



## **U.S. Copyright Office**

### **37 CFR Parts 201, 203, and 221**

**[Docket No. 2021-2]**

#### **Copyright Alternative in Small-Claims Enforcement (“CASE”) Act Regulations:**

#### **Expedited Registration and FOIA**

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

**ACTION:** Final rule.

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**SUMMARY:** The U.S. Copyright Office is amending its regulations to establish a new expedited registration option under the Copyright Alternative in Small-Claims Enforcement Act of 2020 and to provide a technical update to the Office’s Freedom of Information Act regulations. To qualify for this expedited registration option, the work(s) being registered must be the subject of a claim or counterclaim before the Copyright Claims Board.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Kevin R. Amer, Acting General Counsel and Associate Register of Copyrights, by email at [kamer@copyright.gov](mailto:kamer@copyright.gov); John R. Riley, Assistant General Counsel, by email at [jril@copyright.gov](mailto:jril@copyright.gov), or Brad A. Greenberg, Assistant General Counsel, by email at [brgr@copyright.gov](mailto:brgr@copyright.gov). Each can be contacted by telephone at (202) 707-8350.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### A. Statutory Framework

On December 27, 2020, the President signed into law the Copyright Alternative in Small-Claims Enforcement (“CASE”) Act of 2020.<sup>1</sup> The CASE Act establishes the Copyright Claims Board (“CCB” or “Board”), a voluntary, alternative forum to federal court for parties to seek resolution of copyright disputes that have a low economic value (“small copyright claims”).<sup>2</sup> The creation of the CCB does not displace or limit the ability to bring small copyright claims in federal court, but rather provides a more accessible alternative forum.<sup>3</sup> The CCB has authority to hear copyright infringement claims, claims seeking a declaration of noninfringement, and misrepresentation claims under section 512(f) of title 17.<sup>4</sup> Participation before the CCB is voluntary for all parties,<sup>5</sup> and all determinations are non-precedential.<sup>6</sup> The Copyright Office is in the process of standing up the CCB and intends to promulgate several operational and procedural rules.<sup>7</sup> Congress directed the CCB to begin operations by December 27, 2021, though the Register may, for good cause, extend that deadline by not more than 180 days.<sup>8</sup>

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<sup>1</sup> Pub. L. 116-260, sec. 212, 134 Stat. 1182, 2176 (2020).

<sup>2</sup> See, e.g., H.R. Rep. No. 116-252, at 18–20 (2019); S. Rep. No. 116-105, at 7–8 (2019). Note, the CASE Act legislative history cited is for H.R. 2426 and S. 1273, the CASE Act of 2019, a bill nearly identical to the CASE Act of 2020. See H.R. 2426, 116th Cong. (2019); S. 1273, 116th Cong. (2019). In developing the CASE Act, Congress drew on model legislation in the Office’s 2013 policy report, *Copyright Small Claims*, <https://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf> (“*Copyright Small Claims*”). Congress also incorporated the Office’s report and supporting materials into the statute’s legislative history. H.R. Rep. No. 116-252, at 19; S. Rep. No. 116-105, at 2.

<sup>3</sup> H.R. Rep. No. 116-252, at 17; S. Rep. No. 116-105, at 2–3, 9.

<sup>4</sup> 17 U.S.C. 1504(c)(1)–(3). The CCB cannot issue injunctive relief but can require that an infringing party cease or mitigate its infringing activity in the event such party agrees and the agreement is reflected in the proceeding’s record. *Id.* at 1504(e)(2)(A)(i), (e)(2)(B). This provision also applies to parties making knowing material misrepresentations under section 512(f). *Id.* at 1504(e)(2)(A)(ii).

<sup>5</sup> See *id.* at 1504(a); H.R. Rep. No. 116-252, at 17, 21; S. Rep. No. 116-105, at 3, 11.

<sup>6</sup> H.R. Rep. No. 116-252, at 21–22, 33; S. Rep. No. 116-105, at 14.

<sup>7</sup> See 86 FR 16156 (Mar. 26, 2021).

