line should read:
"(17 U.S.C. 304, 305, 702, and 708)"

David Ladd,
Register of Copyrights.

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

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

Part 202 of 37 CFR, Chapter II, is amended by revising 202.17 to read as follows:

§ 202.17 Renewals.

(a) *General.* This section prescribes rules pertaining to the application for renewal copyright under section 304(a) of title 17 of the United States Code, as amended by Pub. L. 94-553.

(b) *Definition.* For purposes of this section, the term "posthumous work" means a work that was unpublished on the date of the death of the author and with respect to which no copyright assignment or other contract for exploitation of the work occurred during the author's lifetime.

(c) *Renewal Time-Limits.* (1) For works originally copyrighted between January 1, 1950 and December 31, 1977, claims to renewal copyright must be registered within the last year of the original copyright term, which begins on December 31 of the 27th year of the copyright, and runs through December 31, of the 28th year of the copyright. The original copyright term for a published work is computed from the date of first publication; the term for a work originally registered in unpublished form is computed from the date of registration in the Copyright Office. Unless the required application and fee are received in the Copyright Office during the prescribed period before the first term of copyright expires, the copyright in the unrenewed work terminates at the expiration of twenty-eight years from the end of the calendar year in which copyright was originally secured. The Copyright Office has no discretion to extend the renewal time limits.

(2) The provisions of paragraph (c)(1) of this section are subject to the following qualification: In any case where the year date in the notice on copies distributed by authority of the copyright owner is earlier than the year of first publication, claims to renewal copyright must be registered within the last year of the original copyright term, which begins on December 31 of the 27th year from the year contained in the notice, and runs through December 31 of the 28th year from the year contained in the notice.

(3) Whenever a renewal applicant has cause to believe that a formal application for renewal (Form RE), and

in the case of works under paragraph (d)(2) of this section, an accompanying affidavit and submission relating to the subsistence of first-term copyright, if sent to the Copyright Office by mail, might not be received in the Copyright Office before expiration of the time limits provided by 17 U.S.C., section 304(a), he or she may apply for renewal registration by telegraphic or similar unsigned written communication. An application made by this method only will be accepted if: (i) The message is received in the Copyright Office within the specified time limits; (ii) the applicant adequately identifies the work involved, the date of first publication or original registration, the name and address of the renewal claimant, and the statutory basis of the renewal claim; (iii) the fee for renewal registration, if not already on deposit, is received in the Copyright Office before the time for renewal registration has expired; and (iv) a formal application for renewal (Form RE), and in the case of works under paragraph (d)(2) of this section, an accompanying affidavit and submission relating to subsistence of the first-term copyright are also received in the Copyright Office before February 1 of the following year.

(d) *Original Registration.* (1) Except as provided by paragraph (d)(2) of this section, copyright in a work will not be registered for a renewal term unless an original registration for the work has been made in the Copyright Office.

(2) An original registration in the Copyright Office is not a condition precedent for renewal registration in the case of a work in which United States copyright subsists by virtue of section 9(c) of title 17 of the United States Code, in effect on December 31, 1977 (which implemented the Universal Copyright Convention) provided, however, that the application for renewal registration is accompanied by:

(i) An affidavit identified as "Renewal Affidavit for a U.C.C. Work" and containing the following information:

(A) The date of first publication of the work;

(B) The place of first publication of the work;

(C) The citizenship of the author on the date of first publication of the work;

(D) The domicile of the author on the date of first publication of the work;

(E) An averment that, at the time of first publication, all the copies of the work published under the authority of the author or other copyright proprietor bore the symbol c accompanied by the name of the copyright proprietor and the year of first publication, and that United States copyright subsists in the work;

(F) The handwritten signature of the renewal claimant or the duly authorized

agent of the renewal claimant. The signature shall (1) be accompanied by the printed or typewritten name of the person signing the affidavit and by the date of the signature; and (2) shall be immediately preceded by the following printed or typewritten statement in accordance with section 1746 of title 28 of the United States Code: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

(ii) A submission relating to the notice of copyright and copyrightable content which shall be, in descending order of preference, comprised of:

(A) One complete copy of the work as first published; or

(B) (1) A photocopy of the title page of the work as first published, and

(2) A photocopy of the page of the work as first published bearing the copyright notice, and

(3) A specification as to the location, relative to each other, of the title and notice pages of the work as first published, if the pages are different, and

(4) A brief description of the copyrightable content of the work, and

(5) An explanation of the inability to submit one complete copy of the work as first published; or

(C) A statement describing the position and contents of the copyright notice as it appeared on the work as first published, and a brief description of the copyrightable content. The statement shall be made and signed in accordance with paragraph (d)(2)(i)(F) of this section and shall also include an explanation of the inability to submit either one complete copy of the work as first published or photocopies of the title and notice pages of the work as first published.

