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

FINAL REGULATION

ACQUISITION AND DEPOSIT OF UNPUBLISHED TELEVISION TRANSMISSION PROGRAMS

The following excerpt is taken from Volume 48, Number 160 of the Federal Register for Wednesday, August 17, 1983 (pp. 37204-37210)

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For further information contact:

Supplementary information: Section 407(e) of the Copyright Act (title 17, United States Code) gives the Library of Congress authority to obtain copies of unpublished transmission programs which have been fixed and transmitted to the public in the United States. That authority may be exercised in two different ways: by making fixations of programs directly from transmissions to the public (off-the-air copying) and by demanding that copies be supplied by the owner of United States transmission rights.

Section 408(b) of the Copyright Act provides that copies acquired by the Library of Congress, under section 407(e) "otherwise than by deposit" may be used to satisfy the deposit requirement of the registration process.

On February 4, 1982, we published in the Federal Register (47 FR 3259) a notice of proposed rulemaking inviting written public comment and announcing a public hearing on our proposal to implement sections 407(e) and 408(b). In that notice we proposed the addition of one new section to the regulations of the Copyright Office, § 202.22, which set out procedures for both means of acquiring copies, stated rules for the disposition and use of such copies after their acquisition, and provided methods of using such copies as registration deposits. In addition, it permitted the Library of Congress to institutionalize the acquisition of such copies by agreement which might modify the provisions included.

Six written comments were received in response to the notice of proposed rulemaking, and representatives of two organizations who submitted written comments testified at the hearing held on March 24, 1982. After careful consideration, we have decided to make one major change in the proposed regulations, and to clarify several matters of concern expressed in the written comments and testimony.

1. Presumption of Unpublished Status: Two of the comments objected to the language of § 302.22(c)(4) which would have allowed the Library to presume that any television program transmitted to the public in the United States by a network or a noncommercial educational broadcast station (as defined in 47 U.S.C. 397) has been fixed but not published.

The Motion Picture Association of America (MPAA) contended that the presumption is inaccurate for most of the works produced by its members since most motion pictures appearing on television are published and as a matter of practice have been so registered with the Copyright Office. The MPAA also described 407(e) procedures as "redundant" with regard to its members who are signatories to the Motion Picture Agreement with the Library since, in signing the Agreement, MPAA members agree to deposit published motion pictures under either 17 U.S.C. 407 or 408 and, in fact, regularly register and deposit copies in the Copyright Office. The MPAA asserted that its
members automatically register their filmed entertainment as published works based on delivery of a print to a network for television exhibition, that they register films no later than the time of distribution for syndicated television exhibition, and that they regularly deposit theatrical motion pictures in their best edition. In sum, the MPAA asserts that the provisions of the Motion Picture Agreement, along with other deposit practices regularly followed by the industry, are sufficient to allow the Library to acquire the motion pictures of MPAA members; the Association therefore asks for a change in the presumption or an exception for its members.

A comment from the Columbia Broadcasting System stated that the presumption was inaccurate with regard to the television programs of CBS, asserting that networks have long regarded their programs as published and that the Copyright Office has accepted such assertions in applications for copyright registration.

For the reasons discussed below, the Copyright Office has decided to amend the presumption of nonpublication, and has made it applicable only to programming transmitted by noncommercial broadcast stations. Commercial network programming will be treated the same as independent station programming—that is, the specific notification procedure of § 202.22(c)(8) applies.

The presumption of nonpublication set forth in § 202.22(c)(4) must be viewed in the context of the Library's acquisition goals, which this regulation is intended to serve pursuant to 17 U.S.C. 407(e). The Library specifically lacks a significant collection of noncommercial educational broadcast materials, the type of programs normally broadcast by member stations of the Public Broadcasting System, and is interested in using off-air taping to fill this particular gap. The Library does not envision taping basic/pay cable and satellite transmissions at this time, and the regulation accordingly makes no provision for this. At a later time, we may amend the regulations to cover cable transmissions. The Library expects to tape programs transmitted by commercial broadcast stations, either network or independent, only in special situations and on an individual basis.

