



ANNOUNCEMENT

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

FINAL REGULATIONS

OFFICE ORGANIZATION AND PROCEDURES IN PROVIDING INFORMATION

The following excerpt is taken from Volume 50, Number 142 of the Federal Register for Wednesday, July 24, 1985 (pp.30169-30172)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201 and 202

(Docket #84-3)

Office Organization and Procedures in Providing Information

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulations.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is amending 37 CFR Parts 201 and 202, concerning Office organization and procedures in providing information. In view of the 1976 revision of the Copyright Act, the citation of the statutory authority for Parts 201 and 202 of the Copyright Office Regulations is being amended. Section 201.1 has been amended to give the addresses to which various kinds of requests to the Copyright Office should be directed. Section 201.2 explains the general information that can be obtained from the Copyright Office and prescribes the conditions under which records, correspondence, and deposit material may be inspected and copied.

EFFECTIVE DATE: July 24, 1985.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8360.

SUPPLEMENTARY INFORMATION:

1. Statutory authority. The statutory

authority under which Parts 201 and 202 have been promulgated has been amended to cite the relevant section in the Copyright Act of 1976 and to give the correct citation in the statutes at large.

2. Mailing addresses. Section 201.1 presently directs that all mail and other communications be sent to the Register of Copyrights at one address. This remains the address to be used when submitting applications for registration of claims to copyright, documents for recordation, and the vast majority of communications with the Copyright Office. However, for more expeditious handling of certain kinds of requests, the Copyright Office asks that those communications be sent directly to the particular Division or Section responsible for responding to the request. The Copyright Office has amended § 201.1 to include the additional addresses.

3. Information given by the Copyright Office. Section 201.2(a)(1) presently states that the Office does not give "legal opinions or advice." This has been interpreted and applied by the Office to mean that it will not act as an attorney for members of the general public. The Office does not give specific advice whether certain conduct actually constitutes copyright infringement. With respect to administration of the Copyright Act in general, however, the Copyright Office must and does interpret the Act. The courts, of course, are the final arbiters of what the law means. The wording of the present regulation is misleading and could be misinterpreted to mean that the Office has no authority to give opinions or

define legal terms in the Act. This would be contrary to the opinions in a number of cases in which courts have accorded weight to Office interpretations. In order to clarify its position, the Office has amended § 201.2(a) by adding a new paragraph (3) as follows:

(3) In the administration of the Copyright Act in general, the Copyright Office interprets the Act. The Copyright Office, however, does not give specific legal advice on the rights of persons, whether in connection with particular uses of copyrighted works, cases of alleged foreign or domestic infringement, contracts between authors and publishers, or other matters of a similar nature.

4. Inspection and copying of records. Section 201.2(b) is amended to reflect the Copyright Office's policy regarding public use of in-process files.

"In-process files" are those which the Copyright Office makes for its own immediate internal use in connection with pending applications for registration or the recordation of documents and which are preliminary to the completion of the public record. These files include the Receipt-in-Process Records, Correspondence Management System Records, accounting files, open unfinished business files (U.B.), and other files of a similar nature. These files are maintained and are constantly used to facilitate the internal administrative operations of the Office in processing applications for registration and recording documents. They are not a part of the records that are required by section 705 of the Copyright Act to be open to public inspection.

As a general policy the regulations

files and any of the areas where they are kept. A procedure is provided, however, whereby *information* contained in the in-process files may be obtained by anyone, following payment of applicable fees, upon request to the Information and Reference Division.

The regulations provide as an exception to the general policy of denying direct public access to in-process files that in the case of pending applications for registration and their accompanying deposits, access will be afforded without charge upon request of the copyright claimant or his/her authorized representative to those applications and deposits that were submitted for registration within the twelve month period immediately preceding the request. Likewise, access will be afforded to pending documents for recordation upon the request of at least one of the persons who executed the document or by an authorized representative of that person. These requests must be presented in the Public Information Office.

Requests for certain information contained in pending applications and documents may be made by anyone and the information will be supplied, following payment of applicable fees. The request should be made to the Certifications and Documents Section.

5. **Correspondence.** A significant amendment is proposed in § 201.2(c)(1). Consistent with Copyright Office practices under the Freedom of Information Act since 1978, the amended regulation makes correspondence directly relating to rejected applications for registration and documents for which recordation was refused records that are open to public inspection.

