



# ANNOUNCEMENT

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

## FINAL REGULATIONS

### RENEWAL REGISTRATION: EFFECTIVE DATE OF REGISTRATION

The following excerpt is taken from Volume 56, Number 240 of the Federal Register for Friday, December 13, 1991 (p. 65000)

#### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 202

[Docket No. 91-12]

#### Renewal Registration: Effective Date of Registration

**AGENCY:** Library of Congress, Copyright Office.

**ACTION:** Final regulations.

**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 renewal registrations made under section 304 of the Copyright Act when the previously required filing fee of \$6 is submitted in lieu of the \$12 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 renewal claims eligible for registration during 1991 and which are received in the Copyright Office on or before December 31, 1991.

**EFFECTIVE DATE:** December 13, 1991.

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

**SUPPLEMENTARY INFORMATION:** On December 4, 1990, the Copyright Office published a new regulation, 37 CFR 202.4, concerning the effective date of registration for basic registration under section 408 of the Copyright Act. The regulation governed the effective date

for basic claims to copyright received on or after January 3, 1991 with a short fee of \$10 in lieu of the \$20 fee required on or by the "Copyright Fees and Technical Amendments Act of 1989," Public Law 101-318, 204 stat. 287. At that time the Copyright Office stated that renewal registration requires a special policy and would be dealt with separately. The Copyright Office is issuing this regulation to notify the public of the effective date of renewal registration when the old fee of \$6 is submitted by mistake for renewal applications submitted in 1991 to effect renewal registration during the 1991. The regulation also specifies the consequences of not submitting the supplementary fee of \$6 in a timely manner.

The new statutory fee schedule authorized by the "Copyright Fees and Technical Amendments Act of 1989" has been in effect since January 3, 1991. The current fee for renewal registration is \$12. The Copyright Office continues to receive a significant number of renewal applications with the old fee of \$6. The public's failure to remit the full \$12 fee can be primarily attributed to Copyright Office literature and renewal application forms in the hands of the public that contain old fee information.

For works in which Federal copyright protection was secured before January 1, 1978, the copyright endures for 28 years from the date it was originally secured. Section 304(a) of the Copyright Act, title 17 United States Code provides that such copyright is entitled to a renewal and extension of the copyright for a further term of 47 years when application for such renewal and extension is properly made to the Copyright Office and duly registered

within one year prior to the expiration of the original term of copyright.

The Copyright Office has no discretion to extend the time in which a renewal application must be received. The actual date of receipt determines the acceptability of a renewal application. The Register clearly has discretionary authority, however, 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.

The Copyright Office hereby established an interim policy for works eligible for renewal copyright in 1991: Where an acceptable application is received with a short fee of \$6, the date the application and \$6 fee are received shall determine the effective date of renewal registration, provided the remaining \$6 fee is received within 45 days of notification of the short fee. The Copyright Office will not assign a registration number to the renewal application until the entire statutory fee is received. Past policy has required that the entire fee must be received within the renewal year.

Since the fee is peculiarly a matter of administrative concern, the Register has decided to exercise his rulemaking authority to establish a new policy, on an interim basis, concerning supplementary fees received after the 1991 renewal year. The Register decided to establish a new policy for renewal registration in 1991 because the public remains misinformed concerning the correct fee. The persons most likely to be misinformed are individual copyright

<sup>1</sup> Error; line should read:  
"101-318, 204 Stat. 287. At that time the"

<sup>2</sup> Error; line should read:  
"registration during 1991. The"

<sup>3</sup> Error; line should read:  
"establishes an interim policy for works"

owners who are hard to reach with the correct information. Since a large number of renewal applications are typically received toward the end of the year, the Office will be unable to examine the applications for correctness or short fee until after the end of the 1991 renewal year. It would be particularly unreasonable and unfair that renewal copyright, which vests only upon registration, should be lost permanently for lack of receipt of the additional fee within the renewal year, during the first year the fee increase is in effect.

Based on past administrative experience the Register concluded that insufficient fees for renewal registrations 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 works eligible for renewal during 1991. For works eligible for renewal in 1992 the Copyright Office will resume its traditional policy of requiring receipt of the entire renewal fee, as well as the application, within the renewal year.

The Copyright Office is issuing this regulation to notify the public of the effective date of registration when the old fee of \$6 is submitted with renewal applications during calendar year 1991 and the consequences of not submitting the supplementary fee of \$6 in a timely manner. This regulation has no applicability to short fee renewal cases where less than \$6 is received during 1991 and no supplementary fees will be accepted after March 31, 1992. The policy adopted responds entirely to the hardship situation that is especially severe during the initial period of implementation of the new fee structure.

No legitimate public interest would be served by forced loss of the renewal copyright because of a mistake regarding the correct fee during the first year the new fee schedule is in effect. At

the same time, the Copyright Office recognizes that the Copyright Act requires timely registration to effect renewal of the copyright. The Office must therefore set a limit on the time to comply fully with the statutory fee requirement. We have set the limit at 45 days after notification of the short fee, or in any case no later than March 31, 1992. Adoption of this policy means that persons who search the renewal registration records of the Copyright Office in 1992 may not be able to determine whether a valid renewal has been made for a work subject to renewal in 1991 until March 31, 1992.

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, 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.<sup>1</sup>

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

Copyright registration: Renewal copyright.

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

## PART 202—REGISTRATIONS OF CLAIMS

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

Authority: Section 702, 90 Stat 2451, 17 U.S.C. 702, §§ 202.19, 202.20, and 202.21 are also issued under 17 U.S.C. 407 and 408.

2. Section 202.18 is added to read as follows:

### § 202.18 Effective date of renewal registration.

The effective date for registration of renewal claims eligible for registration during 1991 and received in the Copyright Office during 1991 with a short fee of \$6 is the date on which the application and the \$6 fee have 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 \$6 is received in the Copyright Office within 45 days after notification of the short fee. Renewal applications submitted with a short fee of \$6 will not be assigned a registration number until the supplementary fee of \$6 is submitted. If the supplementary fee of \$6 is not received in the Copyright Office within 45 days after notification of the short fee, the Copyright Office will not complete the registration. In no case will supplementary fees received after March 31, 1992 be accepted, for the 1991 renewal year.

Dated: November 21, 1991.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

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<sup>1</sup> 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-FOLA requirements.