



# ANNOUNCEMENT

from the Copyright Office, Library of Congress,  
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

INTERIM REGULATIONS WITH REQUEST FOR COMMENTS.

## IMPLEMENTATION OF THE ELECTRONIC FREEDOM OF INFORMATION ACT AMENDMENTS OF 1996

The following excerpt is taken from Volume 62, Number 208 of the  
*Federal Register* for Tuesday, October 28, 1997 (p. 55740-55742)

---

### LIBRARY OF CONGRESS

#### Copyright Office

37 CFR Part 203

[Docket No. 97-7]

#### Implementation of the Electronic Freedom of Information Act Amendments of 1996

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

**ACTION:** Interim regulations with request for comments.

**SUMMARY:** The Copyright Office is issuing interim regulations regarding the Freedom of Information Act to comply with changes mandated by the Electronic Freedom of Information Act Amendments of 1996. The effect of the interim regulations is to permit public access to Office records that were created on or after October 1, 1996, in electronic format. The Office seeks comment on these interim regulations.

**EFFECTIVE DATE:** This interim regulation is effective November 1, 1997. Written comments should be received on or before November 28, 1997.

**ADDRESSES:** *BY MAIL:* Ten copies of written comments should be addressed to David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. *BY HAND:* Ten copies of written comments should be delivered to the Office of the General Counsel, U.S. Copyright Office, James Madison

Memorial Building, Room 403, First and Independence Avenue, S.E., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Kretsinger, Assistant General Counsel, or Patricia L. Sinn, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202)707-8380. Fax: (202)707-8366.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Copyright Office is adopting interim regulations to Part 203 of its regulations to implement the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Pub. L. No. 104-231, 110 Stat. 3048 (1996), which amends the Administrative Procedure Act (APA), title 5, United States Code. The Office is subject to the Freedom of Information Act (FOIA), which is part of the APA, under 17 USC 701(d). Section 701(d) provides that "[e]xcept as provided by section 706(b) and the regulations issued thereunder, all actions taken by the Register of Copyrights under this title are subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended...." Copyright Office regulations describe records and documents available for public inspection under the Copyright Act and under the FOIA. See 37 CFR 201.2, 203. The Copyright Office is part of the Library of Congress, a legislative agency, and is an office of public record governed in its record-keeping activities by sections of the copyright statute that

designate which records are available for public inspection and search. See 17 USC 705, 706. Copyright Office records include deposits, registrations, indexes, recordings, and other actions taken under title 17. 17 USC 705(a). Public records maintained by the Office are the subject of most requests for information received; thus, the Office receives few actual FOIA requests that must be answered outside the realm of its normal public information services.

The FOIA, which establishes a right of access to certain federal agency records, was enacted 30 years ago, before the extensive use of computers to create and retain records in electronic formats. With the advent and widespread acceptance of new information technologies, questions arose about how electronic records should be handled under the FOIA. The EFOIA, signed into law on October 2, 1996, contains amendments that address methods required to make agency records available to the public by electronic means and in electronic formats. This interim regulation revises several provisions of the Office's FOIA regulations under 37 CFR 203 to comply with provisions of the EFOIA.

##### II. Interim Amendments

###### A. Form or Format Requests.

A significant change enacted in the EFOIA is the requirement that agencies honor requests to provide records created after October 1, 1996, in specific formats, including electronic formats, so long as the records are "readily reproducible by the agency in that form or format" by use of reasonable efforts. EFOIA sec. 5 (codified as 5 USC

552(a)(3)(B). The Office will consider the particular set of circumstances involved with each individual FOIA request to determine whether it can reasonably comply with a request to provide a record in a particular format. Prior to this amendment, the FOIA did not place agencies under an obligation to accommodate a FOIA requester's preferences as to format. The Office is amending §203.4(a) of its regulations to reflect EFOIA requirements by adding language to reflect that the Office will produce agency records in response to a FOIA request in either traditional paper form or, if possible, in electronic form.

#### B. Fees.

Fees currently set forth in 37 CFR 203.6 apply to the costs of duplication, review of documents, and copying of paper pages. Under 37 CFR 203.6(b)(2), the current charge of \$0.45 per page for copies of Office records will be assessed for paper pages of computer printouts generated by the Office, matching the current per-page charge for copies beyond the first 15 pages, for which seven dollars is charged. These fees will be modified if the Office adjusts its fees to cover the costs of providing services. The Office will charge a requester the actual cost for provision of computer discs containing requested information. For security reasons, the Office will not use discs or other electronic storage media supplied by requesters for purposes of downloading requested information.

In addition to EFOIA adjustment, the Office is adjusting fees in 37 CFR 203.6(b)(6) regarding fees for services rendered. The time charged for an employee's computer search of records remains the actual cost of the search including the cost of operating equipment for the time directly attributable to searching for records responsive to a request, but modifies the cost of the operator/programmer's time involved in conducting a search from \$10.00 per hour or fraction thereof to \$20.00 per hour or fraction thereof. The Office's authority to raise discretionary fees is found in 17 USC 708(a)(10).

#### C. Time for Processing Initial FOIA Requests.

The EFOIA provides that effective October 2, 1997, agencies will have twenty working days, rather than the current ten working days, to respond to initial FOIA requests. EFOIA sec. 8(b)(codified as 5 USC 552(a)(6)(A)(i)). The Office proposes to amend § 203.4(f) of its FOIA regulations to implement this aspect of the EFOIA.

