



ANNOUNCEMENT

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

PROPOSED REGULATIONS

RECORDATION OF TRANSFERS AND OTHER DOCUMENTS

The following excerpt is taken from Volume 51, Number 191 of the Federal Register for Thursday, October 2, 1986 (pp. 35244-35245)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 86-5]

Recordation of Transfers and Other Documents

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed Regulations.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is considering the deletion of the requirement in its regulations (37 CFR 201.4(a)) that, to be recordable, a reproduction of a signed document must be accompanied by a sworn certification signed by at least one of the persons who executed the document, or by an authorized representative of that person. These regulations implement section 205 of the Copyright Act, title 17 U.S.C., and govern the formal requirements such as the signatures, completeness, and legibility of documents that must be satisfied in order to record a document pertaining to a copyright.

DATE: All comments should be received on or before November 3, 1986.

ADDRESSES: Interested persons should submit ten copies of their written comments to: Office of the General Counsel, Copyright Office, Library of Congress, Department 100, Washington, DC 20540, or if by hand, to: Office of the General Counsel, Copyright Office, James Madison Memorial Building,

Room 407, First and Independence Ave., SE., Washington, DC 20540.

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

SUPPLEMENTARY INFORMATION: Section 205(a) of title 17 U.S.C. provides that: "Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document." The legislative history of this provision also stipulates that any "document pertaining to a copyright" may be recorded if it "bears the actual signature of the person who executed it," or "if it is appropriately certified as a true copy." H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 128 (1976).

In implementing section 205, the Copyright Office adopted final regulations on the recordation of transfers and certain other documents. The regulations were published in the Federal Register on August 8, 1978 (43 FR 35044). Under § 201.4(c)(1) of the regulations, the Copyright Office permitted the recordation of a legible photocopy or other fullsize facsimile reproduction of a signed document pertaining to a copyright, provided that the reproduction of the document was accompanied by a sworn certification or an official certification that the reproduction is true copy of the signed document, and provided further that, "[a]ny sworn certification

accompanying a reproduction *shall be signed by at least one of the persons who executed the document*, or by an authorized representative of that person." (Emphasis added.)

The Association of American Publishers has requested a review of the Copyright Office regulations on the recordation of documents. Specifically, the Association has requested the Office to amend its regulations on certification of documents for recordation "to permit certifications signed by publishers, or their representatives, to accompany reproductions of documents retained in the regular course of publishing business." Letter of April 18, 1983 to Register of Copyrights from Association of American Publishers, inc. They pointed out that the requirement in § 201.4(c)(1) that a sworn certification accompanying a reproduction of a transfer document be signed by one of the *persons* who executed the document (or an authorized agent) imposed a substantial burden on publishers, and, in particular, journal publishers, who maintain their records of transfer documents in microform. Since transfer documents are often signed *only* by the transferor, (generally the author), when a publisher wants to record a reproduction of a document of transfer, often years after the transaction occurred, the publisher must try to locate the transferor, or an authorized representative of that person, to sign the required sworn certification. Where only a microform reproduction of a document is maintained (and it is our understanding that this is common practice in the journal publishing industry), a publisher is deterred and, in some cases, precluded from recording

such reproductions in the Copyright Office.

To alleviate the difficulties experienced by journal publishers in complying with the recordation requirements in § 201.4 of 37 CFR, the Copyright Office proposes to amend its regulations to permit the required sworn certification to be signed by a *party* to a document of transfer, regardless of whether that person actually signed the document. For example, where an author transfers the copyright in an article to a periodical publisher, and the publisher does not sign the document of transfer, a reproduction of this document may be submitted for recordation, provided it is accompanied by a sworn certification signed by either the author or the publisher, or an authorized representative of either. The Copyright Office will continue to require that the person or persons submitting a reproduction of a transfer document for recordation certify that the reproduction is "a true copy of the signed document."

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which 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 that this proposed regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulations

PART 201—[AMENDED]

In consideration of the foregoing, the Copyright Office proposes to amend Part 201 of 37 CFR, Chapter II.

1. The authority citation for Part 201 would continue to read as follows:

Authority: Copyright Act, Pub. L. 94-553; 90 Stat. 2541 (17 U.S.C. 702).

2. Section 201.4(c)(1) would be revised to read as follows. Paragraph (c) introductory text is republished.

§ 201.4 Recordation of transfers and certain other documents.

(c) *Recordable documents.* Any transfer of copyright ownership (including any instrument of conveyance, or note or memorandum of the transfer), or any other document pertaining to a copyright, may be recorded in the Copyright Office if it is accompanied by the fee set forth in paragraph (d) of this section, and if the requirements of this paragraph with respect to signatures, completeness, and legibility are met.

(1) To be recordable, the document must bear the actual signature or signatures of the person or persons who executed it. Alternatively, the document may be recorded if it is a legible photocopy or other full-size facsimile reproduction of the signed document, accompanied by a sworn certification or an official certification that the reproduction is a true copy of the signed document. Any sworn certification accompanying a reproduction shall be signed by at least one of the parties to the signed document, or by an authorized representative of that person.

Ralph Oman,

Register of Copyrights.

Approved:

William J. Welsh,

Acting Librarian of Congress.

[FR Doc. 86-22291 Filed 10-1-86; 8:45 am]

BILLING CODE 1410-03-01