<sup>8</sup> Pub. L. 116-260, sec. 212(d), 134 Stat. at 2199.

Consistent with the overall goal of providing a cost-effective, streamlined alternative to federal litigation, the CASE Act includes provisions addressing the Copyright Act’s registration prerequisite to filing an infringement action. In general, the owner of the copyright in a United States work may not initiate an infringement suit until the Office has issued or refused to issue a copyright registration.<sup>9</sup> Additionally, the Copyright Act provides that in most instances, for a copyright owner to qualify for an award of attorneys’ fees or statutory damages, the infringed work must have been registered on or before the date the infringement commenced, unless registration is made within three months after the work’s first publication.<sup>10</sup> In considering the challenges facing those involved in small copyright claims, the Office noted that while copyright registration “helps to produce a valuable public record of American creativity as well as material information to parties in litigation,” at times it may also act as “a procedural hurdle for copyright claimants . . . who may not be aware of the repercussions of not registering in a timely manner.”<sup>11</sup> Congress similarly noted that “many small claimants currently do not register their works because they do not expect to be able to enforce their rights in federal court.”<sup>12</sup>

The CASE Act addresses these concerns by allowing a party to file an infringement claim with the CCB once “a completed application, a deposit, and the required fee for registration” have been delivered to the Office.<sup>13</sup> The legislative history

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<sup>9</sup> 17 U.S.C. 411(a) (“[N]o civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title” or “the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused.”); *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 886 (2019) (holding that “registration occurs, and a copyright claimant may commence an infringement suit, when the Copyright Office registers a copyright”).

<sup>10</sup> 17 U.S.C. 412.

<sup>11</sup> *Copyright Small Claims* at 16–17; see also H.R. Rep. No. 116-252, at 25–26.

<sup>12</sup> H.R. Rep. No. 116-252, at 26.

<sup>13</sup> 17 U.S.C. 1505(a)(1).

characterizes this approach as taking “a more liberal attitude towards the commencement of a proceeding while registration of a work is in progress.”<sup>14</sup> But before the CCB renders a decision in any infringement dispute, the CASE Act mandates that the work at issue must be registered by the Office, and the other parties in the proceeding must have an opportunity to address the registration certificate.<sup>15</sup> Recognizing that some infringement claims may involve works for which a registration application has been submitted, but for which the Office has not yet rendered a decision, the statute directs the CCB to hold such proceedings in abeyance.<sup>16</sup> If the Office refuses the registration, the CCB action will be dismissed without prejudice.<sup>17</sup> The CCB also may dismiss an action without prejudice if it has been held in abeyance for at least one year, upon providing thirty days written notice to the parties.<sup>18</sup> As the legislative history explains, “[t]his process is intended to strike a balance between still encouraging timely registration of works with the promise of a higher damages caps [in federal court] with the reality that smaller creators may have numerous understandable reasons for not routinely engaging in the registration process.”<sup>19</sup>

To ensure that the work at issue in a CCB proceeding is registered in a timely manner before the CCB issues a determination, the CASE Act directs the Office to “establish regulations allowing the Copyright Office to make a decision, on an expedited basis, to issue or deny copyright registration for an unregistered work that is at issue before the Board.”<sup>20</sup>

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<sup>14</sup> H.R. Rep. No. 116-252, at 25.

<sup>15</sup> 17 U.S.C. 1505(b)(1).

<sup>16</sup> *Id.* at 1505(b)(2).

<sup>17</sup> *Id.* at 1505(b)(3); *see also Copyright Small Claims* at 108–09.

<sup>18</sup> 17 U.S.C. 1505(b)(2).

<sup>19</sup> H.R. Rep. No. 116-252, at 26.

<sup>20</sup> 17 U.S.C. 1505(d).

