



LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 303

[Docket No. 20-CRB-0013-RM]

Procedural Regulations of the Copyright Royalty Board Regarding Electronic Filing System (eCRB)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges propose to amend regulations governing the electronic filing of documents through the Copyright Royalty Board's electronic filing system (eCRB) to permit attorney designees with approved eCRB user accounts to file on behalf of attorneys. The Judges solicit comments on the proposed amendments.

DATES: Comments are due no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by docket number 20-CRB-0013-RM, online through eCRB at <https://app.crb.gov>.

Instructions: All submissions received must include the Copyright Royalty Board name and the docket number for this proposed rule. All comments received will be posted without change to eCRB at <https://app.crb.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to eCRB at <https://app.crb.gov> and perform a case search for docket 20-CRB-0013-RM.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program

Specialist, at 202-707-7658 or crb@loc.gov.

SUPPLEMENTARY INFORMATION:

In 2017, the Copyright Royalty Board (CRB) codified the process for filing documents through its electronic filing system (eCRB) in a set of rules, including what is currently Rule 303.5 (37 CFR 303.5).¹ Rule 303.5(c) lists three categories of people who may obtain eCRB passwords that will authorize them to electronically file documents: (1) attorneys, (2) *pro se* parties, and (3) claimants. 37 CFR 303.5(c). The Copyright Royalty Judges (Judges) recognized a fourth category of people who might file documents using an attorney's password, namely, an authorized employee or agent of an attorney's law office or organization that would file on the attorney's behalf. *See* 37 CFR 303.5(d). The Judges refer to this fourth category of filers as an "attorney designee."

Although the Judges understand and expect that attorneys may not typically personally file the electronic documents that they submit to the CRB, the Judges believe that it is necessary to expressly authorize such practice and to set forth the obligations of attorneys and their designees for the documents that the designees file. eCRB will soon implement multifactor authentication at login which will make the current practice of a designee using an attorney's password impractical. The Judges thus propose adding to Rule 303.5(c) a fourth category of filer that would be required to obtain an eCRB password: attorney designee. An attorney designee would be defined as "a person authorized to file documents on behalf of an attorney."

Under the proposal, an attorney designee would be required to register for an eCRB user account and create a password in order to file documents on an attorney's behalf. The attorney designee's user account would be activated upon approval by the CRB of the attorney designee's completed online registration form. The designating attorney would then authorize the attorney designee using a new function in eCRB. The designating attorney would be responsible for all documents filed on his or her behalf

¹ The rules establishing eCRB were adopted in 2017. Certain of those rules have subsequently been amended and renumbered. *See* 82 FR 18563 (Apr. 20, 2017) and 84 FR 32296 (July 8, 2019).

using the attorney designee's password, which would serve as the designating attorney's signature.

The Judges also propose a number of non-substantive changes to Rule 303.5 to account for the addition of the attorney designee and generally to enhance clarity.²

The Judges seek comments on all aspects of the proposal, including whether or not the proposed new category of filer—attorney designee—is necessary to clarify the obligations and responsibilities of those authorized to file documents electronically on behalf of attorneys.

List of Subjects in 37 CFR Part 303

Administrative practice and procedure, Copyright, Lawyers.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend part 303 of title 37 of the Code of Federal Regulations as follows:

SUBCHAPTER A—GENERAL PROVISIONS

PART 303—GENERAL ADMINISTRATIVE PROVISIONS

Subchapter A—

1. The authority citation for part 303 continues to read as follows:

Authority: 17 U.S.C. 803.

§ 303.5 [Amended]

2. Amend § 303.5 by revising it to read as follows:

§ 303.5 Electronic filing system (eCRB).

(a) *Documents to be filed by electronic means.* Except as otherwise provided in this chapter, all attorneys must file documents with the Copyright Royalty Board through

² The proposal to revise the entire section is for ease of reading, but substantive changes are proposed only to the text of paragraphs (c), (d), and (e).

eCRB. Pro se parties may file documents with the Copyright Royalty Board through eCRB, subject to § 303.4(c)(2).

(b) *Official record.* The electronic version of a document filed through and stored in eCRB will be the official record of the Copyright Royalty Board.

(c) *Obtaining an electronic filing password—*(1) *Attorneys.* An attorney must register for an eCRB account and create an eCRB password in order to file documents or to receive copies of orders and determinations of the Copyright Royalty Judges. The attorney's eCRB account and password will be activated upon approval by the Copyright Royalty Board of the attorney's completed online application form available on the eCRB website.

(2) *Attorney designees.* A person authorized by an attorney to file documents on behalf of that attorney (an attorney designee) must register for an eCRB account and create an eCRB password in order to file documents on the attorney's behalf. The attorney designee's eCRB account and password will be activated upon approval by the Copyright Royalty Board of the attorney designee's completed online registration form available on the eCRB website.

(3) *Pro se parties.* A party not represented by an attorney (a pro se party) may register for an eCRB account and create an eCRB password. The pro se party's eCRB account and password will be activated if the Copyright Royalty Judges, in their discretion, approve the pro se party's completed online application form available on the eCRB website. Once a pro se party's application has been approved, that party must make all subsequent filings by electronic means through eCRB.

(4) *Claimants.* Any person desiring to file a claim with the Copyright Royalty Board for copyright royalties must register for an eCRB account and create an eCRB password for the limited purpose of filing claims by completing the registration form available on the eCRB website.

