

# 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 2 copies of the best edition of every copyrightable work published in the United States be sent to the Copyright Office within 3 months of publication.
- The law also requires that the deposit be made automatically.
- Mandatory deposit also applies to foreign works at the point where they are published in the United States through the distribution of copies that are either imported or are part of an American edition.

## Mandatory Deposit Requirements

On January 1, 1978, all works published with a notice of copyright in the United States became subject to the mandatory deposit requirements of the United States Copyright Act (title 17, *United States Code*). These requirements are similar to the “legal deposit” or “depot legal” laws in effect in other countries.

On March 1, 1989, the qualification “with notice of copyright” was eliminated from the mandatory deposit provision. This change was made in Public Law 100-568, the Berne Convention Implementation Act of 1988. As a result of this change, all works under copyright protection and published in the United States on or after March 1, 1989, are subject to mandatory deposit whether published with or without a notice.

The mandatory deposit provision ensures that the Copyright Office is entitled to receive copies of every copyrightable work published in the United States. Section 704 of the Copyright Act states that these deposits “are available to the Library of Congress for its collections, or for exchange or transfer to any other library.”

## How the Mandatory Deposit Requirements Work

The copyright law in section 407 requires the “owner of copyright or of the exclusive right of publication” in a work published in the United States to

deposit the required number of copies in the Copyright Office within 3 months of the date of such publication.

Publication is defined in the 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.”

Send deposit copies to:

*Library of Congress  
Register of Copyrights  
Attn: 407 Deposits  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000*

### **Use of Registration to Satisfy Mandatory Deposit Requirements**

Deposit for the collections of the Library of Congress of published works is mandatory under section 407; registration of a copyright claim with accompanying deposit copies is voluntary under section 408. While not a condition of copyright protection, registration may under certain circumstances allow the owner a broader range of remedies in infringement suits. To satisfy requirements for both, the following must be sent *in one package* to the Register of Copyrights: (1) mandatory deposit copies, (2) a completed application for registration, and (3) a \$30\* nonrefundable filing fee payable to the Register of Copyrights.

If sending multiple works, all applications, deposits of copyrightable materials, and fees should be sent in the same package, if possible. Each application should be attached to the appropriate deposit. When a single package is not practical, number each package in a set sequentially (e.g., 1 of 3, 2 of 4, etc.) to facilitate processing.

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

### **When the Register Sends a Demand for Deposit; Penalties for Failure to Deposit**

The law envisions that deposit will be made voluntarily to satisfy this requirement. *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 for the required deposit at any time after publication.*

If the required deposit is not made within 3 months of the demand, the person or organization obligated to make the deposit is liable for a fine of not more than \$250 for each work plus the retail price of the copies; if the refusal to comply is willful or repeated, an added fine of \$2,500 may be incurred.

### **When the Deposit Requirement Applies to 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.

### **What Must Be Deposited**

In general, the deposit must consist of *two* complete copies or phonorecords of the best edition of the work. Regulations are available at [www.copyright.gov/title37](http://www.copyright.gov/title37).

#### **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 machine readable in an IBM or Apple Macintosh-compatible format, including 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.

#### **CD-ROM Agreements**

Under a special deposit agreement with the Library, CD-ROM publishers may (1) deposit one copy and authorize local area network use in Library Reading Rooms for up to

five simultaneous users or (2) deposit two copies. For further information on the agreement, write to the Chief of the Copyright Acquisitions Division (see address below) or call (202) 707-3000.

### **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 3 months after the date of publication. For more efficient compliance, and to avoid receiving written demand from the Copyright Office for the required deposit, 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  
Register of Copyrights  
Attn: 407 Deposits  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000*

Copyright claimants may also satisfy the mandatory deposit requirements by formally registering their claims to copyright. As explained in Circular 62 claimants may register serials by using form SE/Group, Short Form SE, or Form SE. Some serials may qualify for group registration. Issues of serials first published on or after January 7, 1991, at intervals of a week or longer within a 3 month period during the same calendar year can be grouped and registered with a single application and reduced fee. The Copyright Office encourages applicants to register those serials that qualify for group registration using Form SE/Group, rather than registering the serial issues individually.

### **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 (e.g., for books, hard cover and soft cover editions) 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 (e.g., the hard bound edition). 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 of Congress. The Library of Congress 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 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 officials of the Library of Congress to obtain a determination as to the best edition of that work.

For a detailed description of the “best edition” criteria, write to the following address for Circular 7B, *Best Edition of Published Copyrighted Works for the Collections of the Library of Congress*:

*Library of Congress  
Copyright Office  
Publications Section, LM-455  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000*

or call the 24-hour Forms and Publications Hotline at (202) 707-9100 and leave a recorded message. Circulars also are available over the Internet at [www.copyright.gov](http://www.copyright.gov). To receive circulars via fax, call (202) 707-2600 from any touchtone phone.

### **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 phono-records from two to one for certain other categories. For further information about these regulations, see Part 202 of 37 CFR, Chapter II, or contact the Copyright Office.

### **Serials**

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

### Special Relief

Under certain circumstances, special relief from deposit requirements may be requested for any 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. They should be sent as follows:

If registration is sought:

*Library of Congress  
Copyright Office  
Chief, Examining Division, LM-445  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000  
Fax: (202) 707-3698*

or, if only mandatory deposit is to be made:

*Library of Congress  
Copyright Office  
Chief, Copyright Acquisitions Division, LM-438c  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6600  
Fax: (202) 707-4435*