(ii) Correspondence received by the Copyright Office in the envelope containing the application and fee states that a fixation of the instant work was made by the Library of Congress and requests that the copy or phonorecord so fixed be used to satisfy the registration deposit provisions.

(2) Copies and phonorecords transferred, lent, or sold to the Library of Congress under the provisions of paragraph (d) of this section may be used as the deposit for copyright registration purposes only when the application and fee, in a form acceptable for registration, accompany, in the same container, the copy or phonorecord lent, transferred, or sold, and there is an explanation that the copy or phonorecord is intended to satisfy both the demand issued under section 407(e)(2) of title 17 of the United States Code and the registration deposit provisions.

(g) Agreements modifying the terms of this section.

(1) The Library of Congress may, at its sole discretion, enter into an agreement whereby the provision of copies or phonorecords of unpublished audio or audiovisual transmission programs on terms different from those contained in this section is authorized.

(2) Any such agreement may be terminated without notice by the Library of Congress.

(17 U.S.C. 407, 408, 702)

§202.23 Full term retention of copyright deposits.

(a) General. (1) This section prescribes conditions under which a request for full term retention, under the control of the Copyright Office, of copyright deposits (copies, phonorecords, or identifying material) of published works may be made and granted or denied pursuant to section 704(e) of title 17 of the United States Code. Only copies, phonorecords, or identifying material deposited in connection with registration of a claim to copyright under title 17 of the United States Code are within the provisions of this section. Only the depositor or the copyright owner of record of the work identified by the copyright deposit, or a duly authorized agent of the depositor or copyright owner, may request full term retention. A fee for this service is fixed by this section pursuant to section 708(a)(11) of title 17 of the United States Code.

(2) For purposes of this section, under the control of the Copyright Office shall mean within the confines of Copyright Office buildings and under the control of Copyright Office employees, including retention in a Federal records center, but does not include transfer to the Library of Congress collections.

(3) For purposes of this section, full term retention means retention for a period of 75 years from the date of publication of the work identified by the particular copyright deposit which is retained.

(4) For purposes of this section, copyright deposit or its plural means the copy, phonorecord, or identifying material submitted to the Copyright Office in connection with a published work that is subsequently registered and made part of the records of the Office.

(b) Form and content of request for full term retention—(1) Forms. The Copyright Office does not provide printed forms for the use of persons requesting full term retention of copyright deposits.

(2) Requests for full term retention must be made in writing addressed to the Chief, Information and Records Division of the Copyright Office, and shall (i) be signed by or on behalf of the depositor or copyright owner of record, and (ii) clearly indicate that full term retention is desired.

(3) The request for full term retention must adequately identify the particular copyright deposit to be retained, preferably by including the title used in the registration application, the name of the depositor or copyright owner of record, the publication date, and, if registration was completed earlier, the registration number.

(c) Conditions under which requests will be granted or denied—(1) General. A request that meets the requirements of paragraph (b) of this section will generally be granted if the copyright deposit for which full term retention is requested has been continuously in the custody of the Copyright Office and the Library of Congress has not, by the
date of the request, selected the copyright deposit for its collections.  

(2) Time of request. The request for full term retention of a particular copyright deposit may be made at the time of deposit or at any time thereafter; however, the request will be granted only if at least one copy, phonorecord, or set of identifying material is in the custody of the Copyright Office at the time of the request. Where the request is made concurrent with the initial deposit of the work for registration, the requestor must submit one copy or phonorecord more than the number specified in §202.20 of for the particular work.

(3) One deposit retained. The Copyright Office will retain no more than one copy, phonorecord, or set of identifying material for a given registered work.

(4) Denial of request for full term retention. The Copyright Office reserves the right to deny the request for full term retention where:

(i) The excessive size, fragility, or weight of the deposit would, in the sole discretion of the Register of Copyrights, constitute an unreasonable storage burden. The request may nevertheless be granted if, within 60 calendar days of the original denial of the request, the requestor pays the reasonable administrative costs, as fixed in the particular case by the Register of Copyrights, of preparing acceptable identifying materials for retention in lieu of the actual copyright deposit;

(ii) The Library of Congress has selected for its collections the single copyright deposit, or both, if two copies or phonorecords were deposited; or

(iii) Retention would result in a health or safety hazard, in the sole judgment of the Register of Copyrights. The request may nevertheless be granted if, within 60 calendar days of the original denial of the request, the requestor pays the reasonable administrative costs, as fixed in the particular case by the Register of Copyrights of preparing acceptable identifying materials for retention in lieu of the actual copyright deposit.

