



# ANNOUNCEMENT

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

## FINAL REGULATION

### GENERAL PROVISIONS: REGISTRY OF VISUAL ART INCORPORATED IN BUILDINGS

The following excerpt is taken from Volume 56, Number 156 of the Federal Register for Tuesday, August 13, 1991 (p. 38340)

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#### LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

(Docket No. RM 91-7)

#### General Provisions—Registry of Visual Art Incorporated in Buildings

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

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**SUMMARY:** The Copyright Office of the Library of Congress is issuing a regulation establishing a Visual Arts Registry for the filing of statements and documentation relating to works of visual art incorporated in buildings. The Judicial Improvements Act of 1990, Public Law 101-650, amends the Copyright Act, title 17 of the U.S. Code and establishes rights of attribution and integrity in certain works of visual art. For works of visual art that are incorporated in buildings, the Act directs the Copyright Office to establish a registry to assist the owner of a building in notifying the artist of a work of visual art that the owner intends to remove the artwork from the building. The regulation establishes the Registry and sets forth the content of statements and the recordation procedures.

**EFFECTIVE DATE:** August 13, 1991.

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<sup>1</sup> Omission; paragraph should read: "Addresses: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC 20559, (202) 707-8380."

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

**SUPPLEMENTARY INFORMATION:** On December 1, 1990, the President signed into law the Judicial Improvements Act of 1990, Pub. L. 101-650, which amends the Copyright Act of 1976, title 17 of the United States Code. Title VI of the Act is known as the Visual Artists Rights Act of 1990. It vests in artists rights of attribution and integrity in certain works of visual art, which take effect June 1, 1991. The right of attribution ensures that artists are correctly identified with the works of art they create, and that they are not identified with works created by others. The right of integrity allows artists to protect their works against modifications and destructions that are prejudicial to their honor or reputations.

The newly created rights for artists are analogous to those protected by Article 6*bis* of the Berne Convention, and are commonly known as "moral rights."

In enforcing these rights, special considerations apply where a work of visual art is incorporated in a building, and the owner of the building decides to have the work removed. To cover these cases, section 113 of title 17 of the United States Code was amended creating special rules. Under the amended provisions, the rights of attribution and integrity apply to any effort of the building owner to remove the work, subject to two important exceptions. First, if the building owner makes a diligent, good faith effort to notify the author in writing of the pending removal, but is unsuccessful in his efforts, he may undertake removal

himself. Second, if the owner successfully notifies the author in writing, but the author fails to respond within 90 days to arrange for removing the work or to pay for its removal, the building owner is allowed to proceed with removal. The statute creates a presumption that an attempt to notify the author by registered mail constitutes a diligent, good faith effort.

In order to assist owners of buildings in locating authors, the Copyright Office is directed to establish a system of records permitting authors of works of visual art to record their identities and addresses. The system is intended to benefit the interests of authors seeking to protect their rights and of building owners attempting diligently, and in good faith, to notify these authors of proposed removals.

Statements submitted for recordation should be as complete as possible in disclosing the pertinent information. Incomplete statements may be found by a court to be insufficient to protect the rights of the party submitting the statement. The Copyright Office will not, however, examine the statements or verify their accuracy or completeness.

After recordation, the sender will receive a certificate of record from the Copyright Office. Photographs accompanying a statement will be retained by the Copyright Office, and may be selected by the Library of Congress for retention in the general collections of the Library.

Recordation of a Statement in the Visual Arts Registry is, of course, not a substitute for registration of a claim to copyright in the work of art. Information about registration of a claim to copyright may be obtained by contacting the Public Information Office of the Copyright Office, Washington, DC 20559.

The Library of Congress and the Copyright Office considered but decided against issuance of a rule that would establish mandatory archival quality standards regarding accompanying photographs and documentation. Artists and others authors are nevertheless encouraged voluntarily to submit good quality, durable photographs disclosing their works of art and the location in buildings. The Library of Congress will be more inclined to select the photographs and documentation for retention in its collections if they are durable and of good quality. The Library reserves the right to determine which deposits will be added to the collections. Those deposits that are selected for the collections may become part of future Library of Congress exhibits that highlight and exemplify the cultural heritage of the United States.

The regulation governing the Visual Arts Registry is issued in final form without public comment since we have tracked the existing procedure regarding recordation of documents and have encouraged the submission of particular information and photographs rather than mandated their form and content as a condition of filing in the Registry. Also, the immediate implementation of the Visual Arts Registry is beneficial to the public.

#### Regulatory Flexibility Act

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"

<sup>1</sup> The Copyright Office was not subject to the Administrative Procedure Act before 1976, 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 copyrights 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.

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 201

##### Visual Arts Registry.

##### Final Regulations

In consideration of the foregoing, the Copyright Office amends part 201 of 37 CFR, chapter II in the manner set forth below.

1. The authority citation for part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541; 17 U.S.C. 702. § 201.25 is also issued under Public Law 101-650, 104 Stat. 5099, 5130-31.