In addition, the Office acknowledges that a high percentage of the works produced by the members of the MPAA, which the Library needs—especially theatrically-released films—is deposited under the terms of the Motion Picture Agreement. A random check of current television series programs and films made specifically for television showed that the deposit practices for these types of works are less satisfactory than those for theatrical films since deposits are made more sporadically and in a less timely fashion. Nonetheless, a significant percentage of these works is also registered under the present system. Theatrical films, made-for-TV films, and television series are generally registered as published. The Library recognizes the cooperation of the MPAA's members and the networks, especially, in acquisitions made through the present deposit system.

Programs transmitted initially by noncommercial broadcast stations are, the Office believes, more likely to be unpublished than published; hence the presumption is directed to programs transmitted by these stations. PBS and its member stations apparently hold the same view since very few of their works are deposited under the present deposit provision of 17 U.S.C. 407, or registered as published under section 408.

As provided in § 202.22(c)(3), the Library will not knowingly tape unfixed or published works off the air. Acquisitions staff in the Library are conversant with the publication practices of commercial networks and of the members of the MPAA, and this knowledge and expertise will be utilized to avoid casual off-air taping of published works acquired routinely through the deposit and registration system. In addition, the regulation establishes other safeguards. Section 202.22(c)(6) provides that unless the Library can cite contrary evidence, a program will be erased or used for registration at the owner's option upon simple declaration of prior nonfixation. Section 202.22(c)(7) provides that upon declaration by the copyright owner that a work was published at the time of transmission, the tape will be used to satisfy the mandatory deposit provision of 17 U.S.C. 407(a). Both provisions turn any mistakes in taping programs off-the-air to the advantage of the copyright owner.

The Office believes that the amendment eliminating commercial network programs from the presumption of nonpublication means that the procedure for rebuttal of the presumption will be seldom invoked. In light of the change, we do not accept the contention of the MPAA that the rebuttal provision is burdensome and unworkable. The rebuttal consists merely of an informal writing containing the minimum information necessary to explain the circumstances of publication (or non fixation) of the work, and we believe it imposes no undue burden. If the presumption of nonpublication is overcome and the work is shown to have been published with notice of copyright in the United States, the Library is entitled to a deposit copy under 17 U.S.C. 407(a), and this requirement will be satisfied at no cost to the copyright owner for the making of the copy. The rebuttal provision regarding nonpublication serves to clarify the basis on which the Library is entitled to obtain a copy for the collections, and the rebuttal provision regarding fixation serves to facilitate registration if the claimant so wishes.

Finally, the presumption of nonpublication has been established, in addition, as a matter of administrative convenience for the Library in implementing 17 U.S.C. 407(e). The Copyright Office has no intention to modify, and we are confident that the regulation does not modify, the statutory definition of publication in any way. The regulation has no effect on a copyright owner's rights under sections 106, 109, or 412 of the statute. The definition of publication in 17 U.S.C. 101 is controlling. The regulation establishes the presumption of non-publication for these purposes only and as an administrative device of convenience only. It thus facilitates an election by the copyright owner, under which the Library can acquire a copy of a transmitted program, as published with notice or in unpublished form. (The Library is entitled to acquire a copy of a transmission program in either case.) The Library will ordinarily accept at its face value the transmitter's declaration as to whether the work is published or unpublished.

2. Use of copies acquired through taping or written declaration for registration. PBS requested an expansion of § 202.22(f), which provides that a copy taped off-the-air or demanded in writing by the Library may be used to satisfy the deposit requirement for copyright registration. PBS wishes to use such a copy to satisfy the deposit requirement for a published work in cases where the program is later published with no significant change in copyrightable content. The statute mandates that a deposit copy of a published work shall be the "best edition" of that work. In many cases the quality of a copy made by taping off-the-air will be inferior to the quality of a best edition copy of the work when published. The Library of Congress wishes to adhere as consistently as possible to the statutory requirement of the best edition, to obtain the best quality copies possible for its collections. Adopting the change requested by PBS would also create additional administrative burdens in
the right of transmission in the United States clearly refers to the scope of the particular license a broadcasting station holds. Nationwide network transmissions and broadcasts of sporting events on a local basis are both included in that phrase.

