



# ANNOUNCEMENT

from the Copyright Office, Library of Congress,  
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

## FINAL RULE

### SERVICE OF NOTICE OF INSTITUTION OF ACTION FOR INFRINGEMENT AND SERVICE OF COMPLAINT IN INFRINGEMENT ACTION ON THE REGISTER OF COPYRIGHTS

The following excerpt is taken from Volume 66, Number 72 of the *Federal Register* of Friday, April 13, 2001  
(pp. 19094-19095)

#### LIBRARY OF CONGRESS

Copyright Office  
37 CFR Part 205  
[Docket No. RM 2001-1]

#### Service of Notice of Institution of Action for Infringement and Service of Complaint in Infringement Action on the Register of Copyrights

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

**ACTION:** Final rule.

**SUMMARY:** This document publishes the procedures for proper service on the Register of Copyrights when a registration applicant whose application for registration has been refused institutes an infringement action. Service under such circumstances is required under title 17, United States Code, section 411(a).

**EFFECTIVE DATE:** Effective May 14, 2001.

#### FOR FURTHER INFORMATION CONTACT

Marilyn J. Kretsinger, Assistant General Counsel, or Patricia L. Sinn, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** Under title 17, United States Code, the copyright law allows a copyright owner to sue for infringement of exclusive rights provided under 17 U.S.C. 106, as long as the work(s) at issue have been registered with the Copyright Office. In addition, under section 411(a), a registration applicant whose application for registration has been refused by the Office may institute an infringement action under certain circumstances. It states:

Except for an action brought for a violation of the rights of the author under section 106A(a), and subject to the provisions of subsection (b), no action for infringement of the copyright in any

United States work shall be instituted until registration of the copyright claim has been made in accordance with this title. In any case, however, where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused, the applicant is entitled to institute an action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights. The Register may, at his or her option, become a party to the action with respect to the issue of registrability of the copyright claim by entering an appearance within sixty days after such service, but the Register's failure to become a party shall not deprive the court of jurisdiction to determine that case.

#### 17 U.S.C. 411(a).

The purpose of the statutory provision is to enable the Register to become a party to an action, if he or she chooses, with respect to the issue of registrability of the copyright claim, and, thereby explain the Office's rejection of an application or clarify the Office's registration practices and procedures. The Register has sixty days after service of complaint to intervene in the case. In order for this to occur, service must be proper and timely.

Unfortunately, the statute does not give specific instructions about service on the Register when registration has been refused, and in practice such service has not been uniform. Despite the Copyright Office's publication of an address where these complaints should be directed, See 59 FR 17401 (April 12, 1994), they continue to be misdirected. A number of them have been delivered to the wrong section of the Copyright Office and held for over 60 days before being forwarded to the appropriate Copyright Office official. Such delays make it impossible for the Office to enter the case. Therefore, the Office is publishing in its regulations the procedures whereby notice of institution of lawsuits and complaints in cases where registration has been refused must be served directly upon the appropriate officials responsible for determining Office participation in such cases. Service that does not comply with these procedures will not be considered proper.

Service on the Register of notice that an action has been instituted for infringement of a work for which registration has been refused will be satisfied by either sending by first class mail notice of the institution of the action in the form of a cover letter addressed to the Register of Copyrights, along with a copy of the complaint to the General Counsel of the Copyright Office at Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024 or by hand delivery of the same material to the General Counsel. If delivered by hand, the cover letter and complaint must be delivered to the Copyright Office General Counsel's Office at the James Madison Memorial Building, Room LM-403, First and Independence Avenue, SE, Washington, D.C. A copy of the cover letter and complaint should also be sent to the Department of Justice by first class mail, addressed to the Director of Intellectual Property Staff, Commercial Litigation Branch, Civil Division, Department of Justice, Washington, D.C. 20530.

This final rule is being published without opportunity for notice and comment because it is a rule of agency practice and procedure. Moreover, the Office finds that there is good cause to conclude that providing the opportunity for notice and comment would be impracticable, unnecessary and contrary to the public interest because this rule simply advises parties of the address to which the notice required by section 411(a) must be sent. See 5 U.S.C. 553(b)(A) and (B).

#### List of Subjects in 37 CFR Part 205

Copyright, Service of process.

#### Final Regulation

In consideration of the foregoing, the Copyright Office is amending 37 CFR Chapter II by adding part 205 consisting of subpart A to read as follows:

#### PART 205—PRODUCTION OF LEGAL DOCUMENTS AND OFFICIAL TESTIMONY

Authority: 17 U.S.C. 411, 17 U.S.C. 702.

**Sec. 205.1 Complaints served on the Register of Copyright pursuant to 17 U.S.C. 411(a)**

When an action has been instituted pursuant to 17 U.S.C. 411(a) for infringement of the copyright of a work for which registration has been refused, notice of the institution of the action and a copy of the complaint must be served on the Register of Copyrights by delivering such documents by first class mail to the General Counsel of the Copyright Office, GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024, or delivery by hand to the General Counsel of the Copyright Office, James Madison Memorial Building, Room LM-403, First and Independence Avenue, SE, Washington, D.C. A second copy should be delivered by first class mail to the United States Department of Justice, directed to the Director of Intellectual Property Staff, Commercial [[Page 19095]] Litigation Branch, Civil Division, Department of Justice, Washington, D.C. 20530.

Dated: April 3, 2001

**Marybeth Peters**  
*Register of Copyrights*

**James H. Billington**  
*Librarian of Congress*

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