The EFOIA recognizes that in "unusual circumstances" agencies may need more than twenty working days to process FOIA requests. EFOIA sec. 7(b)(codified as 5 USC 552(a)(6)(B)). If an extension of more than ten working days is sought, the EFOIA amendments require that an agency provide requesters with the opportunity to limit the scope of their requests to enable processing within the ten day statutory time limit for extensions, or to negotiate an alternate time frame for processing requests. *Id.* The Office proposes to amend its FOIA regulations to reflect these changes.

#### D. Expedited Processing.

The EFOIA requires agencies to promulgate through a notice and comment rulemaking regulations to consider requests for "expedited processing" of initial FOIA requests. EFOIA sec. 8(a)(codified as 5 USC 552(a)(6)(E)). Such requests must be granted whenever a "compelling need" is demonstrated by the requesting party. "Compelling need" is defined in the EFOIA as: (1) involving "an imminent threat to the life or physical safety of an individual," or (2) in the case of a request made by "a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity." EFOIA sec. 8(a)(codified as 5 USC 552(a)(6)(E)(v)). When a request for expedited processing is made, an agency must notify the requester of its decision whether or not to grant the expedited request within ten (10) calendar days. If expedited processing is granted, an agency must process the request as soon as practicable. If the request is denied, an agency must consider an appeal of such a denial. To implement the expedited processing requirements of the EFOIA amendments, the Office proposes to amend section 203.4 of our regulations by adding that the Office will process requests granted expedited processing status "as soon as is practicable." EFOIA sec. 8(a)(codified as 5 USC 552(a)(6)(E)(iii)).

#### E. Electronic Reading Room.

The FOIA requires agencies to make available for inspection and copying statements of policy and interpretations not published in the *Federal Register*, and administrative staff manuals and instructions to staff that affect the public. 5 USC 552(a)(2). The Office maintains these materials in paper form in its Public Information Office. See 37 CFR 203.4. The EFOIA requires agencies to make available by "computer

telecommunications or...by other electronic means" all reading room materials that are created on or after October 1, 1996. EFOIA sec. 4(codified at 5 USC 552(a)(2)). The statute envisions that agencies will develop both a traditional reading room and an electronic reading room. The Office proposes an interim regulation stating which materials are available on-line or in an accessible electronic format.

#### List of Subjects in 37 CFR Part 203

Freedom of Information Act, Policies and Procedures.

#### Interim Regulations

In consideration of the foregoing, the Copyright Office is amending part 203 of 37 CFR, chapter II, in the manner set forth below:

#### PART 203 - FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES [AMENDED]

1. The authority citation for part 203 is amended to read as follows:

**Authority:** 17 USC 702; and 5 USC 552, as amended.

2. Section 203.3(i) is amended by revising paragraph (i) to read as follows:

§203.3 Organization.

\* \* \* \*

(i) The Copyright Office maintains an "electronic reading room" by making available certain documents and records on its World Wide Web page and by providing access to documents that affect the public in electronic format pursuant to 5 USC 552(a)(2). Copyright Office records in machine-readable form cataloged from January 1, 1978, to the present, including registration information and recorded documents, are available on the Internet. Frequently requested Copyright Office circulars, announcements, and recently proposed as well as final regulations are available on-line. The address for the Copyright Office's home page is: <http://www.loc.gov/copyright>; information may also be accessed by connecting to the Library of Congress' home page on the World Wide Web. The address is: <http://www.loc.gov>. Other Copyright Office documents may be provided on disk when so requested.

3. Section 203.4 is amended by revising paragraph (f) and adding a new paragraph (i) to read as follows:  
§203.4 Methods of operation.  
[Amended]

§ 203.4 Methods of operation.

\* \* \* \* \*

(f) The Office will respond to all properly marked mailed requests and all personally delivered written requests for records within twenty (20) working days of receipt by the Supervisory Copyright Information Specialist. Inquiries should be mailed to: Copyright Office, GC/I&R, P.O. Box 70400 Southwest Station, Washington, D.C. 20024. If hand delivered, materials should go to: Copyright Public Information Office, LM 401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, S.E., Washington, D.C. Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. If it is determined that an extension of time greater than ten (10) working days is necessary to respond to a request due to unusual circumstances, as defined in paragraph (i) below, the Supervisory Copyright Information Specialist shall so notify the requester and give the requester the opportunity to:

(1) limit the scope of the request so that it may be processed within twenty (20) working days, or

(2) arrange with the Office an alternative time frame for processing the request or a modified request. If a request is denied, the written notification will include the basis for the denial, names of all individuals who participated in the determination, and procedures available to appeal the determination.

\* \* \* \* \*

(i) The Supervisory Copyright Information Specialist will consider requests for expedited processing of requests in cases where the requester demonstrates a compelling need for such processing. The term "compelling need" means:

(1) that a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity. Requesters for expedited processing must include in their requests a statement setting forth the basis for the claim that a "compelling need" exists for the requested information, certified by the requester to be true and correct to the best of his or her knowledge and belief. The Office will determine whether to grant a request for expedited processing and will notify the requester of such determination within ten (10) days of receipt of the request. If a request for

expedited processing is approved, documents responsive to the request will be processed as soon as is practicable. Denials of requests for expedited processing may be appealed to the Office of the General Counsel, who will expeditiously determine any such appeal.

§203.6 [Amended]

5. Section 203.6(b)(6) is amended by revising the parenthetical at the end of the sentence to read "... (at no less than \$20.00 per hour or fraction thereof)."

DATED: October 21, 1997

**Marybeth Peters,**  
*Register of Copyrights.*

[FR Doc. 97-28418 Filed 10-27-97; 8:45 am]

BILLING CODE 1410-30-P