The CASE Act also limits the materials related to a CCB proceeding that must be disclosed under the Freedom of Information Act (“FOIA”). Subject to certain conditions and exceptions, FOIA requires agencies to make their records available to the public either proactively or in response to a request.<sup>21</sup> The CASE Act provides that “[a]ll information relating to proceedings of the Copyright Claims Board under this chapter is exempt from disclosure” under FOIA, except for “determinations, records, and information” that are published on the Office’s website and that relate to a CCB final determination.<sup>22</sup>

*B. Proposed Rule and Public Comment*

On April 26, 2021, the Office issued a notice of proposed rulemaking (the “NPRM”) requesting public comment on proposed processes for small claims expedited registration and a conforming amendment for disclosures under FOIA.<sup>23</sup> The NPRM proposed to allow a claimant or counterclaimant with a pending copyright registration application to seek expedited review of that application by making such a request and paying the requisite fee, but only after he or she submitted the completed registration application and the respondent either opted in to the CCB proceeding or did not timely opt out. The proposed rule would not enable the CCB to proceed with a dispute involving a work for which registration is still pending or has been denied. Additionally, the NPRM proposed an amendment to the Office’s FOIA regulations to reflect that, as required by the CASE Act, only those CCB “determinations, records, and information” that are published on the Office’s website and that relate to a CCB final determination are subject to disclosure under FOIA.

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<sup>21</sup> See 5 U.S.C. 552.

<sup>22</sup> 17 U.S.C. 1506(t)(4).

<sup>23</sup> 86 FR 21990 (Apr. 26, 2021). Comments received in response to the April 2021 NPRM are available at <https://www.regulations.gov/document/COLC-2021-0002-0001/comment>. References to comments responding to the April 2021 NPRM are by party name (abbreviated where appropriate), followed by “NPRM Comments.”

The Office received four comments in response to the NPRM. The Office had asked stakeholders to try to submit joint comments where they had agreement, and one set of comments, submitted by the Copyright Alliance, was joined by twenty separate stakeholder groups.<sup>24</sup> One of those organizations, the National Press Photographers Association, also submitted separate comments. Comments were also filed by the Science Fiction and Fantasy Writers of America, Inc. (“SFWA”) and by Verizon. On the whole, the comments were broadly supportive of the proposed rule and conforming amendment, while providing substantive feedback on some specific provisions. Verizon’s comments were generally critical of the creation of CCB as an institution and raised concerns about possible abusive actions by claimants.

Having carefully considered each of the comments, the Office now issues a final rule that closely follows the proposed rule, with certain modifications. First, the final rule adjusts the language pertaining to the initiation of an expedited registration request to provide that such a request may be made only after the proceeding has become active. Second, the final rule clarifies that the CCB will provide notice to all parties to a proceeding when a proceeding is dismissed without prejudice after being held in abeyance for more than one year pending a registration decision. Third, the final rule provides additional flexibility as to the methods of payment that may be accepted for small claims expedited registration. Fourth, the final rule specifies the standard governing denials of requests for small claims expedited registration. Finally, the final rule uses the word “request” rather than “claim” to refer to the action a claimant or counterclaimant

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<sup>24</sup> The groups joining the Copyright Alliance are ACT | The App Association, American Photographic Artists, American Society for Collective Rights Licensing, Inc., American Society of Media Photographers, Inc., The Authors Guild, CreativeFuture, Digital Media Licensing Association, Graphic Artists Guild, Inc., Independent Book Publishers Association, Music Artists Coalition, Music Creators North America, National Music Council of the United States, National Press Photographers Association, North American Nature Photography Association, Professional Photographers of America, The Recording Academy, Screen Actors Guild-American Federation of Television and Radio Artists, Society of Composers & Lyricists, Songwriters Guild of America, Inc., and Songwriters of North America.

takes to initiate small claims expedited registration, to remove possible confusion with other uses of the term “claim.”

In the NPRM, the Office noted that it anticipated publishing this rule as an interim rule.<sup>25</sup> Because, however, the public has had an opportunity to comment on the proposed rule, and in light of the limited number of comments received, the Office does not believe that additional written comments are necessary at this time.<sup>26</sup> The Office therefore is publishing the rule as final. As with other CCB regulations, the Office will carefully monitor the operation of these procedures and welcomes CCB participants’ feedback as to whether further adjustments should be considered in the future.

