



Copyright Office

37 CFR Part 202

[Docket No. 2022-4]

Liberalizing the Deposit Requirements for Registering a Single Issue of a Serial Publication

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

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending the rules for registering a single issue of a serial publication, such as an individual issue of a magazine or journal. Under the current regulations, two copies of the best edition are generally needed to register this type of work, and must be in a physical format if the issue was published in that form. The amended rule will liberalize the deposit requirements by letting copyright owners submit one copy of such works instead of two. It also gives copyright owners the option of uploading a digital copy through the electronic registration system, even if the issue was published in a physical format. Alternatively, copyright owners may mail one copy to the Office in a physical format, although mailing a physical copy will delay the examination of the claim and result in a later effective date of registration.

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

FOR FURTHER INFORMATION CONTACT: Suzanne V. Wilson, General Counsel and Associate Register of Copyrights, by email at svwilson@copyright.gov, or Robert J. Kasunic, Associate Register for Copyrights and Director of Registration Policy and Practice, by email at rkas@copyright.gov. Each person may be reached by telephone at 202-707-8050.

SUPPLEMENTARY INFORMATION:

Background

When Congress enacted the Copyright Act of 1976, it authorized the Register of Copyrights to issue regulations specifying administrative classes of works for the purpose of seeking a registration.¹ Pursuant to this authority, the Register established an administrative class for “serials,” known as Class SE.² For purposes of registration, a “serial” is defined as “a work issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely.”³ Examples of works that may qualify as a serial include issues of periodicals, newspapers, journals, and annuals.⁴

Section 408 of the Copyright Act states that an application for registration must be accompanied by “two complete copies . . . of the best edition” if the work has been published in the United States.⁵ The “best edition” 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.”⁶ Section 407 of the Copyright Act separately states that if a work has been published in this country, the copyright owner or the owner of the exclusive right of publication is required to deposit two complete copies of the best edition of that work with the Copyright Office within three months after publication.⁷ This is known as the “mandatory deposit requirement.”

Copies that are submitted to the Copyright Office to satisfy the section 407 mandatory deposit requirement are intended “for the use or disposition of the Library of Congress.”⁸ Likewise, copies of published works that are submitted for registration under section 408 are made “available to the Library of Congress for its collections.”⁹ To avoid duplication, section

¹ 17 U.S.C. 408(c).

² 37 CFR 202.3(b)(1)(v).

³ *Id.*

⁴ *Id.*

⁵ 17 U.S.C. 408(b)(2). If the work was first published in a foreign country but has not been published in the United States, the applicant must submit one complete copy of the foreign edition. *Id.* at 408(b)(3).

⁶ *Id.* at 101.

⁷ *Id.* at 407(a)(1), (b).

⁸ *Id.* at 407(b).

⁹ *Id.* at 704(b).

408 specifies that copies 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.”¹⁰

Both sections 407 and 408 give the Register authority to issue regulations concerning the nature of the copies that must be deposited, and the ability to create exceptions to the deposit requirements set forth in the statute. 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.¹¹ Similarly, section 407 gives the Register authority to issue regulations that “require [the] deposit of only one copy” for the purpose of mandatory deposit.¹²

The legislative history confirms that the Register may adjust the deposit requirements to reduce burdens on copyright owners and to improve efficiencies within the Copyright Office. In discussing the Register’s authority under section 407, Congress made clear that the mandatory deposit requirement should be “as flexible as possible, so that there will be no obligation to make deposits where it serves no purpose, so that only one copy . . . may be deposited where two are not needed, and so that reasonable adjustments can be made to meet practical needs in special cases.”¹³ Similarly, the legislative history for section 408 states 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.”¹⁴

In 2018, the Register exercised this authority to modify the mandatory deposit requirement for serials.¹⁵ If a serial is published in the United States in a physical form, or in both a physical and electronic format, publishers are required to provide the Library with two

¹⁰ *Id.* at 408(b).