Major League Baseball also commented that, although Congress clearly intended written demands to be made on broadcasters rather than the owner of the underlying copyright, such as baseball clubs, they suggested that written demands should be made on the baseball clubs prior to retransmission because baseball clubs may retain copies of the programs (when fixed) only for a period of two weeks.

The Library intends to make written demands only upon the owner of the right of transmission in the U.S. and not on the owner of copyright in the underlying transmission program. Ordinarily, the Library will not make written demands on the baseball clubs themselves. In any event if no copy of the transmission program exists at the time the demand for deposit is made, the Library has missed its opportunity to obtain the copy. The Library on future occasions would probably elect to tape the sports program off the air, rather than risk erasure of the copy before a demand can issue.

The owner of the right of transmission in the U.S., when served with a written demand under § 202.22(d), has the option of giving a copy to the Library, lending a copy for reproduction by the Library, or selling a copy at a price not to exceed the cost of reproducing and supplying the copy. Subsection (d)(4) limits the price to the cost to the Library of reproducing and supplying the copy. PBS commented that, since the costs in question are those of the copyright owner supplying the copy, the copyright owner should determine the costs.

It is likely that costs set by the Library would be lower than those set by the owner of the U.S. transmission right. However, since the choice of one of the three options rests with the owner of the right of transmission, if costs for the third option were left to that same entity, they could be set artificially low, or at least give rise to dispute.

PBS asked also that the Library give an assurance, commensurate with the one asked of a depositor when loaning a copy for reproduction by the Library under § 202.22(d)(9), that a copy loaned for reproduction will be kept in good condition for the duration of the loan. As noted above, the choice of one of the three options offered under subsection (d) rests with the owner of the right of transmission. Concerns about the treatment of the loaned copy should be taken into account when electing one of the three options. However, where the owner chooses the option of loaning a copy to the Library for reproduction, the Library will establish the duration of the loan and make suitable arrangements, at its discretion, for care of the copy.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11,1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 202

Claims to copyright, Copyright, Copyright Office, Registration requirements.

Final Regulation

PART 202—AMENDED

(1) In consideration of the foregoing, Part 202 of 37 CFR Chapter II is amended by adding a new § 202.22 to read as follows:

§ 202.22 Acquisition and deposit of unpublished television transmission programs.

(a) General. This section prescribes rules pertaining to the acquisition of copies of unpublished television transmission programs by the Library of Congress under section 407(e) of Title 17 of the United States Code, as amended by Pub. L. 94–553. It also prescribes rules pertaining to the use of such copies in the registration of claims to copyright, under section 408(b)(2).

(b) Definitions. For purposes of this section:

(1) The terms "copies," "fixed," "publication," and "transmission program" and their variant forms, have the meanings given to them in section 101 of Title 17. The term "network station" has the meaning given it in section 111(f) of Title 17.

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

(c) Off-the-air copying. (1) Library of Congress employees acting under the general authority of the Librarian of Congress may make a fixation of an unpublished television transmission program directly from a transmission to the public in the United States, in accordance with section 407(e)(1) and (4) of Title 17 of the United States Code. The choice of programs selected for fixation shall be based on the Library of Congress acquisition policies in effect at the time of fixation. Specific notice of an intent to copy a transmission program off-the-air will ordinarily not be given.

In general, the Library of Congress will seek to copy off-the-air a substantial portion of the programming transmitted by noncommercial educational broadcast stations as defined in section 397 of Title 47 of the United States Code, and will copy off-the-air selected programming transmitted by commercial broadcast stations, both network and independent.

(2) Upon written request addressed to the Chief, Motion Picture, Broadcasting and Recorded Sound Division by a broadcasting station or other owner of the right of transmission, the Library of Congress will inform the requestor whether a particular transmission program has been copied off-the-air by the Library.

