

may, at its sole discretion, enter into an agreement whereby the provision of copies of unpublished television transmission programs on terms different from those contained in this section is authorized.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)

[48 FR 37208, Aug. 17, 1983, as amended at 56 FR 7815, Feb. 26, 1991; 60 FR 34168, June 30, 1995]

**§ 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 Reference 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) 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 37 CFR 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 after September 19, 1978 shall satisfy the requirements of 37 CFR 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 at \$270.00 for each copyright deposit granted full term retention.

(2) A check or money order in the amount of \$270.00 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 work identified by the copyright deposit retained, and the copyright deposit will be disposed of in accordance with section 704, paragraphs (b) through (d), of title 17 of the United States Code.

[52 FR 28822, Aug. 4, 1987, as amended at 60 FR 34168, June 30, 1995]

#### 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 causing visual or audible defects or distortions or any material remaining from incomplete erasure of previously recorded works.

3. *Unspliced*: Free from splices in any part of the copy reproducing the transmission program, regardless of whether the splice involves the addition or deletion of material or is intended to repair a break or cut.

4. *Undeteriorated*: Free from any visual or aural deterioration resulting from aging or exposure to climatic, atmospheric, or other chemical or physical conditions, including heat, cold, humidity, electromagnetic fields, or radiation. The copy shall also be free from excessive brittleness or stretching, from any visible flaking of oxide from the tape base or other medium, and from other visible signs of physical deterioration or excessive wear.

**B. Physical Appurtenances of Deposit Copy.**

1. *Physical Housing of Video Tape Copy.* (a) In the case of video tape reproduced for reel-to-reel performance, the deposit copy shall consist of reels of uniform size and length. The length of the reels will depend on both the size of the tape and its running time (the last reel may be shorter). (b) In the case of video tape reproduced for cassette, cartridge, or similar performance, the tape drive mechanism shall be fully operable and free from any mechanical defects.

2. *"Leader" or Equivalent.* The copy, whether housed in reels, cassettes, or cartridges, shall have a leader segment both preceding the beginning and following the end of the recording.

**C. Visual and Aural Quality of Copy:**

1. *Visual Quality.* The copy should be equivalent to an evaluated first generation copy from an edited master tape and must reproduce a flawless and consistent electronic signal that meets industry standards for television screening.

2. *Aural Quality.* The sound channels or other portions must reproduce a flawless and consistent electronic signal without any audible defects.

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

[48 FR 37209, Aug. 17, 1983, as amended at 60 FR 34168, June 30, 1995]

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

The copyright law (title 17, United States Code) requires that copies or phonorecords deposited in the Copyright Office be of the "best edition" of the work. The law states

that "The 'best edition' of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes." (For works first published only in a country other than the United States, the law requires the deposit of the best edition as first published.)

When two or more editions of the same version of a work have been published, the one of the highest quality is generally considered to be the best edition. In judging quality, the Library of Congress will adhere to the criteria set forth below in all but exceptional circumstances.

Where differences between editions represent variations in copyrightable content, each edition is a separate version and "best edition" standards based on such differences do not apply. Each such version is a separate work for the purpose of the copyright law.

The criteria to be applied in determining the best edition of each of several types of material are listed below in descending order of importance. In deciding between two editions, a criterion-by-criterion comparison should be made. The edition which first fails to satisfy a criterion is to be considered of inferior quality and will not be an acceptable deposit. Example: If a comparison is made between two hardbound editions of a book, one a trade edition printed on acid-free paper, and the other a specially bound edition printed on average paper, the former will be the best edition because the type of paper is a more important criterion than the binding.

Under regulations of the Copyright Office, potential depositors may request authorization to deposit copies or phonorecords of other than the best edition of a specific work (e.g., a microform rather than a printed edition of a serial), by requesting "special relief" from the deposit requirements. All requests for special relief should be in writing and should state the reason(s) why the applicant cannot send the required deposit and what the applicant wishes to submit instead of the required deposit.

**I. Printed Textual Matter**

**A. Paper, Binding, and Packaging:**

1. Archival-quality rather than less-permanent paper.
2. Hard cover rather than soft cover.
3. Library binding rather than commercial binding.
4. Trade edition rather than book club edition.
5. Sewn rather than glue-only binding.
6. Sewn or glued rather than stapled or spiral-bound.
7. Stapled rather than spiral-bound or plastic-bound.
8. Bound rather than looseleaf, except when future looseleaf insertions are to be issued. In the case of looseleaf materials, this

includes the submission of all binders and indexes when they are part of the unit as published and offered for sale or distribution. Additionally, the regular and timely receipt of all appropriate looseleaf updates, supplements, and releases including supplemental binders issued to handle these expanded versions, is part of the requirement to properly maintain these publications.

9. Slip-cased rather than nonslip-cased.  
10. With protective folders rather than without (for broadsides).

11. Rolled rather than folded (for broadsides).

12. With protective coatings rather than without (except broadsides, which should not be coated).

B. Rarity:

1. Special limited edition having the greatest number of special features.

2. Other limited edition rather than trade edition.

3. Special binding rather than trade binding.

C. Illustrations:

1. Illustrated rather than unillustrated.

2. Illustrations in color rather than black and white.

D. Special Features:

1. With thumb notches or index tabs rather than without.

2. With aids to use such as overlays and magnifiers rather than without.

E. Size:

1. Larger rather than smaller sizes. (Except that large-type editions for the partially-sighted are not required in place of editions employing type of more conventional size.)

