

Mandatory Deposit of Copies or Phonorecords

for the Library of Congress

All works under copyright protection that are published in the United States are subject to the “mandatory deposit” provision of the copyright law. It requires that two copies of the “best edition” of a copyrightable work published in the United States be sent to the Copyright Office within three months of publication. This circular covers

- General requirements for mandatory deposit
- Special rules for certain types of works
- Works exempt from mandatory deposit
- Submission procedures
- Penalties
- Special relief

The Copyright Act establishes two separate deposit requirements. Section 408 specifies the deposit requirements for registering a work with the Copyright Office.¹ Section 407 specifies the requirements for depositing a work with the Copyright Office for use by the Library of Congress, commonly known as mandatory deposit requirement.

Section 407 states that the “owner of copyright or of the exclusive right of publication” in a work published in the United States must deposit the required number of complete copies or phonorecords² in the Copyright Office within three months of the date of publication. The copyright law defines publication as the “distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership or by rental, lease, or lending.” “[O]ffering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display” also constitutes publication under the copyright law.

Submitting a published work for the use or disposition of the Library of Congress is not a condition of copyright protection. However, if compliance with the mandatory deposit requirement is not met within three months of publication in the United States, the Register of Copyrights may facilitate, demand, negotiate, or exempt the provision of copies. The mandatory deposit provision ensures that the Library of Congress has an opportunity to obtain copies of every copyrightable work published in the United States for its collections or for exchange with or transfer to any other library.

In most cases, a copyright owner can satisfy the mandatory deposit requirement by submitting an application to register a work, provided that the owner submits two complete copies or phonorecords of the best edition. Alternatively, the owner can submit the required works to the Copyright Office without seeking a registration. For information about applying for copyright registration, see *Copyright Registration* (**Circular 2**).

Certain categories of works are exempt from the mandatory deposit requirement, as further described below. Included in this category are unpublished works, most works

that are published solely online, foreign works that have not been published in any form in the United States, and works that fall outside the collecting priorities of the Library of Congress.

Best Edition of a Work

The “best edition” for purposes of mandatory deposit is “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.” This definition makes clear that the Library of Congress is entitled to receive the copies or phonorecords of the best published edition that is most suitable for its needs.

If two or more editions of the same version of a work were published in the United States before the date of deposit, the owner is responsible for determining which edition constitutes the “best edition.” If the Copyright Office determines that an edition better than the one submitted exists on the date of deposit, it may request that edition on behalf of the Library. For guidance in determining which edition of a work constitutes the best edition, see *Best Edition of Published Copyrighted Works for the Collections of the Library of Congress* (**Circular 7B**). Appendix B to part 202 of the Copyright Office’s regulations codifies the best edition statement. If you remain uncertain about which published edition constitutes the best edition, contact the Copyright Acquisitions Division at cad@loc.gov or (202) 707-7125.

Complete Copy

According to the Copyright Office’s regulations, a copy is considered “complete” for the purposes of mandatory deposit if it contains “all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements.” The Office’s regulations provide additional requirements for the following categories of works.

Sound Recordings

A phonorecord of a sound recording published in the United States is considered complete if, in addition to the phonorecord, it includes “any printed or other visually perceptible material” published with the phonorecord. This material includes record sleeves, album covers, leaflets, and booklets, if any.

Certain Musical Compositions

When a musical composition is published in the United States solely through rental, lease, or lending of (1) a full score and parts or (2) a conductor’s score and parts, the complete copy is the relevant score that was distributed or offered for distribution in the United States.

Motion Pictures

A copy of a motion picture published in the United States is considered complete when the “reproduction of all visual and aural elements” is clean, undamaged, undeteriorated, and free of splices. In addition, the physical copy and its housing should be free of any defects that would interfere with playback or would cause distortion of the work.

Electronic Serials

Electronic works published in the United States and available only online are generally exempt from the mandatory deposit requirement, except for electronic serials that have been expressly demanded by the Copyright Office. When the Office demands an electronic serial, the work is considered complete if it includes all elements constituting the work in its published form, including metadata and formatting codes that were published with the work, if any.

Number of Copies

If a work is subject to the mandatory deposit requirement, the owner generally must deposit two complete copies or phonorecords of the best edition of the work. There are, however, exceptions for the following categories of works.

Motion Pictures

An owner of a published motion picture may submit one complete copy of the work with a separate description of its contents, such as a continuity, pressbook, or synopsis.

Limited Edition Visual Arts Works

An owner of a published pictorial or graphic work may submit one complete copy of the work. Alternately, the owner may submit identifying material (such as a photograph of the work), if (1) fewer than five copies of the work have been published, or (2) the work has been published and sold or offered for sale in a limited edition consisting of 300 or fewer numbered copies.

Computer Programs and Information Works

An owner of a computer program or computerized information work – such as statistical compendia, serials, or reference works – that is not copy-protected may submit one complete copy of the best edition of the work. If the work is copy-protected, the owner should submit two copies of the work.

