NOTICE OF PROPOSED RULEMAKING

REGISTRATION OF CLAIMS TO COPYRIGHT MANDATORY DEPOSIT OF MACHINE-READABLE COPIES; PROPOSED RULEMAKING

The following excerpt is taken from Volume 53, Number 153 of the Federal Register for Tuesday, August 9, 1988 (pp. 29923 - 29925)
machine-readable form. The Library desires to provide patrons access to these machine-readable reference sources.

Second, the Library desires to provide patrons access to computer software in IBM or Macintosh formats for the purposes of study and evaluation and to obtain information. One of the primary purposes of this software collection is to allow scholars in the future to study the computer revolution going on today. The Library is well aware of the significant value of the machine-readable copies that will be available in the reading room. For this reason, use of the terminals will be monitored in order to prevent copying. Library staff rather than library patrons will maintain physical control of the disks and other machine-readable copies. No lending of copies to patrons or other institutions is contemplated.

2. Proposed Regulation

In order to build the collections of the Machine-Readable Collections Reading Room, the Library proposes to eliminate the existing broad exemption with respect to machine-readable copies. In order to avoid imposing hardship on software publishers, however, the Library proposes generally to limit the required deposit to one copy of the best edition, rather than the traditional two copies. Additionally, the Library will not demand published data bases that are available only online.

Section 202.19 governing mandatory deposit would be changed in two places. Section 202.19(c)(5) would limit the exemption for machine-readable copies to automated databases available only online. Section 202.19(d) would be modified by adding a new subparagraph (vii) allowing for deposit of only one machine-readable copy, except where a copy-guard system is used. In the latter case, two copies are required.

In implementing mandatory deposit for machine-readable copies, the Library intends to demand only copies of works appearing in the formats designated in the Best Edition Statement. As additional assistance to software publishers, the Library does not intend to demand software that requires the utilization of a password or other special authorization.

Demands for deposit pursuant to section 407 will be made, of course, only with respect to works or versions of works that are themselves original works of authorship, eligible for protection under Title 17 of the United States Code.

When final regulations are promulgated, they will be applied prospectively against works published with notice of copyright in the United States for the first time on or after the effective date of the regulations.

If the proposed changes in the mandatory deposit regulation are adopted, the copies demanded by the Library will differ from the identifying material required for copyright registration. The variance occurs because of the lack of standardization of hardware. The Examining Division is required to examine for copyrightable authorship. Machine-readable copies are generally unsuitable for this task because they require utilization of expensive, and often different, hardware. For the present, the Copyright Office continues to require human-readable deposits for examination. The Machine-Readable Collections Reading Room, on the other hand, can only utilize works in those machine-readable formats for which it has acquired hardware. The Copyright Office and the Library have noted the problem and will monitor technological developments and confer with the industry to find a solution as soon as standardization of equipment and budgets permit.

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 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.

List of Subjects in 37 CFR Part 202
Claim, Claims to copyright, Copyright, Registration requirements.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend Part 202 of 37 CFR, Chapter II as set forth following the Appendix below.

PART 202—[AMENDED]
Appendix to Part 202 [Amended]

Appendix—"Best Edition" of Published Copyright Works For The Collection of the Library of Congress is amended by adding a new section VIII governing machine-readable copies. Present section VIII (Works existing in more than one medium) is renumbered to IX. New section VIII is proposed to read as follows:

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VIII. Machine-Readable Copies

A. Computer Programs

1. With documentation and other accompanying material rather than without.
2. Not copy-protected rather than copy-protected (if copy-protected then with a backup copy of the disk(s)).
3. Format:
   a. PC-DOS or MS-DOS (or other IBM compatible formats, such as XENIX):
      i. 8½" Diskette(s).
      ii. 3¼" Diskette(s).
   b. Apple Macintosh:
      i. 3¼" Diskette(s).
      ii. Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.
   c. Other formats:
      i. Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.

B. Computerized Information Works, Including Statistical Compendia, Serials, or Reference Works

1. With documentation and other accompanying material rather than without.
3. Not copy-protected rather than copy-protected (if copy-protected then with a backup copy of the disk(s)).
4. Format:
   a. PC-DOS or MS-DOS (or other IBM compatible formats, such as XENIX):
      i. Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.
      ii. 3¼" Diskette(s).
      iii. 3¼" Diskette(s).
   b. Apple Macintosh:
      i. Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.
      ii. 3¼" Diskette(s).

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


2. Section 202.19(c)(3) would be revised and § 202.16 would be amended by adding a new paragraph (d)(2)(vii) to read as follows:

   § 202.19 Deposit of published copies or phonorecords for the Library of Congress.
   * * * * *
   (c) * * *
   (d) Automated databases available only online in the United States but not including automated databases distributed only in the form of machine-readable copies (such as magnetic tape or disks, punch cards, or the like) from which the work cannot ordinarily be visually perceived except with the aid of a machine or device, and computerized
information works in the nature of statistical compendia, serials, and reference works. Also works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films and works published in any variety or microform), and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category and are subject to the applicable deposit requirements.

(d) **(vii)** In the case of published computer programs and published computerized information works, such as statistical compendia, serials, and reference works that are not copy-protected, the deposit of one complete copy of the best edition as specified in the current Library of Congress Best Edition Statement will suffice in lieu of the two copies required by paragraph (d)(1) of this section. If the works are copy-protected, two copies of the best edition are required.


Ralph Oman,
Register of Copyrights.
Approved by
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The Librarian of Congress.
[FR Doc. 88-17870 Filed 8-8-88; 8:45am]
BILLING CODE 1410-07-M