(d) *Use of an eCRB password.* An eCRB password may be used only by the person to whom it is assigned. The person to whom an eCRB password is assigned is responsible for any document filed using that password, except that designating attorneys are responsible for any document filed on the attorney's behalf by an attorney designee.

(e) *Signature.* The use of an eCRB password to log in and submit documents creates an electronic record. The password operates and serves as the signature of the person to whom the password is assigned for all purposes under this chapter III, except that the password of an attorney designee serves as the signature of the designating attorney on whose behalf the document is filed.

(f) *Originals of sworn documents.* The electronic filing of a document that contains a sworn declaration, verification, certificate, statement, oath, or affidavit certifies that the original signed document is in the possession of the attorney or pro se party responsible for the filing and that it is available for review upon request by a party or by the Copyright Royalty Judges. The filer must file through eCRB a scanned copy of the signature page of the sworn document together with the document itself.

(g) *Consent to delivery by electronic means.* An attorney or pro se party who obtains an eCRB password consents to electronic delivery of all documents, subsequent to the petition to participate, that are filed by electronic means through eCRB. Attorneys and pro se parties are responsible for monitoring their email accounts and, upon receipt of notice of an electronic filing, for retrieving the noticed filing. Parties and their counsel bear the responsibility to keep the contact information in their eCRB profiles current.

(h) *Accuracy of docket entry.* A person filing a document by electronic means, or, if the filer is an attorney designee, the designating attorney, is responsible for ensuring the accuracy of the official docket entry generated by the eCRB system, including proper identification of the proceeding, the filing party, and the description of the document. The

Copyright Royalty Board will maintain on its website (www.loc.gov/crb) appropriate guidance regarding naming protocols for eCRB filers.

(i) *Documents subject to a protective order.* A person filing a document by electronic means must ensure, at the time of filing, that any documents subject to a protective order are identified to the eCRB system as “restricted” documents. This requirement is in addition to any requirements detailed in the applicable protective order. Failure to identify documents as “restricted” to the eCRB system may result in inadvertent publication of sensitive, protected material.

(j) *Exceptions to requirement of electronic filing—(1) Certain exhibits or attachments.* Parties may file in paper form any exhibits or attachments that are not in a format that readily permits electronic filing, such as oversized documents; or are illegible when scanned into electronic format. Parties filing paper documents or things pursuant to this paragraph must deliver legible or usable copies of the documents or things in accordance with § 303.6(a)(2) and must file electronically a notice of filing that includes a certificate of delivery.

(2) *Pro se parties.* A pro se party may file documents in paper form and must deliver and accept delivery of documents in paper form, unless the pro se party has obtained an eCRB password.

(k) *Privacy requirements.* (1) Unless otherwise instructed by the Copyright Royalty Judges, parties must exclude or redact from all electronically filed documents, whether designated “restricted” or not:

(i) *Social Security numbers.* If an individual's Social Security number must be included in a filed document for evidentiary reasons, the filer must use only the last four digits of that number.

(ii) *Names of minor children.* If a minor child must be mentioned in a document for evidentiary reasons, the filer must use only the initials of that child.

(iii) *Dates of birth.* If an individual's date of birth must be included in a pleading for evidentiary reasons, the filer must use only the year of birth.

(iv) *Financial account numbers.* If a financial account number must be included in a pleading for evidentiary reasons, the filer must use only the last four digits of the account identifier.

(2) Protection of personally identifiable information. If any information identified in paragraph (k)(1) of this section must be included in a filed document, the filing party must treat it as confidential information subject to the applicable protective order. In addition, parties may treat as confidential, and subject to the applicable protective order, other personal information that is not material to the proceeding.

(1) *Incorrectly filed documents.* (1) The Copyright Royalty Board may direct an eCRB filer to re-file a document that has been incorrectly filed, or to correct an erroneous or inaccurate docket entry.

(2) If an attorney or a pro se party who has been issued an eCRB password inadvertently presents a document for filing in paper form, the Copyright Royalty Board may direct that person to file the document electronically. The document will be deemed filed on the date it was first presented for filing if, no later than the next business day after being so directed by the Copyright Royalty Board, the attorney or pro se participant files the document electronically. If the filer fails to make the electronic filing on the next business day, the document will be deemed filed on the date of the electronic filing.

(m) *Technical difficulties.* (1) A filer encountering technical problems with an eCRB filing must immediately notify the Copyright Royalty Board of the problem either by email, or by telephone, followed promptly by written confirmation.

(2) If a filer is unable, due to technical problems, to make a filing with eCRB by an applicable deadline, and makes the notification required by paragraph (m)(1) of this section, the filer shall use electronic mail to make the filing with the Copyright Royalty

Board and deliver the filing to the other parties to the proceeding. The filing shall be considered to have been made at the time it was filed by electronic mail. The Copyright Royalty Judges may direct the filer to refile the document through eCRB when the technical problem has been resolved, but the document shall retain its original filing date.

(3) The inability to complete an electronic filing because of technical problems arising in the eCRB system may constitute “good cause” (as used in § 303.6(b)(4)) for an order enlarging time or excusable neglect for the failure to act within the specified time, provided the filer complies with paragraph (m)(1) of this section. This section does not provide authority to extend statutory time limits.

Dated: December 15, 2020.

Jesse M. Feder,
Chief Copyright Royalty Judge.

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