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U.S. Copyright Office

37 CFR Parts 201 and 202

Docket No. 2017-13

Affixation and Position of Copyright Notice

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

ACTION: Final rule.

SUMMARY: This final rule makes a non-substantive technical change to the U.S. Copyright Office's regulations governing the affixation and position of copyright notice on various types of works.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: As part of the U.S. Copyright Office's ongoing efforts to streamline its regulations, the Office is consolidating its regulations related to copyright notice.¹ Copyright notice was required for works published prior to January 1, 1978, which were governed by the Copyright Act of 1909. Before the Copyright Act of 1976, if a work was not published with a proper copyright notice,

¹ Copyright notice placement on phonorecords is governed by statute rather than regulations and can be found at 17 U.S.C. 402(b)–(c). These provisions remain unaffected by this final rule.

copyright protection for the work was lost in the United States.² The 1976 Act also generally required copyright notice (unless a statutory exemption applied) until March 1, 1989, when the Berne Convention Implementation Act of 1988 took effect, making copyright notice optional.³ If a work was publicly distributed prior to the Berne Convention Implementation Act, the omission of a copyright notice did not invalidate the copyright in a work if the notice was omitted from a relatively small number of copies, registration was made within five years after publication and a reasonable effort was made to add notices to copies distributed to the public after the omission was discovered, or the omission was a result of a violation of an express agreement requiring affixation of notice in order to publicly distribute copies.⁴

While U.S. law no longer requires the use of a copyright notice, placing it on a work does have some legal benefits. For example, the use of notice can inform the public that a work is protected by copyright and provide information on authorship and the date of first publication.⁵ Additionally, in an infringement action, a court will not give weight to a defendant's use of an innocent infringement defense, which could otherwise result in a reduction of damages, if the relevant copies of the work in question had a proper copyright notice.⁶

² Sec. 9, Pub. L. 60-349, 35 Stat. 1075, 1077 (1909); *see also Stewart v. Abend*, 495 U.S. 207, 233 (1990) (“Under the 1909 Act, it was necessary to publish the work with proper notice to obtain copyright. Publication of a work without proper notice automatically sent a work into the public domain.”).

³ Sec. 7, Pub. L. 100-568, 102 Stat. 2853, 2857 (1988).

⁴ 17 U.S.C. 405(a).

⁵ 17 U.S.C. 405(b).

⁶ 17 U.S.C. 401(d). For additional background information on copyright notice, *see* U.S. COPYRIGHT OFFICE, CIRCULAR 3: COPYRIGHT NOTICE (2013).

Currently, two sections of the Office’s regulations concern copyright notice: one contains provisions governing copyright notice generally, 37 CFR 202.2, and the other specifies methods of affixation and positions of the copyright notice on various types of works, 37 CFR 201.20. Because the information and requirements contained in these two separate sections are more appropriately contained in a single location, the contents of 37 CFR 201.20 are being relocated to 37 CFR 202.2. The current 37 CFR 201.20 is now rendered duplicative and is being removed and reserved. In addition to relocating the contents of 37 CFR 201.20, minor technical changes are being made to its contents including removing superfluous definitions previously contained in 37 CFR 201.20(b)(1) and (2)⁷ and relocating the definition of “machine-readable copy” § 202.2(c)(2), which is dedicated to definitions.

In addition to the technical changes discussed above regarding copyright notice, this rule is fixing two typos in the 37 CFR 202.6(e)(1), removing an extraneous period and adding a missing comma.

Because this amendment is a non-substantive, technical change not “alter[ing] the rights or interest of parties,” it is therefore not subject to the notice and comment requirements of the Administrative Procedure Act,⁸ and the Office is publishing this as a final rule without first publishing a notice of proposed rulemaking. Other provisions in the regulations that relate to copyright notice remain unaffected.

⁷ See 37 CFR 201.20(b)(1) (defining “audiovisual works, collective works, copies, device, fixed, machine, motion picture, pictorial, graphic, and sculptural works” to have the same meaning given to them in 17 U.S.C. 101); *id.* at 201.20(b)(2) (defining “Title 17” as “title 17 of the United States Code, as amended by Pub. L. 94-553”).

⁸ See *Nat’l Mining Ass’n v. McCarthy*, 758 F.3d 243, 250 (D.C. Cir. 2014); 5 U.S.C. 553(b) (notice and comment not required for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice”).

List of Subjects in 37 CFR Parts 201 and 202

Copyright.

Final Regulations

For the reasons set forth in the above, the Copyright Office amends 37 CFR parts 201 and 202 as follows:

PART 201—GENERAL PROVISIONS

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

Authority: 17 U.S.C. 702.

§ 201.20 [Removed and Reserved]

2. Remove and reserve § 201.20.

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

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

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

4. In § 202.2, add paragraph (c) to read as follows:

§ 202.2 Copyright notice.

