

instance and are typically distributed as digital files as well. Theatrical releases are distributed through a collection of digital files called digital cinema packages (“DCPs”), and streaming content is similarly delivered through hi-resolution digital files. In some cases, MPA members release a home video version as a DVD or other physical product, but that occurs after the initial theatrical or streaming release of the work. In most cases, an analog film version of MPA members’ works simply does not exist at the time of registration.

Accordingly, MPA’s members typically submit a digital version of their work electronically as a deposit copy to the Copyright Office with their registration application, although certain studios supply physical versions for some titles. Given the constraints of the Copyright Office’s online registration system, eCO, it is not possible for MPA’s members to submit the identical digital file with their registrations as they distribute to the public for viewing. eCO limits the file size for deposit copies to 500MB, so MPA’s members will compress their works or break them into smaller pieces for submission. They generally do not deliver physical copies to the Copyright Office or Library of Congress (the “Library”), and the Library does not request them as a matter of course at the present time.

While current practice has not posed particular hardship to MPA members, it may be time to consider a formal amendment to the best edition standard to reflect the current reality for the producers of motion pictures, particularly the Library’s Best Edition Statement, 37 C.F.R. § 202 (Appendix B), which does not list any digital files as best editions for motion pictures.¹ In

¹ The “best edition” of a work for the purpose of Section 407 of the Copyright Act is limited to those editions existing before the date of deposit for copyright registration. While the Best Edition Statement lists various film and video formats, since MPA members’ works are generally published only as digital files at the time of deposit, that constitutes the best edition. Similarly, for the purpose of Section 408 of the Copyright Act, 37 C.F.R. §202.20(b)(2)(iii)(B) states that a digital file “in exact first-publication form” may be submitted as the deposit copy where the work is published solely in an electronic format. Unfortunately, as discussed above, because of the constraints of eCO, MPA members must substitute a

addition, the current system does present significant burdens to other industries and the Copyright Office, particularly where the works must be submitted as physical copies. We are particularly concerned with the burden on the Copyright Office, which must receive the physical product, determine whether it meets the relevant best edition standard, and either find storage space for the copy or forward it to the Library (or both if two copies were submitted). This effort burdens the Office's resources, space allocation and ability to process registrations quickly.

It also may be time to reconsider whether the Library needs to obtain a best edition of every work registered with the Copyright Office. Ten years ago, the Library reached 90% capacity of its shelf space in Washington, D.C. and has needed to transfer its holdings to offsite storage.² At the same time, many sectors have become more sophisticated in their own archival efforts, reducing the need for the Library to perform this role. While many historically significant audiovisual works on film are preserved at the Library's National Audio-Visual Conservation Center, newer works in digital formats are fully preserved by MPA members themselves with robust security. MPA members would support a system in which the Library affirmatively requests copies of those works it seeks to preserve in its collection, rather than requiring submission of every registered work, provided such a system could occur without the need for an entirely separate best edition system for the Library.

If changes in copyright registration law and procedure are to be considered, MPA's members have two related concerns. First, they seek to avoid increasing their burden of complying with Sections 407 and 408. They wish to continue to provide a single copy of their work in the form

lower-resolution digital file to comply with these regulations. Updating the regulations to clarify the submission requirements would therefore be helpful.

² See *Managing the Collections*, Library of Congress Collections Access, Loan & Management Div., July 10, 2010, available at <https://www.loc.gov/rr/cmd/spacereopub.html>.

of an electronically submitted digital file (or files) as the registration deposit copy, with the option to utilize those files to satisfy the best edition requirement. The file-size parameters of the eCO system make this impossible at the moment. Second, MPA members are concerned with the security of their digital files and would only be willing to submit high-resolution digital files viewable by the public in an encrypted format, and with measures in place to prevent further unauthorized distribution. Presently, neither the Copyright Office nor the Library has a file-submission system that can accommodate such requirements. Adoption of a “digital best edition” system is therefore contingent on the expansion of the filing systems to accommodate larger files containing data encryption. If it were decided that the technology should be upgraded in these ways, the MPA would welcome the opportunity to collaborate with the Copyright Office and Library on developing the best edition standard for motion pictures and to develop a corresponding security standard for maintenance of the files.

Given the importance of these issues to our industry, we appreciate the opportunity to comment on this NOI.

RESPONSES

- 1. One way to address concerns raised regarding the best edition requirement would be to limit the categories of deposits to which it applies. To what categor(y/ies) of deposits do you think the best edition requirement should apply and why? What would be the impact on Library collections? What would be the impact on claimants' ability to register their copyrights?**

As discussed above, MPA members regard their current registration deposit practices as relatively efficient and would not seek an exemption for motion pictures. We are not in a position to comment on what other categories of works should or should not have a best edition requirement since we do not know the practices and burdens of registration to other industries.

However, we believe it is likely that the removal of the best edition requirement would increase the volume of applications for some industries that have found compliance with the requirement particularly difficult. It would also lighten the burden on the Copyright Office of processing best editions and would therefore shorten the time it takes the Office to process all registrations, benefiting the entire creative sector.

