

Mandatory Deposit of Copies or Phonorecords for the Library of Congress

Mandatory Deposit in Brief

- All works under copyright protection that are published in the United States are subject to the mandatory deposit provision of the copyright law.
- This law requires that two copies of the best edition of every copyrightable work published in the United States be sent to the Copyright Office within three months of publication.
- Mandatory deposit applies to works first published in a foreign country at the point at which they are distributed in the United States in the form of copies that are imported or are part of an American edition.

Mandatory Deposit Requirements

Section 407 of the Copyright Act (title 17, *U.S. Code*) subjects all works published in the United States to a mandatory deposit requirement. The law 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 copies in the Copyright Office within three months of the date of publication. Publication is defined in copyright law 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.” (See “Published Electronic Works Available Only Online” on page 2 for details about interim regulations governing mandatory deposit of these works.)

The mandatory deposit provision ensures that the Copyright Office is entitled to receive copies of every copyrightable work published in the United States. Section 407 states that the deposits are to be made “available to the Library of Congress for its collections or for exchange or transfer to any other library.”

Send deposit copies to the address below or, to satisfy the mandatory deposit requirement by applying for copyright registration, see “Copyright Registration to Satisfy Mandatory Deposit Requirements” on page 2.

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

Copyright Registration to Satisfy Mandatory Deposit Requirements

Registration of copyright claims with accompanying deposit copies is voluntary under section 408 of the Copyright Act. However, you can satisfy the mandatory deposit provision in section 407 by applying to register a copyright, which requires submission of deposit copies. Registering a copyright establishes a public record of a copyright claim. Before an infringement suit can be filed in court, registration is necessary for works of U.S. origin, and timely registration can also provide a broader range of remedies in an infringement suit. See circular 1, *Copyright Basics*, for more information about the benefits of registration.

There are several ways to apply for copyright registration and simultaneously satisfy the requirements for both mandatory deposit and copyright deposit. Online registration through the electronic Copyright Office (eCO) is the preferred method to register basic claims for literary works; visual arts works; performing arts works, including motion pictures, sound recordings, and single issues of serials. Advantages of online filing include a lower filing fee; the fastest processing time; online status tracking; secure payment by credit or debit card, electronic check, or Copyright Office deposit account; and the ability to upload certain categories of deposits directly into eCO. *However, if you are registering a published work, a physical copy of the best published edition is required under section 407.* (“Best edition” is defined below.) A physical copy is not required for works that are published or distributed only electronically. To access eCO, go to the Copyright Office website at www.copyright.gov.

The next best option for registering basic claims is fill-in Form CO. Using barcode scanning technology, the Office can process these forms more efficiently than paper forms completed manually. Simply complete Form CO on your personal computer, print it out, sign it, and mail the original (copies will not be accepted) along with a check or money order and your deposit. To access Form CO, go to the Copyright Office website and click on *Forms*. The website also provides instructions for alternative methods of applying for registration.

NOTE: Copyright Office fees are subject to change. For current fees, please check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

Demand for Deposit and Penalties for Failure to Deposit

The law envisions that deposit will be made voluntarily to satisfy the requirement of mandatory deposit. To enforce this legal obligation, however, or to ensure a more rapid deposit of a work the Library needs promptly, the Register of Copyrights may make a written demand, including a “mandatory deposit notice,” for the required deposit at any time after publication.

If the required deposit is not made within three months of the demand, the person or organization obligated to make the deposit is liable for a fine for each work plus the retail price of the copies; if the refusal to comply is willful or repeated, an added fine may be incurred.

You can respond to a mandatory deposit notice by applying for copyright registration. If you apply through eCO, you must attach the mandatory deposit notice and an electronically printed shipping slip directly to the hard-copy deposit of the work being registered. If you apply using Form CO, attach the mandatory deposit notice and Form CO to the deposit. In either case, place the mandatory deposit notice on top so that it is visible when the package is opened.

