

The National Writers Union (NWU) submits these comments in response to the Notice of Proposed Rulemaking (NPRM) by the U.S. Copyright Office, “Mandatory Deposit of Electronic-Only Books,” FR Doc. 2018-07484, Copyright Office Docket Number 2016-03, 83 *Federal Register* 16269-16276 (April 16, 2018).

The National Writers Union (NWU) is a national labor union that advocates for freelance and contract writers. The NWU includes local chapters as well as at-large members nationwide and abroad. The NWU works to advance the economic conditions of writers in all genres, media, and formats. NWU membership includes, among others, fiction and nonfiction book authors, journalists, business and technical writers, website and e-mail newsletter content providers, bloggers, poets, novelists, playwrights, editors, and academic writers. The NWU is a national amalgamated union (Local 1981) of the United Auto Workers, AFL-CIO.

Through this proceeding, the Copyright Office is proposing to finalize the current "interim" rule (37 C.F.R. 202) requiring deposit, on demand of the Register of Copyright, of copies of certain "electronic serials," and to expand the final rule to include certain “electronic-only books,” excluding, *inter alia*, “serials,... websites, blogs, and emails.”

The NWU, in conjunction with two other national organizations of working writers, submitted detailed comments¹ in response to the Notice of Inquiry by the Copyright Office which preceded this NPRM.

1 Comments of the National Writers Union, Western Writers of America, and American Society of Journalists and Authors, “Mandatory Deposit of Electronic Books and Sound Recordings Available Only Online; Notice of Inquiry (FR Doc. 2016–11613 and 2016-13814; Copyright Office Docket Number 2016-3), August 18, 2016: <<https://nwu.org/wp-content/uploads/2016/08/NWU-WWA-ASJA-ebook-deposit-18AUG2016.pdf>>.

We thank the Copyright Office for modifying its proposed rule, in response to our comments regarding the potential burden on writers of demands for deposit of works distributed in typical digital formats, to explicitly exclude “serials,... websites, blogs, and emails.”

However, despite this change which significantly mitigates some of our concerns, the NPRM raises two new concerns for us in addition to those discussed in our previous comments.

First, the proposed rule would define an “electronic-only book” as limited to a work “published in one volume or a finite number of volumes.” We recommend that this phrase be stricken as both pointless and impermissibly vague.

The term “volume” is not defined in the proposed rule, and has no applicability or generally agreed meaning with respect to digital formats. A “volume” is canonically a tangible publication format. The term “volume,” as applied to digital data, is normally used to describe a physical or virtual drive, storage device, partition, or filesystem, which can contain any number of related or unrelated files. That conventional meaning of “volume” in the context of digital data doesn’t appear to be the intent of the Copyright Office in the proposed rule. But we don’t know what the Copyright Office does intend. We have no idea which digital files or groups of files the Copyright Office considers or will deem to constitute “volumes,” what criteria it would use to make such determinations, or why it thinks this would be a distinction worth making.

Second, we remain puzzled as to what works the Copyright Office intends to demand be deposited if the proposed rule is finalized, or why the Copyright Office thinks this particular class of works is of such significance as to warrant the proposed rule.

Under the proposed rule, demands for deposit would be limited to works “available only online,” excluding, as noted above, “serials,... websites, blogs, and emails.”

A “website” is a collection of files retrievable from one or more Web servers. An e-book is a file or group of related files. Most works distributed in electronic formats are distributed either as files downloadable from the World Wide Web – i.e., as part of websites – or by email.

Some e-books can be downloaded as digital files, typically over the Internet, directly by e-readers, tablets, or smartphones, through apps or other software and mechanisms that might not be considered to make those files part of a “website.” But most of these e-books are also downloadable as Web content. “Kindle Edition” e-book files, for example, can be downloaded directly over wi-fi or cellular data connections to e-reader devices. But those same files can be downloaded to desktop or laptop computers through the Amazon.com website, and are thus excluded from the proposed rule – as they should be excluded – as part of websites.

The proposed rule is limited to works available only “online,” but not as part of websites or emails. What are these works, and how are they being distributed? We don’t know.

The NPRM does not define or explain what class of such works the Copyright Office intends to demand be deposited, or why this class of works warrants a new or revised deposit rule. In the absence of a clear definition of, and motivation for, such a rule, we continue to believe that the NPRM fails to adequately justify the proposed rule, and should be withdrawn.

Respectfully submitted,

_____/s/_____

Larry Goldbetter, President

Susan E. Davis, National Contract Advisor
and Co-Chair, Book Division

Edward Hasbrouck, Co-Chair, Book Division

National Writers Union

(UAW Local 1981, AFL-CIO)

256 West 38th Street, Suite 703

New York, NY 10018

212-254-0279

<<http://www.nwu.org>>