



## **LIBRARY OF CONGRESS**

### **U.S. Copyright Office**

#### **37 CFR Part 202**

**[Docket No. 2017-9]**

### **Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions**

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

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The United States Copyright Office is proposing to amend the regulations governing the deposit requirements for certain types of literary works and musical compositions. Specifically, the proposed rule will apply to certain types of “literary monographs,” which are defined, in part, as literary works published in one volume or a finite number of separate volumes. The proposed rule also applies to musical compositions that are published in the United States in print formats—that is, compositions published as “copies” rather than solely as phonorecords, as referenced in the Copyright Act. Under the current regulations, two copies of the best edition are generally needed to register these types of works and to comply with the mandatory deposit requirement. Under the proposed rule, copyright owners will be able to satisfy both requirements for literary monographs by submitting one copy of the best edition of the work, although the Office will retain the right to demand a second copy under the mandatory deposit provision should the Library need it. Copyright owners will also be able to satisfy both requirements for certain musical compositions by submitting one copy of the best edition. As part of these changes, the proposed rule also clarifies the

deposit requirements for musical compositions published *both* in print and phonorecord formats. For musical works (*i.e.*, musical compositions) published in both formats, the Office will require the submission of the print version for purposes of copyright registration. If the musical composition is published only as a phonorecord, the applicant should submit the phonorecord. All of these changes will improve the efficiency of registration and mandatory deposit for both the Office and copyright owners alike, ensuring that the Office has an adequate registration record and continuing to make these works available to the Library of Congress when needed for use in its collections or other disposition. The Office invites public comment on this proposal.

**DATES:** Comments on the proposed rule must be made in writing and must be received by the Copyright Office no later than [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office Web site at <https://copyright.gov/rulemaking/singlecopy/>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the Internet, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, by email at rkas@loc.gov; Erik Bertin, Deputy Director of Registration Policy and Practice, by email

at ebertin@loc.gov; or Cindy Abramson, Assistant General Counsel, by email at ciab@loc.gov. All can be reached by telephone by calling 202-707-8040.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Under section 407 of the Copyright Act, when a work is published in the United States, the copyright owner or the owner of the exclusive right of publication is generally required to deposit two complete copies of the best edition of that work with the U.S. Copyright Office within three months after publication. 17 U.S.C. 407. “The ‘best edition’ of a work” is defined as “the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.” 17 U.S.C. 101. The Act provides that copies deposited with the Office under section 407 are “for the use or disposition of the Library of Congress.” 17 U.S.C. 407(b). This is known as the “mandatory deposit” requirement.

Separately, the Copyright Act’s provision governing copyright registration, section 408, specifies that, in the case of published works, an application for registration must be accompanied by “two complete copies or phonorecords of the best edition.” 17 U.S.C. 408(b)(2). To avoid duplication of deposits, section 408 specifies that copies or phonorecords deposited under section 407 “may be used to satisfy the deposit provisions” of section 408 if they “are accompanied by the prescribed application and fee.” 17 U.S.C. 408(b).

Because the same copies can potentially be used for both registration and mandatory deposit, the deposit requirements set forth in sections 407 and 408 are generally the same. *Compare* 17 U.S.C. 407(a)(1)-(2) (requiring two complete copies of

the best edition of the work for purposes of mandatory deposit) *with* 17 U.S.C. 408(b)(2) (requiring two complete copies of the best edition for the purpose of registering a published work).

Sections 407 and 408 both give the Register of Copyrights (the “Register”) broad authority to issue regulations concerning the specific nature of the copies that must be deposited, including the ability to exempt works from these statutory requirements. As relevant here, section 408 gives the Register authority to “require or permit, for particular classes [of works], . . . the deposit of only one copy . . . where two would normally be required” for copyright registration. 17 U.S.C. 408(c)(1). Similarly, section 407 gives the Register authority to issue regulations that “require [the] deposit of only one copy” for the purpose of mandatory deposit. 17 U.S.C. 407(c).

The legislative history confirms that Congress intended the Register to exercise this authority when needed to improve efficiencies within the Copyright Office. In explaining the Register’s authority under section 407, Congress expressed the desire “to make the deposit requirements as flexible as possible, so that there will be no obligation to make deposits where it serves no purpose, so that only one copy or phonorecord may be deposited where two are not needed, and so that reasonable adjustments can be made to meet practical needs in special cases.” H.R. Rep. No. 94-1476, at 151 (1976). Similarly, the legislative history for section 408 explains that the “[d]eposit of one copy . . . rather than two would probably be justifiable . . . in any case where the Library of Congress has no need for the deposit” or where the copies “are bulky, unwieldy . . . or otherwise impractical to file and retain as records identifying the work registered.” *Id.* at 154.

