

August 21, 2009

Office of the General Counsel  
U.S. Copyright Office  
Room LM-401  
James Madison Building  
101 Independence Avenue, SE  
Washington, DC 20559

Via Hand Delivery

Re: Mandatory Deposit of Published Electronic Works Available Only On-line  
Notice of Proposed Rulemaking  
37 CFR Part 202, Docket No. RM 20009-3

Dear Sir or Madam:

The American Society of Media Photographers (ASMP) submits the following comments on behalf of its members in connection with the above-referenced proposed rulemaking. Founded in 1944, ASMP's mission is to protect and promote the interests of professional photographers who make photographs primarily intended for publication. ASMP currently has approximately 7,000 members in the United States and approximately 40 other countries, and it is the largest and oldest organization of its kind in the world.

The Copyright Office has solicited comments regarding proposed amendments to its regulations relating to the mandatory deposit copies of electronic works published in the United States and available only on-line. At the risk of over-simplification, the proposal would exempt such works from the existing mandatory deposit requirement until the Copyright Office issues a demand, would specify the processes relating to the demand and response, and would establish new "best edition" criteria for electronic serials available only on-line.

ASMP supports and encourages all Copyright Office attempts to improve the speed, efficiency and economy of the registration system. It has encouraged its members to utilize the on-line electronic registration system ever since the Copyright Office first introduced it. The current mandatory deposit requirements are particularly burdensome

for photographers, and ASMP applauds even a limited exemption from them for electronic works available only on-line. Indeed, ASMP would encourage the Copyright Office to explore possible ways for expanding the proposed exemption. The difficulties presented by the current mandatory deposit requirement are particularly obvious in the context of electronic registration. Under the current system, the registration of a work published in print may be initiated and submitted on-line, but the electronic application and payment must be accompanied by a separate submission of the mandatory deposit copy in hard copy. In this context, the on-line registration system has the effect of turning registration into a two-step combination of digital and analog tasks, rather than simplifying and accelerating registration. ASMP hopes that can be changed.

In fact, this proposed rulemaking may be an ideal occasion to revisit exactly what “best edition” means in the 21<sup>st</sup> century. It is quite possible that a print edition is no longer the best edition and that viewing a print copy as such is imposing a 20<sup>th</sup> century mindset upon a 21<sup>st</sup> century reality that is quite different. ASMP asks that the Copyright Office explore this possibility, whether in connection with the current rulemaking or a separate one.

The Copyright Office is also requesting comments on whether copyright owners should be required to notify the Library of Congress of the publication of new, on-line only works in the United States. While ASMP is sympathetic to the needs of the Library to maintain and expand its collection, such a requirement would unnecessarily increase the burdens on copyright owners while providing no real benefit to the Library. The registration of this type of work would of necessity, and could by requirement, be accomplished only on-line. The application could easily have a field indicating that the registration was exempt from the mandatory deposit requirement under the proposed regulation. That field could and should be searchable by anyone accessing the Copyright Office’s records. It would, therefore, be easier and more efficient for a Library of Congress Employee to produce a periodic list of such registrations generated by such a search than by having to review and compile lists of notices submitted by copyright owners. A requirement of notification would needlessly burden both the copyright owners and the Library of Congress while providing nothing of additional value to either.

The Copyright Office also requested comment on the proposed change in the definition of “complete copy” as applied to electronic works published and available only on-line. The proposal is essentially that the complete copy must include the metadata and formatting codes that are associated with the work as they comprise the unit of

publication. ASMP applauds this requirement, and generally supports all requirements that compel metadata to accompany the works with which the metadata is associated.

ASMP believes that any regulation dealing with words like “digital,” “electronic,” and “online” needs to have those words clearly defined. While we all intuitively know what those words mean, we recall all too clearly the drafting of §201(c) of the Copyright Act of 1976, where we thought we all knew what “revision” meant, only to have the publishing community convince the courts that it really meant something quite different. It would be unfortunate to have changes in technology to cause history to repeat itself.

On a related issue, it seems advisable to have the regulation specify what happens when copies of digital registrations and digital deposit material are requested in connection with litigation (or otherwise). Precisely what would be delivered by the Copyright Office, in what medium, with what security devices, information and metadata? It would be helpful for the regulation to address this issue.

ASMP is happy to provide any other information that the Copyright Office might wish and gladly supports all efforts by the Copyright Office to improve its operations through the use of modern technology. Please let us know if we can be of any further information or assistance.

Respectfully yours,

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Managing Director & General Counsel

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