Mail deposits submitted in response to a mandatory deposit notice to:

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

Foreign Works

Although the deposit requirements are limited to works published in the United States, they do apply to a work that was first published in a foreign country as soon as that work is published in the United States through the distribution of copies or phonorecords that are either imported or are part of an American edition.

Published Electronic Works Available Only Online

Effective February 24, 2010, the Copyright Office adopted an interim regulation governing mandatory deposit of electronic works published in the United States and available only online. The regulation establishes that online-only works are exempt from mandatory deposit until the Copy-

right Office issues a demand for deposit of copies or phonorecords of such works. Categories of online-only works subject to demand will first be identified in the regulations; electronic serials is the first category for which demands will be issued. Demands may be made only for works published on or after February 24, 2010.

An “electronic serial” is an electronic work published in the United States and available only online; issued or intended to be issued on an established schedule in successive parts bearing numerical or chronological designations, without subsequent alterations; and intended to be continued indefinitely. This class includes periodicals, newspapers, annuals, and the journals, proceedings, transactions, and other publications of societies. Once a demand has been issued, it is expected that electronic deposits for subsequent issues will continue thereafter, as is the current practice, without the need for additional demand notices.

A complete copy of an online work will include associated metadata and formatting codes that make up a unit of publication. Published electronic works often contain elements such as metadata and formatting codes that, although not perceptible to the naked eye or ear, are part of the unit of publication. These elements are also critical for continued access to and preservation of a work once it is deposited.

See Circular 7B, “*Best Edition*” of *Published Copyrighted Works for the Collections of the Library of Congress*, for the criteria to be applied in determining the best edition or file format for deposit of online-only works in descending order of importance to the Library.

Deposit Requirements

In general, for works other than published electronic works available only online, the deposit must consist of two complete copies or phonorecords of the best edition of the work. (“Best edition” of these works is defined below.) Regulations are available at www.copyright.gov/title37/202. Click on 202.19.

Sound Recordings

If the work is a sound recording, the deposit must include two complete phonorecords of the best edition, plus any text or pictorial matter published with the phonorecord. Examples of the textual material include all phonorecord packaging, record sleeves, and separate leaflets or booklets enclosed with the phonorecords (compact disks, albums, or cassettes).

Motion Pictures

If the work is a motion picture, the deposit consists of one complete copy of the best edition, plus a separate description of its contents, such as a continuity, press book, or synopsis.

Machine-Readable Formats

If the work is readable on a personal computer, including on CD-ROMs, the deposit consists of one complete copy of the best edition if it is not copy protected, plus any documentation such as a user’s guide. If the work is copy protected, the deposit consists of two copies of the best edition plus any documentation.

Serials

Under the mandatory deposit provisions of the copyright law, the owner of copyright or of the exclusive right of publication must deposit with the Copyright Office for the Library of Congress two complete copies of the best edition of each issue of a serial published in the United States. Each issue is considered a separate work for copyright purposes and should be deposited within three months of the date of publication. For more efficient compliance, and to avoid receiving written demand from the Copyright Office for the required deposit when it is not submitted for registration, submitters are encouraged to place the Register of Copyrights on a subscription list to receive automatically two complimentary copies of each issue. Send copies to the following address:

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

Copyright claimants can also satisfy the mandatory deposit requirements for serials by formally registering their claims to copyright. Issues of serials first published on or after January 7, 1991, at intervals of a week or longer within a three-month period during the same calendar year can be grouped and registered with a single application and a reduced fee. The Copyright Office encourages applicants to register those serials that qualify for group registration using Form SE/Group, available on the Office’s website. For details, see Circular 62B, *Copyright Registration for a Group of Serial Issues*.

For the preferred method to register single issues of serials, see “Copyright Registration to Satisfy Mandatory Deposit Requirements” on page 2.

Best Edition of a Work

The definition of “best edition” of a work in the law makes clear that the Library of Congress is entitled to receive the copies or phonorecords of the edition that best suits its needs. Its choice may be made from any editions that have been published in the United States before the date of deposit.