The Office has exercised this authority on many occasions. It created exceptions allowing applicants to deposit one copy for purposes of mandatory deposit for some works. *See* 37 CFR 202.19(d)(2)(i)-(ii), (v)-(vi) (covering three-dimensional cartographic representations of area, such as globes; published motion pictures; musical compositions where the only publication took place by rental, lease, or lending; and published multi-media kits). The Office also created corresponding exceptions to the deposit requirements for registration. *See* 37 CFR 202.20(c)(2)(i)(A)-(K). The proposed rule will expand the exception that currently applies to registration deposits of musical compositions, and create a new exception for “literary monographs.” In both cases, one copy of the best edition of the work will satisfy the deposit requirement for registration and mandatory deposit. As noted below, however, the rule excludes legal publications and also allows a second copy to be demanded by the Copyright Office on behalf of the Library under mandatory deposit provisions.

### **Literary Monographs**

For purposes of registration and mandatory deposit, a “literary monograph” will be defined, in part, as “a literary work published in one volume or a finite number of volumes.” Examples of works that fit within this category include fiction, nonfiction, poetry, short stories, memoirs, manuscripts, textbooks, and other types of nondramatic literary works.

The rule draws a distinction between “monographs” and “serials,” which are defined elsewhere in the regulations as “work[s] issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely.” 37 CFR 202.3(b)(1)(v). Examples of works that may qualify as

a serial include periodicals, newspapers, newsletters, and annuals. These types of works are typically published in successive issues and they are usually distributed on an established schedule. Each issue is published under the same continuing title, and they generally bear numerical or chronological designations that distinguish one issue from the next.

By contrast, most monographs are published as a single volume, rather than a series of successive issues. Some monographs are published in separate volumes with each volume bearing the same title and successive numerical designations (as in the case of a multi-volume encyclopedia). But typically the entire work is published in a limited number of volumes that, taken together, constitute the work as a whole.

The proposed rule will allow copyright owners to register a published monograph and satisfy the mandatory deposit requirement by submitting one complete copy of the best edition of that work. There are several reasons for creating this exception.

The Library of Congress's need for copies of works submitted through copyright registration has diminished over time. In many cases, the Library receives additional copies of published monographs through programs such as the Cataloging In Publication ("CIP") program—a program that is entirely separate from the mandatory deposit and copyright registration deposit provisions of the Copyright Act. The CIP program creates a uniform cataloging record for the benefit of the nation's libraries. Publishers that participate in the program submit an application to the Library before they publish their works. The Library then creates an appropriate bibliographic record and sends that information to the publisher. The publisher prints this information on the copyright page when the work is published, and distributes this same information in electronic form to

libraries, vendors, and other interested parties. In exchange, the publisher then sends a complimentary copy of the published work to the CIP program. A member of the Library's staff confirms that the CIP record matches the published work, and if necessary, the electronic cataloging record is updated to reflect the actual content of the published work. All copies submitted through the CIP program are made available to the Library for use in its collections. Because "CIP copies" are submitted soon after a work is published, they often enter the Library's collections before the Copyright Office has examined any additional copies that have been submitted for purposes of registration or mandatory deposit.<sup>1</sup>

In addition, the Library recently revised its acquisition policies and practices for published monographs. Previously, when the Library selected a work for its collections from the copies received through copyright registration or mandatory deposit, it would often take both copies and permanently retain them in the Library's collections. In 2013, Library Services<sup>2</sup> estimated that the Library had at least 1,950,000 "second copies" in its permanent collections, and predicted that the Library could achieve substantial savings in its long-term storage and preservation costs by reducing the number of additional service copies in its collections.

Accordingly, under the revised policy, when the Library selects a work, it still takes both copies that were deposited with the Copyright Office, but (with some

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<sup>1</sup> See generally Library of Congress, *Cataloging in Publication Program*, <https://www.loc.gov/publish/cip/> (last visited Jun. 12, 2017).

