

Announcement

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

PROPOSED RULEMAKING

PUBLIC INFORMATION AND PRIVACY PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT

The following excerpt is taken from Volume 42, No. 233 of the Federal Register for Monday, December 5, 1977 (pp. 61476-9).

[1410-03]

LIBRARY OF CONGRESS

COPYRIGHT OFFICE

[37 CFR Parts 203 and 204]

[Docket RM 77-12]

PUBLIC INFORMATION AND PRIVACY PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT

Notice of Proposed Rulemaking

Agency: Library of Congress, Copyright Office.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking is to inform the public that the Copyright Office of the Library of Congress is considering the adoption of new regulations implementing portions of Pub. L. 94-553 (90 Stat. 2541), the Act for General Revision of the Copyright Law, and the Administrative Procedure Act pertaining to public information and privacy. The effect of the proposed regulations is to establish the rules and procedures by which members of the public may obtain information as authorized under the Freedom of Information Act and Privacy Act provisions of the Administrative Procedure Act.

DATES: Comments should be received on or before December 27, 1977. Copies of all written comments received will be available for public inspection and photocopying between the hours of 8 a.m. and 4 p.m., Monday through Friday, in the Public Information Office of the Copyright Office, room No. 101, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va. 22202.

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

FOR FURTHER INFORMATION CONTACT:

Jon Baumgarten, Office of the General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, 703-557-8731.

SUPPLEMENTARY INFORMATION: Section 701(d) of Pub. L. 94-553, 90 Stat. 2541, provides that, except as set forth in section 706(b)¹ and the regulations issued thereunder, all actions taken by the Register of Copyrights under title 17, U.S.C., are subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended (c. 324, 60 Stat. 237, title 5, United States Code, Chapter 5, Subchapter II and Chapter 7). In order to conform with the requirements of the Administrative Procedure Act, the Copyright Office is required to publish certain information in the FEDERAL REGISTER, and is required to adopt rules, regulations and procedures for the guidance of members of the public in exercising their rights under that statute. The Copyright Office proposes to meet these requirements by adding a new Chapter II, Parts 203 and 204 of Title 37, Code of Federal Regulations. Part 203 will serve as the regulations of the Copyright Office for implementing 5 U.S.C. 552; the Freedom of Information Act,

and Part 204 will serve as the regulations of the Copyright Office for implementing 5 U.S.C. 552a, the Privacy Act, as required by these Acts. Although the Copyright Office is a department of the Library of Congress, the application of 5 U.S.C. 552 and 5 U.S.C. 552a to the Library of Congress as a Legislative Agency is not to be inferred (36 CFR 703).

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

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AUTHORITY: Copyright Act, Pub. L. 94-553; 90 Stat. 2541-2601 (17 U.S.C. 101-710). *

ORGANIZATION

§ 203.1 General.

This information is furnished for the guidance of the public and in compliance with the requirements of section 552 of title 5, United States Code, as amended.

§ 203.2 Authority and functions.

(a) The administration of the copyright law was entrusted to the Library of Congress by an act of Congress in 1870, and the Copyright Office has been a separate department of the Library since 1897. The statutory functions of the

¹ Section 706(b) provides that copies or reproductions of deposited articles retained under the control of the Copyright Office shall be authorized or furnished only under the conditions specified by Copyright Office regulations. These regulations will be the subject of a separate rulemaking procedure.

*Error; line should read: " 90 Stat. 2541-2602 (17 U.S.C. 101-710)."

Copyright Office are contained in and carried out in accordance with the Copyright Act, Pub. L. 94-553, (90 Stat. 2541-2602), 17 U.S.C. 101-710.

§ 203.3 Organization.

The organization of the Copyright Office consists of— (a) The Office of the Register of Copyrights, which includes the Register of Copyrights and the Assistant Registers. The Register of Copyrights provides overall direction of the work of the Copyright Office. The Register is assisted by Assistant Registers of Copyright, who have delegated responsibilities for particular aspects of the activities of the Copyright Office, by the General Counsel and the legal staff, and by the administrative staff.

