



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2017-4]

Disruption of Copyright Office Electronic Systems

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is proposing to amend its regulations governing delays in the receipt of material caused by the disruption of postal or other transportation or communication services. As proposed, the amended rule would, for the first time, specifically address the effect of a disruption or suspension of any Copyright Office electronic system on the Office's receipt of applications, fees, deposits, or other materials, and the assignment of a constructive date of receipt to such materials. The proposed rule would also make various revisions to the existing portions of the rule for usability and readability. In addition, the proposed rule would specify how the Office will assign effective dates of receipt when a specific submission is lost in the absence of a declaration of disruption, as might occur during the security screening procedures used for mail that is delivered to the Office.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this

proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at <https://copyright.gov/rulemaking/eoutages>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Anna Chauvet, Assistant General Counsel, by email at achau@loc.gov, or by telephone at 202-707-8350.

SUPPLEMENTARY INFORMATION: Section 709 of the Copyright Act (title 17, United States Code) addresses the situation where the “general disruption or suspension of postal or other transportation or communications services” prevents the timely receipt by the Office of “a deposit, application, fee, or any other material.” In such situations, and “on the basis of such evidence as the Register may by regulation require,” the Register of Copyrights may deem the receipt of such material to be timely, so long as it is actually received “within one month after the date on which the Register determines that the disruption or suspension of such services has terminated.” 17 U.S.C. 709. In addition, section 702 of the Copyright Act authorizes the Register to “establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title.” 17 U.S.C. 702.

The Copyright Office’s regulations implementing section 709 can be found in 37 CFR 201.8. When the U.S. Copyright Office first promulgated these regulations, many of the Office’s current electronic systems did not exist, and the regulations were not amended to specifically address outages of such systems. In 2015, the Office’s online

system used to register initial copyright claims was disrupted for over a week due to an equipment failure, highlighting the need for the Office to update its regulations to address the effect of a disruption or suspension of any Copyright Office electronic system on the Office's receipt of applications, fees, deposits, or any other materials.

Assigning a date of receipt based on the date materials would have been received but for the disruption of a Copyright Office electronic system is important in a number of contexts. For example, thousands of copyright claims are filed each year using the Office's electronic filing system, and the effective date of registration of a copyright is the date the application, fees, and deposit are received by the Copyright Office. 17 U.S.C. 410(d). That date can affect the copyright owner's rights and remedies, such as eligibility for statutory damages and attorney's fees. *See* 17 U.S.C. 412 (statutory damages and attorney's fees available only for works with effective date of registration prior to commencement of infringement or, for published works, within three months of first publication of the work). In addition, certain filings may be submitted to the Office *only* in electronic form. *See* 37 CFR 201.38 (online service providers must designate an agent to receive notifications of claimed copyright infringement through the Copyright Office's website).

The proposed rule accordingly makes several updates to 37 CFR 201.8 to account for electronic outages. Among other things, the proposed rule allows the Register to assign, as the date of receipt, the date on which she determines the material would have been received but for the disruption or suspension of the electronic system. Ordinarily, when a person submits materials through a Copyright Office electronic system, those materials are received in the Copyright Office on the date the submission was made. In

cases where a person attempts to submit materials, but is unable to do so because of a disruption or suspension of a Copyright Office electronic system, the proposed rule will allow the Register to use the date that the attempt was made as the date of receipt. In cases where it is unclear when the attempt was made, the proposed rule provides the Register with discretion to determine the effective date of receipt on a case-by-case basis.

In addition, the proposed rule makes several changes to update the rule to account for more recent practices, and improve the usability and readability of the regulation. For instance, the proposed rule comprehensively updates paragraph (c) of section 201.8, which specifies the deadline for requesting an adjustment of the date of receipt in cases where a person attempted to submit material to the Office but was unable to do so due to the suspension or disruption of a Copyright Office electronic system. In the past, most materials were submitted to the Office on paper. Permitting the submission of requests prior to the issuance of the certificate of registration or recordation would have imposed unacceptable burdens on the Office due to difficulties in locating the pending applications or submissions to which the requests pertained. Now that the Office has implemented electronic systems, it is easier to make date adjustments, such as correcting the effective date of registration or date of recordation, while the application or submission is still pending. Accordingly, the Office proposes that persons seeking to adjust the date of receipt of any material that could not be submitted electronically due to a disruption or suspension of an Office electronic system, should be permitted to submit a request up to one year after the date on which the disruption or suspension has terminated under section 201.8(a).

Finally, the proposed rule adds sections 201.8(b)(2) and (c)(2), which address a related issue. On occasion, a person may deliver or attempt to deliver material to the Office, but the Office may have no record of having received such material or may have lost or misplaced that material after it was received. Although such situations are rare, they do occur occasionally as mail delivered to the Copyright Office must go through extensive security screening. If the person provides satisfactory evidence that he or she sent that material to the Office, the proposed rule would allow the Register to assign, as the date of receipt, the date on which the material would have been received. Such a request must be made no later than one year after the person delivered or attempted to deliver the application, fee, deposit, or other material to the Copyright Office. As a technical matter, these provisions do not implement section 709, which pertains to a *general* disruption of postal or other services; rather, the Office is implementing these provisions as an exercise of its general regulatory authority under section 702 of the Copyright Act.

