§ 202.22 Acquisition and deposit of unpublished audio and audiovisual transmission programs.

(a) General. This section prescribes rules pertaining to the acquisition of phonorecords and copies of unpublished audio and audiovisual transmission programs by the Library of Congress under section 407(e) of title 17 of the United States Code, as amended. It also prescribes rules pertaining to the use of such phonorecords and copies in the registration of claims to copyright, under section 408(b).

(b) Definitions. For purposes of this section:

(1) The terms copies, fixed, phonorecords, publication, and transmission program and their variant forms, have the meanings given to them in section 101 of title 17. The term network station has the meaning given it in section 111(f) of title 17. For the purpose of this section, the term transmission includes transmission via the Internet, cable, broadcasting, and satellite systems, and via any other existing or future devices or processes for the communication of a performance or display whereby images or sounds are received beyond the place from which they are sent.

(2) Title 17 means title 17 of the United States Code, as amended.

(c) Recording of transmission programs. (1) Library of Congress employees, including Library of Congress contractors, acting under the general authority of the Librarian of Congress, may make a fixation of an unpublished audio or audiovisual transmission program directly from a transmission to...

(1) A transcription of the entire work, or a reproduction of the entire work on a phonorecord; and

(2) Photographs or other reproductions from the motion picture showing the title of the motion picture, the soundtrack credits, and the copyright notice for the soundtrack, if any.

The provisions of paragraphs (b), (c), (d), and (e) of this section do not apply to identifying material deposited under this paragraph (f).

(g)(1) In the case of unpublished motion pictures (including transmission programs that have been fixed and transmitted to the public, but have not been published), identifying material deposited in lieu of an actual copy shall consist of either:

(i) An audio cassette or other phonorecord reproducing the entire soundtrack or other sound portion of the motion picture; or

(ii) A set consisting of one frame enlargement or similar visual reproduction from each 10-minute segment of the motion picture, and a description of the motion picture.

(2) In either case the “description” may be a continuity, a pressbook, or a synopsis but in all cases it must include:

(i) The title or continuing title of the work, and the episode title, if any;

(ii) The nature and general content of the program;

(iii) The date when the work was first fixed and whether or not fixation was simultaneous with first transmission;

(iv) The date of first transmission, if any;

(v) The running time; and

(vi) The credits appearing on the work, if any.

The provisions of paragraphs (b), (c), (d), and (e) of this section do not apply to identifying material submitted under this paragraph (g).

(h) In the case where the deposit copy or copies of a motion picture cannot be viewed on equipment in the Registration Program of the Copyright Office, the “description” required by §202.20(c)(2)(ii) of these regulations may be a continuity, a press-book, a synopsis, or a final shooting script but in all cases must be sufficient to indicate the copyleftable material in the work and include

(1) The continuing title of the work and the episode title, if any;

(2) The nature and general content of the program and of its dialogue or narration, if any;

(3) The running time; and

(4) All credits appearing on the work including the copyright notice, if any.

The provisions of paragraphs (b), (c), and (d) of this section do not apply to identifying material submitted under this paragraph (h).

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the public in the United States, in accordance with subsections 407(e)(1) and (4) of title 17 of the United States Code. The choice of programs selected for fixation shall be based on the Library of Congress's acquisition policies in effect at the time of fixation. Specific notice of an intent to record a transmission program will ordinarily not be given. In general, the Library of Congress will seek to record a substantial portion of the television programming transmitted by noncommercial educational broadcast stations as defined in section 397 of title 47 of the United States Code, and will record selected programming transmitted by commercial television broadcast stations, both network and independent. The Library will also record a selected portion of the radio programming transmitted by commercial and noncommercial broadcast stations. Additionally, the Library will record a selected portion of unpublished Internet, cable and satellite programming transmitted to the public in the United States.

(2) Upon written request addressed to the Chief, Motion Picture, Broadcasting and Recorded Sound Division by a broadcast station or other owner of the right of transmission, the Library of Congress will inform the requestor whether a particular transmission program has been recorded by the Library.

