



ANNOUNCEMENT

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

FINAL REGULATION

GENERAL PROVISIONS; INFORMATION GIVEN BY THE COPYRIGHT OFFICE

The following excerpt is taken from Volume 51, Number 163 of the Federal Register for Friday, August 22, 1986 (pp.30061-30062)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 86-2]

General Provisions; Information Given
by the Copyright Office

AGENCY: Library of Congress, Copyright
Office.

ACTION: Final regulation.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is amending 37 CFR 201.2(b)(2) and (c)(1), concerning Office procedures, to provide direct public access to limited information contained in in-process files and to permit inspection and a request for copies of certain additional correspondence.

EFFECTIVE DATE: August 22, 1986.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Washington, DC 20559. Telephone: (202) 287-8380.

SUPPLEMENTARY INFORMATION: On July 24, 1985 the Copyright Office promulgated and made effective rules regarding public access to information contained in the Office's in-process files and official correspondence files. (50 FR 30169). By this notice, the Office is adopting two amendments to the

regulations governing the dissemination of information by the Office.

1. Computer Search 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 system, Correspondence Management system, 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.

The amended regulation, § 201.2(b)(2), will generally continue to deny direct public access to in-process files and to any of the work areas where they are kept. The amended regulation however, will permit direct public access to a limited amount of information contained in the in-process files by means of a computer terminal.

The computer terminal can be used to determine if a request for registration of document recordation has been received in the Copyright Office, but cannot be used to determine final facts of

copyright registration or document recordation. Access is by title, although in some cases a claimant's name may appear in the index.

Only the following information will be provided by a direct computer search of Office "in-process" files: Title of the work, including issue date, volume number, and issue number, if a serial; receipt date; name of remitter; description of classification if an application for registration; number of copies; and the claimant's name, if different from the name of the remitter. Direct public use of the computer terminal is permitted between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, when the Office is open for business upon payment of applicable fees. The computer terminal is located in the Records Maintenance Unit, Room LM B-14 of the James Madison Memorial Building of the Library of Congress.

In addition, the Office will continue to make available to the public information contained in its "in-process" files by means of an Office-conducted search of those files pursuant to § 201.2(b)(3), which is unchanged.

2. Partial Access to Re-Opened, Pending Cases

"Official correspondence" is correspondence, including preliminary applications, between copyright claimants or their agents and the Copyright Office, directly relating to rejected applications for registration and documents for which recordation was

refused. In our July 24, 1985 rule change, the Office made such correspondence files open to public inspection and copying as a record once the case is closed.

The amended regulation, § 201.2(c)(1), makes it clear that the portion of such correspondence, directly relating to rejected applications for registration and documents for which recordation was refused which once represented a closed case will be open for public inspection and copying even though the once-closed case may have been reopened by some subsequent action on the part of the copyright claimant or his agent or by the Copyright Office. The rationale for this amendment is that the correspondence in such instances was open for public inspection prior to the subsequent reopening of the case, and the Office believes that the portion of the correspondence file that constituted a record because it was a closed case, should remain open to public inspection.

Examples of ways in which a case may be reopened after final Office action include where an appeal is made requesting reconsideration of an Office refusal to register a claim to copyright or to record a document, or where action is taken to cancel a completed registration. Public access will be allowed for the portion of the file which constituted a completed record before the case was reopened. The correspondence, if any, which triggered the reopening of the case, and any correspondence subsequently added to the file before final action will be considered part of an in-process file and public access will be governed by the rules for in process-files found in § 201.2(b)(1).

These amendments are issued as final regulations, effective immediately, without public comment, since they constitute minor changes regarding Office information procedures and are not substantive in nature.

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

List of Subjects in 37 CFR Part 201 Copyright Office.

Final Regulations

In consideration of the foregoing, Part 201 of Title 37, Chapter II is amended as set forth below.

PART 201—(AMENDED)

The authority citation for Part 201 continues to read as follows:

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

2. Section 201.2 is amended by revising the last sentence in paragraph (b)(2) and by adding additional language

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.

before the last sentence of paragraph (c)(1) to read as follows:

§ 201.2 Information given by the Copyright Office.

(b) *Inspection and copying of records.*

(2) * * * However, direct public use of computers intended to access the automated equivalent of limited portions of these files is permitted on a specified terminal in the Records Maintenance Unit, LM B-14, 8:30 a.m. to 5:00 p.m., Monday through Friday, upon payment of applicable fees.

(c) *Correspondence*

(1) * * * Included in the correspondence available for public inspection is that portion of the file directly relating to a completed registration, recorded document, a rejected application for registration, or a document for which recordation was refused which was once open to public inspection as a closed case, even if the case is subsequently reopened. Public inspection is available only for the correspondence contained in the file during the time it was closed because of one of the aforementioned actions. Correspondence relating to the reopening of the file and reconsideration of the case is considered part of an in-process file until final action is taken, and public inspection of that correspondence is governed by § 201.2(b). * * *

Dated: August 12, 1986.

Ralph Oman,
Register of Copyrights.

Approved:
Daniel J. Boorstin,
The Librarian of Congress.
[FR Doc. 86-18956 Filed 8-21-86; 8:45 am]
BILLING CODE 1410-67-M