¹¹ *Id.* at 408(c)(1).

¹² *Id.* at 407(c).

¹³ H.R. Rep. No. 94-1476, at 151 (1976).

¹⁴ *Id.* at 154.

¹⁵ 83 FR 61546 (Nov. 30, 2018).

complimentary subscriptions to that serial, unless they have been informed by the Office that the serial is not needed for the Library's collections.¹⁶ By contrast, if a serial is published solely in electronic form, publishers have no affirmative obligation to provide a subscription, unless the Office issues a formal demand.¹⁷

Today, the Register exercises her authority to liberalize another deposit requirement related to serials, specifically for the registration of a single issue of a serial publication. First, the new rule lets copyright owners deposit one copy of the issue instead of two.¹⁸ Second, it provides flexibility in how to submit that copy to the Office. Under the current rules, if the issue was published solely in electronic format, copyright owners may upload one digital copy to the electronic registration system.¹⁹ The new rule gives copyright owners of serials published in a physical formator in both a physical and electronic format the same ability to deposit an electronic copy for registration purposes. Copyright owners may still submit one physical copy, but as discussed below the inevitable additional time required for the Copyright Office to receive and process the copy will delay the examination of the claim and result in a later effective date of registration. To expedite examination of the claim and obtain an earlier effective date of registration, this rule allows copyright owners to upload a single digital copy of the issue if they comply with the following technical requirements.²⁰

¹⁶ 37 CFR 202.19(d)(2)(xi).

¹⁷ *Id.* at 202.19(c)(5).

¹⁸ The Office recently updated the regulations governing the deposit requirement for the group registration option for serial issues. 37 CFR 202.4(d)(3); 84 FR 60918 (Nov. 12, 2019); 83 FR 61546 (Nov. 30, 2018). Today's final rule only applies to claims involving a single issue of a serial publication. The requirements for registering two or more issues with the group registration option remain unchanged.

¹⁹ This rule does not change the deposit requirements for registering a serial that is published solely in electronic format. Copyright owners are still required to submit "all elements constituting the work in its published form, *i.e.*, the complete work as published, including metadata and authorship for which registration is not sought." 37 CFR 202.20(b)(2)(iii)(B). In other words, "[p]ublication in an electronic only format requires submission of the digital file(s) in exact first-publication form and content." *Id.*

²⁰ To be clear, copyright owners must comply with these technical requirements if they want to upload a digital copy of a work that was published in a physical form. As discussed in footnote 19, they do not need to comply with these requirements when uploading a digital copy of a work that was published solely in electronic form.

A digital copy submission must be contained in one electronic file, and the copy must be presented in an orderly form. A digital copy will be considered “orderly” if the cover and the entire content of the issue are included in the same file, the pages are arranged in sequential reading order, and the digital copy contains the same content as the physical copy. In addition, the file must be viewable and searchable, it must contain embedded fonts,²¹ and it must be free from any access or copy restrictions that prevent the viewing, storage, or examination of the deposit, such as those implemented through digital rights management.

In addition, the file must be submitted in Portable Document Format (“PDF”), and it must be uploaded to the electronic registration system as an individual file (not in a .zip file). The size of the file must not exceed 500 megabytes. To meet this size limitation, applicants may compress the PDF file in accordance with instructions on the Office’s website.

Applicants will be encouraged to follow the file-naming conventions specified on the Office’s website.²² Specifically, the file name should start with the International Standard Serial Number (“ISSN”) that has been assigned to the publication (if any), and it should include the publication date in “YYYYMMDD” format. For example, the file name for an issue published on January 1, 2022 under ISSN 1234-5678 would be “12345678_20220101.pdf” (leaving out the hyphen in the middle of the ISSN and adding an underscore between the ISSN and the publication date). If an ISSN number has not been assigned to the serial, the file name should include the title of the serial and the publication date for that issue.²³ For instance, the file name for a serial titled *Fashion Weekly* published on January 15, 2022 would be “fashion_weekly_20220115.pdf”.