(b) The Assistant Register of Copyrights for Registration serves as a deputy to the Register of Copyrights and has oversight of the operating divisions primarily involved in the registration of materials for copyright. These operating divisions are:

(1) the Acquisitions and Processing Division which receives incoming materials, dispatches outgoing materials, establishes controls over fiscal accounts and controls over the collections of the Library of Congress through implementation of the deposit requirements of the copyright statute.

(2) the Examining Division which examines all applications and material presented to the Copyright Office for registration of original and renewal copyright claims and which determines whether the materials deposited constitutes copyrightable subject matter and whether the other legal and formal requirements of Title 17 have been met.

(c) The Assistant Register of Copyrights for Automation and Records oversees offices and divisions concerned with planning and preparation for application of automation equipment and techniques to appropriate activities in the Copyright Office; preparation, preservation, and service of official copyright records; storage and preservation of copyright deposits; and implementation of licensing provisions in the copyright statute. These offices and divisions are:

(1) The Planning and Technical Office which has immediate responsibility for studies and recommendations concerned with automation of copyright procedures and related organizational studies and for implementation of approved automation applications in the Copyright Office.

(2) The Cataloging Division which prepares the bibliographic description of all copyrighted works registered or received in the Copyright Office, produces catalog cards for such works, and prepares the Catalog of Copyright Entries.

(3) The Information and Reference Division which provides a national copyright information service through the public information office, educates staff and the public on the copyright law, issues and distributes information mate-

rials, responds to reference requests regarding copyright matters, prepares search reports based upon copyright records, certifies copies of legal documents concerned with copyright, and maintains liaison with the United States Customs Service, the Department of the Treasury, and the United States Postal Service.

(4) The Licensing Division which implements the sections of Pub. L. 94-553 dealing with secondary transmissions of radio and television programs, compulsory licenses for making and distributing phonorecords of nondramatic musical works, public performances through coin-operated phonorecord players, and use of published nondramatic musical, pictorial, graphic, and sculptural works in connection with noncommercial broadcasting.

(5) The Records Management Division which develops, services, stores, and preserves the official records and catalogs of the Copyright Office, including applications for registration, biographic and other historical records, and materials deposited for copyright registration that are not selected by the Library of Congress for addition to its collections.

(d) The Office has no field organization.

(e) The Office is presently located in Building No. 2, Crystal Mall, 1921 Jefferson Davis Highway, Crystal City, Va. 22202. The Public Information Office is located in Room 101. Its hours are 8 a.m. to 4 p.m., Monday through Friday. The phone number of the Public Information Office is: 557-8700. Informational material regarding the copyright law, the registration process, fees, and related information about the Copyright Office and its functions may be obtained free of charge from the Public Information Office upon request.

(f) All Copyright Office forms may be obtained free of charge from the Public Information Office.

PROCEDURES

§ 203.4 Methods of operation.

(a) In accordance with section 552(a)(2) of the Freedom of Information Act, the Copyright Office makes available for public inspection and copying records of copyright registrations and of final refusals to register claims to copyright; statements of policy and interpretations which have been adopted but are not published in the FEDERAL REGISTER; and administrative staff manuals and instructions to the staff that affect a member of the public.

(b) The Copyright Office also maintains and makes available for public inspection and copying current indexes providing identifying information as to matters issued, adopted, or promulgated after July 4, 1967, that are within the scope of 5 U.S.C.(a)(2). The Copyright Office has determined that publication of these indexes is unnecessary and impractical. Copies of the indexes will be provided to any member of the public upon request at the cost of reproduction.

(c) The material and indexes referred to in paragraphs (a) and (b) of this section are available for public inspection and copying at the Public Information Office of the Copyright Office, room 101, Building No. 2, Crystal Mall Annex, 1921 Jefferson Davis Highway, Crystal City, Va. 22202, between the hours of 8 a.m. and 4 p.m., Monday thru Friday.

