

§ 201.40

37 CFR Ch. II (7-1-14 Edition)

Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price

1. Title of the work (or, if untitled, a brief description of the work): _____

2. Author(s) of the work: _____

3. Type of work (e.g. music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.): _____

4. Edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, English translation of French text). If there is no information available relating to the edition or version of the work, the Notice should state, "No information available": _____

5. Year of first publication: _____

6. Year the work first secured federal copyright through publication with notice or registration as an unpublished work: _____

7. Copyright renewal registration number (not required for foreign works restored under 17 U.S.C. 104A): _____

8. Full legal name of the copyright owner (or the owner of exclusive rights): _____

9. The person or entity identified in space #8 owns:
 all rights.

the following rights (e.g., the right to reproduce/distribute/publicly display/publicly perform the work or to prepare a derivative work): _____

10. Person or entity that the Copyright Office should contact concerning the Notice:

- Name: _____
 Address: _____
 Telephone: _____
 Fax number (if any): _____
 E-mail address (if any): _____

11. Person or entity that libraries and archives may contact concerning the work's normal commercial exploitation or availability at a reasonable price:

- Name: _____
 Address: _____
 Telephone: _____
 Fax number (if any): _____
 E-mail address (if any): _____

Additional Content (OPTIONAL):

12. Original copyright registration number: _____

13. Additional information concerning the work's normal commercial exploitation or availability at a reasonable price: _____

Declaration:

I declare under penalty of perjury under the laws of the United States:

- that each work identified in this notice is subject to normal commercial exploitation.

- that a copy or phonorecord of each work identified in this notice is available at a reasonable price.

Signature: _____

Date: _____

Typed or printed name: _____

Title: _____

APPENDIX B TO §201.39—REQUIRED FORMAT FOR CONTINUATION SHEET

NLA CON

Page ____ of ____ Pages.

Continuation Sheet for NLA Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price

1. Title of the work (or, if untitled, a brief description of the work): _____

2. Type of work (e.g. music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.): _____

3. Edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, English translation of French text). If there is no information available relating to the edition or version of the work, the Notice should state, "No information available": _____

4. Copyright renewal registration number (not required for foreign works restored under 17 U.S.C. 104A): _____

Additional Content (OPTIONAL):

5. Original copyright registration number: _____

6. Additional information concerning the work's normal commercial exploitation or availability at a reasonable price: _____

[63 FR 71787, Dec. 30, 1998, as amended at 66 FR 34373, June 28, 2001; 71 FR 31092, June 1, 2006; 73 FR 37839, July 2, 2008; 78 FR 42874, July 18, 2013]

§ 201.40 Exemption to prohibition against circumvention.

(a) General. This section prescribes the classes of copyrighted works for which the Librarian of Congress has determined, pursuant to 17 U.S.C. 1201(a)(1)(C) and (D), that noninfringing uses by persons who are users of such works are, or are likely to be, adversely affected. The prohibition against circumvention of technological measures that control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to such users of the prescribed classes of copyrighted works.

(b) *Classes of copyrighted works.* Pursuant to the authority set forth in 17 U.S.C. 1201(a)(1)(C) and (D), and upon the recommendation of the Register of Copyrights, the Librarian has determined that the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to persons who engage in noninfringing uses of the following classes of copyrighted works:

(1) Literary works, distributed electronically, that are protected by technological measures which either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies in the following instances:

(i) When a copy of such a work is lawfully obtained by a blind or other person with a disability, as such a person is defined in 17 U.S.C. 121; provided, however, the rights owner is remunerated, as appropriate, for the price of the mainstream copy of the work as made available to the general public through customary channels; or

(ii) When such work is a nondramatic literary work, lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. 121.

(2) Computer programs that enable wireless telephone handsets to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the telephone handset.

