



ANNOUNCEMENT

from the Copyright Office, Library of Congress,
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

NOTICE OF PROPOSED RULEMAKING.

COPYRIGHT RULES AND REGULATIONS: INFORMATION GIVEN BY THE COPYRIGHT OFFICE

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2000-1]

Copyright Rules and Regulations: Information Given by the Copyright Office

AGENCY: Copyright Office, Library of
Congress

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is proposing amendments to its regulations governing information given to the public for litigation purposes in cases where the application for registration is still in-process. The Office is also proposing to publish in regulatory text the existing requirement for submission of a Litigation Statement when a third party needs copies of material accompanying a registration claim for use in actual or pending litigation and other minor clarifications to these regulations. These proposed amendments will allow a qualified party greater access to in-process registration materials and also provide clearer information to the public on how to get these materials.

DATES: Written comments are due March 21, 2000.

ADDRESSES: An original and ten copies of the comments should be addressed, if sent by mail, to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. If delivered by hand, an original and ten copies should be delivered to: Office of the General Counsel, United States Copyright Office, James Madison Memorial Building, Room 403, First Street and Independence Avenue, S.E., Washington, DC.

FOR FURTHER INFORMATION

CONTACT: David O. Carson, General Counsel, or Patricia L. Sinn, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Fax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

1. Background

The Copyright Act makes the Register of Copyrights responsible for all administrative functions and duties under title 17 and authorizes the Register to establish regulations for this administration. 17 U.S.C. 701, 702. As an Office of public record, the Copyright Office provides a public record of completed registrations and recordations, and it permits access to these records and to the materials or files accompanying a registration claim--the application, the deposit, and any correspondence--when the conditions specified in the regulations are met. See 17 U.S.C. 705, 706. See also 37 CFR 201.2.

The Copyright Office's existing regulations tell the public how to get information on or access to such registration materials. 37 CFR 202.1, 202.2. In the past, the regulations have distinguished between providing these materials to copyright claimants and providing them to third parties, and also between providing copies in cases where the claim has been examined and registered or refused and in those where the claim is still pending or in-process. By in-process the Office means those materials, including correspondence files, applications, and deposit copies,

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associated with claims to registration that are still being processed and those for which the process has been reopened.

The Copyright Office already permits

limited access to in-process files. See 37 CFR 201.2(b)(2)-(5), 201.2(c)(1)-(2). However, the Office no longer sees a reason to distinguish between a request for material from an in-process file and material from a closed file when a qualified party needs this material for litigation purposes. The Office, therefore, proposes amending its regulations to permit the making of copies of material accompanying in-process claims--including the deposit--in the same circumstances relating to litigation as those in which copies may be made from a closed file. See 37 CFR 201.2(d)(2)(ii).

*Information needed to initiate a search.*¹

A party requesting a search for any material accompanying a registration claim in order to get information, inspect, or get copies of such material must provide as much specific information as possible about the material desired, including facts such as the name(s) of the copyright claimant(s) of record (or his or her designated agent), the title(s) of the work(s) to be located and copied; and the date(s) the work(s) was submitted for registration. See 37 CFR 201.2(b)(3)(i).

Access to contents of works. Currently, the Office outlines procedures for gaining access to registration records or materials in 37 CFR 201.2(b). Often a request for access to these materials is associated with legal proceedings. In particular, Sec. 201.2(b)(5) permits access to in-process files by someone other than the copyright claimant in extraordinary circumstances; in practice the circumstances under which this relief has been granted are equivalent to actual or prospective litigation. The Office proposes amending this subsection to allow the making of copies of such material available in cases identical to those already set out in 37 CFR 201.2(d) for closed files wherein a

¹See generally Circular 6. For information on searching the Office's records to investigate the copyright status of a work see Circular 22.

qualified party may request certified or uncertified reproductions of copies, phonorecords, or other identifying material deposited in connection with registration of a work. Section 201.2(d)(1) specifies what information should be included in the request to get copies of records. Section 201.2(d)(2) specifies three conditions in which copies may be made of registration materials. They are: (1) at the written request of the claimant, or his or her designated agent, or from an owner of exclusive rights; (2) at the written request of an attorney for litigation purposes; and (3) upon receipt of a court order. The proposed regulations would permit access to and copying of in-process files under the same circumstances found in 201.2(d)(2) and (3).² In the second situation the attorney or authorized representative must file a Litigation Statement with the Copyright Office.

2. Use of the Litigation Statement

The proposed amendment requires use of a Litigation Statement for requesting in-process materials to be used in litigation. The Office has recommended the use of a Litigation Statement for completed files for a long time. In 1991, it announced that in order to obtain copies of material deposited with the Office in support of a registration claim, an attorney or authorized agent had to submit a Litigation Statement. 56 FR 12957 (March 29, 1991). A party that provides a false statement of a material fact in a Litigation Statement is subject to criminal penalties under the terms of 18 U.S.C. 1001. Currently, the Litigation Statement requires that the materials sought be identified by registration number, year of registration, and title and description of the work. The Litigation Statement also requires a description of the active or prospective litigation for which the material is to be used, including:

1. Name and address of client (or person requesting the material).
2. Whether the client is or may become Plaintiff or Defendant in litigation.
3. Name of the other party.
4. Nature of the controversy.
5. Name of court if proceedings have been instituted.