(e) *Application for Renewal Registration.* (1) Each application for renewal registration submitted on or after January 1, 1978 shall be furnished on Form RE. Copies of Form RE are available free upon request to the Public Information Office, United States Copyright Office, Library of Congress, Washington, D.C. 20559.

(2) (i) An application for renewal registration may be submitted by any eligible renewal claimant as specified in paragraph (f) of this section or by the duly authorized agent of any such claimant.

(ii) An application for renewal registration shall be accompanied by a fee of \$6. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of: (A) A designation of whether the applicant is the renewal claimant, or the duly

*Error; line should read:
"bore the symbol c accompanied by the"

authorized agent of such claimant (whose identity shall also be given); (B) the handwritten signature of such claimant or agent, accompanied by the typewritten or printed name of that person; (C) a declaration that the statements made in the application are correct to the best of that person's knowledge; and (D) the date of certification.

(iii) In the case of an application for renewal registration for a foreign work protected under the U.C.C. which has not been the subject of an original copyright registration, the application shall be accompanied by a "Renewal Affidavit for a U.C.C. Work" and a submission relating to the notice of copyright and the copyrightable content in accordance with paragraph (d)(2) of this section.

(3) Once a renewal registration has been made, the Copyright Office will not accept a duplicate application for renewal registration on behalf of the same renewal claimant.

(f) *Renewal Claimants.* (1) Except as otherwise provided by paragraphs (f)(2) and (3) of this section, renewal claims may be registered only in the name(s) of the eligible person(s) falling within one of the following classes of renewal claimants specified in section 304(a) of the copyright law. If the work was a new version of a previous work, renewal may be claimed only in the new matter.

(i) In the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, the renewal claim

may be registered in the name of the proprietor;

(ii) In the case of any work copyrighted by a corporate body (otherwise than as assignees or licensees of the individual author) or by an employer for whom such work is made for hire, the renewal claim may be registered in the name of the proprietor; and

(iii) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the renewal claim may be registered in the name(s) of the following person(s) in descending order of eligibility:

(A) the author of the work, if still living;

(B) the widow, widower, or children of the author, if the author is not living;

(C) the author's executors, if there is a will and neither the author nor any widow, widower, or child of the author is living;

(D) the author's next of kin, in the absence of a will and if neither the author nor any widow, widower, or child of the author is living.

(2) The provisions of paragraph (f)(1) are subject to the following qualification: Notwithstanding the definition of "posthumous work" in paragraph (b) of this section, a renewal claim may be registered in the name of the proprietor of the work, as well as in the name of the appropriate claimant under paragraph (f)(1)(iii), in any case where a contract for exploitation of the work but no copyright assignment in the work has occurred during the author's

lifetime. However, registration by the Copyright Office in this case should not be interpreted as evidencing the validity of the claim.

(3) The provisions of paragraphs (f)(1)(iii)(C) and (D) of this section are subject to the following qualifications:

(i) In any case where: (A) the author has left a will which names no executor; (B) the author has left a will which names an executor who cannot or will not serve in that capacity; or (C) the author has left a will which names an executor who has been discharged upon settlement of the estate or removed before the estate has been completely administered, the renewal claim may be registered either in the name of an administrator cum testamento annexo (administrator c.t.a.) or an administrator de bonis non cum testamento annexo (administrator d.b.n.c.t.a.) so appointed by a court of competent jurisdiction;

(ii) In any case described in paragraph (f)(3)(i) of this section, except in the case where the author has left a will without naming an executor and a court appointed administrator c.t.a. or administrator d.b.n.c.t.a. is in existence at the time of renewal registration, the renewal claim also may be registered in the name of the author's next of kin. However, registration by the Copyright Office of the conflicting renewal claims in these cases should not be interpreted as evidencing the validity of either claim.

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