<sup>2</sup> Library Services is one of the main components of the Library of Congress, and is the entity that is principally responsible for developing and maintaining the Library of Congress's collections. See Library of Congress, *About the Library*, <https://www.loc.gov/about/>.

exceptions<sup>3</sup>) it only keeps one for itself, and delivers the other one to the Library's Surplus Books program,<sup>4</sup> Duplicate Materials Exchange Program,<sup>5</sup> or other similar programs for donation or exchange to eligible organizations and institutions. And if it turns out that the Library previously received a copy through the CIP Program, *both* copies received from the Office are sent to Surplus Books or another program.<sup>6</sup> Finally, if the Library does not select a work for the Library's collections, the Copyright Office sends one copy to Surplus Books, and sends the second copy to the Office's storage facility.<sup>7</sup> Thus, as things stand now, at least one copy of every published monograph sent to the Copyright Office is treated as surplus.

The deposit of unneeded material imposes significant burdens both on copyright owners and the Copyright Office. Copyright owners have to bear costs involved in producing extra copies of each work, and shipping both copies to the Office. Cumulatively, these costs may discourage copyright owners from routinely registering their works.

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<sup>3</sup> The Library's single-copy retention policy does not apply to legal publications, reference works, or publications about certain topics: United States history (including genealogy and heraldry), commerce and finance, political institutions and public administration, and libraries and information science.

<sup>4</sup> Surplus books that are not needed for the Library's own collections are made available to educational institutions, governmental agencies, and non-profit organizations or institutions located within the United States. *See generally* Library of Congress, *Library of Congress Surplus Books Program*, <https://www.loc.gov/acq/surplus.html> (last visited July 31, 2017).

<sup>5</sup> The Library of Congress exchanges library materials with approximately 4,000 partners around the world through its Duplicate Materials Exchange Program. *See generally* Library of Congress, *Exchange of Library Materials*, <https://www.loc.gov/acq/exchange.html> (last visited July 31, 2017).

<sup>6</sup> In addition, this policy has been applied retroactively to monographs held within the general collections. In cases where the Library received two copies from the Office and a third copy from the CIP program or another source, Library Services will remove the second and third copies from the shelves and offer them to another institution through the Surplus Books program or another program.

<sup>7</sup> Published works stored in this facility are kept for up to 20 years unless the applicant requests full-term retention under § 202.23 of the regulations.

From the Office's perspective, literary monographs are significantly larger than the physical copies received by the other divisions within the Registration Program. They are heavy, unwieldy, and often include multi-volume sets of books. To distribute these materials to the staff, the copies must be strapped together, which doubles the size and weight of each submission. Sometimes the Literary Division does not have enough space to store the copies that it has on hand. The bulky nature of these physical copies also slows down the examination of each work. On average, the copies must be moved at least eight times or more during the examination process, which increases the risk that they may be damaged, misplaced, mismatched, or lost. Requiring two copies limits the amount of work that the examiner may keep at his or her desk at any given time. It also increases the amount of time that the examiners need to examine the claim, prepare the copies for dispatch, and retrieve his or her next assignment.

Reducing the number of unneeded copies required will reduce this volume and significantly increase the amount of space available for storing incoming physical copies. This should increase productivity within the Literary Division and reduce the likelihood that copies may be lost or misplaced. For copyright owners, the proposed rule will reduce the cost of seeking a registration and complying with mandatory deposit by lowering the incremental cost of producing and delivering physical copies to the Office.

Although, generally speaking, the provision of a single copy of a literary monograph will be sufficient to meet the Library's collection needs, in certain cases, the Library may need an additional copy—for example, if the original is in high demand by Congress, the Congressional Research Service, the Supreme Court, or researchers from the general public. The rule expressly carves out one category of works that are

consistently in high demand—legal publications, which are defined in the rule as works “published in one volume or a finite number of volumes that contain legislative enactments, judicial decisions, or other edicts of government.” These types of works are collected either by the Library of Congress’s Serials and Government Publications division (which is part of Library Services) or the Law Library.<sup>8</sup> At the present time, these divisions still have an active need for the two copies received through copyright registration for their respective collections.

With respect to other categories of works, if the Library determines that it does need a second copy, the proposed rule entitles it to demand the additional copy under the mandatory deposit provision.<sup>9</sup> The copyright owner, however, will not be required to proactively deposit a second copy in order to be in compliance with either the mandatory deposit or registration deposit rules. And, a single copy will be deemed to satisfy mandatory deposit unless the Office issues a demand for an additional copy.

