



ANNOUNCEMENT

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

FINAL REGULATION

REGISTRATION OF CLAIMS TO COPYRIGHT; EFFECTIVE DATE OF REGISTRATION

The following excerpt is taken from Volume 55, Number 233 of the Federal Register for Tuesday, December 4, 1990 (pp. 49999-50001)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 90-8]

Registration of Claims to Copyright; Effective Date of Registration

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting a new regulation to establish the effective date for registrations made under section 408 of the Copyright Act when the previously required filing fee of \$10 is submitted in lieu of the \$20 filing fee required by the "Copyright Fees and Technical Amendments Act of 1989" (Pub. L. 101-318, 104 Stat. 287). The regulation will be in effect for claims to copyright received in the Copyright Office from January 3, 1991, through December 31, 1991.

EFFECTIVE DATE: January 3, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION: The "Copyright Fees and Technical Amendments act of 1989," Public Law 101-318, July 3, 1990, increases the filing fee for registration of claims to

copyright made under section 408 of \$10¹ to \$20 effective January 3, 1991. The Copyright Office's past experience with fee increases for copyright registration indicates that a substantial number of claims will be submitted to this Office on and after January 3, 1991, with the old fee of \$10. The Office expects that it will continue to receive claims with the old fee for some time and estimates that approximately 100,000 claims will be received with an insufficient fee. The public's failure to remit the full fee can be primarily attributed to Copyright Office literature and application forms in the hands of the public that contain old fee information.

The Office considered a number of options for administratively processing the large number of short fees that are expected. Two options were found to require an inordinate amount of staff time, which would delay registration of the claims correctly submitted with the \$20 fee. The Office estimated that these options would cost 40 to 50 cents for each dollar collected. The Office decided that the additional delay in processing claims and the high cost of assuring receipt of the additional \$10 fee before registration made these options unacceptable.

The Office has chosen to implement a third option. The Office will request immediately the payment of the supplementary \$10 fee, but will simultaneously process the claim and by this regulation establish the effective date of registration as the date on which the original \$10 remittance, application, and copy(s) are received. The Office assumes that the required additional \$10 will be received in the Office in most cases by the time the administrative process of registration is completed. If the supplementary fee is not received by

the Office, the registration of the claim to copyright will be cancelled with the resultant loss of the effective date of registration. Implementation of this option is less costly than other available options will be less disruptive of Office procedures. The public benefits both from timely processing and cost-effective administration of the registration system.

Under section 410(d) of the Copyright Act, title 17 of the United States Code, the effective date of a copyright registration is "the day on which an application, deposit, and fee, which are later determined by the Register of Copyright or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office." Ordinarily, the Copyright Office has required receipt of the full filing fee to establish the effective date of registration. The effective date has significance with respect to the availability of certain remedies. Under section 412, no award of statutory damages or attorney's fees can be made generally for any infringement commenced before the effective date of registration of the work infringed.

The Copyright Act clearly gives the Register of Copyrights discretion to determine the acceptable form of the application, deposit, and fee. The Register decides when the basic requirements for registration have been satisfied, and the effective date is the date on which it is later determined by the Register that the elements received are acceptable for registration. This clearly means that the effective date is designated as an earlier date than the date registration processing is actually completed. Also, it is the Register's determination initially that is

¹ Error; line should read:
"Amendments act of 1989," Public Law"

² Error; line should read:
"copyright made under section 408 from \$10"

³ Error; line should read:
"options and will be less disruptive of Office"

controlling. The Register has discretionary authority to determine the acceptability of the application and deposit but the Register's authority is even clearer with respect to fee determinations. Receipt of the proper statutory fee is almost exclusively the interest of the Copyright Office. Congress has decided that a certain portion of the costs of administering the copyright registration system shall be recovered through earned fee services.

To implement the Copyright Fees and Technical Amendments Act of 1989 the Register has decided, after reviewing the costs and benefits of various options, that effective administration of the Copyright Act is better served by processing short fee cases normally, after notification that the full fee must be paid, and then verifying payment of the full fee after registration has been completed. The Register considered and rejected as too costly the option of establishing the effective date after the completion of registration. The Register concluded that it would be unwise to adopt costly effective date procedures with respect to receipt of the proper fee. Since the fee is peculiarly a matter of administrative concern, the Register decided to exercise his rulemaking authority to establish a new effective date policy solely as an interim, emergency policy related to implementation of the new fee structure in calendar year 1991.

Based on past administrative experience, the Register concluded that the administrative problems related to insufficient fees would occur primarily in the first year of the new fee structure. Also one year should be sufficient time to educate the public about the new fee structure. Consequently, this regulation is adopted only for calendar year 1991. In 1992 the Copyright Office will resume its traditional policy of delaying registration of short fee cases until the proper statutory fee is received in the Copyright Office.

The Copyright Office is issuing this regulation to notify the public of the effective date of registration when the old fee of \$10 is submitted with claims to copyright deposited during calendar year 1991 and the consequences of not submitting the supplementary fee of \$10 in a timely manner. The regulation has

no applicability to short fee cases where less than \$10 is received. The policy adopted responds strictly to the emergency situation that is created by the administrative problems associated with implementation of a new fee structure.

Moreover, renewal registration requires a special policy, and the Copyright Office will deal separately with renewal registration. Renewal registration costs differ from original registration costs because deposit copies are not processed and examined. Also, registration vests the right. The Office concluded that it is better policy to delay registration of renewal applications until the full fee is received than to register and then cancel if the fee is not received. Renewal registration can be made at any time during the last year of the first term of copyright. In effect, applicants have a year to remit the proper fee, if they apply early in 1991. The Office recognizes that a problem may arise at the end of 1991, if an insufficient fee is received shortly before expiration of the first term. The Office will deal with this problem in a separate proceeding.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that his Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, of U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the federal Government that are agencies as defined in the Administrative Procedure Act.¹

¹ The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 202

Copyrights; Effective date; Registrations.

In consideration of the foregoing, part 202 of CFR 37 chapter II is amended in the manner set forth below.

PART 202—REGISTRATIONS OF CLAIMS—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: Section 702, 90 Stat 2451; 17 U.S.C. 702.

2. Section 202.4 is added to read as follows:

§ 202.4 Effective date of registration.

The effective date of registration for claims received in the Copyright Office on or after January 3, 1991, and through December 31, 1991, with a short fee of \$10 is the date on which the application, deposit, and \$10 fee have all been received in the Copyright Office, provided, the claim is later determined to be acceptable for registration by the Register of Copyrights and a supplementary fee of \$10 is received in the Copyright Office. If the supplementary fee is not received promptly after notification of the short fee, the Copyright Office will initiate a proceeding to cancel the copyright registration. If the supplementary fee of \$10 is not received in the Copyright Office before the cancellation proceeding is completed, the cancellation will become final and will result in the loss of the effective date of registration. After cancellation, registration could be obtained only by submitting a new application, deposit, and filing fee.

Dated: November 19, 1990.

Ralph Oman,

Register of Copyrights.

James Billington,

The Librarian of Congress.

[FR Doc. 90-28387 Filed 12-3-90; 8:45 am]

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⁴ Error; line should read:
"takes the position that this Act does not"

⁵ Error; line should read:
"of the Federal Government that are"