2. New § 201.25 is added as follows:

##### § 201.25 Visual Arts Registry.

(a) *General.* This section prescribes the procedures relating to the submission of Visual Arts Registry Statements by visual artists and owners of buildings, or their duly authorized representatives, for recordation in the Copyright Office under section 113(d)(3) of Title 17 of the United States Code, as amended by Public Law 101-650, effective June 1, 1991. Statements recorded in the Copyright Office under this regulation will establish a public record of information relevant to an artist's integrity right to prevent destruction or injury to works of visual art incorporated in or made part of a building.

(b) *Forms.* The Copyright Office does not provide forms for the use of persons recording statements regarding works of visual art that have been incorporated in or made part of a building.

(c) *Recordable statements—(1) General.* Any statement designated as a<sup>2</sup> "Visual Arts Regulatory Statement" and which pertains to a work of visual art that has been incorporated in or made part of a building may be recorded in the Copyright Office provided the statement is accompanied by the fee for recordation of documents specified in section 708(a)(4) of title 17 of the United States Code. Upon their submission, the statements and an accompanying<sup>3</sup> documentation or photographs become the property of the United States Government and will not be returned. Photocopies are acceptable if they are clear and legible. Information contained in the Visual Arts Registry Statement should be as complete as possible since the information may affect the enforceability of valuable rights under the copyright law. Visual Arts Registry Statements which are illegible or fall outside of the scope of section 113(d)(3)

of title 17 may be refused recordation by the Copyright Office.

(2) *Statements by artists.* Statements by artists regarding a work of visual art incorporated or made part of a building should be filed in a document containing the head: "Registry of Visual Art Incorporated in a Building—Artist's Statement." The statement should contain the following information:

(i) Identification of the artist, including name, current address, age, and telephone number, if publicly listed.

(ii) Identification of the work or works, including the title, dimensions, and physical description of the work and the copyright registration number, if known. Additionally, it is recommended that one or more 8 x 10 photographs of the work on good quality photographic paper be included in the submission; the images should be clear and in focus.

(iii) Identification of the building, including its name and address. This identification may additionally include 8 x 10 photographs of the building and the location of the artist's work in the building.

(iv) Identification of the owner of the building, if known.

(3) *Statements by the owner of the building.* Statements of owners of a building which incorporates a work of visual art should be filed in a document containing the heading: "Registry of Visual Art Incorporated in a Building—Building Owner's Statement." The statement should contain the following information:

(i) Identification of the ownership of the building, the name of a person who represents the owner, and a telephone number, if publicly listed.

(ii) Identification of the building, including the building's name and address. This identification may additionally include 8 x 10 photographs of the building and of the works of visual art which are incorporated in the building.

(iii) Identification of the work or works of visual art incorporated in the building, including the works' title(s), if known, and the dimensions and physical description of the work(s). This identification may include one or more 8 x 10 photographs of the work(s) on high quality photographic paper; the images should be clear and in focus.

(iv) Identification of the artist(s) who have works incorporated in the building, including the current address of each artist, if known.

(v) Photocopy of contracts, if any, between the artist and owners of the building regarding the rights of attribution and integrity.

(vi) Statement as to the measures

<sup>2</sup>Error; line should read: "Visual Arts Registry Statement" and"

<sup>3</sup>Error; line should read: "statement and any accompanying"

taken by the owner to notify the artist(s) of the removal or pending removal of the work of visual art, and photocopies of any accompanying documents.

(4) *Updating statements.* Either the artist or owner of the building or both may record statements updating previously recorded information by submitting an updated statement and paying the recording fee specified in paragraph (d) of this section. Such statements should repeat the information disclosed in the previous filing as regarding the name of the artist(s), the name of the work(s) of visual art, the name and address of the building, and the name of the owner(s) of the building. The remaining portion of the statement should correct or supplement the information disclosed in the previously recorded statement.

(d) *Fee.* For a statement covering no more than one title, the basic recording fee is \$20. An additional charge of \$10.00 is made for each group of not more than 10 titles. For these purposes the term "title" refers to an identification of the

work of visual art which is covered by the statement.

(e) *Date of recordation.* The date of recordation is the date when all of the elements required for recordation, including the prescribed fee have been received in the Copyright Office. After recordation of the statement, the sender will receive a certificate of record from the Copyright Office. Any documentation or photographs accompanying any submission will be retained and filed by the Copyright Office. They may also be transferred to the Library of Congress, or destroyed after preparing suitable copies, in accordance with usual procedures.

(f) The Copyright Office will record statements in the Visual Arts Registry without examination or verification of the accuracy or completeness of the statement, if the statement is designated as a "Visual Arts Registry Statement" and pertains to a work of visual art incorporated in or made part of a building. Recordation of the statement and payment of the recording fee shall

establish only the fact of recordation in the official record. Acceptance for recordation shall not be considered a determination that the statement is accurate, complete, and otherwise in compliance with section 113(d), title 17, U.S. Code. The accuracy and completeness of the statement is the responsibility of the artist or building owner who submits it for recordation. Artists and building owners are encouraged to submit accurate and complete statements. Omission of any information, however, shall not itself invalidate the recordation, unless a court of competent jurisdiction finds the statement is materially deficient and fails to meet the minimum requirements of section 113(d) of title 17, U.S. Code.

Dated: July 28, 1991.

Ralph Oman,  
Register of Copyrights.

Approved:  
James H. Billington,  
The Librarian of Congress.

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