



# ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559

## ADVANCE NOTICE OF PROPOSED REGULATIONS

### 37 CFR PART 201

#### GENERAL PROVISIONS; WORKS CONSISTING OF SOUNDS, IMAGES, OR BOTH: ADVANCE NOTICE OF POTENTIAL INFRINGEMENT

The following excerpt is taken from Volume 45, Number 149 of the Federal Register for Thursday, July 31, 1980 (pp. 50823-50825).

#### LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 80-1]

**General Provisions; Works Consisting of Sounds, Images, or Both: Advance Notice of Potential Infringement**

**AGENCY:** Library of Congress, Copyright Office.

**ACTION:** Advance notice of proposed regulations.

**SUMMARY:** This notice is issued to advise the public that the Copyright Office of the Library of Congress proposes to adopt a new regulation designed to implement paragraph (b) of section 411 of the Copyright Act of 1976, Title 17 of the United States Code, as amended by Pub. L. No. 94-553. This paragraph provides for the service of advance notices of potential infringement for the purpose of preventing the unauthorized use of certain works that are being transmitted "live" at the same time that they are being fixed in tangible form for the first time. The proposed regulation would establish requirements governing the content and manner of service of the advance notices.

**DATES:** Initial comments should be received on or before August 29, 1980. Reply comments should be received on or before September 15, 1980.

**ADDRESSES:** Ten copies of all written comments should be submitted, if by mail, to: Office of the General Counsel, Copyright Office, Library of Congress, Caller Number 2999, Arlington, Virginia 22202; or by hand to: Office of the General Counsel, Copyright Office, Room 519, Crystal Mall, Bldg. No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, (703) 557-8731.

**SUPPLEMENTARY INFORMATION:** Section 411(b) of the Copyright Act of 1976 [Act of October 19, 1976, 90 Stat. 2541] concerns the unauthorized use of works consisting of sounds, images, or both, that are fixed for the first time simultaneously with their transmission. It provides generally that the copyright owner may institute an action for infringement under section 501 of the Act, either before or after the first fixation takes place, and seek any or all of the remedies provided for by sections 502 through 506 and sections 509 and 510 of the Act so long as certain requirements are met.

In discussing the purpose of this provision, the Reports of the Judiciary Committees of the House of Representatives and the Senate [H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. (1976) at 157 and S. Rep. No. 94-473, 94th Cong. 1st Sess. (1975) at 140, respectively] state:

Section 411(b) is intended to deal with the special situation presented by works that are being transmitted "live" at the same time they are being fixed in tangible form for the first time. Under certain circumstances, where the infringer has been given advance notice, an injunction could be obtained to prevent the unauthorized use of the "live" transmission.

Under the statute, this advance notice must be served on the person responsible for the potential infringement at least ten days but not more than thirty days before the first fixation of the work and must identify the work and specify the time and source of its first transmission. The advance notice must also include a declaration of "an intention to secure copyright in the work." Section 411(b) further provides that the advance notice must comply "with the requirements that the Register of Copyrights shall prescribe by regulation."

We propose to implement this provision by the addition of a new § 201.22 to the regulations of the Copyright Office. Proposed § 201.22 assumes that, at the time when he or she serves the advance notice, the copyright owner has already acquired some advance knowledge of the intended unauthorized use of the work by the person responsible for the potential infringement. Since it may be possible that not all of the activities contemplated by the alleged potential infringer would constitute an infringement of the work, we are proposing that the regulations require the copyright owner to specify the

nature of the rights that he or she believes will be infringed and to describe the relevant activities that would, if carried out, result in an infringement. We are also proposing that the advance notice refer to section 411(b) as the statutory authority for the copyright owner's actions and explains that a failure to cease preparation for the unauthorized activities could lead to further liability for copyright infringement.

Because this statutory provision requires the service of a notice before fixation of the work, we are proposing in § 201.22(a)(2) to define a "copyright owner" in part as "the person who will be considered the author of the work upon its fixation"; no statutory copyright will exist at the time the notice must be served.

We invite comments on the foregoing explanation and on the proposed regulation in general. Specifically, we invite comments on the following:

1. Section 411(b) refers to "a work consisting of sounds, images, or both." Should the regulation define more specifically the works that it covers, for example in terms of the types of works of authorship set forth in section 102(a) of the Copyright Act?

2. Since it may be possible for a transmission to contain multiple works, should the regulation permit an advance notice to accommodate more than one work, particularly where multiple copyright owners are involved? If so, how should this be done?

