

is able to perform the services necessary to fulfill its obligation under the contract by assigning only three of its employees, each with the same rate of compensation, to render services both within and without the United States during the taxable year. Since the rate of compensation is the same, it can be assumed that all employees are adding the same value to the product. The total number of employee-days necessary to complete the contract is 30 days of which 10 days were spent performing services within the United States. Under these facts and circumstances, an apportionment on a time basis would be the basis that most correctly reflects the proper source of the income. The amount of compensation for labor or personal services performed in the United States will be that amount that bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the payment is made. Thus, \$5,000 will be compensation from labor or personal services performed in the United States ($\$15,000 \times 10/30$).

Example 3. B, a nonresident alien individual, was employed by M, a domestic corporation, from March 1 to June 12 of the taxable year, a total of 104 days, for which B received compensation in the amount of \$12,240. Under the contract, B was subject to call at all times by M and was in a payment status on a 7-day week basis. Pursuant to the contract, B performed services within the United States for 59 days and performed services without the United States for 45 days. Under subparagraph (b)(2) of this section, the amount of compensation from labor or personal services performed in the United States will be determined on a time basis and equal to \$6,943.85 ($\$12,240 \times 59/104$).

Example 4. (i) A, a United States citizen, is employed by a domestic corporation. A earns an annual salary of \$100,000. During the first quarter of the calendar year, A's post of duty is in the United States and A performs services entirely within the United States during this period. A is transferred to Country X for the remaining three-quarters of the year, and, in addition to A's annual salary, receives \$75,000 in fringe benefits that relate to the foreign posting. These fringe benefits are paid separately from A's annual salary and are specifically stated to be a housing allowance and an allowance for family home leave. Under A's employment contract, A is required to work on a 5-day week basis, Monday through Friday. During the last three quarters of the year, A performs services 30 days in the United States and 150 days abroad.

(ii) A has \$175,000 gross income for the taxable year from the performance of services. A is able to clearly establish that A's transfer created two distinct, separate, and continuous time periods within the calendar year. Accordingly, \$25,000 of the income designated as salary is attributable to the first quarter of the year (one quarter of \$100,000). This amount is allocated entirely to compensation for labor or personal services performed in the United States. The balance of A's adjusted gross income, \$150,000

(which includes the \$75,000 in fringe benefits that relate to the foreign posting), is compensation allocated to services performed for the final three quarters of his taxable year. During the last three quarters of the year, A's periodic performance of services in the United States does not constitute distinct, separate, and continuous periods of time. Of this \$150,000 amount, \$125,000 ($150/180 \times \$150,000$) is apportioned to compensation for labor or personal services performed outside the United States, and \$25,000 ($30/180 \times \$150,000$) is apportioned to compensation for labor or personal services performed in the United States.

* * * * *

(d) **Effective date.** Paragraphs (a) and (c) of this section apply with respect to taxable years beginning after December 31, 1966, however, the first sentence of paragraph (a)(1) applies to taxable years beginning on or after final regulations are published in the **Federal Register**. Paragraph (b) of this section applies to taxable years beginning on or after final regulations are published in the **Federal Register**. For paragraph (b) of this section and corresponding rules applicable to taxable years beginning after December 31, 1966, and before the date final regulations are published in the **Federal Register**, see § 1.861-4(b) in effect prior to the date final regulations are published in the **Federal Register** (26 CFR part 1 revised April 1, 1999). For corresponding rules applicable to taxable years beginning before January 1, 1967, see § 1.861-4 in effect prior to October 2, 1975 (26 CFR part 1 revised April 1, 1975).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00-757 Filed 1-20-00; 8:45 am]

BILLING CODE 4830-01-U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2000-1]

Copyright Rules and Regulations: Information Given by the Copyright Office

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is proposing amendments to its regulations governing information given to the public for litigation purposes in cases where the application for registration is still in-process. The Office is also proposing to publish in regulatory text the existing requirement

for submission of a Litigation Statement when a third party needs copies of material accompanying a registration claim for use in actual or pending litigation and other minor clarifications to these regulations. These proposed amendments will allow a qualified party greater access to in-process registration materials and also provide clearer information to the public on how to get these materials.