(d) The Supervisory Copyright Information Specialist is responsible for responding to all initial requests submitted under the Freedom of Information Act. Individuals desiring to obtain access to Copyright Office information under the Act should make a written request to that effect either by mail to the Supervisory Copyright Information Specialist, Information and Publication Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, D.C., 20559, or in person between the hours of 9 a.m. and 4 p.m. on any working day at room 101, Copyright Office, Building No. 2, Crystal Mall, 1921 Jefferson Davis Highway, Arlington, Va. If a request is made by mail, both the request and the envelope carrying it should be plainly marked Freedom of Information Act Request. Failure to so mark a mailed request may delay the Office response.

(e) Records must be reasonably described. A request reasonably describes records if it enables the Office to identify the records requested by any process that is not unreasonably burdensome, disruptive of Office operations. The Supervisory Copyright Information Specialist will, upon request, aid members of the public to formulate their requests in such a manner as to enable the Office to respond effectively and reduce search costs for the requester.

(f) The Office will respond to all properly marked mailed requests and all personally delivered requests within 10 working days of receipt by the Supervisory Copyright Information Specialist. The Office response will notify the requester whether or not the request will be granted. If the request is denied, the written notification will include the basis for the denial and also include the names of all individuals who participated in the determination and a description of procedures available to appeal the determination.

(g) In the event a request is denied and that denial is appealed, the Supervisory Copyright Information Specialist will refer the appeal to the General Counsel. Appeals shall be set forth in writing and addressed to the Supervisory Copyright Information Specialist at the address listed in paragraph (d) of this section. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the General Counsel or his or her delegate within 20 working days. If, on appeal, the denial is in whole or in part upheld, the written determination will include the basis for the appeal denial and will also contain a notification of

*Error; line should read: "scope of 5 U.S.C. 552 (a) (2). The Copyright"

provisions for judicial review and the names of the persons who participated in the determination.

(h) In unusual circumstances, the General Counsel may extend the time limits prescribed in paragraphs (f) and (g) of this section for not more than 10 working days. The extension period may be split between the initial request and the appeal but the total period of extension shall not exceed 10 working days. Extensions will be by written notice to the person making the request. The Copyright Office will advise the requester of the reasons for the extension and the date the determination is expected. As used in this paragraph "unusual circumstances" means.

(1) The need to search for and collect the requested records from establishments that are physically separate from the office processing the request;

(2) The need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practical speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Copyright Office which have a substantial subject matter interest therein.

AVAILABILITY OF INFORMATION

203.5 Inspection and copying.

(a) When a request for information has been approved, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the Supervisory Copyright Information Specialist at the address or telephone number listed in § 203.4(d). Such material may be copied manually without charge, and reasonable facilities are available in the Public Information Office for that purpose. Also, copies of individual pages of such materials will be made available at the price per page specified in paragraphs (a) and (b) of § 203.6.

CHARGES FOR SEARCH FOR REPRODUCTION

§ 203.6 Schedule of fees and method of payment for services rendered.

(a) Fees shall be charged according to the schedule in paragraph (b) of this section for services rendered in responding to requests for Copyright Office records under this section. The Copyright Office will furnish the documents without charge or at a reduced charge where the Office determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public or where the requester claims indigency. When the request is for a copy of a record for which a specific fee is required under section 708 of Pub. L. 94-553, that fee will be charged. Copies of Copyright Office publications are offered for sale to the public at prices based on the cost

of reproduction and distribution, as required under section 707 of Pub. L. 94-553.

(b) The following charges will be assessed for the services listed:

(1) For copies of certificates of copyright registration, \$4.

(2) For copies of all other Copyright Office records not otherwise provided for in this section, \$.45 per page for 24 pages or less, and \$.35 per page for 25 pages or more, with a minimum fee of \$4.00.

(3) For each hour or fraction of an hour spent in searching for a requested record, \$10.

(4) For certification of each document, \$4.