* * * * *

(c) Methods of affixation and positions of the copyright notice on various types of works—(1) General. (i) This paragraph specifies examples of methods of affixation and positions of the copyright notice on various types of works that will satisfy the notice requirement of section 401(c) of title 17 of the United States Code, as amended by Pub. L. 94-553. A notice considered “acceptable” under this regulation shall be considered to satisfy the requirement of that section that it be “affixed to the copies in such manner and

location as to give reasonable notice of the claim of copyright.” As provided by that section, the examples specified in this regulation shall not be considered exhaustive of methods of affixation and positions giving reasonable notice of the claim of copyright.

(ii) The provisions of this paragraph are applicable to copies publicly distributed on or after December 1, 1981. This paragraph does not establish any rules concerning the form of the notice or the legal sufficiency of particular notices, except with respect to methods of affixation and positions of notice. The adequacy or legal sufficiency of a copyright notice is determined by the law in effect at the time of first publication of the work.

(2) *Definitions.* For the purposes of this paragraph:

(i) In the case of a work consisting preponderantly of leaves on which the work is printed or otherwise reproduced on both sides, a “page” is one side of a leaf; where the preponderance of the leaves are printed on one side only, the terms “page” and “leaf” mean the same.

(ii) A work is published in *book form* if the copies embodying it consist of multiple leaves bound, fastened, or assembled in a predetermined order, as, for example, a volume, booklet, pamphlet, or multipage folder. For the purpose of this paragraph, a work need not consist of textual matter in order to be considered published in “book form.”

(iii) A *title page* is a page, or two consecutive pages facing each other, appearing at or near the front of the copies of a work published in book form, on which the complete title of the work is prominently stated and on which the names of the author or authors, the name of the publisher, the place of publication, or some combination of them, are given.

(iv) The meaning of the terms *front*, *back*, *first*, *last*, and *following*, when used in connection with works published in book form, will vary in relation to the physical form of the copies, depending upon the particular language in which the work is written.

(v) In the case of a work published in book form with a hard or soft cover, the *front page* and *back page* of the copies are the outsides of the front and back covers; where there is no cover, the “front page,” and “back page” are the pages visible at the front and back of the copies before they are opened.

(vi) A *masthead* is a body of information appearing in approximately the same location in most issues of a newspaper, magazine, journal, review, or other periodical or serial, typically containing the title of the periodical or serial, information about the staff, periodicity of issues, operation, and subscription and editorial policies, of the publication.

(vii) A *single-leaf work* is a work published in copies consisting of a single leaf, including copies on which the work is printed or otherwise reproduced on either one side or on both sides of the leaf, and also folders which, without cutting or tearing the copies, can be opened out to form a single leaf. For the purpose of this paragraph, a work need not consist of textual matter in order to be considered a “single-leaf work.”

(viii) A *machine-readable copy* is a copy from which the work cannot ordinarily be visually perceived except with the aid of a machine or device, such as magnetic tapes or disks, punched cards, or the like. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform) and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category.

(3) *Manner of affixation and position generally.* (i) In all cases dealt with in this paragraph, the acceptability of a notice depends upon its being permanently legible to an ordinary user of the work under normal conditions of use, and affixed to the copies in such manner and position that, when affixed, it is not concealed from view upon reasonable examination.

(ii) Where, in a particular case, a notice does not appear in one of the precise locations prescribed in this paragraph but a person looking in one of those locations would be reasonably certain to find a notice in another somewhat different location, that notice will be acceptable under this paragraph.

(4) *Works published in book form.* In the case of works published in book form, a notice reproduced on the copies in any of the following positions is acceptable:

(i) The title page, if any;

(ii) The page immediately following the title page, if any;

(iii) Either side of the front cover, if any; or, if there is no front cover, either side of the front leaf of the copies;

(iv) Either side of the back cover, if any; or, if there is no back cover, either side of the back leaf of the copies;

(v) The first page of the main body of the work;

(vi) The last page of the main body of the work;

(vii) Any page between the front page and the first page of the main body of the work, if:

(A) There are no more than ten pages between the front page and the first page of the main body of the work; and

(B) The notice is reproduced prominently and is set apart from other matter on the page where it appears;

(viii) Any page between the last page of the main body of the work and back page, if:

(A) There are no more than ten pages between the last page of the main body of the work and the back page; and

(B) The notice is reproduced prominently and is set apart from the other matter on the page where it appears.

(ix) In the case of a work published as an issue of a periodical or serial, in addition to any of the locations listed in paragraphs (c)(4)(i) through (viii) of this section, a notice is acceptable if it is located:

(A) As a part of, or adjacent to, the masthead;

(B) On the page containing the masthead if the notice is reproduced prominently and is set apart from the other matter appearing on the page; or

(C) Adjacent to a prominent heading, appearing at or near the front of the issue, containing the title of the periodical or serial and any combination of the volume and issue number and date of the issue.

(x) In the case of a musical work, in addition to any of the locations listed in paragraphs (c)(4)(i) through (ix) of this section, a notice is acceptable if it is located on the first page of music.

(5) *Single-leaf works*. In the case of single-leaf works, a notice reproduced on the copies anywhere on the front or back of the leaf is acceptable.

