



ANNOUNCEMENT

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

FINAL REGULATION

COMPUTER SOFTWARE LENDING BY LIBRARIES; COPYRIGHT WARNING

The following excerpt is taken from Volume 56, Number 38 of the Federal Register for Tuesday, February 26, 1991 (pp. 7811-7812)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

Computer Software Lending by Libraries; Copyright Warning

[Docket No. RM 91-2]

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: The Copyright Office issues this regulation to implement one provision of the Computer Software Rental Amendments Act of 1990. Section 802 of the Act allows the lending of computer programs by nonprofit libraries for nonprofit purposes without the permission of the copyright owner, but the library shall affix a warning of copyright to the package containing the computer program. This regulation specifies the form and content of the copyright warning and the requirements concerning affixation of the warning by nonprofit libraries.

EFFECTIVE DATE: March 28, 1991.

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

SUPPLEMENTARY INFORMATION: The Computer Software Rental Amendments Act of 1990, title VIII of the Judicial Improvements Act of 1990. Public Law 101-650, December 1, 1990, 104 Stat. 5089, 5134, amended section 109 of the Copyright Act, title 17 of the United States Code. The Computer Software Rental Amendments Act generally

grants owners of copyright in computer programs an exclusive right to control public distribution of the program in the nature of rental, lease, or lending, subject to several limitations and exclusions.

One limitation on the software rental right allows lending by nonprofit libraries for nonprofit purposes, without the permission of the copyright owner, but the library shall affix to the packaging containing the program a warning of copyright, in accordance with regulations issued by the Register of Copyrights.

The Copyright Act specifies a similar warning of copyright in connection with library reproduction of copyrighted works. The Copyright Office decided to adapt the warning of copyright regulation of 37 CFR 201.14 in prescribing the warning of copyright for lending of computer programs. The regulation is issued in final form without public comment since the Computer Software Rental Amendments Act is already in effect and the Office based its decision on the experience under the 37 CFR 201.14 warning.

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 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 Act.¹

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the 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 201

Copyright warning.

Final Regulation

In consideration of the foregoing, part 201 of 37 CFR chapter II is amended in the manner set forth below.

PART 201—[AMENDED]

1. The authority citation for part 201 is amended by adding the following citation:

Authority: Section 702, 90 Stat. 2341; 17 U.S.C. 702; * * * § 201.24 is also issued under Public Law 101-650, 104 Stat. 5089, 5134.

2. New § 201.24 is added to read as follows:

§ 201.24 Warning of copyright for software lending by nonprofit libraries.

(a) *Definition.* A Warning of Copyright for Software Rental is a

¹ The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is not 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. 708(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.

² Error; line should read: "now subject to it only in areas specified by section"

notice under paragraph (b)(2)(A) of section 109 of the Copyright Act, title 17 of the United States Code, as amended by the Computer Software Rental Amendments Act of 1990, Public Law 101-650. As required by that paragraph, the "Warning of Copyright for Software Rental" shall be affixed to the packaging that contains the computer program which is lent by a nonprofit library for nonprofit purposes.

(b) *Contents.* A Warning of Copyright for Software Rental shall consist of a verbatim reproduction of the following notice, printed in such size and form and affixed in such manner as to comply with paragraph (c) of this section.

Notice: Warning of Copyright Restrictions

The copyright law of the United States (Title 17, United States Code) governs the

reproduction, distribution, adaptation, public performance, and public display of copyrighted material.

Under certain conditions specified in law, nonprofit libraries are authorized to lend, lease, or rent copies of computer programs to patrons on a nonprofit basis and for nonprofit purposes. Any person who makes an unauthorized copy or adaptation of the computer program, or redistributes the loan copy, or publicly performs or displays the computer program, except as permitted by title 17 of the United States Code, may be liable for copyright infringement.

This institution reserves the right to refuse to fulfill a loan request if, in its judgement, fulfillment of the request would lead to violation of the copyright law.

(c) *Form and manner of use.* A Warning of Copyright for Software Rental shall be affixed to the packaging that contains the copy of the computer

program, which is the subject of a library loan to patrons, by means of a label cemented, gummed, or otherwise durably attached to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copy of the computer program. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual user of the computer program.

Dated: February 14, 1991.

Ralph Oman,
Register of Copyrights.

Approved by:
James H. Billington,
The Librarian of Congress.
[FR Doc. 91-4410 Filed 2-25-91; 8:45 am]
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