(3) The Library of Congress will not knowingly copy off-the-air any unfixed or published television transmission program under the copying authority of section 407(e) of Title 17 of the United States Code.

(4) The Library of Congress is entitled under this paragraph (c) to presume that a television program transmitted to the public in the United States by a noncommercial educational broadcast station as defined in section 397 of Title 47 of the United States Code has been fixed but not published.

(5) The presumption established by paragraph (c)(4) of this section may be overcome by written declaration and submission of appropriate documentary evidence to the Chief, Motion Picture,
Broadcasting and Recorded Sound Division, either before or after off-the-air copying of the particular transmission program by the Library of Congress. Such written submission shall contain:

(i) The identification, by title and time of broadcast, of the transmission program in question;
(ii) A brief statement declaring either that the program was not fixed or that it was published at the time of transmission;
(iii) If it is declared that the program was published at the time of transmission, a brief statement of the facts of publication, including the date and place thereof, the method of publication, the name of the owner of the right of first publication, and whether the work was published in the United States with notice of copyright; and
(iv) The actual handwritten signature of an officer or other duly authorized agent of the organization which transmitted the program in question.

(6) A declaration that the program was unfixed at the time of transmission shall be accepted by the Library of Congress, unless the Library can cite evidence to the contrary, and the off-the-air copy will either be:

(i) Erased; or
(ii) Retained, if requested by the owner of copyright or of any exclusive right, to satisfy the deposit provision of section 406 of Title 17 of the United States Code.

(7) If it is declared that the program was published at the time of transmission, the Library of Congress is entitled under this section to retain the copy to satisfy the deposit requirement of section 407(a) of Title 17 of the United States Code, unless the Library is notified in writing by the owner of copyright or of the exclusive right of publication that the work has never been published in the United States with notice of copyright.

(8) The Library of Congress in making fixations of unpublished transmission programs transmitted by commercial broadcast stations shall not do so without notifying the transmitting organization or its agent that such activity is taking place. In the case of network stations, the notification will be sent to the particular network. In the case of any other commercial broadcasting station, the notification will be sent to the particular broadcast station that has transmitted, or will transmit, the program. Such notice shall, if possible, be given by the Library of Congress prior to the time of broadcast. In every case, the Library of Congress shall transmit such notice no later than fourteen days after such fixation has occurred. Such notice shall contain:

(i) The identification, by title and time of broadcast, of the transmission program in question;
(ii) A brief statement asserting the Library of Congress' belief that the transmission program has been, or will be, by the date of transmission, fixed and is unpublished, together with language converting the notice to a demand for deposit under section 407(a) and (b) of Title 17 of the United States Code, if the transmission program has been published in the United States with notice of copyright.

(9) The notice required by paragraph (c)(6) of this section shall not cover more than one transmission program except that the notice may cover up to thirteen episodes of one title if such episodes are generally scheduled to be broadcast at the same time period on a regular basis, or may cover all the episodes comprising the title if they are scheduled to be broadcast within a period of not more than two months.

(d) Demands for deposit of a television transmission program. (1) The Register of Copyrights may make a written demand upon the owner of the right of transmission in the United States to deposit a copy of a specific transmission program for the benefit of the Library of Congress under the authority of section 407(e)(2) of Title 17 of the United States Code.

(2) The Register of Copyrights is entitled to presume, unless clear evidence to the contrary is proffered, that the transmitting organization is the owner of the United States transmission right.

(3) Notices of demand shall be in writing and shall contain:

(i) The identification, by title and time of broadcast, of the work in question;
(ii) An explanation of the optional forms of compliance, including transfer of ownership of a copy to the Library, lending a copy to the Library for reproduction, or selling a copy to the Library at a price not to exceed the cost of reproducing and supplying the copy;
(iii) A ninety-day deadline by which time either compliance or a request for an extension of a request to adjust the scope of the demand or the method for fulfilling it shall have been received by the Register of Copyrights;
(iv) A brief description of the controls which are placed on the copies' use;
(v) A statement concerning the Register's perception of the publication status of the program, together with language converting this demand to a demand for a deposit, under 17 U.S.C. 407(a) and (c), if the recipient takes the position that the work is published; and
(vi) A statement that a "compliance copy" must be made and retained if the notice is received prior to transmission.