3. In addition to service of the advance notice, section 411(b) further requires the copyright owner to make "registration for the work within three months after its first transmission." Does the mandate given to the Register in this section authorize him to compel registration for the work and/or provide certain penalties for a failure to register? If so, and if the Register decides to exercise this authority, how should the regulation accomplish either of these purposes?

*Proposed Regulation.* We propose to amend Part 201 of 37 CFR Chapter II by adding a new § 201.22 to read as follows:

**§ 201.22 Advance notices of potential infringement of works consisting of sounds, images, or both.**

(a) *Definitions.* (1) An "Advance Notice of Potential Infringement" is a notice which, if served in accordance with section 411(b) of title 17 of the United States Code, as amended by Public Law 94-553, and in accordance with the provisions of this section 201.22, enables a copyright owner to institute an action for copyright infringement either before or after the first fixation of a work consisting of sounds, images, or both that is first fixed simultaneously with its transmission,

and to enjoy the full remedies of said title 17 for copyright infringement, provided registration for the work is made within three months after its first transmission.

(2) For purposes of this section, the "copyright owner" of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, is the person who will be considered the author of the work upon its fixation (including, in the case of a work made for hire, the employer or other person for whom the work was prepared), or a person or organization that has obtained ownership of an exclusive right, initially owned by the person who will be considered the author of the work upon its fixation.

(b) *Form.* The Copyright Office does not provide printed forms for the use of persons serving Advance Notices of Potential Infringement.

(c) *Contents.*

(1) An Advance Notice of Potential Infringement must clearly state that the copyright owner objects to the relevant unauthorized activities of the person responsible for the potential infringement, and must include all of the following:

(i) Reference to 17 U.S.C. 411(b) as the statutory authority on which the Advance Notice of Potential Infringement is based;

(ii) The date and specific time of the intended first transmission of the work;

(iii) The source of the intended first transmission of the work;

(iv) Clear identification, by title, of the work. If the work is untitled, the Advance Notice shall include a detailed description of the work;

(v) The name of the person who will be considered the author of the work upon its fixation;

(vi) The identity of the copyright owner, as defined in paragraph (a)(2) of this section. If the copyright owner is not the person who will be considered the author of the work upon its fixation, the Advance Notice also shall include a brief, general statement summarizing the means by which the copyright owner obtained ownership of the copyright and the particular rights that are owned;

(vii) The nature of the rights which the copyright owner believes will be infringed; and

(viii) A description of the relevant unauthorized activities of the person responsible for the potential infringement which would, if carried out, result in an infringement of the copyright.

(2) An Advance Notice of Potential Infringement must also include clear and prominent statements:

(i) Explaining that a failure to cease the unauthorized activities may subject the person responsible to further liability for copyright infringement; and

(ii) Declaring that the copyright owner intends to protect the copyright in the work upon its fixation, and to make registration of the copyright claim for the work within three months from the date of its first transmission.

(d) *Signature and Identification.*

(1) An Advance Notice of Potential Infringement shall be in writing and signed by the copyright owner, or such owner's duly authorized agent.

(2) The signature of the owner or agent shall be an actual handwritten signature of an individual, accompanied by the date of signature and the full name, address, and telephone number of that person, typewritten or printed legibly by hand.

(3) If an Advance Notice of Potential Infringement is initially served in the form of a telegram or similar communication, as provided by paragraph (e) of this section, the requirement for an individual's handwritten signature shall be considered waived if the further conditions of said paragraph (e) are met.

(e) *Service.*

(1) An Advance Notice of Potential Infringement shall be served on the person responsible for the potential infringement at least ten days but not more than thirty days before the first fixation and simultaneous transmission of the work as provided by 17 U.S.C. 411(b)(1).

(2) Service of the Advance Notice may be effected by any of the following methods:

(i) Personal service;

(ii) First-class mail; or

(iii) Telegram, cablegram, or similar form of communication, if: (A) the Advance Notice meets all of the other conditions provided by this section; and (B) before the first fixation and simultaneous transmission take place, the person responsible for the potential infringement receives written confirmation of the Advance Notice, bearing the actual handwritten signature of the copyright owner or duly authorized agent.

(3) The date of service is the date the Advance Notice of Potential Infringement is received by the person responsible for the potential infringement or by any agent or employee of that person.

(17 U.S.C. 411, 702)

Dated: July 21, 1980.

David Ladd,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

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