DATES: Written comments are due March 21, 2000.

ADDRESSES: An original and ten copies of the comments should be addressed, if sent by mail, to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. If delivered by hand, an original and ten copies should be delivered to: Office of the General Counsel, United States Copyright Office, James Madison Memorial Building, Room 403, First Street and Independence Avenue, S.E., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Patricia L. Sinn, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Fax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

1. Background

The Copyright Act makes the Register of Copyrights responsible for all administrative functions and duties under title 17 and authorizes the Register to establish regulations for this administration. 17 U.S.C. 701, 702. As an Office of public record, the Copyright Office provides a public record of completed registrations and recordations, and it permits access to these records and to the materials or files accompanying a registration claim—the application, the deposit, and any correspondence—when the conditions specified in the regulations are met. See 17 U.S.C. 705, 706. See also 37 CFR 201.2.

The Copyright Office's existing regulations tell the public how to get information on or access to such registration materials. 37 CFR 202.1, 202.2. In the past, the regulations have distinguished between providing these materials to copyright claimants and providing them to third parties, and also between providing copies in cases where the claim has been examined and registered or refused and in those where the claim is still pending or in-process. By in-process the Office means those materials, including correspondence files, applications, and deposit copies,

associated with claims to registration that are still being processed and those for which the process has been reopened.

The Copyright Office already permits limited access to in-process files. See 37 CFR 201.2(b)(2)–(5), 201.2(c)(1)–(2). However, the Office no longer sees a reason to distinguish between a request for material from an in-process file and material from a closed file when a qualified party needs this material for litigation purposes. The Office, therefore, proposes amending its regulations to permit the making of copies of material accompanying in-process claims—including the deposit—in the same circumstances relating to litigation as those in which copies may be made from a closed file. See 37 CFR 201.2(d)(2)(ii).

*Information needed to initiate a search.*¹ A party requesting a search for any material accompanying a registration claim in order to get information, inspect, or get copies of such material must provide as much specific information as possible about the material desired, including facts such as the name(s) of the copyright claimant(s) of record (or his or her designated agent), the title(s) of the work(s) to be located and copied; and the date(s) the work(s) was submitted for registration. See 37 CFR 201.2(b)(3)(i).

Access to contents of works. Currently, the Office outlines procedures for gaining access to registration records or materials in 37 CFR 201.2(b). Often a request for access to these materials is associated with legal proceedings. In particular, § 201.2(b)(5) permits access to in-process files by someone other than the copyright claimant in extraordinary circumstances; in practice the circumstances under which this relief has been granted are equivalent to actual or prospective litigation. The Office proposes amending this subsection to allow the making of copies of such material available in cases identical to those already set out in 37 CFR 201.2(d) for closed files wherein a qualified party may request certified or uncertified reproductions of copies, phonorecords, or other identifying material deposited in connection with registration of a work. Section 201.2(d)(1) specifies what information should be included in the request to get copies of records. Section 201.2(d)(2) specifies three conditions in which copies may be made of registration

materials. They are: (1) at the written request of the claimant, or his or her designated agent, or from an owner of exclusive rights; (2) at the written request of an attorney for litigation purposes; and (3) upon receipt of a court order. The proposed regulations would permit access to and copying of in-process files under the same circumstances found in 201.2(d)(2) and (3).² In the second situation the attorney or authorized representative must file a Litigation Statement with the Copyright Office.

2. Use of the Litigation Statement

The proposed amendment requires use of a Litigation Statement for requesting in-process materials to be used in litigation. The Office has recommended the use of a Litigation Statement for completed files for a long time. In 1991, it announced that in order to obtain copies of material deposited with the Office in support of a registration claim, an attorney or authorized agent had to submit a Litigation Statement. 56 FR 12957 (March 29, 1991). A party that provides a false statement of a material fact in a Litigation Statement is subject to criminal penalties under the terms of 18 U.S.C. 1001. Currently, the Litigation Statement requires that the materials sought be identified by registration number, year of registration, and title and description of the work. The Litigation Statement also requires a description of the active or prospective litigation for which the material is to be used, including:

1. Name and address of client (or person requesting the material).
2. Whether the client is or may become Plaintiff or Defendant in litigation.
3. Name of the other party.
4. Nature of the controversy.
5. Name of court if proceedings have been instituted.

