



# ANNOUNCEMENT

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

## FINAL REGULATION

### REGISTRATION OF CLAIMS TO COPYRIGHT FULL TERM RETENTION OF COPYRIGHT DEPOSITS

The following excerpt is taken from Volume 52, Number 149 of the Federal Register for Tuesday, August 4, 1987 (pp. 28821-28823)

#### LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket RM 83-5A]

#### Registration of Claims to Copyright Full Term Retention of Copyright Deposits

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final regulation.

**SUMMARY:** This notice is published to inform the public that the Copyright Office of the Library of Congress is adopting interim regulation 37 CFR 202.23 as a final regulation with minor housekeeping changes. The purpose of the regulation is to implement section 704(e) of the Copyright Act. Section 704(e) directs the Register of Copyrights to issue regulations prescribing the conditions under which requests for full term retention of copyright deposits are to be made and granted including the fees for this service.

The effect of this regulation is to provide a mechanism for requesting retention of copyright deposits, to establish the conditions under which such requests are granted or denied, and to fix the fee to be charged pursuant to section 708(a)(ii), if the request is granted.

**EFFECTIVE DATE:** August 4, 1987.

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

**SUPPLEMENTARY INFORMATION:** Section 704(e) of the Copyright Act of 1976, title 17 of the United States Code, directs the Register of Copyrights to issue regulations prescribing the conditions under which requests for full term retention of copyright deposits may be made and granted. Effective July 19, 1983 the Copyright Office adopted interim regulations (48 FR 32775) governing the making and granting of requests for full term retention of deposits. The regulations were put into effect on an interim basis because they conferred a benefit on the public and were primarily procedural in nature. The Copyright Office invited comment, however, before issuing the regulations in final form.

None of the nine comment letters received in response to the interim full term retention regulation suggested any changes in the substance of the regulation. Only one letter questioned the amount of the fee. The remaining letters were primarily concerned with the effect of the announced policy decision of the Register of Copyrights and the Librarian of Congress that it is no longer practicable to retain deposit copies of published works for more than five years from the date of deposit, except works of the visual arts which will be retained for ten or more years, if practicable. (48 FR 12882).

The comment letters indicate that there may be some misunderstanding of the effect of the announcement regarding the shortened retention period for copies and the full term retention regulation. First, neither of these has any effect on copyright protection or the length of protection for published works; secondly, the question of the retention of

deposit copies applies only to those copies in the custody of the Copyright Office. The Library of Congress is permitted by the Copyright Act to select copies from the copyright deposits to add to its collections. The policy decision to retain copyright deposits for a limited period of time does not apply to copies selected by the Library for its collections. Those copies will continue to be available in the Library. However, such copies are not considered to be in the custody of the Copyright Office and the Copyright Office cannot certify them as the copies used to make the copyright registration. In those cases, certification must be requested from the Library of Congress through the Library's Office of the General Counsel.

The sole purpose of the full term retention of deposit copies regulation is to offer copyright owners the opportunity to assure that the deposit copies of their published works will be retained in the custody of the Copyright Office for the full term of copyright. The Copyright Act itself obligates the Office to retain the deposit copies of unpublished works or their facsimile for the entire term of copyright.

Section 704(e) specifies that deposit material retained for full term storage in response to a request will be kept "under the control of the Copyright Office." Accordingly, deposit material retained under the final regulation pursuant to section 704(e) will be kept within the confines of Copyright Office buildings or under the control of Copyright Office employees, and will not be transferred to the Library of Congress collections. The Copyright Office will exercise normal due care in processing and maintaining copyright

deposits in full term retention status, but the Office will not apply special preservation techniques. Moreover, full term deposits are open to public inspection pursuant to 17 U.S.C. 705(b).

The only change in the final regulation appears in paragraph (b)(2) which specifies that requests for full term retention be addressed to the Chief, Information and Reference Division of the Copyright Office. The interim regulation directed that the requests be sent to the Chief, Records Management Division. The Records Management Division has been abolished since the interim regulation was published and its functions were reassigned to the Information and Reference Division.

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 11 and Chapter 7).<sup>1</sup> 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 and defined in the Administrative Procedure Act.<sup>1</sup> 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 final regulation will have no significant impact on small businesses.

#### List of Subjects in 37 CFR Part 202

Claims to copyright, Copyright registration requirements.

#### Final Regulation

In consideration of the foregoing, Part 202 of 37 CFR, Chapter II is amended as follows:

#### PART 202—[AMENDED]

1. The authority citation for Part 202 continues to read as follows:

<sup>1</sup> The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17], "except with respect to the making of copies of copyright deposits). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

Authority: Section 702, 90 Stat. 2541; 17 U.S.C. 702.

2. Section 202.23 is adopted as final and revised to read as follows:

#### § 202.23 Full term retention of copyright deposits.

(a) *General.* (1) This section prescribes conditions under which a request for full term retention, under the control of the Copyright Office, of copyright deposits (copies, phonorecords, or identifying material) of published works may be made and granted or denied pursuant to section 704(e) of Title 17 of the United States Code. Only copies, phonorecords, or identifying material deposited in connection with registration of a claim to copyright under Title 17 of the United States Code are within the provisions of this section. Only the depositor or the copyright owner of record of the work identified by the copyright deposit, or a duly authorized agent of the depositor or copyright owner, may request full term retention. A fee for this service is fixed by this section pursuant to section 708(a)(11) of Title 17 of the United States Code.