(3) Computer programs, in the form of firmware or software, that enable a wireless telephone handset originally acquired from the operator of a wireless telecommunications network or retailer no later than ninety days after the effective date of this exemption to connect to a different wireless telecommunications network, if the operator of the wireless communications network to which the handset is locked has failed to unlock it within a reasonable period of time following a request by the owner of the wireless telephone handset, and when circumvention is initiated by the owner, an individual consumer, who is also the owner of the

copy of the computer program in such wireless telephone handset, solely in order to connect to a different wireless telecommunications network, and such access to the network is authorized by the operator of the network.

(4) Motion pictures, as defined in 17 U.S.C. 101, on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System, where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary because reasonably available alternatives, such as noncircumventing methods or using screen capture software as provided for in alternative exemptions, are not able to produce the level of high-quality content required to achieve the desired criticism or comment on such motion pictures, and where circumvention is undertaken solely in order to make use of short portions of the motion pictures for the purpose of criticism or comment in the following instances:

(i) In noncommercial videos;

(ii) In documentary films;

(iii) In nonfiction multimedia ebooks offering film analysis; and

(iv) For educational purposes in film studies or other courses requiring close analysis of film and media excerpts, by college and university faculty, college and university students, and kindergarten through twelfth grade educators. For purposes of this exemption, “noncommercial videos” includes videos created pursuant to a paid commission, provided that the commissioning entity’s use is noncommercial.

(5) Motion pictures, as defined in 17 U.S.C. 101, that are lawfully made and acquired via online distribution services and that are protected by various technological protection measures, where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary because reasonably available alternatives, such as noncircumventing methods or using screen capture software as provided for in alternative exemptions, are not able to produce the level of high-quality content required to achieve the desired criticism or comment on such motion pictures, and where circumvention is undertaken solely in order to make use

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of short portions of the motion pictures for the purpose of criticism or comment in the following instances:

- (i) In noncommercial videos;
- (ii) In documentary films;
- (iii) In nonfiction multimedia ebooks offering film analysis; and
- (iv) For educational purposes in film studies or other courses requiring close analysis of film and media excerpts, by college and university faculty, college and university students, and kindergarten through twelfth grade educators. For purposes of this exemption, “noncommercial videos” includes videos created pursuant to a paid commission, provided that the commissioning entity’s use is noncommercial.

(6)(i) Motion pictures, as defined in 17 U.S.C. 101, on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System, where the circumvention, if any, is undertaken using screen capture technology that is reasonably represented and offered to the public as enabling the reproduction of motion picture content after such content has been lawfully decrypted, when such representations have been reasonably relied upon by the user of such technology, when the person engaging in the circumvention believes and has reasonable grounds for believing that the circumvention is necessary to achieve the desired criticism or comment, and where the circumvention is undertaken solely in order to make use of short portions of the motion pictures for the purpose of criticism or comment in the following instances:

- (A) In noncommercial videos;
- (B) In documentary films;
- (C) In nonfiction multimedia ebooks offering film analysis; and
- (D) For educational purposes by college and university faculty, college and university students, and kindergarten through twelfth grade educators.

(ii) For purposes of this exemption, “noncommercial videos” includes videos created pursuant to a paid commission, provided that the commissioning entity’s use is noncommercial.

(7)(i) Motion pictures, as defined in 17 U.S.C. 101, that are lawfully made and acquired via online distribution services and that are protected by various technological protection measures,

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where the circumvention, if any, is undertaken using screen capture technology that is reasonably represented and offered to the public as enabling the reproduction of motion picture content after such content has been lawfully decrypted, when such representations have been reasonably relied upon by the user of such technology, when the person engaging in the circumvention believes and has reasonable grounds for believing that the circumvention is necessary to achieve the desired criticism or comment, and where the circumvention is undertaken solely in order to make use of short portions of the motion pictures for the purpose of criticism or comment in the following instances:

- (A) In noncommercial videos;
- (B) In documentary films;
- (C) In nonfiction multimedia ebooks offering film analysis; and
- (D) For educational purposes by college and university faculty, college and university students, and kindergarten through twelfth grade educators.