As for the impact on the Library, we presume that, even if the requirement for submission of a best edition with the registration application were eliminated for some categories of works, copyright owners would still be required to submit a copy to the Library upon request. If so, there would only be an adverse impact on the Library's collection to the extent the Library actually wanted to obtain a copy of a particular work and the copyright owner did not comply with such request. We believe the incidence of such cases would be quite rare, particularly if requests by the Library were reasonable. It is impossible to predict the volume of works that would no longer enter the Library's collection, or how many additional works would be registered—and how these changes would affect the operation of the Copyright Office and Library. Accordingly, if Congress wishes to consider exempting particular categories of works from the best edition requirement, it should direct the Copyright Office to conduct a more in-depth study on this topic.

2. If registration and mandatory deposit requirements were no longer linked, how would this affect the deposit burden on copyright owners? How would it affect the Library's collections? How would it affect claimants' ability to register their copyrights?

If the requirements of Sections 407 and 408 were “decoupled,” but copyright owners were still statutorily required to submit best editions to the Library (as opposed to that requirement being eliminated), the burden on MPA members would depend entirely on how the new submission system would work. If they were still able to submit a single copy of their works to satisfy both requirements, the effect of decoupling the two provisions would be largely neutral for our members, apart from greater efficiency in the operation of the Copyright Office, which would benefit all users of the Office’s services. If they were required to submit different versions (or the same version through different procedures) to the Copyright Office and the Library, that would clearly increase the burden on our members relative to their current practices. This might have a negative impact on both their ability to register works and the Library’s collection.

3. Should the Office expand the options for submitting electronic deposits for the purpose of examining registration applications and selection by the Library for its collections while retaining the requirement to submit best edition copies upon demand by the Library pursuant to Section 407? Why or why not?

MPA’s members appreciate the Office’s continued effort to expand the options for electronic deposits. As noted above, our members make extensive use of this feature and would benefit from increased options. While in the short term our members are happy to supply the Library with physical best editions upon request to the extent they exist, any “on demand” system for the Library must be electronic so the Library and copyright owners do not need to correspond and physically deliver best edition copies apart from the registration deposit procedure.

- 4. Would copyright owners prefer to deposit electronic deposit copies for registration purposes instead of copies that meet the best edition standards? Why or why not? Would copyright owners like the option to provide electronic copies or best edition physical copies? Why or why not? How would the submission of electronic copies for registration affect the Library's collections and operations? What effect would the use of electronic copies have on the public record, and on a researcher's ability to use the work?**

As noted above, MPA's members generally submit a digital deposit copy of their works with their registration applications. But presently it is simply not possible for MPA's members to submit DCPs or high-resolution digital files in a secure format. The storage capacity, file transfer speed and security parameters of the Copyright Office's and Library's databases would need to be significantly increased in order for them to be able to accept best edition copies of our members' works. If an appropriate technological system could be built, our members would certainly favor the option of an electronic "digital best edition." Such a system would also decrease the burden on the Copyright Office and likely enhance the Library's collection.

- 5. Would the option to deposit electronic deposit copies create security concerns that the Copyright Office's and the Library's protocols do not currently address? What are the security concerns most important to applicants if electronic deposit copies are permitted and how could the Library address them?**

As discussed above, our members already utilize eCO to electronically submit deposit copies. While we are always concerned with data security, the protocols currently in place, combined with the relatively low-resolution quality of the files, permits us to utilize this option. If the Library were to consider a move to digital best editions, our members would have more significant concerns. Obviously, a massive database containing a high-resolution version of every major motion picture and television program from every MPA member, including unpublished and potentially pre-release works (which would be more complete than any existing legal commercial service) would be a very attractive target for hackers. Beyond the preservation

of such a database, we are also concerned with the security measures the Library would deploy in potentially digitally lending our members' works to the public.

This question asks what concerns we have that are not addressed by the Library's current protocols, but this is impossible to answer as we have no insight into those protocols. The Library has not shared the details of its current data security or future plans. Moreover, the Library does not presently operate a digital deposit and lending system, so any current security protocols are not applicable to a new system. It is therefore impossible to itemize specific security concerns and suggest ways to address them. If the Copyright Office and Library were ever in a position to utilize electronic best edition versions of MPA works for the Library's collections, we would welcome the opportunity to collaborate on appropriate security protocols.

6. The Copyright Act requires that a “best edition” of a work must be the edition published in the U.S. Can this definition be interpreted to include digital file formats that were not themselves distributed to the public but contain the same copyrightable material as the edition distributed to the public?

The MPA believes it is possible for a digital file format of a work to satisfy the statutory definition of “best edition” in certain circumstances—indeed, that is the premise on which our members file digital copies of our works with our registration applications today. However, the answer would likely be a fact-specific determination that is not susceptible to a blanket rule. For example, it may depend on the format of the work that was distributed to the public and the quality of the digital file that would serve as the best edition.

The MPA and our members thank and commend the Office for all of its work on modernizing the registration and related systems, and looks forward to working with the Office on these issues going forward.

Respectfully submitted,



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