To be clear, the Library anticipates that it will often have a need for second copies for certain reference works, such as dictionaries, encyclopedias, gazetteers, bibliographies, and almanacs as well as publications about the following topics: United States history (including genealogy and heraldry),<sup>10</sup> commerce and finance,<sup>11</sup> political

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<sup>8</sup> The Law Library is a component of the Library of Congress that is separate from Library Services, and it is a primary source of legal materials for the U.S. Supreme Court. *See* Library of Congress, *About the Library*, <https://www.loc.gov/about/>; Library of Congress, *Law Librarian’s Welcome*, <http://www.loc.gov/law/about/welcome.php>.

<sup>9</sup> Although the Library’s single-copy retention policy does not apply to certain other categories of works, *see* n.3 *supra*, in many of those cases the Library already receives a second copy through the CIP program or other sources. In cases where the Library does need an additional copy, either because it was not received via the CIP program or otherwise, the Office will issue a demand to the publisher pursuant to the mandatory deposit provision.

<sup>10</sup> This includes, but is not limited to, works where the Library of Congress CIP data, as printed on the verso of the book’s title page, indicates a Library of Congress Subject Heading of heraldry, genealogy, United States local history, United States history or has a Library of Congress Classification of CR, CS, F below 1000, or E.

institutions and public administration,<sup>12</sup> and libraries and information science.<sup>13</sup> Thus, although the proposed rule does not specifically require the proactive deposit of two copies of such works for registration or mandatory deposit purposes, principally because of the difficulty of crafting a rule *ex ante* defining these additional categories of works, it is anticipated that many works falling within these categories will be subject to a later demand as part of the mandatory deposit process. Accordingly, publishers may nevertheless decide to submit two copies of works that might fall within these categories as part of the registration process if they wish to avoid the burden of subsequent production.

Moreover, the proposed rule creates a new exception only for “literary” monographs, meaning nondramatic literary works that predominantly contain textual material. 37 CFR 202.3(b)(1)(i). Monographs that predominantly contain photographs, artwork, or other pictorial or graphic content would not be eligible for this exception. To register these types of works and to satisfy the mandatory deposit requirement, applicants would be required to submit two complete copies of the best edition, even if the applicant is seeking to register both the visual and textual aspects of the work. The Office is limiting this exception to literary monographs at this time, because they routinely account for the largest number of physical deposits received in the Literary Division. By contrast,

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<sup>11</sup> This includes, but is not limited to, works where the Library of Congress CIP data indicates a Library of Congress Subject Heading of Commerce, Finance, or Public Finance or has a Library of Congress Classification of HF, HG, or HJ.

<sup>12</sup> This includes, but is not limited to, works where the Library of Congress CIP data indicates a Library of Congress Subject Heading of Political Institutions and Public Administration (North America) or Political Institutions and Public Administration (United States) or has a Library of Congress Classification of JJ or JK.

<sup>13</sup> This includes works where the Library of Congress CIP data indicates a Library of Congress Subject Heading of Libraries, Books, Information Resources or Bibliography or has a Library of Congress Classification of Z.

pictorial or graphic monographs represent a relatively small portion of the claims received in the Visual Arts Division, and thus, have less impact on the division's workflow.

### **Musical Compositions Published in Print Formats**

The proposed rule also simplifies and rationalizes the deposit requirements for musical compositions published in print formats (*i.e.*, as sheet music, musical scores or the like). Put another way using the Copyright Act's specific language, the proposed rule applies to compositions published in "copies" (including cases where a composition is published both in copies and in phonorecords).<sup>14</sup> The proposed rule does not apply to compositions published only in phonorecords, or to unpublished musical compositions. Nor does the proposed rule apply to those seeking to register their copyright in a *sound recording*, as opposed to the *musical composition*.<sup>15</sup>

Under the current regulation, copyright owners generally are required to submit two copies of compositions published in print formats for purposes of mandatory deposit and copyright registration. There are narrow exceptions permitting the deposit of one copy rather than two where publication only took place by rental, lease, or lending, 37

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<sup>14</sup> The Copyright Act draws a distinction between "copies" and "phonorecords." "Copies" are defined as "material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." 17 U.S.C. 101. A "phonorecord" is a "material object[] in which sounds . . . are fixed . . . and from which the sounds can be perceived, reproduced, or otherwise communicated either directly or with the aid of a machine or device." *Id.* The definition includes "a cassette tape, an LP vinyl disc, a compact disc, or other means of fixing sounds." Copyright Office, *U.S. Copyright Office Definitions*, <https://www.copyright.gov/help/faq/definitions.html>.

