



# ANNOUNCEMENT

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

## FINAL REGULATION

### REGISTRATION OF CLAIMS TO COPYRIGHT: GROUP REGISTRATION OF SERIALS

The following excerpt is taken from Volume 55, Number 236 of the Federal Register for Friday, December 7, 1990 (pp. 50556-50557)

#### LIBRARY OF CONGRESS

##### Copyright Office

##### 37 CFR Part 202

[Docket No. RM 90-1]

##### Registration of Claims to Copyright: Group Registration of Serials

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

**ACTION:** Final regulations.

**SUMMARY:** The Copyright Office of the Library of Congress is adopting a new regulation that permits group registration of certain serial publications. Issues of serials published at intervals of a week or longer within a three-month period during the same calendar year can be grouped and registered on a single application and fee. The group registration privilege is contingent upon automatic regular submission of two complimentary subscription copies of each issue for the Library of Congress, and upon meeting the other conditions specified in the regulation. The regulation implements a portion of section 408(c)(1) of the Copyright Act of 1976, title 17 of the U.S. Code, relating to the deposit requirements for copyright registration.

**EFFECTIVE DATE:** January 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 707-8380.

**SUPPLEMENTARY INFORMATION:** Under section 407 of the Copyright Act of 1976, title 17 of the U.S. Code, the owner of copyright, or of the exclusive right of publication, in a work published in the United States is required to deposit two copies of the work in the Copyright Office for the use or disposition of the Library of Congress. The deposit is to be made within three months after such publication. Failure to make the required

deposit does not affect the copyright in the work, but may subject the copyright owner to fines and other monetary liability if the failure is continued after a demand for deposit is made by the Register of Copyrights.

Section 408 of title 17 requires deposit of material in connection with applications for registration of claims to copyright in unpublished and published works. Subsection 408(c)(1) authorizes the Register of Copyrights to establish by regulation the nature of the deposit that is required. These regulations may require or permit "a single registration for a group of related works."

In 1978 when the Copyright Office issued the original deposit regulations, publishers of serials urged that the Copyright Office permit group registration of serial issues. Until this time, the Copyright Office has declined to establish such procedures due to concerns about the administrative burden associated with processing several works on a single application.

The 101st Congress, enacted Public Law No. 101-318, which raises the copyright service fees set by section 708 of the copyright law, effective January 3, 1991.

In the legislative consideration of the Copyright Office's need for a fees increase, representatives of serial publishers renewed the request for establishing a serials group registration procedure. According to the publishers, their administrative costs in making separate registrations for each issue constitute a significant burden. Some serial publishers elect not to register for this reason; however, they remain subject to the mandatory deposit requirement of section 407. The publishers contended that one application covering several issues would greatly reduce the impediments to registration, and they would not object to supplying the Library with complimentary subscription copies of copyrighted serials, nor to paying the reasonable administrative costs of the Copyright Office in processing serial group registration applications.

Accordingly, the Copyright Office has decided to adopt appropriate procedures for registering a group of related serials published at intervals of a week or longer within a three-month period during the same calendar year, provided that the publishers of these publications on a regular, automatic basis submit two complimentary subscription copies of each issue to the Library of Congress and later, when registration is applied for, also deposit one copy of each issue of the works covered by the group registration application.

The two complimentary subscription copies will satisfy the mandatory deposit requirement of section 407 and assure that the Library of Congress receives each issue as published on a regular basis, even though registration may be deferred several months in order to apply for registration on a group basis. The regulation provides that the privilege of group registration of serials will be revoked for any publisher who fails to submit the required complimentary subscription copies on a regular, automatic basis promptly after publication of each issue of the serial.

The copy of each work that must accompany the group registration application will enable the Copyright Office to examine the work to determine that it is copyrightable subject matter and that the other legal and formal requirements of the statute have been satisfied, pursuant to section 410(a) of the Copyright Act.

Group registration of related works is entirely discretionary with the Copyright Office. Based on the Office's experience with statutory group registration of contributions to periodicals, the Office finds that, unless appropriate restrictions limit the availability of group registration, the administrative costs and burden on the Office escalate. In the case of group registration of serials, the Copyright Office has determined that only the possibility of regular, automatic submission of complimentary subscription copies for

the benefit of the Library of Congress, which satisfies the mandatory deposit requirement, outweighs the administrative burden of group registration. Therefore, publishers who do not enter complimentary subscriptions for the Library are not entitled to group registration, and the privilege of group registration of serials will be revoked for publishers who fail to forward the complimentary subscription copies on a regular, automatic basis.

