



ANNOUNCEMENT

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

FINAL REGULATIONS

HOUSEKEEPING AMENDMENTS: REFUND OF EXCESS FEES; COMPULSORY LICENSE FOR CABLE SYSTEMS; COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS; REGISTRATION OF CLAIMS TO COPYRIGHT

The following excerpt is taken from Volume 56, Number 38 of the Federal Register for Tuesday, February 26, 1991 (pp. 7812-7814)

37 CFR Parts 201 and 202

[Docket No. RM 90-2]

Housekeeping Amendments: Refund of Excess Fees; Compulsory License for Cable Systems; Compulsory License for Making and Distributing Phonorecords; Registration of Claims to Copyright

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulations.

SUMMARY: The Copyright Office is making housekeeping amendments to several regulations. The regulations regarding refund of excess fees are amended in two respects: To increase from \$5.00 to \$10.00 the amount that will not be refunded absent a specific request, and to provide that the regulations apply to non-registration services. The regulations regarding the compulsory license for making and distributing phonorecords are amended to include the rates currently in effect. The regulations regarding the compulsory license for cable systems are amended to eliminate reference to a reporting form no longer in use and to correct a typographical error. The cable regulations are also amended to eliminate an interim section that required cable systems to declare whether, in figuring its gross receipts, the system allocated its fees between broadcast and nonbroadcast programming where both services were offered on a single tier for a single price. Lastly, the Copyright Office is amending

its registration regulations to include Class SE as an additional class. Class SE is used for registration of claims in periodicals and serials.

EFFECTIVE DATE: February 26, 1991.

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

SUPPLEMENTARY INFORMATION:

1. Refund Policy

Section 708 of the Copyright Act of 1976, title 17 of the United States Code, establishes a schedule of fees for copyright services provided by the Copyright Office to the public. Fees remitted for specific registration services are nonrefundable under the statute since they are filing fees. The regulations currently provide that payments made by mistake or in excess of the statutory fee will be refunded except that amounts of \$5.00 or less will not be refunded unless specifically requested.

Since the issuance of the existing refund regulation, inflation has essentially cut the stated dollar value in half. Congress recognized this fact in passing the Copyright Fees and Technical Amendments Act of 1989, which doubles the statutory fees for copyright services effective January 3, 1991. The Copyright Office is, consequently, making a similar adjustment of the refund regulation. Section 201.6 of 37 CFR is amended to increase the existing \$5.00 limitation to

\$10.00. The Copyright Office will not refund amounts of \$10.00 or less which are paid by mistake or in excess of the statutory fees unless specifically requested by the remitter.

In addition, the Copyright Office is amending 37 CFR 201.6 to provide that in making any refund for fees remitted in payment of nonregistration services (for example, certification of records; searches of the records), an administrative processing fee shall be deducted from the amount remitted equivalent to one hour of service, or the minimum fee set by statute for the service. The Register of Copyrights has determined that this administrative processing fee shall be charged pursuant to section 708(a) of the Copyright Act to reflect the minimum administrative cost of responding to the request, even if the service cannot be provided.

2. Cable Compulsory License

Section 111(d)(1) of the Copyright Act of 1976, title 17 of the United States Code mandates that the Register of Copyrights prescribe by regulation statements of account to be filed in the Copyright Office by cable systems whose secondary transmissions are subject to compulsory licensing under section 111(c) of the Act. The Copyright Office now uses only two reporting forms, but the present Copyright Office regulation, 37 CFR 201.17(d)(2), prescribes three forms to be used for filing statements of account based on the gross receipts limitations. "Form CS-SA-3—'Long Form'" is obsolete. Consequently, subsection (iii) of paragraph (d)(2) of § 201.17 is deleted.

Also in § 201.17, a typographical error appearing in paragraph (j)(1)(ii) is being corrected. The reference in that paragraph is corrected to read "paragraph (j)(1)(iii)" instead of "paragraph (j)(1)(ii)".

A third amendment to § 201.17 eliminates paragraph (k) ("Additional declaration of gross receipts") in its entirety. Paragraph (k) was added to § 201.17 on an interim basis while an appeal was pending in *Cablevision Systems Development Corp v. Motion Picture Association of America*, 836 F.2d 599 (D.C. Cir. 1988), cert. denied, 108 S.Ct. 2901 (1988). The Court of Appeals reinstated a Copyright Office regulation governing reporting of gross receipts, which the district court had held invalid.