<sup>15</sup> When registering a sound recording, the applicant should submit a phonorecord that contains a complete copy of the work. 37 CFR 202.20(c)(1)(i)-(iv), 202.20(c)(2)(viii)(D). The proposed rule also makes a technical change to the deposit requirement for musical compositions and sound recordings fixed or published in machine-readable form. Specifically, the rule directs applicants to submit "a reproduction of the entire work on a phonorecord," rather than an "audiocassette." 37 CFR 202.20(c)(2)(viii)(C)-(D).

CFR 202.19(d)(2)(v), 202.20(c)(2)(i)(E). These exceptions are intended to cover “musical compositions published by rental of scores for performances,” because “only a limited number of [these] copies are available for distribution.” 43 FR 763, 764 (Jan. 4, 1978).

In the past, when the Office received a musical composition in print format it would send both copies to the Library. Since March 2017, however, the Library of Congress’s Music Division (which is a component of Library Services) has requested only one copy, and the Office has retained the second copy in its storage facility.<sup>16</sup> Given this change in the Music Division’s acquisition practice, the Office believes it is appropriate to expand the current exceptions for musical compositions. Under the proposed rule, applicants will be allowed to deposit a single copy of *any* musical composition that has been published in copies or in both copies and phonorecords. In other words, the exceptions will no longer be limited to musical compositions published solely by rental, lease, or lending.

The proposed rule makes one further clarification with respect to musical compositions. In cases where a musical composition was published in *both* copies and phonorecords, the proposed rule specifies that the copyright owner should submit a *copy* of the work—*i.e.*, in print format—rather than a phonorecord. (For *unpublished* musical compositions, the applicant may submit either a copy or a phonorecord for purposes of copyright registration. *See* 37 CFR 202.20(c)(i).) There are three reasons for this change.

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<sup>16</sup> The Music Division collects musical compositions that are published in print formats, but it does not collect works that have been published in phonorecords. The Library’s Motion Picture Broadcasting and Recorded Sound division collects phonorecords, but it does not collect musical compositions that have been published in printed form.

First, the proposed rule harmonizes the deposit requirements for registration and mandatory deposit. In general, the Office has designed its regulations so that deposits submitted as part of copyright registration will also satisfy mandatory deposit requirements where those requirements apply. But the current regulations governing musical compositions depart from that approach. On the one hand, the mandatory deposit statute and implementing regulations require the submission of complete *copies* (not phonorecords) of the best edition of published musical compositions. 17 U.S.C. 407(a) (requiring deposit of two *copies* of the best edition of all works except sound recordings); 37 CFR 202.19(d)(1)(i), (2)(v).<sup>17</sup> On the other hand, the registration deposit regulations currently state that applicants may register a musical composition by submitting one complete *copy or phonorecord* of the best edition without further qualification. *See id.* § 202.20(c)(1)(iii), (c)(2)(i)(E) (emphasis added). This means that when a musical composition is published both as copies and as phonorecords, a copyright owner might submit phonorecords for purposes of registration, and unwittingly fail to satisfy the mandatory deposit requirement. The proposed rule fixes this discrepancy.

Second, when a musical composition has been published in both copies and phonorecords, the Office considers the copies to be the best representation of the work. Visually perceptible formats typically contain a clear and precise representation of the music and lyrics that constitute the work. When a preexisting musical composition is published in a phonorecord, the sound recording is a separate work that recasts, transforms, or adapts the music and lyrics embodied in that recording. *See* 17 U.S.C. 101

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<sup>17</sup> Musical works compositions published *only* as phonorecords are not subject to mandatory deposit at all. *See* 42 FR 59302, 59304 (Nov. 16, 1977) (explaining that under section 407 “the mandatory deposit requirements extend only to ‘copies’ of all types of works except sound recordings, and to ‘phonorecords’ of sound recordings; they do not apply to ‘phonorecords’ of literary, dramatic, or musical works”).

(definition of “derivative work”). And in cases where the music and sound recording are created simultaneously, it may be difficult to identify the author or co-authors of the music and sound recording or the respective owners or co-owners of each work. (To be clear, when a musical composition is published *solely* in a phonorecord, the phonorecord constitutes the only representation of the work. In such cases, the copyright owner may submit the phonorecord for purposes of registration. There is no need to transcribe or notate the work in a visually perceptible form. *See* 42 FR at 59304.)