(4) With respect to paragraph (d)(3)(ii) of this section, the sale of a copy in compliance with a demand of this nature shall be at a price not to exceed the cost to the Library of reproducing and supplying the copy. The notice of demand should therefore inform the recipient of that cost and set that cost, plus reasonable shipping charges, as the maximum price for such a sale.

(5) Copies transferred, lent, or sold under paragraph (d) of this section shall be of sound physical condition as described in Appendix A to this section.

(e) Special Relief. In the case of any demand made under paragraph (d) of this section the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation,

(i) Extend the time period provided in subparagraph (d)(3)(iii);
(ii) Make adjustments in the scope of the demand; or
(iii) Make adjustments in the method of fulfilling the demand. Any decision as to whether to allow such extension or adjustments shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress and shall be made as reasonably warranted by the circumstances. Requests for special relief under paragraph (d) of this section shall be made in writing to the Chief, Acquisitions and Processing Division of the Copyright Office, shall be signed by or on behalf of the owner of the right of transmission in the United States and shall set forth the specific reasons why the request shall be granted.

(e) Disposition of copies. (1) All copies acquired under this section shall be maintained by the Motion Picture, Broadcasting and Recorded Sound Division of the Library of Congress. The Library may make one archival copy of a program which it has fixed under the provisions of section 407(e)(1) of Title 17 of the United States Code and paragraph (c) of this section.

(2) All copies acquired or made under this section, except copies of transmission programs consisting of a regularly scheduled newscast or on-the-spot coverage of news events, shall be subject to the restrictions concerning copying and access established in Library of Congress Regulation 818-17. Policies Governing the Use and Availability of Motion Pictures and Other Audiovisual Works in the Collections of the Library of Congress, or its successors. Copies of transmission programs consisting of regularly scheduled newscasts or on-the-spot coverage of news events are
holding and handling materials, correspondence, and the like. For these reasons, the Office has
decided not to adopt the change suggested by PBS. However, the Library is willing to consider accepting an
unpublished copy acquired under § 202.22 as a deposit for the work after publication, unchanged in copyrightable
content, on a case-by-case basis, under the special relief provisions set forth in § 202.22(d)(8).

3. Specific notification of off-air
taping to commercial networks and
independent commercial broadcast
stations. Four comments spoke to
various aspects of the specific
notification procedure of § 202.22(c)(8). As originally proposed, this clause
provided that a notice of intent to tape
off-the-air would be given only to
independent commercial broadcast
stations. In accordance with the
decision to remove programming
transmitted by commercial networks
from the presumption of nonpublication,
the Office has amended § 202.22(c)(8) to
include the commercial networks. The
notice will be sent to a central office at
each commercial network (ABC, CBS,
and NBC) and this will constitute
notification to the network, network-
owned stations, and affiliates. Notice
will be given prior to broadcast time if
possible, but no later than fourteen days
after the taping off the air by the
Library.

The Public Broadcasting System
requested that notification also be given
to noncommercial broadcast stations, to
facilitate using taped copies for
registration purposes under § 202.22(f)(1)
and asserted that administrative
inconvenience to the Library would be
offset by directing the notifications to
PBS rather than to individual member
stations. PBS offered in return to assist
the Library in its off-air taping
procedures by providing advance
notification of transmission of PBS-
distributed programs.

CBS similarly asked that network-
owned commercial broadcast stations,
around fifteen in number, be notified.
The Motion Picture Association of
America asked that the underlying
owner of copyright in the transmission
program, as the real party in interest,
also be notified. Major league baseball
agreed with the MPAA’s request, citing
the desirability of taking advantage of the
possibility of using Library-taped
copies for registration.