## **II. Final Rule**

### *A. Small Claims Expedited Registration*

The NPRM outlined several regulatory requirements to govern the expedited registration process. Commenters were generally supportive of the regulation’s proposed framework and substance. Recommended amendments to the proposed rule were limited to the matters discussed below.

#### *1. Requesting Small Claims Expedited Registration*

Under the CASE Act, a claim or counterclaim may be asserted before the CCB where “the legal or beneficial owner of the copyright has first delivered a completed application, a deposit, and the required fee for registration of the copyright to the Copyright Office,” and “a registration certificate has either been issued or has not been refused.”<sup>27</sup> The small claims expedited registration provision is designed to reduce the time required for examination of a party’s application and, in doing so, streamline claim

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<sup>25</sup> 86 FR at 21992.

<sup>26</sup> Interim final rules are a common practice among federal agencies, often adopted when there is a need to promulgate a rule before comments can be received, considered, and addressed. *See* 5 U.S.C. 553(b)(3)(B) (good-cause exception to notice-and-comment requirements under Administrative Procedure Act).

<sup>27</sup> 17 U.S.C. 1505(a).

resolution before the CCB. The NPRM provided that small claims expedited registration may be requested only after a claimant or counterclaimant “has submitted a completed registration application and the respondent has either opted in or has not timely opted out” of the CCB proceeding. This requirement aimed to “ensure that registration applicants do not invoke the CCB to receive special handling treatment at a discounted rate when not genuinely intending to pursue their claim through the CCB.”<sup>28</sup>

The Copyright Alliance et al. objected to the inclusion of the phrase “opting in,” noting that the statute does not contain that language and that it therefore could cause confusion.<sup>29</sup> To address that concern, the final rule amends the proposed rule, providing that a claimant or counterclaimant may request small claims expedited registration only after it “has submitted a completed registration application and the proceeding has become active.” The revision reflects that there are several ways for a proceeding to become active, including when a respondent fails to timely opt out or the case is referred from a district court with consent of the parties.<sup>30</sup>

## 2. *Abeyance*

The proposed rule reflected the statutory requirement that if the proceeding cannot move forward because a registration certificate for the work is still pending, the CCB will hold the proceedings in abeyance until a decision is made on the application.<sup>31</sup> It also provided that “[i]f the proceeding has been held in abeyance for more than one year, the Copyright Claims Board may dismiss the claim or counterclaim without prejudice after providing thirty days written notice.”<sup>32</sup> The Copyright Alliance et al.

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<sup>28</sup> 86 FR at 21992–93.

<sup>29</sup> Copyright Alliance et al. NPRM Comments at 7.

<sup>30</sup> See 17 U.S.C. 1506(i), 1509(b). The Office also removed the word “both” from before “completed an application” because only one action—completing the registration application—is taken by the claimant or counterclaimant. This change does not alter the substance of the rule.

<sup>31</sup> *Id.* at 1505(b)(2).

<sup>32</sup> 86 FR at 21993.



asked the Office to clarify “to whom written notice will be provided.”<sup>33</sup> The final rule clarifies that the CCB will provide notice of the dismissal to all parties to the proceeding.

### 3. *Fees*

The NPRM provided that a fee would be required to seek small claims expedited registration.<sup>34</sup> In response, two commenters raised questions as to how the Office would handle small claims expedited registration requests for works included in a group registration application and whether the fee in such cases would be higher than for works not included in a group application.<sup>35</sup> To clarify, small claims expedited registration relates to examination of the registration application as a whole, and not to examination of the specific work or works at issue before the CCB. Because the expedited registration fee is paid per registration application, small claims expedited registration for a group application will incur the same fee as is applicable to a single-work application. Thus, there is no need to revise the proposed rule to provide unique fees and procedures for group registrations.