(d) Form of copyright deposit. If full term retention is granted, the Copyright Office will retain under its control the particular copyright deposit used to make registration for the work. Any deposit made on or after September 19, 1978, shall satisfy the requirements of §§202.20 and 202.21.

(e) Fee for full term retention. (1) Pursuant to section 708(a)(11) of title 17 of the United States Code, the Register of Copyrights has fixed the fee for full term retention, as prescribed in §201.3(d), for each copyright deposit granted full term retention.

(2) A check or money order in the amount prescribed in §201.3(d) payable to the Register of Copyrights, must be received in the Copyright Office within 60 calendar days from the date of mailing of the Copyright Office’s notification to the requestor that full term retention has been granted for a particular copyright deposit.

(3) The Copyright Office will issue a receipt acknowledging payment of the fee and identifying the copyright deposit for which full term retention has been granted.

(f) Selection by Library of Congress—(1) General. All published copyright deposits are available for selection by the Library of Congress until the Copyright Office has formally granted a request for full term retention. Unless the requestor has deposited the additional copy or phonorecord specified by paragraph (c)(2) of this section, the Copyright Office will not process a request for full term retention submitted concurrent with a copyright registration application and deposit, until the Library of Congress has had a reasonable amount of time to make its selection determination.

(2) A request for full term retention made at the time of deposit of a published work does not affect the right of the Library to select one or both of the copyright deposits.

(3) If one copyright deposit is selected, the second deposit, if any, will be used for full term retention.

(4) If both copyright deposits are selected, or, in the case where the single deposit made is selected, full term retention will be granted only if the additional copy or phonorecord specified by paragraph (c)(2) was deposited.

(g) Termination of full term storage. Full term storage will cease 75 years after the date of publication of the
§ 202.24 Deposit of published electronic works available only online.

(a) Pursuant to authority under 17 U.S.C. 407(d), the Register of Copyrights may make written demand to deposit one complete copy or a phonorecord of an electronic work published in the United States and available only online upon the owner of copyright or of the exclusive right of publication in the work, under the following conditions:

(1) Demands may be made only for works in those categories identified in § 202.19(c)(5) of these regulations as being subject to demand.

(2) Demands may be made only for works published on or after February 24, 2010.

(3) The owner of copyright or of the exclusive right of publication must deposit the demanded work within three months of the date the demand notice is received.

(4) Copies or phonorecords deposited in response to a demand must be able to be accessed and reviewed by the Copyright Office, Library of Congress, and the Library’s authorized users on an ongoing basis.

(b) Technical standards. Technical standards for the transmission of copies of online-only works to the Copyright Office in response to a demand will be available on the Copyright Office website (www.copyright.gov).

(c) Definitions. (1) “Best edition” has the meaning set forth in § 202.19(b)(1) of these regulations.

(2) "Complete copy" has the meaning set forth in § 202.19(b)(2) of these regulations.

(3) “Electronic works” are works fixed and published solely in an electronic format.

(4) Special relief. (1) In the case of any demand made under paragraph (a) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation,

(i) Extend the time period provided in section 407(d) of Title 17;

(ii) Permit the deposit of incomplete copies or phonorecords; or

(iii) Permit the deposit of copies or phonorecords other than those normally comprising the best edition.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3) Requests for special relief under this section shall be made in writing to the Copyright Acquisitions Division, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reasons why the request should be granted.

[75 FR 3869, Jan. 25, 2010]

Appendix A to Part 202—Technical Guidelines Regarding Sound Physical Condition

To be considered a copy “of sound physical condition” within the meaning of 37 CFR 202.22(d)(5), a copy shall conform to all the technical guidelines set out in this Appendix.

A. Physical Condition. All portions of the copy that reproduce the transmission program must be:

1. Clean: Free from dirt, marks, spots, fungus, or other smudges, blotches, blemishes, or distortions.

2. Undamaged: Free from burns, blisters, tears, cuts, scratches, breaks, erasure, or other physical damage. The copies must also be free from:

   (i) Any damage that interferes with performance from the tape or other reproduction, including physical damage resulting from earlier mechanical difficulties such as cassette jamming, breaks, tangles, or tape overflow; and

   (ii) Any erasures, damage caused by visual or audible defects or distortions or any remaining from incomplete erasure of previously recorded works.

3. Unspliced: Free from splices in any part of the copy reproducing the transmission.

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