The fee for group registration is set at \$10 per issue to reflect the administrative cost of processing multiple works on a single application. In addition, it has been necessary to impose several restrictions on the availability of group registration to minimize processing costs. Group registration will be restricted to those serials that are eligible for a new simplified application form SE/Group. The issues must be published within a given calendar year.

The collective work authorship must be essentially new, but publishers may use Form SE/Group to register claims in individual contributions published for the first time in the serial, if the publisher has obtained ownership of the copyright.

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 a 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.<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 and hereby certifies that this regulation will have no significant impact on small businesses.

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

Registration of claims to copyright, Claims to copyright, Copyright registration.

#### Final Regulations

In consideration of the foregoing, the Copyright Office is amending part 202 of 37 CFR, chapter II in the manner set forth below.

#### PART 202—[AMENDED]

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

**Authority:** Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §§ 202.3 and 202.20 are also issued under 17 U.S.C. 407 and 408.

#### § 202.3 [Amended]

2. Sections 202.3(b)(5) and (6) are redesignated as 202.3(b)(6) and (7) respectively.

3. Section 202.3(b)(5) is added to read as follows:

#### § 202.3 Registration of copyright.

\* \* \*

(b) \* \* \*

(5) *Group registration of related serials.* (i) Pursuant to the authority granted by section 408(c)(1) of title 17 of the United States Code, the Register of Copyrights has determined that, on the basis of a single application, deposit, and filing fee, a single registration may be made for a group of serials published at intervals of a week or longer if all the following conditions are met:

(A) The Library of Congress receives two complimentary copies promptly after publication of each issue of the serial.

(B) The single application covers no more than the issues published in a given three month period.

(C) The claim to copyright for which registration is sought is in the collective work.

(D) The collective work authorship is essentially new material that is being published for the first time.

(E) The collective work is a work made for hire.

(F) The author(s) and claimant(s) of the collective work are the same person(s) or organization(s).

(G) Each issue must have been created no more than one year prior to publication and all issues included in the group registration must have been published in the same calendar year.

(ii) To be eligible for group registration of serials, publishers must submit a letter affirming that two complimentary subscriptions to the particular serial have been entered for the Library of Congress. The letter

should be sent to: Office of the General Counsel, Copyright Office, Library of Congress, Department 17, Washington, DC 20540.

(iii) The complimentary subscription copies must be addressed to: Group Periodicals Registration Library of Congress, Washington, DC 20540.

(iv) The Register of Copyrights may revoke the privilege of group registration of serials for any publisher who fails to submit the required complimentary subscription copies promptly after publication of each issue. Notice of revocation of the group registration of serials privilege shall be given in writing and shall be sent to the individual person or organization applying for group registration of serials, at the last address shown in the records of the Copyright Office. A notice of revocation may be given at any time if the requirements of the regulation are not satisfied, but it shall state a specific date of revocation that is at least 30 days later than the date the notice is mailed.

(v) To apply for group registration of serials under section 408(c)(1) of title 17 and this subsection, the following items must be sent together in the same package:

(A) A completed Form SE/Group giving the requested information.

(B) A filing fee of \$10 for each issue covered by the group registration.

(C) A deposit consisting of one complete copy of the best edition of each issue included in the group registration.

4. Section 202.20(c)(2)(xvii) is added to read as follows:

#### § 202.20 Deposit of copies and phone records for copyright registration.

\* \* \*

(c) Nature of required deposit. \* \* \*

(2) \* \* \*

(xvii) *Group registration of serials.* For group registration of related serials, as specified in § 202.3(b)(5), the deposit must consist of one complete copy of the best edition of each issue included in the group registration. In addition, two complimentary subscriptions to any serial for which group registration is sought must be entered and maintained in the name of the Library of Congress, and the copies must be submitted regularly and promptly after publication.

\* \* \*

Dated: November 13, 1990.

Ralph Oman,  
Register of Copyrights.

Approved by:

James H. Billington,  
The Librarian of Congress.

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<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.