(ii) For purposes of this exemption, “noncommercial videos” includes videos created pursuant to a paid commission, provided that the commissioning entity’s use is noncommercial.

(8) Motion pictures and other audiovisual works on DVDs that are protected by the Content Scrambling System, or that are distributed by an online service and protected by technological measures that control access to such works, when circumvention is accomplished solely to access the playhead and/or related time code information embedded in copies of such works and solely for the purpose of conducting research and development for the purpose of creating players capable of rendering visual representations of the audible portions of such works and/or audible representations or descriptions of the visual portions of such works to enable an individual who is blind, visually impaired, deaf, or hard of hearing, and who has lawfully obtained a copy of such a work, to perceive the work; provided however, that the resulting player does not require circumvention of technological measures to operate.

(c) *Definition.* “Specialized format,” “digital text” and “authorized entities” shall have the same meaning as in 17 U.S.C. 121.

[65 FR 64574, Oct. 27, 2000, as amended at 68 FR 62018, Oct. 31, 2003; 71 FR 68479, Nov. 27, 2006; 74 FR 55139, Oct. 27, 2009; 75 FR 43839, July 27, 2010; 75 FR 47465, Aug. 6, 2010; 77 FR 65278, Oct. 26, 2012]

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

Sec.

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- 202.19 Deposit of published copies or phonorecords for the Library of Congress.
- 202.20 Deposit of copies and phonorecords for copyright registration.
- 202.21 Deposit of identifying material instead of copies.
- 202.22 Acquisition and deposit of unpublished audio and audiovisual transmission programs.
- 202.23 Full-term retention of copyright deposits.
- 202.24 Deposit of published electronic works available only online.

APPENDIX A TO PART 202—TECHNICAL GUIDELINES REGARDING SOUND PHYSICAL CONDITION

APPENDIX B TO PART 202—“BEST EDITION” OF PUBLISHED COPYRIGHTED WORKS FOR THE COLLECTIONS OF THE LIBRARY OF CONGRESS

AUTHORITY: 17 U.S.C. 408(f), 702

EDITORIAL NOTE: Nomenclature changes to part 202 appear at 76 FR 27898, May 13, 2011.

§ 202.1 Material not subject to copyright.

The following are examples of works not subject to copyright and applications for registration of such works cannot be entertained:

(a) Words and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listing of ingredients or contents;

(b) Ideas, plans, methods, systems, or devices, as distinguished from the particular manner in which they are expressed or described in a writing;

(c) Blank forms, such as time cards, graph paper, account books, diaries, bank checks, scorecards, address books, report forms, order forms and the like, which are designed for recording information and do not in themselves convey information;

(d) Works consisting entirely of information that is common property containing no original authorship, such as, for example: Standard calendars, height and weight charts, tape measures and rulers, schedules of sporting events, and lists or tables taken from public documents or other common sources.

(e) Typeface as typeface.

[24 FR 4956, June 18, 1959, as amended at 38 FR 3045, Feb. 1, 1973; 57 FR 6202, Feb. 21, 1992]

§ 202.2 Copyright notice.

(a) *General.* (1) With respect to a work published before January 1, 1978, copyright was secured, or the right to secure it was lost, except for works seeking *ad interim* copyright, at the date of publication, *i.e.*, the date on which copies are first placed on sale, sold, or publicly distributed, depending upon the adequacy of the notice of copyright on the work at that time. The adequacy of the copyright notice for such a work is determined by the copyright statute as it existed on the date of first publication.

(2) If before January 1, 1978, publication occurred by distribution of copies or in some other manner, without the statutory notice or with an inadequate notice, as determined by the copyright statute as it existed on the date of first publication, the right to secure copyright was lost. In such cases, copyright cannot be secured by adding the notice to copies distributed at a later date.

(3) Works first published abroad before January 1, 1978, other than works for which *ad interim* copyright has been obtained, must have borne an adequate