

each registration for its collections. Within six months of registration, the Library of Congress will determine whether it wishes to consider certain photographs for its collections. Generally, the Library is interested in photographs covering newsworthy events by specific photographers, and it does not anticipate making a large number of requests for samples or archival quality prints.

Submission of Sample, if Requested

In order for the Library of Congress to determine whether it wishes to make a selection, it will need to examine a sample of the photographs included in the registration. The Library will first review the application and identifying material which identify the photographs included in the group registration. The Library may then request that the photographer or photography business send a sample of from fifty to one hundred images of the photographs in the format that is the least expensive, but will still facilitate the Library's selection process, e.g., slides, contact prints in black and white or in color, or good quality photocopies in black or white. For registrations of up to five thousand photographs, fifty images may be requested as a sample; for registrations of over five thousand photographs, another ten images may be requested for each additional one thousand photographs covered in the registration. A maximum of one hundred images may be requested for registrations covering over ten thousand photographs.

Deposit of Archival Quality Photographs

After reviewing the sample, the Library of Congress may request from five to ten archival quality photographs, depending on the number of photographs included in the group registration. The Library's guidelines for deposit of photographs are included in the new proposed Copyright Office regulation found at 37 CFR 202.20(c)(2)(xx).

The number of photographs that the Library may select depends on the number of photographs covered in one group registration. For any group registration of up to five thousand photographs, the Library may select five photographs for its collections; for each additional one thousand photographs included in a group registration up to ten thousand, the Library may select another photograph. For any group over ten thousand, the deposit would remain ten, archival quality photographs.

Effective Date

The proposed regulations permitting group registration of photographs will be effective upon publication of an interim or final rule. They may be used to register photographs created on or after March 1, 1989, the effective date of the Berne Convention Implementation Act of 1988. Prior to March 1, 1989, the copyright law required that a copyright notice be placed on all copies of published works; however, for works published after that date, use of the notice is optional. Therefore, these regulations cover only photographs where the use of a copyright notice is not an issue.

Further Public Comment

The Office has met with various parties, and has been made aware both of certain concerns and also the guidelines agreed upon by The Board of Directors of the American Society of Media Photographers, the Professional Photographers of America, Photo Marketing Association International, the Association of Professional Color Laboratories, the Professional School Photographers Association International and the Coalition for Consumers' Picture Rights. One of that group's agreements is to work to eliminate the 17 U.S.C. 412 requirement as a precondition for statutory damages and attorneys fees for photographers. The Office takes no position on this particular proposal but observes that photographers need real relief now; we believe the proposed rule offers that relief.

The Copyright Office seeks comment on these proposed rules. Following review of all comments, the Office will adopt interim or final regulations. The Copyright Office is interested in receiving information based on actual experience, if possible, including answers to the following questions.

1. How have courts dealt with deposits consisting of only identifying material rather than a complete copy of the work?
2. Have such registrations been accorded prima facie evidentiary effect with respect to copyrightability as well as to the facts in the certificate?
3. How would the problems of photographs registered under this regulation differ from those of other registered collections, e.g., in collections where there are no individual identifiers for the works but the Copyright Office has a copy of each work included in the collection?
4. How does this proposed group registration differ from a group registration for a database covering a

three month period of time where the deposit consists of only a small sample of the copyrightable authorship from a representative day?

5. What problems would be caused by registrations made under these proposed regulations that include both unpublished and published works?

6. Will inclusion of information about the agent or licensing entity be helpful?

7. What might be the abuses, if any?

8. Is the Office proposing too many photographs to be registered on one application? If yes, what number would be more appropriate?

9. Are there other identifiers that could assist in identifying the registered works?

Conforming Amendments

The Copyright Office also is proposing to amend 37 CFR 202.3(b)(3)(ii) and footnote 6 to 37 CFR 202.3(c)(2) to conform to the addition of new 37 CFR 202.3(b)(9).

List of Subjects in 37 CFR Part 202

Claims, Copyright.

Proposed Rule

In consideration of the foregoing, the Copyright Office proposes to amend 37 CFR part 202 in the manner set forth below:

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 is revised to read as follows:

Authority: 17 U.S.C. 408 and 702.

§ 202.3 [Amended]

2. Section 202.3(b)(3)(ii) is amended by removing "(b)(8)" and adding "(b)(9)."

3. In § 202.3, paragraph (b)(9) is redesignated as paragraph (b)(10) and a new paragraph (b)(9) is added to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(9) Group registration of photographs.

(i) Pursuant to the authority granted by 17 U.S.C. 408(c)(1), and without waiving any rights of the Library of Congress to review and acquire copies of individual photographs, the Register of Copyrights has determined that, on the basis of a single application, and a single filing fee of \$40, a single registration may be made for a group of photographs, if the following conditions are met:

(A) The group bears a single title identifying the group as a whole;

(B) All of the photographs were created by the same author;