(5) Other costs incurred by the Copyright Office in fulfilling a request will be chargeable at the actual cost to the Office.

(c) No charge will be made for time spent in resolving legal or policy issues affecting access to Office records. No charge will be made for the time involved in examining records to determine whether some or all of such records may or will be withheld. Normally, no charge will be made if the records requested are not found. However, if the time expended in processing the request is substantial, and if the requester has been notified in advance that the Copyright Office cannot determine if the requested record exists or can be located, fees may be charged.

(d) Where it is anticipated that the fees chargeable under this section will amount to more than \$50.00, and the requester has not indicated in advance willingness to pay fees as high as are anticipated, the Copyright Office shall furnish the requester an estimate of the anticipated fee. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated fee and agrees to bear it. Such a notification will be transmitted as soon as possible, but in any event, within five working days after the receipt of the initial request. The Supervisory Copyright Information Specialist will, when appropriate, consult with the requester in an effort to formulate the request so as to reduce the total fees chargeable.

(e) Payment should be made by check or money order payable to the Register of Copyrights.

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

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AUTHORITY: Copyright Act, Pub. L. 94-553; 90 Stat. 2541-2602 (17 U.S.C. 101-710).

§ 204.1 Purposes and scope.

The purposes of these regulations are:

(a) the establishment of procedures by which an individual can determine if the Copyright Office maintains a system of records in which there is a record pertaining to the individual; and

(b) the establishment of procedures by which an individual may gain access to a record or information maintained on that individual and have such record or information disclosed for the purpose of review, copying, correction, or amendment.

§ 204.2 Definitions.

For purposes of this Part:

(a) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) the term "maintain" includes maintain, collect, use, or disseminate;

(c) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history, and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(d) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual; and

(e) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 204.3 General policy.

The Copyright Office serves primarily as an office of public record. Section 705 of title 17, United States Code, requires the Copyright Office to open for public inspection all records of copyright deposits, registrations, recordings, and other actions taken under title 17. Therefore, a routine use of all Copyright Office systems of records created under Title 17 will be disclosure to the public. All Copyright Office systems of records will also be available for public copying as required by section 706(a), with the exception of copyright deposits, whose reproduction will be governed as authorized by Section 706(b) and the regulations issued under that section.

§ 204.4 Procedure for notification of the existence of records pertaining to individuals.

(a) The Copyright Office will publish annually in the FEDERAL REGISTER notices of all Copyright Office systems of records subject to the Privacy Act. Individuals desiring to know if a Copyright Office system of records contains a record pertaining to them should submit a written request to that effect either by mail to the Supervisory Copyright Information Specialist, Information and Publications

Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, D.C. 20559, or in person between the hours of 9 a.m. and 4 p.m. on any working day at room 101, Copyright Office, Building No. 2, Crystal Mall, 1921 Jefferson Davis Highway, Arlington, Va.

(b) The written request should identify clearly the system of records which is the subject of inquiry, by reference, whenever possible, to the system number and title as given in the notices of systems of records in the *FEDERAL REGISTER*. Both the written request and the envelope carrying it should be plainly marked "Privacy Act Request." Failure to so mark the request may delay the Office response.

(c) The Office will acknowledge all properly marked requests within ten working days of receipt and will notify the requester within 30 working days of receipt of the existence or non-existence of records pertaining to the requester.

(d) Since all Copyright Office records are open to public inspection, no identity verification is necessary for individuals who wish to know whether a specific system of records pertains to them.

§ 204.5 Procedures for requesting access to records.

(a) Individuals desiring to obtain access to Copyright Office information pertaining to them should make a written request to that effect either by mail to the Supervisory Copyright Information Specialist, Information and Publications Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, D.C., 20559, or in person between the hours of 9 a.m. and 4 p.m. on any working day at room 101, Copyright Office, Building No. 2, Crystal Mall, 1921 Jefferson Davis Highway, Arlington, Va.