6. **Requests for copies.** The Copyright Office has amended § 201.2(d)(1) to specify more precisely the information to be given when requests for copies of records are made. The regulations would retain the same conditions that must be presently satisfied when copies of copyright deposits are requested, but the proposed amendment of § 201.2(d)(2)(i) makes clear that the written authorization may also be made by the owner of any of the exclusive rights in the copyright as long as it can be documented in writing that the transfer of ownership occurred. The remaining subsections in § 201.2(d)(2) have minor non-substantive changes in wording. Section 201.2(d)(3) is new. It specifies that in responding to a request for a reproduction of a phonorecord the Office will provide "proximate reproduction," and reserves to the Office the right to substitute a monaural reproduction for a stereo, quadrasonic, or any other type of fixation of the work accepted for deposit.

These amendments have been issued as final regulations, effective immediately, without public comment, since they concern Office organization and procedures and are not substantive in nature. Moreover, the changes are either technical, or clarify or confirm previously announced policies regarding access to Office in-process files.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and 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, Chapter 5 of the 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

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 Acting Register of Copyrights has determined that the regulations will have no significant impact on small businesses.

List of Subjects in 37 CFR Parts 201 and 202

Copyright, Copyright office.

In consideration of the foregoing, Parts 201 and 202 of 37 CFR Chapter II are amended in the manner set forth below.

PART 201—[AMENDED]

To the authority citation for Part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541; 17 U.S.C. 702. . . .

2. Section 201.1 is revised to read as follows:

§ 201.1 Communications with the Copyright Office.

(a) *In general.* Mail and other communications shall be addressed to

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. 708(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.

Congress, Washington, D.C. 20559.

(b) *Inquiries to Licensing Division.* Inquiries about filings related to the four compulsory licenses (17 U.S.C. 111, 115, 116, and 118) should be addressed to the Licensing Division, LM-454, Copyright Office, Library of Congress, Washington, D.C. 20557.

(c) *Copies of records or deposits.* Requests for copies of records or deposits should be addressed to the Certifications and Documents Section, LM-402, Copyright Office, Library of Congress, Washington D.C. 20559.

(d) *Search of records.* Requests for searches of registrations and recordations in the completed catalogs, indexes, and other records of the Copyright Office should be addressed to the Reference and Bibliography Section, LM-450, Copyright Office, Library of Congress, Washington, D.C. 20559.

3. Section 201.2 is revised to read as follows:

§ 201.2 Information given by the Copyright Office.

(a) *In general.* (1) Information relative to the operations of the Copyright Office is supplied without charge. A search of the records, indexes, and deposits will be made for such information as they may contain relative to copyright claims upon application and payment of the statutory fee. The Copyright Office, however, does not undertake the making of comparisons of copyright deposits to determine similarity between works.

(2) The Copyright Office does not furnish the names of copyright attorneys, publishers, agents, or other similar information.

(3) In the administration of the Copyright Act in general, the Copyright Office interprets the Act. The Copyright Office, however, does not give specific legal advice on the rights of persons, whether in connection with particular uses of copyrighted works, cases of alleged foreign or domestic copyright infringement, contracts between authors and publishers, or other matters of a similar nature.

(b) *Inspection and copying of records.* (1) Inspection and copying of completed records and indexes relating to a registration or a recorded document, and inspection of copies or identifying material deposited in connection with a completed copyright registration may be undertaken in the Certifications and Documents Section. Since some of these materials are not stored on the immediate premises of the Copyright Office, it is advisable to consult the Certifications and Documents Section to determine the length of time necessary to produce the requested materials.

(2) It is the general policy of the Copyright Office to deny direct public

work (or other) areas where they are kept. Likewise, direct public use of computer terminal intended to access the automated equivalents of these files is not permitted.

(3) Information contained in Copyright Office in-process files may be obtained by anyone upon payment of applicable fees and request to the Information and Reference Division, in accordance with the following procedures:

(i) In general, all requests by the public for information in the in-process and open unfinished business files should be made to the Certifications and Documents Section, which upon receipts of applicable fees will give a report that provides the following for each request:

(A) the date(s) of receipt of: (1) The application(s) for registration that may have been submitted and is (are) in process; (2) the document(s) that may have been submitted for recordation and is (are) in process; (3) the copy or copies (or phonorecords) that may have been submitted; (B) the title of the work(s); and (C) the name of the remitter.

(ii) Such searches of the in-process files will be given priority to the extent permitted by the demands of normal work flow of the affected sections of the Copyright Office.