To keep the CCB accessible while helping to offset some of the anticipated cost increases related to small claims expedited registration, the Office has determined that a \$50 fee is reasonable. Verizon argued that a \$50 fee would be too low and “would incentivize claimants, large or small, to pay only \$50 and file some claim at the CCB in order to gain access to a quick registration, a CCB decision, and possible statutory damages.”<sup>36</sup> The Office, however, believes it is important to keep fees low wherever possible to advance the statutory goal of providing a cost-effective alternative to federal court. While the Office appreciates the concerns over potential abuses, it should be noted that the statute specifically includes provisions to deter abusive behavior and empowers

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<sup>33</sup> Copyright Alliance et al. NPRM Comments at 10.

<sup>34</sup> 86 FR at 21992–94.

<sup>35</sup> See Copyright Alliance et al. NPRM Comments at 8; SFWA NPRM Comments at 2–3.

<sup>36</sup> Verizon NPRM Comments at 2.

the Office to promulgate various regulations to safeguard the CCB, parties, and the public from such practices.<sup>37</sup> The Office believes that such concerns are more properly addressed through the regulatory process than through its fee-setting authority. The final rule thus does not revise the proposed fee and establishes that applicants seeking small claims expedited registration will pay a \$50 fee for each request. This fee is in addition to the relevant copyright registration application fee. In line with its overall approach to fee-setting, the Office intends to periodically reassess the reasonableness of the small claims expedited registration fee once additional data about the operation of this service becomes available.

#### *4. Methods of Payment*

Separately, the Copyright Alliance et al. proposed expanding the permitted methods of payment available for small claims expedited registration. The proposed rule specified that “[t]he fee for small claims expedited registration must be submitted electronically to the Copyright Claims Board and not through the Copyright Office’s electronic registration system,” and shall be paid, in accordance with Office instructions posted online, by “credit or debit cards, or directly from [parties’] bank accounts by means of automated clearing house (ACH) debit transactions.”<sup>38</sup> The Copyright Alliance et al. recommended providing greater flexibility by allowing payment using “prepaid cards and other widely accepted online payment options, like PayPal, Zelle, Venmo, and CashApp.”<sup>39</sup> The Office appreciates that providing additional payment options could help to advance the statute’s accessibility goals. Presently, however, the Office is unable to accept the alternative forms suggested, including because some are not supported by Pay.gov, and due to additional administrative costs. Nevertheless, in the interest of

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<sup>37</sup> See 17 U.S.C. 1504(g), 1506(y), (z); 86 FR at 16164–65.

<sup>38</sup> 86 FR at 21994.

<sup>39</sup> Copyright Alliance et al. NPRM Comments at 8–9.

providing future flexibility, the Office is revising this portion of the final rule to remove the references to specific payment methods and instead to simply state that a claimant or counterclaimant shall follow instructions on the Copyright Office website to make electronic payments by Pay.gov. Such an approach will enable the Office to consider possible additional methods of payment as Pay.gov expands its capabilities.

#### 5. *Denied Requests*

Finally, commenters addressed the proposed language allowing the Office to deny a request for small claims expedited registration if the requester did not pay the required fee or if the Office determines that the request would be unduly burdensome. Comments submitted by the Copyright Alliance et al. and by SFWA both expressed concern that the proposed rule did not define the term “unduly burdensome.”<sup>40</sup> The Copyright Alliance et al. recommended guarding against uncertainty by adopting language similar to that provided in the *Compendium of U.S. Copyright Office Practices* in the context of special handling requests.<sup>41</sup> The *Compendium* states that the Office may reject a request for special handling if the Office “is unable to process the request based on the Office’s workload or budget at the time the request is made.”<sup>42</sup> The Office agrees that this language would provide greater certainty as to the considerations governing denial on this basis. Accordingly, the rule has been revised to provide that if the requisite fee has been paid for small claims expedited registration, the Office will grant the request unless the Office “determines that expedited registration under this section would be unduly burdensome based on the Office’s workload or budget at the time the request is made.” As under the proposed rule, the Office is authorized to refund the fee in these circumstances.