(b) The written request should identify clearly the system of records which is the subject of inquiry, by reference, whenever possible, to the system number and title as given in the notices of systems of records in the *FEDERAL REGISTER*. Both the written request and the envelope carrying it should be plainly marked "Privacy Act Request." Failure to so mark the request may delay the Office response.

(c) The Office will acknowledge all properly marked requests within ten working days of receipt; and will notify the requester within 30 working days of receipt when and where access to the record will be granted. If the individual requested a copy of the record, the copy will accompany such notification.

§ 204.6 Fees.

(a) The Copyright Office will provide, free of charge, one copy to an individual of any record pertaining to that individual contained in a Copyright Office system of records, except where the request is for a copy of a record for which a specific fee is required under section 708 of Pub. L. 94-553, in which case that fee shall be charged. For additional

copies of records not covered by section 708 the fee will be computed at the rate of \$.45 per page for 24 pages or less, and \$.35 per page for 25 pages or more, with a minimum fee of \$4.00. The Office will require prepayment of fees estimated to exceed \$25.00 and will remit any excess paid or bill an additional amount according to the differences between the final fee charged and the amount prepaid. When prepayment is required, a request will not be deemed "received" until prepayment has been made.

(b) The Copyright Office may waive the fee requirements whenever it determines that such waiver would be in the public interest.

§ 204.7 Request for correction or amendment of records.

(a) Any individual may request the correction or amendment of a record pertaining to her or him. With respect to an error in a copyright registration, the procedure for correction and fee chargeable is governed by section 408(d) of Pub. L. 94-553, and the regulations issued as authorized by that section. With respect to an error in any other record, the request shall be in writing and delivered either by mail addressed to the Supervisory Copyright Information Specialist, Information and Publications Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, D.C., 20559, or in person at room 101, Copyright Office, Building No. 2, Crystal Mall, 1921 Jefferson Davis Highway, Arlington, Va. The request shall explain why the individual believes the record to be incomplete, inaccurate, irrelevant, or untimely.

(b) With respect to an error in a copyright registration, the time limit for Office response to requests for correction is governed by section 408(d) of Pub. L. 94-553, and the regulations issued as authorized by that section. With respect to other requests for correction or amendment of records, the Office will respond within 10 working days indicating to the requester that the requested correction or amendment has been made or that it has been refused. If the requested correction or amendment is refused, the Office response will indicate the reason for the refusal and the procedure available to the individual to appeal the refusal.

§ 204.8 Appeal of refusal to correct or amend an individual's record.

(a) An individual has 90 calendar days from receipt of the Copyright Office's response to appeal the refusal to correct or amend a record pertaining to the individual. The individual should submit a written appeal to the Register of Copyright, Copyright Office, Library of Congress, Washington, D.C. 20559 for the final administrative determination. Appeals, and the envelopes carrying them, should be plainly marked "Privacy Act Appeal". Failure to so mark the appeal may delay the Register's response. An appeal should contain a copy of the

request for amendment or correction and a copy of the record alleged to be untimely, inaccurate, incomplete or irrelevant.

(b) The Register will issue a written decision granting or denying the appeal within 30 working days after receipt of the appeal unless, after showing good cause, the Register extends the 30 day period. If the appeal is granted, the requested amendment or correction will be made promptly. If the appeal is denied, in whole or part, the Register's decision will set forth reasons for the denial. Additionally, the decision will advise the requester that he or she has the right to file with the Copyright Office a concise statement of his or her reasons for disagreeing with the refusal to amend the record and that such statement will be attached to the requester's record and included in any future disclosure of such record.

§ 204.9 Judicial Review.

Within two years of the receipt of a final adverse administrative determination, an individual may seek judicial review of that determination as provided in 5 U.S.C. 552a(g) (1).

(17 U.S.C. 701; and under the following sections of Title 17 of the U.S. Code as amended by Pub. L. 94-553: 705; 706; 707; 708.)

Dated: November 29, 1977.

WALDO H. MOORE,
Assistant Register of Copyrights
for Registration.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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