(2) For purposes of this section, "under the control of the Copyright Office" shall mean within the confines of Copyright Office buildings and under the control of Copyright Office employees, including retention in a Federal records center, but does not include transfer to the Library of Congress collections.

(3) For purposes of this section, "full term retention" means retention for a period of 75 years from the date of publication of the work identified by the particular copyright deposit which is retained.

(4) For purposes of this section, "copyright deposit" or its plural means the copy, phonorecord, or identifying material submitted to the Copyright Office in connection with a published work that is subsequently registered and made part of the records of the Office.

(b) *Form and content of request for full term retention—*(1) *Forms.* The Copyright Office does not provide printed forms for the use of persons requesting full term retention of copyright deposits.

(2) Requests for full term retention must be made in writing addressed to the Chief, Information and Reference Division of the Copyright Office, and shall (i) be signed by or on behalf of the depositor or copyright owner of record, and (ii) clearly indicate that full term retention is desired.

(3) The request for full term retention must adequately identify the particular copyright deposit to be retained, preferably by including the title used in the registration application, the name of

the depositor or copyright owner of record, the publication date, and, if registration was completed earlier, the registration number.

(c) *Conditions under which requests will be granted or denied.*—(1) *General.* A request that meets the requirements of subsection (b) will generally be granted if the copyright deposit for which full term retention is requested has been continuously in the custody of the Copyright Office and the Library of Congress has not, by the date of the request, selected the copyright deposit for its collections.

(2) *Time of request.* The request for full term retention of a particular copyright deposit may be made at the time of deposit or at any time thereafter; however, the request will be granted only if at least one copy, phonorecord, or set of identifying material is in the custody of the Copyright Office at the time of the request. Where the request is made concurrent with the initial deposit of the work for registration, the requestor must submit one copy or phonorecord more than the number specified in § 202.20 of 37 CFR for the particular work.

(3) *One deposit retained.* The Copyright Office will retain no more than one copy, phonorecord, or set of identifying material for a given registered work.

(4) *Denial of request for full term retention.* The Copyright Office reserves the right to deny the request for full term retention where:

(i) The excessive size, fragility, or weight of the deposit would, in the sole discretion of the Register of Copyrights, constitute an unreasonable storage burden. The request may nevertheless be granted if, within 60 calendar days of the original denial of the request, the requestor pays the reasonable administrative costs, as fixed in the particular case by the Register of Copyrights, of preparing acceptable identifying materials for retention in lieu of the actual copyright deposit;

(ii) The Library of Congress has selected for its collections the single copyright deposit, or both, if two copies or phonorecords were deposited; or

(iii) Retention would result in a health or safety hazard, in the sole judgment of the Register of Copyrights. The request may nevertheless be granted if, within 60 calendar days of the original denial of the request, the requestor pays the reasonable administrative costs, as fixed in the particular case by the Register of Copyrights of preparing acceptable identifying materials for retention in lieu of the actual copyright deposit.

(d) *Form of copyright deposit.* If full term retention is granted, the Copyright Office will retain under its control the

<sup>1</sup> Error; line should read: "Code, Subchapter II and Chapter 7."

particular copyright deposit used to make registration for the work. Any deposit made on after September 19, 1978 shall satisfy the requirements of 37 CFR 202.20 and 202.21.

(e) *Fee for full term retention.* (1) Pursuant to section 708(a)(11) of title 17 of the United States Code, the Register of Copyrights has fixed the fee for full term retention at \$135.00 for each copyright deposit granted full term retention.

(2) A check or money order in the amount of \$135.00 payable to the Register of Copyrights, must be received in the Copyright Office within 60 calendar days from the date of mailing of the Copyright Office's notification to the requestor that full term retention has been granted for a particular copyright deposit.

(3) The Copyright Office will issue a receipt acknowledging payment of the fee and identifying the copyright deposit for which full term retention has been granted.

(f) *Selection by Library of Congress.*—  
(1) *General.* All published copyright deposits are available for selection by the Library of Congress until the Copyright Office has formally granted a request for full term retention. Unless the requestor has deposited the additional copy or phonorecord specified by paragraph (c)(2) of this section, the Copyright Office will not process a request for full term retention submitted concurrent with a copyright registration application and deposit, until the Library of Congress has had a reasonable amount of time to make its selection determination.

(2) A request for full term retention made at the time of deposit of a published work does not affect the right of the Library to select one or both of the copyright deposits.

(3) If one copyright deposit is selected, the second deposit, if any, will be used for full term retention.

(4) If both copyright deposits are

selected, or, in the case where the single deposit made is selected, full term retention will be granted only if the additional copy or phonorecord specified by paragraph (c)(2) was deposited.

(g) *Termination of full term storage.* Full term storage will cease 75 years after the date of publication of the work identified by the copyright deposit retained, and the copyright deposit will be disposed of in accordance with section 704, paragraphs (b) through (d), of title 17 of the United States Code.

Date: July 15, 1987.

**Ralph Oman,**  
*Register of Copyrights.*

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

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