### II. Photographs

A. Size and finish, in descending order of preference:

1. The most widely distributed edition.

2. 8 x 10-inch glossy print.

3. Other size or finish.

B. Unmounted rather than mounted.

C. Archival-quality rather than less-permanent paper stock or printing process.

### III. Motion Pictures

A. Film rather than another medium. Film editions are listed below in descending order of preference.

1. Preprint material, by special arrangement.

2. Film gauge in which most widely distributed.

3. 35 mm rather than 16 mm.

4. 16 mm rather than 8 mm.

5. Special formats (e.g., 65 mm) only in exceptional cases.

6. Open reel rather than cartridge or cassette.

B. Videotape rather than videodisc. Videotape editions are listed below in descending order of preference.

1. Tape gauge in which most widely distributed.

2. Two-inch tape.

3. One-inch tape.

4. Three-quarter-inch tape cassette.

5. One-half-inch tape cassette.

### IV. Other Graphic Matter

A. Paper and Printing:

1. Archival quality rather than less-permanent paper.

2. Color rather than black and white.

B. Size and Content:

1. Larger rather than smaller size.

2. In the case of cartographic works, editions with the greatest amount of information rather than those with less detail.

C. Rarity:

1. The most widely distributed edition rather than one of limited distribution.

2. In the case of a work published only in a limited, numbered edition, one copy outside the numbered series but otherwise identical.

3. A photographic reproduction of the original, by special arrangement only.

D. Text and Other Materials:

1. Works with annotations, accompanying tabular or textual matter, or other interpretative aids rather than those without them.

E. Binding and Packaging:

1. Bound rather than unbound.

2. If editions have different binding, apply the criteria in I.A.2-I.A.7, above.

3. Rolled rather than folded.

4. With protective coatings rather than without.

### V. Phonorecords

A. Compact digital disc rather than a vinyl disc.

B. Vinyl disc rather than tape.

C. With special enclosures rather than without.

D. Open-reel rather than cartridge.

E. Cartridge rather than cassette.

F. Quadraphonic rather than stereophonic.

G. True stereophonic rather than monaural.

H. Monaural rather than electronically rechanneled stereo.

### VI. Musical Compositions

A. Fullness of Score:

1. *Vocal music*:

a. With orchestral accompaniment—

i. Full score and parts, if any, rather than conductor's score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to full score only.)

ii. Conductor's score and parts, if any, rather than condensed score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to conductor's score only.)

b. Unaccompanied: Open score (each part on separate staff) rather than closed score (all parts condensed to two staves).

2. *Instrumental music:*

a. Full score and parts, if any, rather than conductor's score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to full score only.)

b. Conductor's score and parts, if any, rather than condensed score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to conductor's score only.)

B. Printing and Paper:

1. Archival-quality rather than less-permanent paper.

C. Binding and Packaging:

1. Special limited editions rather than trade editions.

2. Bound rather than unbound.

3. If editions have different binding, apply the criteria in I.A.2-I.A.12, above.

4. With protective folders rather than without.

*VII. Microforms*

A. Related Materials:

1. With indexes, study guides, or other printed matter rather than without.

B. Permanence and Appearance:

1. Silver halide rather than any other emulsion.

2. Positive rather than negative.

3. Color rather than black and white.

C. Format (newspapers and newspaper-formatted serials):

1. Reel microfilm rather than any other microform.

D. Format (all other materials):

1. Microfiche rather than reel microfilm.

2. Reel microfilm rather than microform cassettes.

3. Microfilm cassettes rather than micro-  
opaque prints.

E. Size:

1. 35 mm rather than 16 mm.

*VIII. Machine-Readable Copies*

A. Computer Programs

1. With documents and other accompanying material rather than without.

2. Not copy-protected rather than copy-protected (if copy-protected then with a backup copy of the disk(s)).

3. *Format:*

a. PC-DOS or MS-DOS (or other IBM compatible formats, such as XENIX):

(i) 5¼" Diskette(s).

(ii) 3½" Diskette(s).

(iii) Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.

b. Apple Macintosh:

(i) 3½" Diskette(s).

(ii) Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.

B. Computerized Information Works, Including Statistical Compendia, Serials, or Reference Works:

1. With documentation and other accompanying material rather than without.

2. With best edition of accompanying program rather than without.

3. Not copy-protected rather than copy-protected (if copy-protected then with a backup copy of the disk(s)).

4. *Format*

a. PC-DOS or MS-DOS (or other IBM compatible formats, such as XENIX):

(i) Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.

(ii) 5¼" Diskette(s).

(iii) 3½" Diskette(s).

b. Apple Macintosh:

(i) Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.

(ii) 3½" Diskette(s).

*IX. Works Existing in More Than One Medium*

Editions are listed below in descending order of preference.

A. Newspapers, dissertations and theses, newspaper-formatted serials:

1. Microform.

2. Printed matter.

B. All other materials:

1. Printed matter.

2. Microform.

3. Phonorecord.

[54 FR 42299, Oct. 16, 1989]

**PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES**

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AUTHORITY: 17 U.S.C. 702; and 5 U.S.C. 552(a)(1).

SOURCE: 43 FR 774, Jan. 4, 1978, unless otherwise noted.