Paragraph (k) required a cable system to declare whether in figuring the gross receipts upon which its compulsory license fees were based, it allocated its fees between broadcast and nonbroadcast programming where both services were offered on a single tier for a single price, and to explain its method of allocation, if any allocation was made. With the resolution of the Cablevision case, paragraph (k) is no longer relevant and is being removed.

3. Mechanical Reproduction of Recorded Music

Section 201.19 concerning royalties and statements of account under the compulsory license for making and distributing phonorecords of nondramatic musical works is being amended to reflect royalty rates established by the Copyright Royalty Tribunal, effective on January 1, 1990.

4. New Forms SE and SE/Group

Lastly, the Copyright Office is amending § 202.3 of its regulations to include Class SE, which is used to register claims to copyright in issues of periodicals and serials. Paragraph (b)(1)(i) of § 202.3 is being amended to remove "periodicals and serials" as examples of works registrable on Form TX and a new paragraph (b)(1)(v) of that section is being added to designate Class SE as a class to be used for registration of claims in periodicals and serials. In paragraph (b)(2) of that section the number of basic forms available for registration is being changed from "four" to "six" and Form SE and Form SE/Group are being added to the list of designated forms to be used for registration in each class.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this 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 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 this final regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Parts 201 and 202

Cable systems, Copyright registration.

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

PART 201—[AMENDED]

1. The authority citation for part 201 is amended by adding the following citations:

Authority: Section 702, 90 Stat. 2541; 17 U.S.C. 702; * * * § 201.8 is also issued under 17 U.S.C. 708; § 201.17 is also issued under 17 U.S.C. 111; § 210.19 is also issued under 17 U.S.C. 115.

2. Section 201.8(c) is revised to read as follows:

§ 201.8 Payment and refund of Copyright Office fees.

(c) *Refunds.* Money remitted to the Copyright Office for original, basic, supplementary or renewal registration will not be refunded if the claim is rejected because the material deposited does not constitute copyrightable subject matter or because the claim is invalid for any other reason. Payments made by mistake or in excess of the statutory fee will be refunded, but amounts of \$10 or less will not be refunded unless specifically requested, and refunds of less than \$2 may be made

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.

in postage stamps. Before making any refund for fees remitted in relation to nonregistration copyright services, the Copyright Office shall deduct an administrative processing fee in an amount equivalent to one hour of the requested service, or the minimum fee set by statute for the service.

§ 201.17 [Amended]

3. Section 201.17 is amended by removing paragraphs (d)(2)(iii) and (k) in their entirety and by changing the reference to "(j)(1)(ii)" in paragraph (j)(1)(iii) to "(j)(1)(iii)".

§ 201.19 [Amended]

4. Section 201.19(e)(4)(ii) Step 5 is amended by removing the phrase "royalty rate of 2½ cents or ½ cent per minute" and inserting in its place the phrase "royalty rate of 5.7 cents or 1.1 cents per minute".

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

5. The authority citation for part 202 is amended by adding the following citation:

Authority: Section 702, 90 Stat. 2541; 17 U.S.C. 702; * * * § 202.3 also issued under 17 U.S.C. 407 and 408.

§ 202.3 [Amended]

6. The introductory text of § 202.3(b)(1) is amended by revising the phrase "four classes of works" to read "the classes of works".

7. Section 202.3(b)(1)(i) is amended by removing the phrase "periodicals and serials;"

8. Section 202.3 is amended by adding a new paragraph (b)(1)(v) to read as follows:

(v) Class SE: Serials. A serial is a work issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. This class includes periodicals; newspapers; annuals; and the journals, proceedings, transactions, etc. of societies.

9. The introductory text § 202.3(b)(2) is amended by revising the phrase "four basic forms" to read "the basic forms" and by replacing the phrase "(Form TX"; "Form PA"; "Form VA"; and "Form SR");" with the phrase "(Form TX"; "Form PA"; "Form VA"; "Form SR"; "Form SE"; and "Form SE/Group")."

Dated: February 13, 1991.

Ralph Otmaz,.

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

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