(3) The Library of Congress will not knowingly record any unfixed or published transmission program under the recording authority of section 407(e) of title 17 of the United States Code.

(4) The Library of Congress is entitled under this paragraph (c) to presume that a radio program transmitted to the public in the United States has been fixed but not published at the time of transmission, and that a television program transmitted to the public in the United States by a noncommercial educational broadcast station as defined in section 397 of title 47 of the United States Code has been fixed but not published.

(5) The presumption established by paragraph (c)(4) of this section may be overcome by written declaration and submission of appropriate documentary evidence to the Chief, Motion Picture, Broadcasting and Recorded Sound Division, either before or after recording of the particular transmission program by the Library of Congress. Such written submission shall contain:

(i) The identification, by title and time of broadcast, of the transmission program in question;

(ii) A brief statement declaring either that the program was not fixed or that it was published at the time of transmission;

(iii) If it is declared that the program was published at the time of transmission, a brief statement of the facts of publication, including the date and place thereof, the method of publication, the name of the owner of the right of first publication, and whether the work was published in the United States; and

(iv) The actual handwritten signature of an officer or other duly authorized agent of the organization which transmitted the program in question.

(6) A declaration that the program was unfixed at the time of transmission shall be accepted by the Library of Congress, unless the Library can cite evidence to the contrary, and the copy or phonorecord will either be

(i) Erased; or

(ii) Retained, if requested by the owner of copyright or of any exclusive right, to satisfy the deposit provision of section 408 of title 17 of the United States Code.

(7) If it is declared that the program was published at the time of transmission, the Library of Congress is entitled under this section to retain the copy or phonorecord to satisfy the deposit requirement of section 407(a) of title 17 of the United States Code.

(8) The Library of Congress shall maintain a list of the radio, cable, Internet and satellite transmission programs that the Library has recorded on the Motion Picture, Broadcasting and Recorded Sound Division Web site at http://www.loc.gov/rr/record/ for audio-visual transmission programs, and, in making fixations of such unpublished transmission programs, shall identify a program that the Library has recorded by including that transmission program on the list no later than fourteen days after such fixation has occurred.
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The Library of Congress in making fix-
ations of unpublished television trans-
mission programs transmitted by com-
mercial broadcast stations shall not do
so without notifying the transmitting
organization or its agent that such ac-
tivity is taking place. In the case of
television network stations, the notifi-
cation will be sent to the particular
network. In the case of any other com-
mercial television broadcasting sta-
tion, the notification will be sent to
the particular broadcast station that
has transmitted, or will transmit, the
program. Such notice shall, if possible,
be given by the Library of Congress
prior to the time of broadcast. In every
case, the Library of Congress shall
transmit such notice no later than
fourteen days after such fixation has
occurred. Such notice shall contain:

(i) The identification, by title and
time of broadcast, of the transmission
program in question;

(ii) A brief statement asserting the
Library of Congress' belief that the
transmission program has been, or will
be by the date of transmission, fixed
and is unpublished, together with lan-
guage converting the notice to a de-
mand for deposit under section 407 (a)
and (b) of title 17 of the United States
Code, if the transmission program has
been published in the United States.

(9) The notice required by paragraph
(c)(8) of this section shall not cover
more than one transmission program
except that the notice may cover up to
thirteen episodes of one title if such
episodes are generally scheduled to be
broadcast at the same time period on a
regular basis, or may cover all the epi-
sodes comprising the title if they are
scheduled to be broadcast within a pe-
riod of not more than two months.

(d) Demands for deposit of a trans-
mision program. (1) The Register of
Copyrights may make a written de-
mand upon the owner of the right of
transmission in the United States to
deposit a copy or phonorecord of a spe-
cific transmission program for the ben-
fefit of the Library of Congress under
the authority of section 407(e)(2) of
title 17 of the United States Code.