²¹ This means that the fonts that appeared within the issue when it was published must be included within the file itself.

²² Guidance will be provided on the Registration Portal for the Literary Division, which is located at <https://copyright.gov/registration/literary-works/>. Similar guidance will be added to the *Compendium of U.S. Copyright Office Practices* at a later date.

²³ Copyright owners may obtain an ISSN by contacting the U.S. ISSN Center (www.loc.gov/issn).

Over the next twelve months, the Copyright Office plans to contact copyright owners that routinely submit single serial issues to notify them about the change in the deposit requirements and the technical requirements for uploading a digital deposit. If an applicant uploads a digital deposit but fails to follow the technical requirements during this one-year transition period, the Office may communicate with the applicant to discuss the missing technical requirements and allow it to cure the deficiencies.

Accepting digital deposits in cases where the serial was published in a physical format will benefit both the Office and copyright owners by improving the efficiency of the registration process. Because a significantly larger percentage of single serial issues are submitted with physical deposits, the average processing time in FY21 for claims involving a single serial issue was significantly longer than claims involving other types of literary works.²⁴ The average processing time for a single serial issue with a physical deposit was 280 days in FY21; if correspondence was needed, the processing time jumped to 307 days. By contrast, the average processing time for a single serial issue with an electronic deposit was 72 days, which is comparable to the overall average for other types of literary works.²⁵

There are many reasons for the disparity in the review time between physical and electronic submissions, the most significant one being related to the time required for the Office to receive mailed deposits. When an applicant uploads a digital file in an acceptable file format, the Office typically receives the application, filing fee, and deposit on the same date. The examiner can review the uploaded file as soon as the claim has been assigned, because the Office does not need physical copies to examine a serial for copyrightable authorship.

Conversely, when an applicant submits an online application and mails physical copies to the Office, the deposit may arrive long after the date that the application and filing fee were

²⁴ During this time, 75% of single serial issues were submitted with a physical deposit. For other types of literary works, the numbers were reversed: 75% of those claims were submitted with an electronic deposit, while 25% were submitted with a physical deposit.

²⁵ The average processing time for other literary works was 57 days in FY21.

received, and in some cases it may take weeks to connect the application with the correct deposit. In addition to the inherent delay in mail versus electronic submission, physical mail sent to the Office faces additional delays. Before the physical deposit can be delivered to the Office, it must be sent offsite to be screened and decontaminated for possible pathogens.²⁶ Then the Office's Materials Control and Analysis Division ("MCA") must manually match the deposit to the corresponding application. To facilitate this process, applicants are expected to print a "shipping slip" that contains a barcode generated by the electronic registration system, and attach that document to the physical deposits.²⁷ Unfortunately, many serials are submitted without the required shipping slip. In such cases, MCA must correspond with the applicant to obtain the case number that was assigned to the application, search for the application in the electronic registration system, and manually generate a new shipping slip with an identifying barcode.

In the vast majority of cases, the Serials Division of the Library of Congress does not need these physical copies for its collections. Physical deposits would be useful only if (1) the Library has selected the serial for its collections; (2) certain issues are missing from the collections (or previously deposited copies of such issues had been lost or damaged); and (3) the physical copies that were submitted for purposes of registration happened to be the precise issues that are needed to fill the gap in the collection. While this could theoretically happen, it does not happen often enough to justify the work and expense required on the part of both the claimant and the Office to submit and process physical copies within the Office.

For copyright owners, the rule will reduce the cost of seeking a registration by lowering the incremental cost of producing and mailing physical copies to the Office. It also provides them with certain benefits. When the Office registers a serial issue, the effective date of registration is the date that the Office received the application, filing fee, and deposit in proper

²⁶ See *Compendium of U.S. Copyright Office Practices, Third Edition* 1508.6, 1508.6(A), and 1508.6(B) (2021) ("Compendium").

