



What You Need to Know About Copyright Mandatory Deposit

by Steve Gillen

You could be in the book publishing business for a very long time and never see one. But if by chance it one day appears, it will likely have come to you in the mail from the Office of the Register of Copyrights.

At the top, the paper will read "Notice for Mandatory Deposit of Copies," and then go on to explain—albeit not until about a third of the way down the page—that "this document constitutes formal request for deposit, under the mandatory deposit provisions of the copyright law of the work indicated in the enclosed Claim Notice ... Failure to comply will make you liable to penalties prescribed by the copyright law, including a fine of up to \$250 per work and payment to the Library of Congress of the total retail price of the copies claimed."

Is this for real, you ask? Or is it another one of those official-looking scam solicitations you get from vanity publishers and shady agents whenever you file a copyright application?

You already know about the requirement that says you must deposit two copies of the best edition of your published book along with the application to register it with the US Copyright Office. But you haven't yet filed an application for this particular book ... and maybe you don't ever intend to. Is the office trying to anticipate your next move? Are they jumping the gun?

In a word, no. There is an infrequently used, lesser-known provision in US copyright law that obliges the owner of copyrights in a *published* work to deposit two copies of that work with the Copyright Office for the use or disposition of the Library of Congress within three months after the date of first publication (Title 17 of the United States Code, Section 407). This obligation is independent of the requirement that you deposit two



copies with an application for registration; it is triggered simply by publication in the US.

But wait, you say, why am I only learning about this now?

The mandatory deposit requirement is not new. It has been a feature of US copyright law since the early 1800s. Its purpose, then and now, is to assist in building the collection of the Library of Congress. However, over two centuries of history and many revisions to the law, there have rarely been any consequences for failure to comply—no fines or penalties, and no impact on the copyright status of the subject work.

So what should you do? Should you change your practice to voluntarily comply with the deposit requirement on publication of each of your books?

The answer again is no. As of this date, there are no consequences for failure to comply on a voluntary basis upon publication. However, if and when the office serves you with a Notice for Mandatory Deposit, then the situation changes and you have three options:

1. You can simply comply with the deposit demand by sending two copies of the best edition of the work to

the address specified in the demand notice within three months of the date the demand is received.

2. You can file an application to register the work with the US Copyright Office. You will still have to deposit two copies of the best edition of the work with your application, but this will satisfy both the application requirements and the mandatory deposit requirements and you will end up with a registration.
3. You can apply to the Register of Copyrights for special relief from the mandatory deposit requirements if compliance would pose an undue burden or cost. Your request should set forth the specific reasons why special relief should be granted (e.g., the work is unusually expensive to reproduce, the print run was very small, all copies except archival copies have already been distributed, or the like) and must be signed by or on behalf of the copyright owner.

Failure to comply could result in a fine of up to \$250 plus the total retail price of the copies demanded or the reasonable cost to the Library of Congress of acquiring them elsewhere. And you can face an additional fine of up to \$2,500 if you willfully or repeatedly fail, or refuse to comply.

The truth is that the Library of Congress does not want two copies of every work published in the US. But for those it does want, it has a process under the law to get them at no cost. If you get a notice, be flattered that your work has been selected for the library's collection, but then settle on one of the three options listed above. •

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