(2) The Register of Copyrights is enti-
tled to presume, unless clear evidence
to the contrary is proffered, that the
transmitting organization is the owner
of the United States transmission
right.

(3) Notices of demand shall be in
writing and shall contain:

(i) The identification, by title and
time of broadcast, of the work in ques-
tion;

(ii) An explanation of the optional
forms of compliance, including transfer
of ownership of a copy or phonorecord
to the Library, lending a copy or pho-
norecord to the Library for reproduc-
tion, or selling a copy or phonorecord
to the Library at a price not to exceed
the cost of reproducing and supplying
the copy or phonorecord;

(iii) A ninety-day deadline by which
time either compliance or a request for
an extension of a request to adjust the
scope of the demand or the method for
fulfilling it shall have been received by
the Register of Copyrights;

(iv) A brief description of the con-
trols which are placed on the use of the
copies or phonorecords;

(v) A statement concerning the Reg-
ister's perception of the publication
status of the program, together with
language converting this demand to a
demand for deposit, under 17 U.S.C.
407, if the recipient takes the position
that the work is published; and

(vi) A statement that a compliance
copy, or in the case of an audio trans-
mision program, a compliance phon-
orecord, must be made and retained if
the notice is received prior to trans-
mition.

(4) With respect to paragraph
(d)(3)(ii) of this section, the sale of a
copy or phonorecord in compliance
with a demand of this nature shall be
at a price not to exceed the cost to the
Library of reproducing and supplying
the copy or phonorecord. The notice of
demand should therefore inform the re-
cipient of that cost and set that cost,
plus reasonable shipping charges, as
the maximum price for such a sale.

(5) Copies and phonorecords trans-
ferred, lent, or sold under paragraph (d)
of this section shall be of sound phys-
ical condition as described in Appendix
A to this section.

(6) Special relief. In the case of any de-
mand made under paragraph (d) of this
section the Register of Copyrights
may, after consultation with other ap-
propriate 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 subparagraph (d)(3)(iii);
(ii) Make adjustments in the scope of the demand; or
(iii) Make adjustments in the method of fulfilling the demand. Any decision as to whether to allow such extension or adjustments shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress and shall be made as reasonably warranted by the circumstances. Requests for special relief under paragraph (d) of this section shall be made in writing to the Copyright Acquisitions Division, shall be signed by or on behalf of the owner of the right of transmission in the United States and shall set forth the specific reasons why the request should be granted.

(e) Disposition and use of copies and phonorecords. (1) All copies and phonorecords acquired under this section shall be maintained by the Motion Picture, Broadcasting and Recorded Sound Division of the Library of Congress. The Library may make one archival copy or phonorecord of a program which it has fixed under the provisions of section 407(e)(1) of title 17 of the United States Code and paragraph (c) of this section.
(2) All copies and phonorecords acquired or made under this section, except copies and phonorecords of transmission programs consisting of a regularly scheduled newscast or on-the-spot coverage of news events, shall be subject to the following restrictions concerning copying and access: in the case of television or other audiovisual transmission programs, copying and access are governed by Library of Congress Regulation 818–17, Policies Governing the Use and Availability of Motion Pictures and Other Audiovisual Works in the Collections of the Library of Congress, or its successors; in the case of audio transmission programs, copying and access are governed by Library of Congress Regulation 818–18.1, Recorded Sound Listening and Duplication Services, or its successors. Transmission programs consisting of regularly scheduled newscasts or on-the-spot coverage of news events are subject to the provisions of the "American Television and Radio Archives Act," 2 U.S.C. 170, and such regulations as the Librarian of Congress shall prescribe.

(f) Registration of claims to copyright. (1) Copies and phonorecords fixed by the Library of Congress under the provisions of paragraph (c) of this section may be used as the deposit for copyright registration provided that:
(i) The application and fee, in a form acceptable for registration, is received by the Copyright Office not later than ninety days after transmission of the program, and
(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.