Third, the statute and the regulations indicate that copies should be given preference over phonorecords in cases where a musical composition has been published in both print and audio form. As mentioned above, copyright owners are required to submit the “best edition” of their works for purposes of mandatory deposit. “The ‘best edition’ of a work” is defined, in part, as the edition “that the Library of Congress determines to be most suitable for its purposes.” 17 U.S.C. 101. Section 407(a)(2) of the statute and § 202.19(a) of the regulations state that phonorecords are subject to mandatory deposit. But this requirement only applies to the copyright owner of the sound recording or the owner of the exclusive right to publish that recording. 17 U.S.C. 407(a)(2); 37 CFR 202.19(c)(4). It does not apply to the owner of the musical composition that may be embodied in that recording. 37 CFR 202.19(c)(4).

The Library’s preference for copies rather than phonorecords of musical compositions is also reflected in the Best Edition Statement, which is set forth in Appendix B to Part 202 of the regulations. Section VI of this statement contains a hierarchical list of the preferred formats for musical compositions. All of the formats listed in this section are visually perceptible formats. *See* 37 CFR p. 202, app. B, secs.

VI.A-C. Thus, allowing applicants to submit phonorecords in cases where a musical composition has been published in both visual and audio form is inconsistent with the Library's stated preferences. *See* 37 CFR p. 202, app. B, sec. b. ("In judging quality, the Library of Congress will adhere to the criteria set forth [in the Best Edition Statement] in all but exceptional circumstances.").

### **Retention of Copyright Registration Deposits**

The proposed rule does not change current practices regarding what works the Office retains in its possession. Under these practices, when applicants submit a physical copy of a published literary monograph or a published musical composition, the Office will not retain a copy of that work in most cases.<sup>18</sup> After a work is registered, the Office will offer the copy to Library Services,<sup>19</sup> and will generally retain the copy in its storage facility only if the copy has not been selected by Library for inclusion in its collections.<sup>20</sup> If applicants want to ensure that the Office does retain a precise record of the particular

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<sup>18</sup> By contrast, when an applicant submits an unpublished work, the Office will retain the copy for the entire term of the copyright.

<sup>19</sup> *See* 17 U.S.C. 704(b) ("In the case of published works, all copies, phonorecords, and identifying material deposited are available to the Library of Congress for its collections, or for exchange or transfer to any other library."). In exceptional cases, the Office may retain a registered work for a limited time if the applicant requested special handling and notified the Office that the registration is needed for pending or prospective litigation. If the Office refuses registration, or if the claim is closed because the applicant failed to respond to the examiner, the copy will be sent to the Office's storage facility. Under current record retention policies, claims that have been closed or refused are retained for up to 30 years.

<sup>20</sup> The Office's regulations provide that the Office will make a certified copy of a registered work if it is needed for litigation or other legitimate purposes, provided that the Office has retained a copy of that work. 37 CFR 201.2(d)(2). The Office cannot issue a certified copy of a work that has been transferred to the Library or another institution. *See* U.S. Copyright Office, Compendium of U.S. Copyright Office Practices secs. 2405.3, 2409.5 (3d ed. 2014). But the Office has no institutional memory of any case where a party has requested a certified copy of a published monograph or a musical composition in print format. This makes sense because, in infringement cases involving published works, the work alleged to have been copied has been made publicly available, and the fact that the work was registered is not typically a disputed issue.

published work that was submitted for registration, they should consider one of the following options.

First, the applicant may request full-term retention. To do so, the applicant must submit a written request together with an additional copy of the work and the appropriate fee for this service.<sup>21</sup> *See* 37 CFR 202.23(b)(2), (c)(2), (e)(1). If the request is approved, the Office will retain the copy in its storage facility for 75 years from the date of publication.<sup>22</sup> *See id.* at § 202.23(g).

Second, if an International Standard Book Number (“ISBN”) or International Standard Music Number (“ISMN”) number has been assigned to the work, the applicant is encouraged to include that information in the online application. If this number is provided in the appropriate field, it will appear on the certificate of registration, and in the case of an ISBN, it will also appear in the online public record for that work, and will serve as evidence of the work submitted for examination and registration. Note, however, that the examiner will not review the ISBN or ISMN to determine if it matches the number appearing on the copy. Therefore, applicants should confirm that this number has been entered correctly. *See* U.S. Copyright Office, Compendium of U.S. Copyright Office Practices sec. 612.6(C) (3d ed. 2014).

