



ANNOUNCEMENT

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

FINAL REGULATION

RECORDATION OF TRANSFERS AND OTHER DOCUMENTS

The following excerpt is taken from Volume 53, Number 2 of the Federal Register for Tuesday, January 5, 1988 (pp. 122 - 123)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM-86-5A]

Recordation of Transfers and Other Documents

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting a final regulation amending its regulations (37 CFR 201.4) implementing section 205 of the Copyright Act of 1976, title 17 U.S.C. The Office has decided to revise its requirement 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. Under the amended regulation, the required sworn certification need only be signed by a party to a document, or by an authorized representative of that person, regardless of whether the person actually signed the original document.

EFFECTIVE DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone: (202) 755-8380.

SUPPLEMENTARY INFORMATION: Section 205(a) of title 17 U.S.C. provides for the recordation in the Copyright Office of any transfer of copyright ownership or other document pertaining to a copyright "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." In implementing this provision, the Copyright Office adopted a regulation [37 CFR 201.4(c)(1)] requiring 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." On October 2, 1986 (51 FR 35244), the Office published a notice of proposed rulemaking to advise the public that it was considering the adoption of an amendment to its regulations to permit the required sworn certification to be signed by a party to a document, regardless of whether that person actually signed the original document. Interested parties were given until November 3, 1986, to comment on the proposed amendment. Comments were received from a representative of the Association of American Publishers, Inc. (AAP) and the law firm of Brylawski, Cleary & Leeds.

Both parties commenting on the proposed amendment supported the direction taken by the Copyright Office, but suggested that the proposed change did not go far enough. The law firm asserted that, where the original, signed document is unavailable, there are many people capable of certifying a reproduction as a true copy of the

original. These persons would include an assignee or other successor in interest. The commentator urged that at least the successor in interest to one of the parties to the original signed document be permitted to sign the required certification. The AAP also suggested that the proposed amendment be expanded to cover successors in interest to one of the original parties. The AAP observed that the proposal, while an improvement on the existing requirement, could lead to difficulties "where recordation is sought by a successor to the publisher (e.g., in the case of a license, assignment, or business transfer of all or part of the subject matter covered by the document." The AAP noted that it is not uncommon that a party to the original document may no longer exist or be unavailable.

The Copyright Office, after reviewing the comments in light of the statutory purpose of recordation concludes that it should not record documents on the basis of copies attested to merely by a successor in interest. The Office is concerned about the authenticity of the recordations made pursuant to section 205, and has a responsibility to the public and the judicial system to guard against fraud. In cases where several transfers are interposed between the initial transaction and the point at which recordation is sought, the reliability of any bare assertion by a successor in interest is diminished. Finally since a successor in interest may submit for recordation the actual signed document under which such person is claiming an interest in the copyright, the Copyright Office is not persuaded of the need to revise its proposal.

The Office has been operating under its current regulation on recordation of transfers and other documents for nearly ten years. During this period, the Office has received few complaints concerning its certification requirement. The rule as proposed last year is an important departure from the existing procedure. The Office will closely monitor the experience under this new certification requirement to determine whether further amendment is required.

The Copyright Office is also making a minor technical amendment to 37 CFR 201.4(c)(1). The words "full-size" before facsimile reproductions are being deleted. The phrase is amended to read: "a legible photocopy or other legible facsimile reproduction of the signed document." This change is made in order to clarify the meaning of this requirement. "Full-size" refers to the Copyright Office policy of refusing to accept microform copies of documents for recordation, not whether a particular reproduction is the same size as the document reproduced. The Copyright Office is not in a position to make such a determination. It is sufficient for a reproduction of a document to be capable of being read for purposes of examining and cataloging and being reproduced in legible microform copies. As provided in subparagraph (3) of § 201.4(c), to be recordable, a document "must be legible and capable of being reproduced in legible microform copies." Reproductions of documents must also

meet this requirement.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. This position is explained fully in the "Supplementary Information" accompanying the proposed rule. See 51 FR 35244. In the event it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to that Act, the Register of Copyrights has determined that this final regulation will have no significant impact on small businesses. In fact the amendment makes it easier to record documents.

List of Subjects in 37 CFR Part 201

Copyright, Recordation of copyright documents.

In consideration of the foregoing, the Copyright Office is amending Part 201 of 37 CFR, Chapter II.

PART 201—[AMENDED]

1. The authority citation for Part 201 continues 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) is revised to read as follows. The introduction to paragraph (c) 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 legible 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.

Dated: December 14, 1987.

Ralph Oman,

Register of Copyrights.

James H. Billington,

Librarian of Congress.

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