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<sup>40</sup> Copyright Alliance et al. NPRM Comments at 9; SFWA NPRM Comments at 3.

<sup>41</sup> Copyright Alliance et al. NPRM Comments at 9.

<sup>42</sup> U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 623.2 (3d ed. 2021).

## B. *Freedom of Information Act*

The final rule also adopts a technical edit to the Office’s FOIA regulations to reflect the CASE Act’s reference to FOIA. The regulatory language provides that “Copyright Claims Board determinations published on the Copyright Office website and related records and information published on that website” may be disclosed under FOIA.<sup>43</sup> By statute, all other materials related to CCB proceedings are exempt from disclosure under FOIA.<sup>44</sup>

Commenters raised two issues related to the proposed rule. First, the Copyright Alliance et al. argued that the rule required a technical edit—the addition of a comma before “and related records” to “clarify that only those records published on the Office’s website are . . . subject to FOIA.”<sup>45</sup> In their view, “[w]ithout a comma preceding ‘and related records,’ it is unclear whether ‘on that website’ is intended to modify both ‘related records and information’ or just ‘information.’”<sup>46</sup> To clarify, the phrase “on that website” is intended to modify both terms, and therefore only those CCB records published on the Office’s website will be subject to FOIA. The Office is not persuaded, however, that the addition of the suggested comma states that rule any more clearly than the text as proposed. Further, it appears that the commenters’ concern relates primarily to questions regarding which records are considered confidential and subject to a protective order.<sup>47</sup> Those issues will be addressed in a separate rulemaking. Accordingly, the Office does not believe that the requested change is necessary.

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<sup>43</sup> 86 FR at 21993.

<sup>44</sup> 17 U.S.C. 1506(t)(4).

<sup>45</sup> Copyright Alliance et al. NPRM Comments at 10.

<sup>46</sup> *Id.* at 10 n.17.

<sup>47</sup> *See id.* at 10 (“[I]nformation provided in the course of discovery, such as documents, interrogatories, testimony, etc. should be presumed to be confidential and should not be published/subject to FOIA.”).

Second, SFWA expressed concern that confidential sales figures submitted to the CCB in connection with proving damages could be “placed on [the CCB’s] website or released in response to a FOIA request.”<sup>48</sup> SFWA argued that if such information is subject to FOIA, it “could easily discourage many writers and creators of copyrighted works, whom the CASE Act is intended to help, from bringing claims or raising counterclaims.”<sup>49</sup> The Office recognizes SFWA’s concern about protecting sensitive or confidential information, but, as noted, the Office intends to address these issues in a separate rulemaking. Accordingly, the conforming amendment for the Office’s FOIA regulations is unchanged in the final rule.

### **List of Subjects**

#### **37 CFR Part 201**

Copyright, General provisions.

#### **37 CFR Part 203**

Freedom of information.

#### **37 CFR Part 221**

Claims, Copyright, Registration.

### **Final Regulations**

For reasons stated in the preamble, the Copyright Office amends 37 CFR chapter II as follows:

#### **PART 201—GENERAL PROVISIONS**

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

**Authority:** 17 U.S.C. 702.

2. Amend § 201.3 by redesignating paragraphs (d)(8) through (17) as paragraphs (d)(9) through (18), respectively, and adding new paragraph (d)(8) to read as follows:

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<sup>48</sup> SFWA NPRM Comments at 3–4.

<sup>49</sup> *Id.* at 4.

**§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.**

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(d) \* \* \*

(8) Small claims expedited registration fee for each request.	\$50
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**PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES**

3. The authority citation for part 203 continues to read as follows:

**Authority:** 5 U.S.C. 552.

4. Amend §203.1 by adding a sentence at the end of the section to read as follows:

**§203.1 General.**

\* \* \* \* \* All information relating to proceedings of the Copyright Claims Board under chapter 15 of the Copyright Act is exempt from disclosure under FOIA, except for Copyright Claims Board determinations published on the Copyright Office website and related records and information published on that website.