²⁷ 37 CFR 202.3(b)(2)(i)(D) ("an applicant may send physical copies or phonorecords as necessary to satisfy the best edition requirements, by mail to the Copyright Office, using the required shipping slip generated during the online registration process").

form. As discussed above, when an applicant uploads a digital copy of the deposit to the electronic registration system, the Office typically receives the application, filing fee, and deposit on the same date. By comparison, as described above, when an applicant sends physical copies to the Office the deposit may arrive long after the date that the application and filing fee were received—thereby establishing a later effective date of registration. Moreover, if an applicant uploads a complete copy through the electronic registration system, the Office will retain a digital copy of the issue for twenty years.²⁸ Digital copies are much easier to track, store, and retrieve than physical copies. This is critical if the copyright owner or other interested parties need to obtain a copy of a particular issue for use in litigation or another purpose.

To be clear, copyright owners may continue to submit their deposits in a physical format if they wish to do so, and in such cases, one copy will be required instead of two.²⁹ For all of the reasons provided here, the Office strongly encourages applicants to upload copies to the electronic registration system, instead of sending them in a physical format.

This is a technical change to a “rule[] of agency . . . procedure [and] practice,”³⁰ By reducing the number of copies required for registering a single issue of a serial publication, and by giving copyright owners the option of submitting their deposits either in digital or physical format, it does not harm the interests of any parties and eases the deposit burden for some applicants. Accordingly, the Office finds good cause for publishing this as a final rule without first issuing a notice of proposed rulemaking.³¹

List of Subjects in 37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright.

²⁸ See Compendium 1510.1 (“Published deposit materials are currently stored for twenty years”).

²⁹ The rule also confirms that the copy must be sent in the same package with the shipping slip that is generated by the electronic system, as required by the current regulation.

³⁰ 5 U.S.C. 553(b)(A).

³¹ See 5 U.S.C. 553(b)(B) (rules may be issued without notice of proposed rulemaking where the agency finds that an NPRM is “unnecessary, or contrary to the public interest”).

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 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 § 202.20 by revising paragraph (c)(2) introductory text and by adding paragraph (c)(2)(i)(N) to read as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * *

(c) * * *

(2) In the case of certain works, the special provisions set forth in this clause shall apply. In any case where this clause specifies that one copy or phonorecord may be submitted, that copy or phonorecord shall represent the best edition, or the work as first published, as set forth in paragraph (c)(1) of this section, unless stated otherwise.

(i) * * *

(N) A single issue of a serial publication, for which the deposit may comply with the requirements set forth in paragraphs (b)(2)(iii)(B) or (c)(2)(i)(N)(1) or (2) of this section.

(1) If the issue was published in a physical format, the applicant may upload a digital copy to the electronic registration system provided that the following requirements have been met. The file must be submitted in Portable Document Format (PDF), it must be assembled in an orderly form, and it must be uploaded as one electronic file (*i.e.*, not in a .zip file). The file must be viewable and searchable, contain embedded fonts, and be free from any access or copy restrictions (such as those implemented through digital rights management) that prevent the viewing, storage, or examination of the issue. The file size for the upload must not exceed 500 megabytes, but the file

may be compressed to comply with this requirement, consistent with instructions on the Office's web site. Applicants are encouraged to use the file-naming convention specified on the Copyright Office's website.

(2) Alternatively, the applicant may submit a single physical copy of the issue. If the claim is submitted with the Standard Application, the copy must be accompanied by the required shipping slip generated by the electronic registration system, the shipping slip must be attached to the copy, the copy and the shipping slip must be included in the same package, and the package must be sent to the address specified on the shipping slip.

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Dated: June 27, 2022

Shira Perlmutter,
*Register of Copyrights and Director
of the U.S. Copyright Office*

Approved by:

Carla D. Hayden,
Librarian of Congress

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