

Mandatory Copyright Deposit Provisions: Are They Really Mandatory?

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Not everyone knows that the U.S. Copyright Act contains “[mandatory deposit provisions](#),” which require that copies of most copyrighted works be sent to the Copyright Office. Those who are aware of these provisions may believe that they only apply to works that are the subject of a federal copyright application. Although a common misconception, this is not true – the mandatory deposit provisions apply to *all* works that are published in the U.S., with a few limited exceptions, regardless of whether the owner is filing an application to obtain a registration. If this comes to a surprise to you, **[READ THIS POST](#)** to learn more about this provision of the law, including timing, exceptions, and penalties for failure to comply (ouch!).

Timing and Copies

Indeed, section 407 of the Copyright Act provides that *all* works published in the U.S. are subject to a mandatory deposit requirement (including those works published first in a foreign country, but then later imported into the U.S. for distribution). Specifically, the owner of the copyright (or the owner of the exclusive right to publish) is required to deposit *two* copies of the work in the Copyright Office within *three* months after publication. These provisions ensure that that Copyright Office is entitled to copies of every copyrightable work published in the U.S., which are then made available to the Library of Congress.

Additionally, the law does not state that just any two copies can be deposited – rather, the Copyright Office has dibs on the “best edition” of the work. When two or more editions have published, the “best edition” is the edition that the Library of Congress determines to be the most suitable for its purposes. There is a list of [criteria](#) to apply to make this determination, but generally the edition of the highest quality is considered to be the best edition. For example, a hard bound edition of a book is better than a soft bound edition, and an edition printed on acid-free paper is better than one printed on average paper.

Exceptions

You may be thinking that this requirement seems pretty onerous, especially when we are talking “best editions.” There are a few notable exceptions, which may help to soften the blow.

First, some works just are not useful to the Library of Congress, because they would not be suitable either for a collection or for use in national library programs. Thus, the Copyright Office has declared certain categories to be entirely exempt. Perhaps most notably in this digital age, works that are published only electronically and that have no physical counterpart do not have to be deposited (which exempts this blog post!).

Also, the Copyright Office may, at its discretion, grant special relief from these requirements for other works that are not exempt. Most often, copyright owners make a request for relief based on undue burden or cost. Those wishing to request relief under this provision must make a written request containing specific reasons to the Copyright Office, who will then assess the acquisition policies of the Library of Congress and the hardship to the copyright owner. This avenue may become important for copyright owners of works that would be particularly difficult to deposit, for example, sculptures or paintings with a limited number that each have a high monetary value.

How to comply

Some copyright owners have found ways to comply with these deposit requirements in a manner that is not too disruptive to their business.

One way to meet these requirements is to make it a practice to file applications for federal copyright registration. Although registration of copyright claims is voluntary, it does come along with many benefits, such as establishing a public record of the copyright claim, providing for attorney's fees and statutory damages if made within certain time constraints, and allowing the registration to be recorded with the U.S. Customs Service for protection against the importation of infringing copies. Further, registration is required before a copyright infringement lawsuit can be filed in court. Because depositing copies of the works is a part of the federal application process, the mandatory deposit requirements will also be satisfied in this process.

Another way that copyright owners have met these requirements without much administrative burden is simply adding the Library of Congress on subscription lists to automatically receive two complimentary copies of the works. Obviously, the ability to use this method will determine on the nature of the work.

Penalties

Now that we have seen that these mandatory deposit provisions are indeed mandatory, what happens to copyright owners that fail to comply? The good news is, it doesn't involve jail time or huge fines. Rather, the Copyright Office states,

The law envisions that deposit will be made voluntarily to satisfy the requirement of mandatory deposit. 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, including a "mandatory deposit notice," for the required deposit at any time after publication.

If a copyright owner receives one of these demands and does not make the required deposit within *three* months, the owner 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, the Copyright Office may impose an additional fine of \$2,500.

Thus, copyright owners who do not make the mandatory deposits should be prepared to respond to a mandatory deposit notice, if one is received, within three months. A proper response would be to either make the required deposit, or file an application for registration of the work.

It is these mandatory deposit requirements, and the deposit requirements that go along with obtaining a copyright registration, that have made the Library of Congress the world's largest library and America's national library. Indeed, the Library of Congress presently contains more than 142 million books, photographs, maps, films, documents, sound recordings, computer programs, and other copyrighted works. With the Copyright Office registering half a million claims to copyright annually, we can expect the Library of Congress to continue to be greatly enhanced through the operations of the copyright system.

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