



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: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulations governing delays in the receipt of material caused by the disruption of postal or other transportation or communication services. The amendments, 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 amendments also make various revisions to the existing portions of the rule for usability and readability. In addition, the amendments specify how the Office will assign effective dates of receipt when, in the absence of a declaration of a general disruption, the Office does not receive, loses, or misplaces materials that were physically delivered or attempted to be physically delivered to the Office.

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

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 U.S. Copyright Office (“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 Office’s regulations implementing section 709 can be found in 37 CFR 201.8. When the 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 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.

On March 2, 2017, the Office published a Notice of Proposed Rulemaking (“NPRM”) setting forth proposed regulatory amendments designed to close this gap in the Office’s regulations. 82 FR 12326. The proposed amendments addressed 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. 82 FR 12326. The Office received six comments in response to the NPRM. None of the commenters opposed or proposed amendments to the proposed rule.

As explained in the NPRM, 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 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 Office's amendments accordingly make several updates to 37 CFR 201.8 to account for electronic outages. Among other things, the amendments allow 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 an Office electronic system, those materials are received in the 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 amendments 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 amendments provide the Register with discretion to determine the effective date of receipt on a case-by-case basis.

In addition, the amendments make several other changes to update the rule to account for more recent practices, and improve the usability and readability of the regulation. For instance, the amendments comprehensively update paragraph (c) of § 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 declared suspension or disruption of postal or other transportation or communications services. Under the previous rule, an applicant could only submit such a request *after* the issuance of a certificate of registration or recordation. That is because, in the past, most materials were submitted to the Office on paper. Permitting the submission of requests prior to the issuance of the certificate would have imposed unacceptable burdens on the Office, primarily due to difficulties in locating the pending paper 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's amendments allow persons seeking to adjust the date of receipt of any material that could not be submitted electronically due to a disruption or suspension of a Copyright Office electronic system, to submit a request on the date the Register publishes the announcement declaring that the disruption or

suspension has terminated under § 201.8(a), up to one year after the date on which the disruption or suspension has terminated under § 201.8(a).

Finally, the amendments add § 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 Office must go through extensive security screening.¹ If the person provides satisfactory evidence that he or she physically delivered or attempted to physically deliver that material to the Office, the amendment allows 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 physically delivered or attempted to physically deliver the application, fee, deposit, or other material to the 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.

¹ As the NPRM thus made clear, sections 201.8(b)(2) and (c)(2) are meant to address situations where the Office does not receive, loses, or misplaces materials that were *physically* delivered or attempted to be *physically* delivered to the Office. The rule is not intended to address short-term or routine outages of electronic systems that may occur in the absence of a declaration of a general disruption under section 201.8(a). The language of the final rule clarifies this point for the avoidance of any doubt.

List of Subjects in 37 CFR Part 201

Copyright

Final Regulations

For the reasons set forth in the preamble, 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.

2. Section 201.8 is amended by revising paragraphs (a) through (f) introductory text, (f)(4), by adding paragraph (f)(5), and by removing paragraph (g).

The revisions and addition 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) of this section.

(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 physically delivered or attempted to physically 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) of this section 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 physically delivered or attempted to physically deliver the application, fee, deposit, or other material to the Copyright Office.

(d) *Return of certificate.* In cases where a certificate of registration or a certificate of recordation has already been issued, the original certificate must be returned to the Copyright Office along with the request under paragraph (b) of this section.

(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:

(1) A receipt from the United States Postal Service indicating the date on which the United States Postal Service received material for delivery to the Copyright Office by means of first class mail, Priority Mail, or Express Mail;

(2) A receipt from a delivery service such as, or comparable to, United Parcel Service, Federal Express, or Airborne Express, indicating the date on which the delivery service received material for delivery to the Copyright Office; and

(i) The date on which delivery was to be made to the Copyright Office, or

(ii) The period of time (e.g., overnight, or two days) from receipt by the delivery service to the date on which delivery was to be made to the Copyright Office;

(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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(4) Materials deposited with a delivery service such as, or comparable to, United Parcel Service, Federal Express, or Airborne Express, would have been received in the Copyright Office on the date indicated on the receipt from the delivery service;

(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.

Dated: May 11, 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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