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# POSITION PAPER

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## **U.S. Copyright Office Modernization: Best Edition Requirements**

The Copyright Act requires copyright owners to deposit copies of the “best edition” of a work with the U.S. Copyright Office and the Library of Congress. Specifically, for works published in the United States, section 408 of the Copyright Act requires an applicant to deposit two copies of the “best edition” of the work with the Copyright Office when the rightsholder registers their work with the Office, and, for works first published in the United States, section 407 of the Copyright Act requires the submission of two copies of the “best edition” of the work for the use or disposition of the Library of Congress. “Best edition” is broadly defined as the edition that is 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. The Library of Congress establishes criteria to determine what is the best edition for different types of copyrighted works.

The Copyright Act provides that copies deposited with the Copyright Office under section 408 will satisfy the requirement under section 407. It is through this system that the Library of Congress has been able to amass a large percentage of its collections through the copyright registration system.

### **Problems with the Existing System**

This system, which may have at one point worked for analog print materials no longer works effectively and needs to be modernized. The most significant problems with the existing system’s best edition requirement include:

- The best edition requirements conflate and thus serve two entirely different purposes: (i) submitting copies necessary to facilitate the Copyright Office’s ability to examine works that are submitted for registration; and (ii) building the Library of Congress’ collections with archival-quality “best edition” copies as an adjunct to the Copyright Office registration process. While acquisition of the best edition benefits the Library in building its collections, the Copyright Office does not need archival quality “best edition” copies to complete the registration process.



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- In many cases, the Library chooses not to add the deposit copy to its collections and instead donates or otherwise disposes of the copies. There are many classes of works that the Library curators have no interest in acquiring, yet the registration and best edition requirements still require submissions of best editions. In other instances, very expensive and demanding best edition requirements persist, putting a tremendous burden on rightsholders. Consequently, the present system results in a considerable waste of time, money, and resources for all those involved in the copyright registration and collections systems, but these inefficiencies and burdens fall primarily and inequitably on the shoulders of rightsholders who register their copyrighted works with the Copyright Office.
- There is no transparency to the best edition requirements—rightsholders have no idea what the Library needs best edition copies of and how the Library decides what the best edition is and why.

The best way to fix the system is for the Library to work with rightsholders to assure the system works correctly and efficiently. The present system is also a one-size fits all system. But there are a plethora of different types of copyrighted works and different formats and, therefore, it is essential that they each be treated differently.

### **A More Efficient, Less Burdensome System is Needed**

Moving forward, it is essential that the responsibility for adequately and appropriately supplying the Library's collections through the copyright registration system be more equitably divided between the Library and rightsholders. That can be achieved by requiring that the Library articulate which deposits, and in which formats, it wants to add to its collections and which it does not rather than indiscriminately demanding all deposit copies and then disposing of copies it does not want, as is presently the case.

Under this new system:

- if a type of work is not needed by the Library for its collections, then only one copy of that work would need to be deposited for examination purposes (and that copy need not be a best edition copy); but



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- if a type of work is needed by the Library for its collections, a best edition copy of that work would need to be deposited (so that the Library can include that copy in its collections), and when practicable, in a digital format to facilitate Copyright Office registration examinations and to suit the Library's collection needs.

After the Library specifies what types of works it needs and does not need, the next step would be for rightsholders groups to meet with Library and Copyright Office officials to discuss whether and how the best edition requirements for those types of works that are needed by the Library should apply. These meetings would help ensure that:

- rightsholders understand precisely what the Library is looking for;
- the Library understands how easy or difficult it is for rightsholders of various types of works to prepare and deposit best edition copies; and
- changes to the system are not implemented in a way that could adversely impact rightsholders. (For example, the Copyright Office's requirements for deposit copies under section 408 should continue to be consistent with the requirements for legal deposits under section 407 so that a rightsholder can satisfy both requirements when registering a copyright).

This new system would benefit all parties:

- The Library would retain its ability to obtain deposit copies in best edition format through the Copyright Office registration system and could permit electronic copies, which take up much less physical space and are easier to access.
- The Copyright Office would be able to reduce (i) registration pendency times because digital (non-best-edition format) copies will be easier and quicker for examiners to access and examine; and (ii) the burden on examiners caused by rightsholder confusion about best edition requirements since examiners would no longer have to examine for compliance with the best edition requirement in every case and would correspond with rightsholders about best edition requirements less frequently.
- Rightsholders would be able to more easily and affordably comply with deposit requirements when registering their works with the Office.