The Library is willing to consider
special agreements with PBS, and
others, as provided in § 202.22(g). Under
such agreements the Library may be
willing to assume the administrative
burden of special notification to PBS, as
the representative of member stations,
with the understanding that PBS will
facilitate the Library’s off-air taping
process by providing the Library with
notice of PBS-distributed programs in
advance of transmission or with a
special satellite feed. We continue to
believe that, pending the conclusion of
any such special agreements, the Library
cannot undertake the administrative
burden of specific notification to PBS.

It would also be impractical and
administratively burdensome to notify
the owners of copyright in the
transmission programs. Frequently, the
Library has no direct knowledge of the
owner of copyright in the programs and
the identity could be ascertained, if at
all, only at substantial cost.

Unpublished works need not contain a
copyright notice and, even if a copyright
notice were present, an address
normally would not appear with the name
of the copyright owner. The
statute sets forth a simple scheme that
will enable the Library to develop a
national collection of television
programming at modest cost to the
Library and no cost to copyright owners,
in the case of off-air taping. The Office
believes that notifications sent to the
commercial networks (as agents for
network-owned and affiliated broadcast
stations) or to owners of U.S.
transmission rights (i.e., broadcast
organizations) are the most practical
method of carrying out the statutory
scheme. Transmitting organizations can
in turn inform the owners of copyright.

Section 202.22(c)(9) allows a
notification to encompass up to thirteen
episodes of one title if such episodes are
generally scheduled to be broadcast at
the same time period on a regular basis;
or to cover all episodes comprising one
title if they are scheduled to be
broadcast within a period of not more
than two months. The MPAA suggested
in passing remarks that the legislative
history precludes such a notification.
The prohibition against “blanket”
demands discussed on page 152 of the
1976 House Report 94–1476. However,
refers solely to the demand procedure
which has been implemented in § 202.22(d). That comment has no
relevance to the special notification of off-air taping established by
§ 202.22(c)(8).

One comment asked whether
network-owned stations, or stations
owned by chain broadcasters, are
included in the definition of

(1976).

“independent commercial broadcast
station.” The question has lost its
significance in view of the change
regarding the presumption of
nonpublication. However, we clarify
that, by “independent commercial
broadcast station,” we mean a station
which is neither network-owned nor
network-affiliated.

As set out in 17 U.S.C. 111(f), a
“network station” is a television
broadcast station that is owned or
operated by, or affiliated with, one or
more of the television networks in the
United States providing nationwide
transmissions, and that transmits a
substantial part of the programming
supplied by such networks for a
substantial part of that station’s typical
broadcast day. The Office has amended
§ 202.22(b) to include the term “network
station” as defined in 17 U.S.C. 111(f).
Currently, only the American
Broadcasting System, the Columbia
Broadcasting System, and the National
Broadcasting System constitute
networks under this definition.

4. Written demands for deposit.
Although the MPAA acknowledged that
the statute allows written demands
under section 407(e) to be made against
the owner of the right of transmission in
the U.S., they commented that the
presumption that a transmitting
organization is the owner of the U.S.
transmission right may not be true and
that, in any case, the demand should
also be sent to the owner of copyright in
the underlying transmission program as
the real party in interest.

The statute states unequivocally that
any written demand under section 407(e)
is to be made on the owner of the right
of transmission in the United States. The
Library is not required to take on the
additional burden of seeking out the
owner of copyright in the underlying
transmission program as well. As noted
above, determining the identity of that
owner could be difficult, if not
impossible. It is reasonable to assume
that the broadcaster is the owner of the
U.S. transmission right. Otherwise, the
transmission is presumable unauthorized, which rarely occurs in
the United States. If the demand is not
directed to the proper entity, the
broadcaster can notify the Office of that
fact.

Major League Baseball explained that
in the case of baseball broadcasts the
primary market of the transmitting
organization is frequently limited in
geographic area within the United States
and asked that the phrase “owner of the
right of transmission in the United
States” be defined expressly to include
the owners of local transmission rights.
We see no need to define the statutory

[Error: line should read:
“transmission is presumable”]
subject to the provisions of the
"American Television and Radio
Archives Act" (section 370 of Title 2 of
the United States Code) and such
regulations as the Librarian of Congress
shall prescribe.