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<sup>21</sup> Requests for full term retention may only be granted “if at least one copy . . . is in the custody of the Copyright Office” at the time of the request. 37 CFR 202.23(c)(2). Thus, to ensure that the Office has such a copy, the applicant must submit a complete request with the registration application. If the applicant submits two copies without requesting full-term retention or paying the appropriate fee, the second copy will be sent to Library Services before the claim has been assigned to a member of the Registration Program.

<sup>22</sup> The Office is planning to initiate a separate rulemaking that will extend the full-term retention period to 95 years to better correspond with the extended term established by the Copyright Term Extension Act for published works. *See* Pub. L. 105-298, 112 Stat. 2827 (1998); *accord* 17 U.S.C. 302(a), (c) (ensuring copyright “endures for a term consisting of the life of the author and 70 years after the author’s death” for works created after Jan. 1, 1978, and that “copyright endures for a term of 95 years from the year of . . . first publication” for anonymous, pseudonymous, and works made for hire).

Third, in addition to submitting a physical copy when it is required,<sup>23</sup> the applicant may also upload a digital copy of the work to the electronic registration system. When doing so, the applicant should add a note in the “Note Copyright Office” field stating that the digital copy has been submitted for archival purposes and that a physical copy will be sent separately. The examiner will examine the claim when the physical deposit arrives and will only check any electronic upload to determine whether it represents the same work.

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

Copyright, Preregistration and Registration of Claims to Copyright.

### **Proposed Regulations**

In consideration of the foregoing, the U.S. Copyright Office is proposing to amend 37 CFR Part 202 as follows:

### **Part 202 - PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT**

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

**Authority:** 17 U.S.C. 408(f), 702.

2. Amend § 202.19 as follows:

a. Add paragraph (b)(5).

b. Revise paragraph (d)(2)(v) by removing the words “in copies only,” and adding in its place “solely in copies,” and by removing the words “if the only publication of copies in the United States took place by rental, lease, or lending,” .

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<sup>23</sup> See 37 CFR 202.20(b) (stating that “if a work is first published in both hard copy, *i.e.*, in a physically tangible format, and also in an electronic format, the current Library of Congress Best Edition Statement requirements pertaining to the hard copy format apply” for purposes of copyright registration).

c. Add paragraph (d)(2)(ix).

The revision and addition read as follows:

**§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.**

\* \* \* \* \*

(b) \* \* \*

(5) The term *literary monograph* means a literary work published in one volume or a finite number of volumes. This category does not include serials, nor does it include legal publications that are published in one volume or a finite number of volumes that contain legislative enactments, judicial decisions, or other edicts of government.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ix) In the case of published literary monographs, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section, unless the Copyright Office issues a demand for a second copy pursuant to 17 U.S.C. 407(d).

\* \* \* \* \*

3. Amend § 202.20 as follows:

a. Revise paragraph (b)(3).

b. Remove paragraph (b)(4).

c. Redesignate paragraph (b)(5) as paragraph (b)(4).

d. In paragraphs (c)(2)(i)(A) through (D), remove the semi-colon and add a period in its place at the end of each sentence.

- e. Revise paragraph (c)(2)(i)(E).
- f. In paragraphs (c)(2)(i)(F) through (I), remove the semi-colon and add a period in its place at the end of the sentence.
- g. In paragraph (c)(2)(i)(J) remove “; and” and add a period in its place at the end of the sentence.
- h. Add paragraph (c)(2)(i)(L).
- i. In paragraphs (c)(2)(viii)(A) through (D) remove the semi-colon and add a period in its place at the end of the sentence.
- j. In paragraphs (c)(2)(viii)(C) and (D) remove “an audiocassette or other” and add in its place “a”.

The revision and additions read as follows:

**§ 202.20 Deposit of copies and phonorecords for copyright registration.**

\* \* \* \* \*

(b) \* \* \*

(3) The terms *secure test* and *literary monograph* have the meanings set forth in §§ 202.13(b) and 202.19(b)(5).

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(E) Musical compositions published solely in copies or in both copies and phonorecords, provided that one complete copy (rather than a phonorecord) is deposited;

(L) Published literary monographs.

\* \* \* \* \*

Dated: August 10, 2017.

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**Sarang V. Damle,**  
*General Counsel and*  
*Associate Register of Copyrights.*

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