



ANNOUNCEMENT

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

NOTICE OF INQUIRY

REGISTRATION OF CLAIMS TO COPYRIGHT; INQUIRY CONCERNING REGISTRATION AND DEPOSIT OF DATABASES

The following excerpt is taken from Volume 50, Number 111 of the Federal Register for Monday, June 10, 1985 (pp.24240-24241)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

(Docket No. RM 85-4)

Registration of Claims to Copyright; Inquiry Concerning Registration and Deposit of Databases

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: As part of another proceeding requesting public comment on the Copyright Office's proposed deposit regulations, the Information Industry Association [I.I.A.] submitted a proposal concerning the deposit requirements for machine-readable databases. The Association of American Publishers [A.A.P.] also suggested a procedure for the group registration of databases. Because of the significance of these issues and their timeliness in light of rapid technological development, by this Notice of Inquiry the Office is inviting public comment on the questions that have been raised.

DATES: Comments should be received on or before July 15, 1985.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department D.S., Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Copyright ordinarily subsists in the contents of a database either as a compilation or as some other work of authorship. In order for a database to have any meaningful copyright protection, however, the author must register the work. Under the Copyright Act of 1976, Title 17 of the United States Code [Act], registration serves several essential functions: It is a prerequisite to suit, 17 U.S.C. 411(a); if the registration is made before publication or within five years of first publication, the certificate or registration is prima facie evidence of the facts it states and of the validity of the copyright, 17 U.S.C. 410(c); and by registering the work within three months after publication, the copyright owner preserves the right to claim statutory damages and discretionary counsel fees, 17 U.S.C. 412.

Section 408(c)(1) of the Act is also important for the deposit of databases. That section authorizes the Register of Copyrights to specify classes into which works may be placed for purposes of deposit and registration. One of the alternatives is "a single registration for a group of related works." When the Copyright Office issued its 1978 regulations, there were several comments requesting special provisions for group registration of revisions and updates of automated databases. 43 FR 763 (January 4, 1978). At that time the Office invited further comments and suggestions as to the type of related works that could be covered by group registration and the deposit and

registration requirements applicable in those cases. The possibility of providing for "a single registration for a group of related works," however, was "reserved for implementation in a separate proceeding." 43 FR 965 (January 5, 1978). The Office also deferred additional amendment to the deposit regulations for machine-readable works prior to developing further experience with the "rapidly developing technology of storing and retrieving information." 43 FR 763 (January 4, 1978). Under present Office regulations, the group registration of related works has similarly been reserved. 37 CFR 202.3(b)(4)(1984).

Databases provide special problems for copyright deposit and examination because they are constantly changing and there remains some question about the copyright ability of additional small increments of information. Special relief provisions, in any event, provide some flexibility in deposit requirements. See H.R. Rep. 94-1476, 94th Cong., 2d Sess. 115 (1976). Presently, the specific provision relating to the registration of machine-readable databases is § 202.20(c)(2)(vii)(B), while the special relief provision is § 202.20(d).

Public Comment Invited on the Following Issues

1. A.A.P. Proposal

In response to the proposed deposit regulations published in the Federal Register on February 14, 1985 (50 FR 6208), A.A.P. stated that regulations must be developed to meet the problems of deposit for dynamic databases subject to regular revision, expansion or other change. A.A.P. proposed regulations which "permit: (a) A single 1

¹ Error; line should read:
"regulations which would
"permit: (a) A single"

'group' registration for varying versions (enhancements, updates, and other modifications) of a database, and related databases, published within a twelve-month period, or any lesser period within twelve months, on the basis of a single deposit and application; (b) in any case, deposit material based on reasonable portions of output, rather than 'raw data' or the like; and (c) diminished deposit requirements in the case of successively or singly ('group') registered revisions, in the nature of descriptions of content and their relation to prior deposits, rather than data content." Letter from Carol A. Risher, Director-Copyright and New Technology, to Dorothy Schrader, General Counsel, Copyright Office (March 29, 1985). The Copyright Office is interested in comments on the feasibility of a single group registration for databases; deposit based on reasonable portions of output, rather than raw data; and deposit based on description of content and its relation to prior deposits, instead of data content.

2. I.I.A. Proposal

I.I.A. suggested in a comment to the proposed deposit regulations (50 FR 6208) that databases cannot serve as documentation of the complete identify of the work's content, either to show the extent of registration or the entirety of the work. Relevant evidence in the examination of authorship, I.I.A. recommended, would be documentary evidence of the continuing process of creation, hard copy extracts (for example, the first and last 25 pages) and the same direct online access as is offered the customer. Finally, I.I.A. stated, section 408(c)(1) of the Act, Title 17 of the United States Code, provides statutory authority for the Copyright

Office to permit a single registration for a group of related works (I.I.A. Comment No. 5).

I.I.A. proposed the addition of a new § 202.3(b)(4) which would permit a single registration for a group of related works if certain conditions are met. The group registration would require that works have the same copyright claimant, the same general title, and similar general content, including subject and organization. If the works are published, each must bear a separate copyright notice as first published and have the same copyright owner, and the work or works must be first published within three months prior to registration.

The deposit accompanying the application for the earliest work or works in the group, fixed or published only in the form of machine-readable copies, would be one copy of identifying portions of the work reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. The required deposit for the remaining work or works in the group would be either the above identifying portions taken from the latest work or works in the group or, where registration is sought for a revised version of, or another derivative work based upon a previously registered database, the claimant may deposit identifying material pursuant to 17 U.S.C. 408(c)(1). The identifying material under section 408(c)(1) would consist of a brief statement that it remains representative of the corresponding pages or equivalent units, or of the data file or files and the data records in such file or files. The descriptive statement submitted with the earlier deposit must also remain accurate except for the changes set forth in the current

statement. If the earlier deposit and descriptive statement were submitted more than a year earlier, the claimant could not submit identifying material as an alternative deposit for the revised version or versions, and instead would have to meet the general deposit requirements for machine-readable databases.

I.I.A. also advocates the use of special relief, pursuant to the proposed deposit regulation, 37 CFR 202.20(d)(iv), which would allow the Register of Copyrights to "permit the deposit of identifying material which does not comply with § 202.21 of these regulations."

The Copyright Office is interested in public comment on the deposit requirements for machine-readable databases including revisions and derivative works based upon previously registered databases. The Office also welcomes views on the question of the use of the special relief provisions to ease the registration deposit requirements for databases. Although the Office invites public comment specifically on the I.I.A. and A.A.P. proposals, we have not made even a tentative decision that all elements of the proposals have merit.

In this proceeding the Copyright Office is not inviting comment on group registration for works other than databases.

(17 U.S.C. 408, 409 and 702)

List of Subjects in 37 CFR Part 202

Copyright registration.

Dated: May 31, 1985.

Dorothy Schrader,
Associate Register of Copyrights for Legal Affairs.

[FR Doc. 85-13827 Filed 6-7-85; 8:45 am]

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² Error; line should read:
"extent of registration or
the entirety of"