List of Subjects in 37 CFR Part 201

Copyright

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§201.8 [Amended]

2. Amend § 201.8 as follows:

- a. Revise paragraphs (a), (b) and (c);
- b. In paragraph (d), add “*Return of certificate.*” before “In cases”, remove “in which” and add in its place “where”, and add “under paragraph (b)” after “along with the request”.
- c. Revise paragraph (e) introductory text.
- d. In paragraph (e)(1), add a comma after “Priority Mail”.
- e. In paragraph (e)(2), add a semicolon after “Copyright Office”.
- f. In paragraph (e)(2)(ii), remove “2” and add in its place “two”.
- g. Revise paragraphs (e)(3) and (e)(4);
- h. Revise paragraph (f) introductory text.
- i. In paragraph (f)(4), remove the period at the end of the sentence and replace it with a semicolon.
- j. Add paragraph (f)(5).
- k. Remove paragraph (g).
- l. Add authority citation to the end of the section.

The revisions and additions read as follows:

§201.8 Disruption of postal or other transportation or communication services.

(a) *Declaration of disruption.* For purposes of 17 U.S.C. 709, when the Register has determined that there is or has been a general disruption or suspension of postal or other transportation or communications services, including a disruption or suspension of a Copyright Office electronic system, that has delayed the receipt by the Copyright Office of applications, fees, deposits, or any other materials, the

Register shall publish an announcement of that determination, stating the date on which the disruption or suspension commenced. The announcement may, if appropriate, limit the means of delivery that are subject to relief pursuant to section 709. Following the cessation of the disruption or suspension of services, the Register shall publish an announcement stating the date on which the disruption or suspension has terminated, and may provide specific instructions on how to make a request under paragraph (b)(1).

(b) Request for earlier filing date due to disruption. (1) When the Register has declared a disruption. When the Register has made a declaration of disruption under paragraph (a) of this section, any person who, in compliance with any instructions provided by the Register, provides satisfactory evidence as described in paragraph (e) of this section that he or she attempted to deliver an application, fee, deposit, or other material to the Copyright Office, but that receipt by the Copyright Office was delayed due to a general disruption or suspension of postal or other transportation or communications services announced under paragraph (a), shall be assigned, as the date of receipt of the application, fee, deposit, or other material, the date on which the Register determines the material would have been received but for the disruption or suspension of services, so long as the application, fee, deposit, or other material was actually received in the Copyright Office within one month after the date the Register identifies pursuant to paragraph (a) of this section that disruption or suspension of services has terminated. Such requests should be mailed to the address specified in §

201.1(c)(1), or through any other delivery method the Register specifies in a published announcement under paragraph (a) of this section.

(2) *With respect to disruption affecting specific submission.* In the absence of a declaration of disruption under paragraph (a) of this section, any person who provides satisfactory evidence as described in paragraph (e) of this section that he or she delivered or attempted to deliver an application, fee, deposit, or other material to the Copyright Office, but that the Office did not receive that material or that it was lost or misplaced by the Office after its delivery to the Office, shall be assigned, as the date of receipt, the date that the Register determines that the material was received or would have been received. Such requests may be mailed to the address specified in § 201.1(c)(1), or through any other delivery method specified by the Copyright Office.

(c) *Timing.* (1) A request under paragraph (b)(1) of this section shall be made no earlier than the date on which the Register publishes the announcement under paragraph (a) declaring that the disruption or suspension has terminated, and no later than one year after the publication of that announcement.

(2) A request under paragraph (b)(2) of this section shall be made no later than one year after the person delivered or attempted to deliver the application, fee, deposit, or other material to the Copyright Office.

(e) *Satisfactory evidence.* In all cases the Register shall have discretion in determining whether materials submitted with a request under paragraph (b) of this section constitute

satisfactory evidence. For purposes of paragraph (b) of this section, satisfactory evidence may include:

* * * * *

(3) A statement under penalty of perjury, pursuant to 28 U.S.C. § 1746, from a person with actual knowledge of the facts relating to the attempt to deliver the material to the Copyright Office, setting forth with particularity facts which satisfy the Register that in the absence of the general disruption or suspension of postal or other transportation or communications services, including a disruption or suspension of a Copyright Office electronic system, or but for the misdelivery, misplacement, or loss of materials sent to the Copyright Office, the material would have been received by the Copyright Office by a particular date; or

(4) Other documentary evidence which the Register deems equivalent to the evidence set forth in paragraphs (e)(1) and (2) of this section.

(f) *Presumption of receipt.* For purposes of paragraph (b) of this section, the Register shall presume that but for the general disruption or suspension of postal or other transportation or communications services, including a disruption or suspension of a Copyright Office electronic system, or but for the misdelivery, misplacement, or loss of materials sent to the Copyright Office;:

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(5) Materials submitted or attempted to be submitted through a Copyright Office electronic system would have been received in the Copyright Office on the date the attempt was made. If it is unclear when an attempt was made, the Register will determine the effective date of receipt on a case-by-case basis.

(17 U.S.C. 702, 709)

Dated: February 23, 2017.

Sarang V. Damle,
General Counsel and
Associate Register of Copyrights

[BILLING CODE 1410-30-P]

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