5. Add subchapter B, consisting of part 221, to read as follows:

**Subchapter B—Copyright Claims Board, Library of Congress**

**PART 221—REGISTRATION**

Sec.

221.1 Registration requirement.

221.2 Small claims expedited registration.

**Authority:** 17 U.S.C. 702, 1510.

**§ 221.1 Registration requirement.**

(a) A claim or counterclaim alleging infringement of an exclusive right in a copyrighted work may not be asserted before the Copyright Claims Board unless the legal or beneficial owner of the copyright has first delivered a completed application, a deposit, and the required fee for registration of the copyright to the Copyright Office and a registration certificate has either been issued or has not been refused.

(b) For a work that has not yet been registered, a claimant or counterclaimant who has a pending application to register the work must indicate on its claim or counterclaim notice that the work is pending registration and must include the work's service request (SR) number that was assigned to the copyright registration claim. If the proceeding cannot continue because of a pending registration, the Copyright Claims Board shall hold proceedings in abeyance until the claimant or counterclaimant provides the Copyright Claims Board with the certificate of registration or the registration number on the certificate of registration or certificate preview. The proceeding shall be dismissed without prejudice if the Copyright Claims Board is notified that the registration application was rejected. If the proceeding has been held in abeyance for more than one year, the Copyright Claims Board may dismiss the claim or counterclaim without prejudice after providing thirty days written notice to all parties to the proceeding.

#### **§221.2 Small claims expedited registration.**

(a) *Eligibility.* A claimant or counterclaimant alleging infringement of an exclusive right in a copyrighted work before the Copyright Claims Board is eligible to expedite a copyright registration application under this section. This process shall be known as small claims expedited registration.

(b) *Initiating small claims expedited registration.* The small claims expedited registration process can only be initiated after the claimant or counterclaimant has completed an application for copyright registration and the proceeding has become active. To initiate the small claims expedited registration process, the qualifying claimant

or counterclaimant must make a request and pay the required fee as directed by the Copyright Claims Board. Parties should request small claims expedited registration once the proceeding has become active. Parties must not attempt to initiate small claims expedited registration by using the Copyright Office's electronic registration system (eCO).

(c) *Fee*—(1) *Amount*. The small claims expedited registration fee for each request must be made for the appropriate amount, as prescribed in §201.3(c). The fee for small claims expedited registration is intended to accelerate the registration process for a qualifying Copyright Claims Board claimant or counterclaimant that already has a pending registration application; it is in addition to, and does not offset, the fee for copyright registration.

(2) *Method of payment*. (i) The fee for small claims expedited registration must be submitted electronically to the Copyright Claims Board and not through the Copyright Office's electronic registration system (eCO).

(ii) A claimant or counterclaimant shall follow instructions on the Copyright Office website to make electronic payments by Pay.gov. Applicants may not use a deposit account to make payments for small claims expedited registration.

(3) *No refunds*. The small claims expedited registration fee is not refundable, unless the small claims expedited registration request is denied under paragraph (d) of this section.

(d) *Denied requests*. If the applicant failed to pay the required fee or if the Copyright Office determines that expedited registration under this section would be unduly burdensome based on the Office's workload or budget at the time the request is made, the Office will notify the applicant that the request has been denied and that the copyright registration claim will be examined on a regular basis.



(e) *Granted requests.* If the request for expedited registration under this section is granted, the Office will make every attempt to examine the application or the document within ten business days after notice of the request is delivered by the Copyright Claims Board to the Copyright Office's Office of Registration Policy and Practice, although the Copyright Office cannot guarantee that all applications or all documents will be registered or recorded within that timeframe.

(f) *Identical registration standards.* The Copyright Office will apply the same practices and procedures when examining a copyright registration claim, regardless of whether the applicant asks for small claims expedited registration.

**Dated:** August 3, 2021

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**Shira Perlmutter,**  
*Register of Copyrights and*  
*Director of the U.S. Copyright Office.*

Approved by:

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**Carla D. Hayden,**  
*Librarian of Congress.*

**[BILLING CODE 1410-30-P]**

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