



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2017-6]

Designation of Agent To Receive Notification of Claimed Infringement

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

ACTION: Final rule.

SUMMARY: This final rule makes non-substantive technical amendments to the U.S. Copyright Office's regulations governing the submission of designated agent and service provider information to the Office pursuant to the Digital Millennium Copyright Act ("DMCA").

DATES: Effective May 10, 2017.

FOR FURTHER INFORMATION CONTACT: Sarang V. Damle, General Counsel and Associate Register of Copyrights, by email at sdam@loc.gov, or Jason E. Sloan, Attorney-Advisor, by email at jslo@loc.gov. Each can be contacted by telephone by calling (202) 707-8350.

SUPPLEMENTARY INFORMATION: Effective December 1, 2016, the Copyright Office adopted new regulations governing the submission of designated agent and service provider information to the Office pursuant to the Digital Millennium Copyright Act ("DMCA") in connection with the implementation of a new electronic registration system launched the same day.¹ Under that rule, a person creating a user account for the

¹ 81 FR 75695 (Nov. 1, 2016).

electronic registration system is required to provide contact information for two people—a primary contact and secondary contact. Once the user account is set up, the user can then submit service provider and designated agent contact information. The contact information for the user account is collected by the Copyright Office solely for “administrative purposes,”² *e.g.*, for Office correspondence, and is not made public; it is distinct from the information that must be provided for each service provider and designated agent.

As a result of user feedback about the new system, the Office has reconsidered the need for some of the contact information required to be provided under the current rule as part of the user account creation process. Specifically, the Office has been informed that in some cases smaller service providers have either been confused by some of the requirements or have had difficulty following them. For example, a service provider who is an individual blogger, acting as his or her own primary point of contact for communications with the Office, may not have a positional/title or organization, or may have difficulty finding someone to act as a secondary point of contact.

Upon further reflection, the Office believes that some of the currently required information, while helpful, is not essential to facilitating efficient communication with the Office, and on balance need not be collected. Consequently, the Office has determined that in connection with the user account creation process, it will no longer be mandatory to provide the position or title, organization, or physical mail address for the individual named as the primary point of contact for communications with the Office. The Office will also stop requiring users to provide a secondary point of contact for

² See 37 CFR 201.38(c)(1).

communications with the Office. The Office is removing the position/title and address fields for the primary and secondary account contacts from the system; the Office has determined that such information is not necessary for Office communications. The organization field and fields relating to the secondary contact will remain, but will be made optional, as certain service providers might find it useful to include this information. Nonetheless, the Office still strongly encourages all service providers to provide a secondary contact as a backup to best ensure that important communications from the Office—especially renewal reminders—reach the appropriate person.

Because the current regulation only requires this information for administrative purposes, this final rule is a non-substantive, procedural change not “alter[ing] the rights or interests of parties,” and thus is not subject to the notice and comment requirements of the Administrative Procedure Act.³ Furthermore, the Office finds good cause that permitting notice and comment would be “contrary to the public interest” in this instance.⁴ Because this final rule will make it even easier and faster for service providers to register an account with the new system, and should reduce any confusion or burden on smaller service providers, it is in the public’s best interest that it take effect without delay. For these same reasons, the Office is making this final rule effective on May 10, 2017, when updates to the electronic system will be made to implement it.⁵

³ See *Nat’l Mining Ass’n v. McCarthy*, 758 F.3d 243, 250 (D.C. Cir. 2014) (“The critical feature of a procedural rule is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.”) (internal quotation marks omitted); 5 U.S.C. 553(b) (notice and comment not required for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice”).

⁴ See 5 U.S.C. 553(b) (notice and comment not required “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest”).

⁵ See *id.* § 553(d) (“The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—(1) a substantive rule which grants or recognizes an exemption or

List of Subjects in 37 CFR Parts 201 and 202

Copyright.

Final Regulations

For the reasons set forth above, the Copyright Office amends 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.

§ 201.1 [Amended]

2. Amend § 201.1 by removing paragraph (c)(3) and redesignating paragraphs (c)(4) through (8) as paragraphs (c)(3) through (7), respectively.

§ 201.2 [Amended]

3. Amend § 201.2 in paragraph (b)(5) by removing “201.1(c)(5)” and adding in its place “201.1(c)”.

3. Amend § 201.38 as follows:

a. In paragraph (b)(1)(ii), remove “an email address and/or physical mail address” and add in its place “an email address”; and

b. Revise paragraph (c)(1)(i).

The revision reads as follows:

§ 201.38 Designation of agent to receive notification of claimed infringement.

* * * * *

(c) * * *

relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.”).

(1) * * *

(i) The first name, last name, telephone number, and email address of a representative of the service provider who will serve as the primary point of contact for communications with the Office.

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PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

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

AUTHORITY: 17 U.S.C. 408(f), 702

§ 202.5 [Amended]

4. Amend § 202.5 in paragraph (d) by removing “201.1(c)(4)” and adding in its place “201.1(c)”.

Dated: April 19, 2017.

Karyn Temple Claggett,
*Acting Register of Copyrights and
Director of the U.S. Copyright Office.*

Approved by:

Carla D. Hayden,

Librarian of Congress.

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