(f) Registration of claims to copyright.
(1) Copies fixed by the Library of
Congress under the provisions of
paragraph (c) of this section may be
used as the deposit for copyright
registration provided that:

(i) The application and fee, in a form
acceptable for registration, is received
by the Copyright Office not later than
ninety days after transmission of the
program, and

(ii) Correspondence received by the
Copyright Office in the envelope
containing the application and fee states
that a fixation of the instant work was
made by the Library of Congress and
requests that the copy so fixed be used
to satisfy the registration deposit
provisions.

(2) Copies transferred, lent, or sold to
the Library of Congress under the
provisions of paragraph (d) of this
section may be used as the deposit for
copyright registration purposes only
when the application and fee, in a form
acceptable for registration, accompany,
in the same container, the copy lent,
transferred, or sold, and there is an
explanation that the copy is intended to
satisfy both the demand issued under
section 407(e)(2) of Title 17 of the United
States Code and the registration deposit
provisions.

(g) Agreements modifying the terms of
this section. (1) The Library of Congress
may, at its sole discretion, enter into an
agreement whereby the provision of
copies of unpublished television
transmission programs on terms
different from those contained in this
section is authorized.

(2) Any such agreement may be
terminated without notice by the Library
of Congress.

[17 U.S.C. 407, 408, 702]
Dated: August 4, 1983.

David Ladd,
Register of Copyrights.
Approved by:
Daniel J. Boorstin,
The Librarian of Congress.

(2) Part 202 of 37 CFR Chapter II is
amended by adding Appendix A to read
as follows:

Appendix A—Technical Guidelines
Regarding Sound Physical Condition

To be considered a copy "of sound
physical condition" within the meaning
of 37 CFR 202.22(d)(5), a copy shall
conform to all the technical guidelines
set out in this Appendix.

A. Physical Condition. All portions of
the copy that reproduce the
transmission program must be:

1. Clean: Free from dirt, marks, spots,
fungus, or other smudges, blotches,
blemishes, or distortions;

2. Undamaged: Free from burns,
blisters, tears, cuts, scratches, breaks,
erasure, or other physical damage. The
copies must also be free from:

(i) Any damage that interferes with
performance from the tape or other
reproduction, including physical damage
resulting from earlier mechanical
difficulties such as cassette jamming,
breaks, tangles, or tape overflow; and

(ii) Any erasures, damage causing
visual or audible defects or distortions
or any material remaining from
incomplete erasure of previously
recorded works.

3. Unspliced: Free from splices in any
part of the copy reproducing the
transmission program, regardless of
whether the splice involves the addition
or deletion of material or is intended to
repair a break or cut.

4. Undeteriorated: Free from any
visual or aural deterioration resulting
from aging or exposure to climatic,
atmospheric, or other chemical or
physical conditions, including heat, cold,
humidity, electromagnetic fields, or
radiation. The copy shall also be free
from excessive brittleness or stretching,
from any visible flaking of oxide from
the tape base or other medium, and from
other visible signs of physical
deterioration or excessive wear.

B. Physical Appurtenances of Deposit
Copy.

1. Physical Housing of Video Tape
Copy. (a) In the case of video tape
reproduced for reel-to-reel performance,
the deposit copy shall consist of reels of
uniform size and length. The length of
the reels will depend on both the size of
the tape and its running time (the last
reel may be shorter). (b) In the case of
video tape reproduced for cassette,
cartridge, or similar performance, the
tape drive mechanism shall be fully
operable and free from any mechanical
defects.

2. "Leader" or Equivalent. The copy,
whether housed in reels, cassettes, or
cartridges, shall have a leader segment
both preceding the beginning and
following the end of the recording.

C. Visual and Aural Quality of Copy:

1. Visual Quality. The copy should be
equivalent to an evaluated first
generation copy from an edited master
tape or other reproduction, including
physical damage resulting from
earlier mechanical
difficulties such as cassette jamming,
breaks, tangles, or tape overflow; and

2. Aural Quality. The sound channels
or other portions must reproduce a
flawless and consistent electronic signal
without any audible defects.