When two or more editions of the same version of a work (hard and soft cover editions of books, for example) have been published before the date of deposit, the Library of Congress generally considers the one of the highest quality to be the best edition (the hard bound edition of a book, for example). If, on the date of deposit, a better edition exists but is not submitted, the Copyright Office is entitled to request the better edition on behalf of the Library. The Library lists criteria to follow in judging quality in its current “best edition” statement. The criteria to be applied in determining the best edition of each of several types of materials (such as printed textual matter, phonorecords, microforms, motion pictures, and so forth) are listed in Circular 7B, “*Best Edition*” of *Published Copyrighted Works for the Collections of the Library of Congress*, in descending order of importance to the Library’s archival collections. When the criteria listed do not apply to a particular work, the Copyright Office will confer with appropriate Library officials to obtain a determination as to the best edition of that work.

Exemptions from the Deposit Requirement

Because many deposits are not suitable for addition to the Library of Congress collections or for use in national library programs, the Copyright Office has issued regulations that exempt certain categories of works entirely from the mandatory deposit requirements. These regulations also reduce the required number of copies or phonorecords from two to one for certain other categories. Currently, works that are published only electronically and that have no physical counterparts are exempted from the deposit requirements until the Copyright Office issues a demand for deposit. (See “Published Electronic Works Available Only Online” on page 2.) For further information about these regulations, see www.copyright.gov/title37/202. Click on 202.19.

Serials

Although its collections are comprehensive, the Library of Congress does not retain every serial title deposited in the Copyright Office. Upon written notification from the Copyright Acquisitions Division (CAD), serial titles not selected for the Library’s collections are completely exempted from the mandatory deposit requirements of section 407. Note

that each letter an individual publisher receives from CAD is title specific and does not apply to all titles published by the publisher. If registration is sought under section 408, the required number of deposit copies is reduced from two to one for those exempted from mandatory deposit. Applicants registering works in this category may want to file electronically through eCO. To complete such a registration, upload the letter received from CAD, preferably as a PDF file, in addition to the uploaded deposit file. Enter a reference to the letter in the “Notes to the Copyright Office” section of the application.

For more information about copyright registration of serial titles that will not be retained for the Library’s collections, contact the Registration and Recordation Program at (202) 707-8250. Direct questions about correspondence received or about serials not retained for the Library’s collections to CAD at cad@loc.gov or (202) 707-7125.

Special Relief

Under certain circumstances, special relief from deposit requirements may be granted for a published work not exempt from mandatory deposit. Requests are most frequently based on undue burden or cost to a copyright owner. The grant of special relief is discretionary with the Copyright Office and will depend 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 set forth specific reasons why special relief should be granted and must be signed by, or on behalf of, the owner of copyright or the owner of the exclusive right of publication in the work.

If registration is sought, send the request to the chief of the Literary Division, Visual Arts Division, or Performing Arts Division, according to the type of claim being submitted, at the following address:

*Library of Congress
Copyright Office
Registration and Recordation Program
101 Independence Avenue SE
Washington, DC 20559-6200
FAX: (202) 707-3698*

If only mandatory deposit is to be made, send the request to:

*Library of Congress
Copyright Office
Chief, Copyright Acquisitions Division*

101 Independence Avenue SE
Washington, DC 20559-6600
FAX: (202) 707-4435

For Further Information

By Internet

Circulars, announcements, regulations, other related materials, and certain copyright application forms are available from the Copyright Office website at www.copyright.gov.

By Telephone

For general information about copyright, call the Copyright Public Information Office at (202) 707-3000. Staff members

are on duty from 8:30 AM to 5:00 PM, eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day. To request paper application forms or circulars by postal mail, call (202) 707-9100 and leave a recorded message.

By Regular Mail

Write to

*Library of Congress
Copyright Office-COPUBS
Publications Section
101 Independence Avenue SE
Washington, DC 20559-6300*