(6) *Contributions to collective works.* For a separate contribution to a collective work to be considered to “bear its own notice of copyright,” as provided by 17 U.S.C. 404, a notice reproduced on the copies in any of the following positions is acceptable:

(i) Where the separate contribution is reproduced on a single page, a notice is acceptable if it appears:

(A) Under the title of the contribution on that page;

(B) Adjacent to the contribution; or

(C) On the same page if, through format, wording, or both, the application of the notice to the particular contribution is made clear;

(ii) Where the separate contribution is reproduced on more than one page of the collective work, a notice is acceptable if it appears:

(A) Under a title appearing at or near the beginning of the contribution;

(B) On the first page of the main body of the contribution;

(C) Immediately following the end of the contribution; or

(D) On any of the pages where the contribution appears, if:

(1) The contribution is reproduced on no more than twenty pages of the collective work;

(2) The notice is reproduced prominently and is set apart from other matter on the page where it appears; and

(3) Through format, wording, or both, the application of the notice to the particular contribution is made clear;

(iii) Where the separate contribution is a musical work, in addition to any of the locations listed in paragraphs (c)(6)(i) and (ii) of this section, a notice is acceptable if it is located on the first page of music of the contribution;

(iv) As an alternative to placing the notice on one of the pages where a separate contribution itself appears, the contribution is considered to “bear its own notice” if the notice appears clearly in juxtaposition with a separate listing of the contribution by title, or if the contribution is untitled, by a description reasonably identifying the contribution:

(A) On the page bearing the copyright notice for the collective work as a whole, if any; or

(B) In a clearly identified and readily-accessible table of contents or listing of acknowledgements appearing near the front or back of the collective work as a whole.

(7) *Works reproduced in machine-readable copies.* For works reproduced in machine-readable copies, each of the following constitutes an example of acceptable methods of affixation and position of notice:

(i) A notice embodied in the copies in machine-readable form in such a manner that on visually perceptible printouts it appears either with or near the title, or at the end of the work;

(ii) A notice that is displayed at the user's terminal at sign on;

(iii) A notice that is continuously on terminal display; or

(iv) A legible notice reproduced durably, so as to withstand normal use, on a gummed or other label securely affixed to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copies.

(8) *Motion pictures and other audiovisual works.* (i) The following constitute examples of acceptable methods of affixation and positions of the copyright notice on motion pictures and other audiovisual works: A notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear whenever the work is performed in its entirety, and that is located:

(A) With or near the title;

(B) With the cast, credits, and similar information;

(C) At or immediately following the beginning of the work; or

(D) At or immediately preceding the end of the work.

(ii) In the case of an untitled motion picture or other audiovisual work whose duration is sixty seconds or less, in addition to any of the locations listed in paragraph (c)(8)(i) of this section, a notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear to the projectionist or broadcaster when preparing the work for performance, is acceptable if it is located on the leader of the film or tape immediately preceding the beginning of the work.

(iii) In the case of a motion picture or other audiovisual work that is distributed to the public for private use, the notice may be affixed, in addition to the locations specified in paragraph (c)(8)(i) of this section, on the housing or container, if it is a permanent receptacle for the work.

(9) *Pictorial, graphic, and sculptural works.* The following constitute examples of acceptable methods of affixation and positions of the copyright notice on various forms of pictorial, graphic, and sculptural works:

(i) Where a work is reproduced in two-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, of the front or back of the copies, or to any backing, mounting, matting, framing, or other material to which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed, is acceptable.

(ii) Where a work is reproduced in three-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, to any visible portion of the work, or to any base, mounting, framing, or other material on which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed, is acceptable.

(iii) Where, because of the size or physical characteristics of the material in which the work is reproduced in copies, it is impossible or extremely impracticable to affix a notice to the copies directly or by means of a durable label, a notice is acceptable if it appears on a tag that is of durable material, so as to withstand normal use, and that is attached to the copy with sufficient durability that it will remain with the copy while it is passing through its normal channels of commerce.

(iv) Where a work is reproduced in copies consisting of sheet-like or strip material bearing multiple or continuous reproductions of the work, the notice may be applied:

(A) To the reproduction itself;

(B) To the margin, selvage, or reverse side of the material at frequent and regular intervals; or

(C) If the material contains neither a selvage nor a reverse side, to tags or labels, attached to the copies and to any spools, reels, or containers housing them in such a way that a notice is visible while the copies are passing through their normal channels of commerce.

(v) If the work is permanently housed in a container, such as a game or puzzle box, a notice reproduced on the permanent container is acceptable.

§ 202.6 [Amended]

5. In § 202.6(e)(1), remove “SE., an unpublished collection or” and add in its place “SE, an unpublished collection, or”.

Dated: August 14, 2017.

Karyn Temple Claggett,
*Acting Register of Copyrights and Director
of the U.S. Copyright Office*

Approved by:

Carla Hayden,
Librarian of Congress

[BILLING CODE 1410-30-P]

[FR Doc. 2017-19285 Filed: 9/11/2017 8:45 am; Publication Date: 9/12/2017]