Published Multimedia Kits

An owner of a published multimedia kit that includes literary works, audiovisual works, sound recordings, or any combination of such works may submit one complete copy of the best edition of the work.

Certain Musical Compositions

An owner of a musical composition published in the United States solely by rental, lease, or lending may submit one complete copy of the best edition of the relevant score.

Three-Dimensional Cartographic Works

An owner of a published three-dimensional cartographic work, such as a globe or relief model, may submit one complete copy of the best edition of the work.

Architectural Works

An owner of an architectural work may submit presentation drawings in their most finished form. For information about the preferred format for presentation drawings, see **chapter 1500**, section 1509.3(D), of the *Compendium*.

Special Considerations for Specific Works

This section describes special considerations regarding mandatory deposit of print serials, electronic serials, foreign works, and unpublished transmission programs.

Print Serials

Each issue of a serial is considered a separate work that may be subject to the mandatory deposit requirement. To avoid receiving a written demand from the Copyright Office for each issue, owners are encouraged to establish a complimentary subscription for the Library of Congress to ensure that the Library automatically receives two copies of each issue. The address for the subscription is

Library of Congress
Copyright Office
Attn: 407 Deposits
101 Independence Avenue SE
Washington, DC 20559-6600

Although Library of Congress collections are comprehensive, the Library does not retain every serial title deposited in the Copyright Office. If the Copyright Acquisitions Division notifies a publisher in writing that a particular title has not been selected for the Library's collections, that title is considered exempt from the mandatory deposit requirements of section 407. Each notification from the division is limited to the specific title(s) listed in the notification and does not apply to other titles distributed by the same publisher. When registering a title exempted from mandatory deposit, the publisher may submit one complete copy in any available format. When submitting an online application, the publisher should cite any notification received in the "Note to the Copyright Office" field and upload a copy of it. Direct any questions about correspondence received from the Copyright Acquisitions Division or about serials not retained by the Library of Congress to cad@loc.gov or (202) 707-7125.

Electronic Serials

In general, electronic works that are published in the United States and available only online are not subject to the mandatory deposit requirement. However, an electronic serial is subject to mandatory deposit if the Copyright Office issues a written demand for a copy for the use or disposition of the Library of Congress. An electronic serial is an electronic work published in the United States and available only online that is issued or intended to be issued on an established schedule in successive parts bearing numerical or chronological designations without subsequent alteration and intended to be continued indefinitely. This category includes periodicals, newspapers, annuals, and journals. Serials that are published in the United States in both physical and electronic form are subject to mandatory deposit on the same basis as serials published in physical form.

Foreign Works

Works published in a foreign country are subject to mandatory deposit as soon as the publisher sells or offers any version of the work for distribution in the United States. If a work is published solely in a foreign country, it is not subject to mandatory deposit. When a work is first published in a foreign country and then in the United States, the work is subject to the mandatory deposit requirement unless (1) it was registered with the Copyright Office prior to its publication in the United States, or (2) it was registered after its publication in the United States but before the Copyright Office issued a demand for it.

Unpublished Transmission Programs

Although most unpublished works are exempt from mandatory deposit, the Copyright Office may issue a written demand for a copy or phonorecord of an audio or audiovisual transmission program even if that program is unpublished. A transmission program is a body of material intended for transmission to the public in sequence and as a unit. The transmission may be made over the Internet or by a cable, broadcasting, or satellite system. For more information, see section 202.22(d) of the Copyright Office's regulations.

Works Exempt from Mandatory Deposit

As noted elsewhere in this circular, the mandatory deposit requirement applies only to works published in the United States. Accordingly, unpublished works and works that are published solely outside the United States are not subject to this requirement. Most works that are published only online are not subject to mandatory deposit. Under Copyright Office regulations, the following categories of published works are also exempt from mandatory deposit because they are not selected for addition to the Library of Congress collections or for use in national library programs.

NOTE: A work exempt from mandatory deposit is not exempt from the deposit requirements for copyright registration.

- Tests and answer material published separately from other works;
- Individually published speeches, sermons, lectures, and addresses;
- Works originally published as part of a collective work (although the collective work itself may be subject to mandatory deposit);
- Literary, dramatic, and musical works published only in phonorecords (although the recording itself may be subject to mandatory deposit from the copyright owner or publisher of the sound recording);
- Motion picture soundtracks (although the motion picture itself may be subject to mandatory deposit);
- Motion pictures published solely through a license or grant to a nonprofit institution to make a fixation of that program directly from a transmission to the public;
- Scientific or technical diagrams, models, plans, or designs;
- Advertising materials, including catalogs;
- Three-dimensional sculptural works;
- Jewelry;
- Dolls, toys, and games;
- Plaques;
- Floor coverings, wallpaper and similar commercial wall coverings, textiles and other fabrics;
- Packaging materials;
- Useful articles; and
- Online-only electronic works, with the exception of electronic serials that have been demanded by the Copyright Office.

