



# ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559-6000

## NOTICE OF POLICY DECISION

### PUBLICATION OF CATALOG OF COPYRIGHT ENTRIES

The following excerpt is taken from Volume 61, Number 195 of the *Federal Register* for Monday, October 7, 1996 (pp. 52465-52467)

#### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 201

#### [Docket No. 96-5]

#### Publication of Catalog of Copyright Entries

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

**ACTION:** Notice of policy decision.

**SUMMARY:** Under section 707(a) of the Copyright Act, the Copyright Office is directed to publish a catalog of copyright entries at periodic intervals. The Copyright Office has determined that this statutory obligation is satisfied by electronic publication of copyright information over the Internet. For this reason, the Copyright Office is discontinuing its publication of microfiche copies of the Catalog of Copyright Entries.

**EFFECTIVE DATE:** October 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Kent Dunlap, Principal Legal Advisor to the General Counsel's Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The 1891 Copyright Act initiated a Catalog of Copyright Entries (CCE). The purpose of the catalog was to provide a means for customs officers to prevent

importation of pirated copyrighted works. The 1891 Act split responsibility for publishing the catalog between the Librarian of Congress and the Secretary of the Treasury. Copyright Act of 1891, sec. 4, 26 Stat. 1106, 1108 (1891).

The catalog did not provide an efficient means for customs searching; therefore, the Secretary of the Treasury saw little use in continuing publication. The Register of Copyrights, on the other hand, defended the publication in 1904 for a number of reasons. He reasoned that the CCE provided a useful index to copyright businesses and the public without recourse to the Office; a useful reference tool for the staff of the Copyright Office; a secure record against destruction by fire or other catastrophe; and an official contemporaneous record of the country's intellectual production. He also stated that the cost of the catalog could be defrayed through registration fees. H.R. Doc. No. 420, 58th Cong., 2d Sess. 6 (1904).

The 1909 Copyright Act consolidated responsibility for publication of the catalog in the Copyright Office. Copyright Act of 1909, Pub. L. No. 349, secs. 56, 57, 35 Stat. 1075, 1086. From 1909 to 1936, the Copyright Office regarded the Catalog of Copyright Entries as the primary tool for the public to conduct research on registered copyrights since the public was not encouraged to use Office facilities and Copyright Office staff did not conduct requested searches of any length. During the subsequent years, there was a reduced budget for publication of the catalog; consequently, the number of staff preparing the catalog was reduced, and entries were shortened. However, beginning in 1937, the Office provided a more extended

search service and reorganized the records to make searching more efficient. In 1945, a general reorganization of the Copyright Office improved both the search service and the content and timeliness of the catalog. Elizabeth K. Dunne and Joseph W. Rogers, Copyright Law Revision Studies No. 21, 86th Cong., 2d Sess., The Catalog of Copyright Entries, 59-60 (Comm. Print 1960).

Since its inception the catalog has been published as a public service. There have always been relatively few sales, and the catalog has been distributed free to federal depository libraries. These libraries were largely public, university and college libraries which were designated by Members of Congress as being entitled to receive free government documents. Due to the number of such free distributions, costs incurred from publishing the catalog have been considerably larger than revenue from sales to subscribers. In 1959, for example, 37 copies of the Books part of the CCE were sold while 359 were distributed to federal depository libraries, and 85 were given to U.S. government agencies. *Id.* at 64.

##### II. The 1976 Copyright Revision Act.

As part of the general copyright revision, the Copyright Office conducted 34 studies for Congress on the copyright law; Study No. 21 published in 1960, was devoted to the catalog of copyright entries. Both professional librarians and copyright practitioners commented; commentators generally supported continuation of the publication with some reservations. Considerations favoring continued publication included the fact that a few individuals and organizations found the publication to be highly useful, and alternative avenues

for searching copyright information outside of Washington were not readily available. Reservations included acknowledgement that the publications were not widely used by the public at large and publication appeared relatively expensive. In conclusion, most commentators urged a "flexible" approach. Elizabeth K. Dunne and Joseph W. Rogers, Copyright Law Revision Studies No. 21, 86th Cong., 2d Sess., The Catalog of Copyright Entries, 77-81 (Comm. Print 1960).

In his report to Congress in 1961 summing up the problems to be considered in drafting a new copyright statute, the Register of Copyrights noted:

Only a small fraction of the cost of producing the printed catalog is recovered from sales. In 1959, for example, the total cost of assembling, printing, and binding the entire yearly catalog came to about \$109,000, while receipts from the year's sales totaled slightly over \$4,000. Most of the copies printed are distributed free of charge to libraries and Government agencies.

House Comm. on the Judiciary, 87th Cong., 1st Sess., Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law 144 (Comm. Print 1961).

During the revision process others concurred with the Register that the rigid requirements of the 1909 Act for publication of the catalog should be alleviated and that "a more flexible authorization to determine the form and frequency of publication of each part of the catalog is highly desirable."

Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law: 1965 Revision Bill, 89th Cong., 1st Sess. 155 (H. Comm. Print 1965). During the early stages of the revision process a far simpler provision intended to encourage a more flexible approach was put forward:

(a) CATALOG OF COPYRIGHT ENTRIES.- The Register of Copyrights shall compile and publish at periodic intervals catalogs of all copyright registrations. These catalogs shall be divided into parts in accordance with the various classes of works, and the Register has discretion to determine, on the basis of practicability and usefulness, the form and frequency of publication of each particular part.

17 U.S.C. 707(a). This provision remained unchanged throughout the revision process.

Congress emphasized the theme of flexibility, and even mentioned "electronic devices" as possibly leading to a better product in the legislative history accompanying the 1976 revision bill. It noted:

Section 707(a) of the bill retains the present statute's basic requirement that the

Register compile and publish catalogs of all copyright registrations at periodic intervals, but provides "discretion to determine, on the basis of practicability and usefulness, for the form and frequency of publication of each particular part". This provision will in no way diminish the utility or value of the present catalogs, and the flexibility of approach, coupled with use of the new mechanical and electronic devices now becoming available, will avoid waste and result in a better product.

S. Rep. No. 473, 94th Cong., 1st Sess. 154 (1975); H.R. Rep. No. 1476, 94th Cong., 2d Sess. 172 (1976).

### III. Copyright Office Budget Constraints

Despite the authorization for continued publication of the catalog in the copyright law, the Office has been unable to meet this responsibility on a timely basis due to increasing budget constraints. In 1982, the Office changed the format of publication of the catalogs from print to microfiche and issued the eight parts of the 1979 edition in that format. Since 1982, delays in issuing the catalog have increased. Currently, the Office is essentially fourteen years behind; it published the 1982 edition in microfiche in 1994 and that has been the last issue to date.

The major cost in producing the CCE is that of creating a master copy from which microfiche copies can be produced. The costs are between \$2,500 and \$5,000 per master for each part of the catalog. Since each year consists of eight parts, a complete edition would cost approximately between \$35,000 and \$40,000. Costs for Copyright Office staff who prepare the material for microfilming must also be considered. In 1991, the Office estimated that it would cost over \$268,000 to publish the volumes between 1982 and 1991.

The Office has maintained the CCE volumes published so far; some of which are identified in Circular 2, Publications on Copyright, as available for sale. The volume of sales has been quite low. Should the Office resume publication in print or microfiche, as many as 1500 federal depository libraries and government agencies would be entitled to free copies. Although not all of those entitled to receive free copies elect to receive all or any part of the catalog, a heavy printing burden would be imposed on the Office.

### IV. On-line Availability of Copyright Registration Information

Despite the existing lengthy publication delay, there has been little public comment that the CCE is not delivered on a timely basis, indicating that relatively few people currently rely on the published CCE to secure

copyright registration information.

While the Copyright Office has maintained public records since 1870, the information has never been so readily and widely available before. This is due to the fact that in 1994 the Copyright Office inaugurated remote public access via Internet to its computerized database of post 1977 copyright registration and recordation information. Public information on how to use the registration system, including forms and circulars, was included as part of the on-line system.

The registration information and recorded documents which are available over Internet are limited to Copyright Office records produced in machine-readable form from January 1, 1978, to the present. These include the following files: COHM, which contains all original and renewal registrations except serials; COHD, which contains documents; and COHS, which contains serials. Locating information through on-line searches of the record eliminates the need to search individual volumes of the published CCE and is, therefore, far more efficient.

### V. Conclusion

While the Copyright Office has historically been assigned the responsibility of creating and maintaining a public record of copyright registration information, the Office has had difficulty in serving the needs of individuals who were unable to come to the Copyright Office. Since the Catalog of Copyright Entries addressed this need, it maintained some level of support within the copyright community. The Office is now providing broad public access on a timely basis via Internet, and there is no longer any reason for maintaining publication of the Catalog of Copyright Entries.

Publication of the catalog has always been quite costly due to the low volume of sales. Moreover, publication of the catalog serves relatively few people since existence of the catalog is not widely known, and only a few hundred copies of each edition of the catalog is distributed. Individuals with access to the Internet, on the other hand, number in the millions; therefore, making copyright registration information available over the Internet is a far more efficient means for publicly disseminating copyright registration information.

The Office has determined that the language of section 707(a) of the Copyright Act is sufficiently flexible to authorize publishing copyright registration information over the Internet. The legislative history of this section emphasizes flexibility and actually mentions "electronic devices" as a suitable means for enhancing

distribution efficiency. For these reasons, the Copyright Office is discontinuing publication by print or microfiche of the Catalog of Copyright Entries and will meet its responsibilities under 17 U.S.C. 707(a) through publication over Internet. The Office will continue to maintain the volumes of CCE printed so far.

Dated: September 30, 1996

Marilyn J. Kretsinger,  
*Acting General Counsel.*

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