If the litigation is prospective, the Litigation Statement requires a statement of the facts surrounding the controversy and a copy of any letter or other document that supports the claim that litigation may be instituted.

Just above the signature line, the following statement appears: "I hereby affirm to the Copyright Office that a controversy exists and that the requested copy will be used only in connection with the specified actual or prospective litigation. I also acknowledge that any other use of this copy would be in violation of the Regulations of the Copyright Office 37 CFR 201.2(d)(2)."

²Copyright Office regulations already permit copies of in-process files in the first situation.

The Litigation Statement also includes a warning that any false statement of a material fact made on the form may be a criminal offense, with a reference to 18 U.S.C. 1001 et seq. The texts of 18 U.S.C. 1001 and 37 CFR 201.2(d)(2) are reproduced on the back of the Litigation Statement.

A Litigation Statement may be requested from the Certification and Documents Section of the Information and Reference Division. The Office keeps a record of requests for copies of registration materials made using the Litigation Statement for at least three years, and this system of records is available to the public through the Certification and Documents Section.

When the Office adopts final rules concerning access to and copying of in-process materials, it will make minor amendments to the existing Litigation Statement to conform with those regulations. For example, it will change Registration No. to Registration No. or Control No. if an application is pending, and broaden the term "Copyright Registration" to cover both completed registrations and applications for copyright registration that are still pending.

3. Other Amendments

The Office is also proposing minor amendments to 37 CFR 201.1(c) and (d) and 201.2(b)(6), (b)(7) and (c)(4) to update official addresses and to clarify what kind of information the Office can or cannot supply.

4. Questions for Public Comment

The Copyright Office requests public comment on any aspect of these regulations but especially the following:

1. Should a party who needs copies of material for use in pending or actual litigation be permitted to get copies of in-process materials in the same way that he or she can if the work had been registered or the file closed? Why or why not?

2. Should additional information or documentation be required from those who file a Litigation Statement? For example, to verify that a party requesting information is truly involved in actual or prospective litigation, should the party be required to submit a copy of a document (e.g. the complaint or, in the case of prospective litigation, correspondence to or from an alleged infringer) that describes what the dispute over a copyrighted work entails?

3. If litigation is prospective rather than actual, should the Office contact the copyright owner or any other party to verify the likelihood of litigation?

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List of Subjects in 37 CFR Part 201

Copyright.

In consideration of the foregoing, it is proposed that part 201 of 37 CFR be amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Sections 201.1(c) and (d) are revised to read as follows:

§201.1 Communications with the Copyright Office.

* * * * *

(c) Copies of records or deposits.

Requests for copies of records or deposits should be addressed to the Library of Congress, Copyright Office, Certifications and Documents Section, LM-402, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000.

(d) Search of records. Requests for searches of registrations and recordings in the completed catalogs, indexes, and other records of the Copyright Office should be addressed to the Library of Congress, Copyright Office, Reference & Bibliography Section, LM-451, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000.

3. Section 201.2 is amended as follows:

a. By revising paragraphs (b)(5) and (b)(6);

b. By removing the last sentence of paragraph (b)(7) and adding two sentences in its place;

c. By revising paragraph (c)(4);

d. In paragraph (d)(2) introductory text, by adding the phrase "or an application for copyright registration" after the phrase "in connection with a copyright registration"; and

e. By revising paragraph (d)(2)(ii) introductory text.

The revisions to §201.2 read as follows:

§201.2 Information given by the Copyright Office.

* * * * *

(b) * * *

(5) In exceptional circumstances the Register of Copyrights may allow inspection or even copying of pending applications and open correspondence files by someone other than the copyright claimant, upon submission of a written request which is deemed by the Register to show good cause for such access and establishes the person making the request is one properly and directly concerned. Any request for such access or copying of this material should be directed to the Certifications and Documents Section which will either refer the requestor to the General Counsel, or if litigation is involved, send the requestor the Copyright Office's form known as a Litigation Statement. If a Litigation Statement is required, it must be submitted on the Office's form, comply with

Sec. 201.2(d)(2) (ii), contain an original signature, and be returned to the Certifications and Documents Section at the address given in 37 CFR 201.1(c).

(6) Direct public access will not be permitted to any financial or accounting records, including records maintained on Deposit Accounts.

(7) * * * As the Office updates and revises certain chapters of Compendium II, it will make the information available on the Copyright Office's web site. This information is also available for public inspection and copying in the Certifications & Documents Section.

(c) * * *

(4) The Copyright Office will not respond to any abusive or scurrilous correspondence or correspondence where the intent is unknown.

(d) * * *

(2) * * *

(ii) The Copyright Office receives and approves on a form requested from the Certification and Documents Section, a Litigation Statement containing a request from an attorney on behalf of either a plaintiff or defendant in connection with litigation, actual or prospective, involving a registered work or a work on which registration is sought. The following information must be included in such a request:

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Dated: January 13, 2000.

Marybeth Peters,
Register of Copyrights.

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