Submitting a Mandatory Deposit

You can satisfy the mandatory deposit requirement in one of three ways: (1) submitting an application to register your work, (2) sending the required copies of your work within three months of publication without applying to register, or (3) responding to a written demand from the Copyright Office.

By Registration

In most cases, a copyright owner can satisfy the mandatory deposit requirement by submitting an application to register a work, provided that the owner submits two complete copies or phonorecords of the best edition. For information about applying for copyright registration, see *Copyright Registration* (**Circular 2**).

If the owner completes registration without depositing the best edition of the work or under a grant of special relief, the owner should separately submit the copies required to satisfy mandatory deposit to the address below.

NOTE: When registering a work published solely in physical form or in both physical and electronic form through the Office's electronic registration system, you must generally forgo the online upload option and instead send in the required number of physical copies for deposit.

Without Registration

Alternatively, an owner can submit the required works to the Copyright Office without seeking a registration and should submit the required number of complete copies or phonorecords to

Library of Congress
Copyright Office
Attn: 407 Deposits
101 Independence Avenue SE
Washington, DC 20559-6600

In Response to a Demand

If an owner receives a written demand from the Copyright Office for any work subject to mandatory deposit, the owner must respond within three months after the demand is received by submitting the required number of complete copies or phonorecords to the Copyright Acquisitions Division or by registering the work with the Copyright Office. When registration is not sought, send the deposits to

Library of Congress
Copyright Office—CAD/AD
101 Independence Avenue SE
Washington, DC 20559-6601

If you choose to respond to the demand by registering your work and complete an online application, attach the demand notice to the top of the deposit and shipping slip before sending the deposits to the address on the shipping slip. If you complete a paper application, attach the demand notice and registration materials to the required deposit, placing the demand notice on top, and send the items to the above address.

Penalties for Failure to Deposit

The law envisions that deposit will be made voluntarily to satisfy the requirements of section 407. If the required deposit is not made within three months after receiving a demand from the Copyright Office, the owner obligated to make the deposit may be subject to the following penalties:

- A fine of not more than \$250 for each work;
- The total retail price of the work demanded or, in the absence of a retail price, the reasonable cost of acquiring the work; and
- For willful or repeated failure to comply with the demand, a fine of \$2,500.

Special Relief

Under certain circumstances, the Copyright Office may grant a request for special relief from the mandatory deposit requirements for a published work that is not otherwise exempt from mandatory deposit. Requests are frequently based on undue burden or cost to a copyright owner. Special relief is granted at the discretion of the Copyright Office. It depends on a careful balance of the acquisition policies of the Library of Congress, the examining requirements of the Copyright Office if registration is sought, and the hardship to the copyright owner. Requests must be made in writing and set forth specific reasons why special relief should be granted, and they must be signed by, or on behalf of, the owner of copyright or the owner of the exclusive right of publication in the work.

Address requests for special relief to
Associate Register of Copyrights and
Director of Registration Policy and Practice
U.S. Copyright Office
P.O. Box 70400
Washington, DC 20024-0440

The Register of Copyrights may terminate any ongoing or continuous grant of special relief after consulting with other appropriate officials at the Library of Congress. The owner who requested special relief will be notified of the termination in writing, and the effective date of termination will take effect 30 days after the notice is mailed. For more information about special relief, see **chapter 1500**, section 1511.9, of the *Compendium*.

NOTES

1. This circular is intended as an overview of the basic concepts of mandatory deposit. The authoritative source for U.S. copyright law is the Copyright Act, codified in Title 17 of the *United States Code*. Copyright Office regulations are codified in Title 37 of the *Code of Federal Regulations*. Copyright Office practices and procedures are summarized in the third edition of the *Compendium of U.S. Copyright Office Practices*, cited as the *Compendium*. The copyright law, regulations, and the *Compendium* are available on the Copyright Office website at www.copyright.gov.

2. 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. Examples include a cassette tape, a vinyl disc, or a compact disc. A phonorecord does not include sounds accompanying a motion picture or other audiovisual work.

For Further Information

By Internet

The copyright law, the *Compendium*, electronic registration, application forms, regulations, and related materials are available on the Copyright Office website at www.copyright.gov.

By Email

To send an email inquiry, click the *Contact Us* link on the Copyright Office website.

By Telephone

For general information, call the Copyright Public Information Office at (202) 707-3000 or 1-877-476-0778 (toll free). Staff members are on duty from 8:30 am to 5:00 pm, Eastern time, Monday through Friday, except federal holidays. To request application forms or circulars by postal mail, call (202) 707-9100 or 1-877-476-0778 and leave a recorded message.

By Regular Mail

Write to

Library of Congress
U.S. Copyright Office
Publications Section
101 Independence Avenue, SE #6304
Washington, DC 20559-6304