(4) Access will be afforded as follows to pending applications for registration, the deposit material accompanying them, and pending documents for recordation that were submitted within the twelve month period immediately preceding the request for access: (i) in the case of applications for registration and deposits accompanying them, upon the request of the copyright claimant or his/her authorized representative, and (ii) in the case of documents, upon the request of at least one of the persons who executed the document or by an authorized representative of that person. These requests should be made to the Public Information Office, and the review of the materials will be permitted there. No charge will be made for this service.

(5) In exceptional circumstances, the Register of Copyrights may allow inspection 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 that the person making the request is one properly and directly concerned. The written request should be addressed to the General Counsel of the Copyright Office, Department DS, Washington, D.C. 20540.

(6) In no case will direct public access be permitted to any financial or accounting records.

(7) The Copyright Office maintains administrative staff manuals referred to as its "Compendium of Office Practices I" and "Compendium of Office Practices II" for the general guidance of its staff in

documents. The manuals, as amended and supplemented from time to time, are available for purchase from the National Technical Information Service (Compendium I) and the Government Printing Office (Compendium II). They are also available for public inspection and copying in the Certifications and Documents Section.

(c) *Correspondence.* (1) Official correspondence, including preliminary applications, between copyright claimants or their agents and the Copyright Office, and directly relating to a completed registration, a recorded document, a rejected application for registration, or a document for which recordation was refused is available for public inspection. Requests for reproductions of the correspondence shall be made pursuant to paragraph (d) of this section.

(2) Correspondence, application forms, and any accompanying material forming a part of a pending application are considered in-process files and access to them is governed by paragraph (b) of this section.

(3) Correspondence, memoranda, reports, opinions, and similar material relating to internal matters of personnel and procedures, office administration, security matters, and internal consideration of policy and decisional matters including the work product of an attorney, are not open to public inspection.

(4) The Copyright Office will return unanswered any abusive or scurrilous correspondence.

(d) *Requests for copies.* (1) Requests for copies of records should include the following:

(i) A clear identification of the type of records desired (for example, additional certificates of registration, copies of correspondence, copies of deposits).

(ii) A specification of whether the copies are to be certified or uncertified.

(iii) A clear identification of the specific records to be copied. Requests should include the following specific information, if possible: (A) the type of work involved (for example, novel, lyrics, photograph); (B) the registration number; (C) the year date or approximate year date of registration; (D) the complete title of the work; (E) the author(s) including any pseudonym by which the author may be known; and (F) the claimant(s); and (G) if the requested copy is of an assignment, license, contract, or other recorded document, the volume and page number of the recorded document.

(iv) If the copy requested is an additional certificate of registration, include the fee. The Certifications and Documents Section will review requests for copies of other records and quote fees for each.

(v) The telephone number and address of the requestor.

(2) Requests for certified or uncertified

phonorecords, or identifying material deposited in connection with a copyright registration of published or unpublished works in the custody of the Copyright Office will be granted only when one of the following three conditions has been met:

(i) The Copyright Office receives written authorization from the copyright claimant of record or his or her designated agent, or from the owner of any of the exclusive rights in the copyright as long as this ownership can be demonstrated by written documentation of the transfer of ownership.

(ii) The Copyright Office receives a written request from an attorney on behalf of either the plaintiff or defendant in connection with litigation, actual or prospective, involving the copyrighted work. The following information must be included in such a request: (A) The names of all the parties involved and the nature of the controversy; (B) the name of the court in which the actual case is pending or, in the case of a prospective proceeding, a full statement of the facts of the controversy in which the copyrighted work is involved; and (C) satisfactory assurance that the requested reproduction will be used only in connection with the specified litigation.

(iii) The Copyright Office receives a court order for reproduction of the deposited copies, phonorecords, or identifying material of a registered work which is the subject of litigation. The order must be issued by a court having jurisdiction of the case in which the reproduction is to be submitted as evidence.

(3) When a request is made for a reproduction of a phonorecord, such as an audiotape or cassette, in which either a sound recording or the underlying musical, dramatic, or literary work is embodied, the Copyright Office will provide proximate reproduction. The Copyright Office reserves the right to substitute a monaural reproduction for a stereo, quadraphonic, or any other type of fixation of the work accepted for deposit.

PART 202—REGISTRATIONS OF CLAIMS TO COPYRIGHT

4. The authority citation for Part 202 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702.

Dated: July 17, 1985.

Donald C. Curran,

Acting Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

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