If the litigation is prospective, the Litigation Statement requires a statement of the facts surrounding the controversy and a copy of any letter or other document that supports the claim that litigation may be instituted.

Just above the signature line, the following statement appears: "I hereby affirm to the Copyright Office that a controversy exists and that the requested copy will be used only in connection with the specified actual or prospective litigation. I also acknowledge that any other use of this copy would be in violation of the

Regulations of the Copyright Office 37 CFR 201.2(d)(2)."

The Litigation Statement also includes a warning that any false statement of a material fact made on the form may be a criminal offense, with a reference to 18 U.S.C. 1001 *et seq.* The texts of 18 U.S.C. 1001 and 37 CFR 201.2(d)(2) are reproduced on the back of the Litigation Statement.

A Litigation Statement may be requested from the Certification and Documents Section of the Information and Reference Division. The Office keeps a record of requests for copies of registration materials made using the Litigation Statement for at least three years, and this system of records is available to the public through the Certification and Documents Section.

When the Office adopts final rules concerning access to and copying of in-process materials, it will make minor amendments to the existing Litigation Statement to conform with those regulations. For example, it will change Registration No. to Registration No. or Control No. if an application is pending, and broaden the term "Copyright Registration" to cover both completed registrations and applications for copyright registration that are still pending.

3. Other Amendments

The Office is also proposing minor amendments to 37 CFR 201.1(c) and (d) and 201.2(b)(6), (b)(7) and (c)(4) to update official addresses and to clarify what kind of information the Office can or cannot supply.

4. Questions for Public Comment

The Copyright Office requests public comment on any aspect of these regulations but especially the following:

1. Should a party who needs copies of material for use in pending or actual litigation be permitted to get copies of in-process materials in the same way that he or she can if the work had been registered or the file closed? Why or why not?

2. Should additional information or documentation be required from those who file a Litigation Statement? For example, to verify that a party requesting information is truly involved in actual or prospective litigation, should the party be required to submit a copy of a document (e.g. the complaint or, in the case of prospective litigation, correspondence to or from an alleged infringer) that describes what the dispute over a copyrighted work entails?

3. If litigation is prospective rather than actual, should the Office contact the copyright owner or any other party to verify the likelihood of litigation?

¹ See generally Circular 6. For information on searching the Office's records to investigate the copyright status of a work see Circular 22.

² Copyright Office regulations already permit copies of in-process files in the first situation.

List of Subjects in 37 CFR Part 201

Copyright.

In consideration of the foregoing, it is proposed that part 201 of 37 CFR be amended 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. Sections 201.1(c) and (d) are revised to read as follows:

§ 201.1 Communications with the Copyright Office.

* * * * *

(c) Copies of records or deposits. Requests for copies of records or deposits should be addressed to the Library of Congress, Copyright Office, Certifications and Documents Section, LM-402, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000.

(d) Search of records. Requests for searches of registrations and recordations in the completed catalogs, indexes, and other records of the Copyright Office should be addressed to the Library of Congress, Copyright Office, Reference & Bibliography Section, LM-451, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000.

3. Section 201.2 is amended as follows:

a. By revising paragraphs (b)(5) and (b)(6);

b. By removing the last sentence of paragraph (b)(7) and adding two sentences in its place;

c. By revising paragraph (c)(4);

d. In paragraph (d)(2) introductory text, by adding the phrase "or an application for copyright registration" after the phrase "in connection with a copyright registration"; and

e. By revising paragraph (d)(2)(ii) introductory text.

§ 201.2 Information given by the Copyright Office.

* * * * *

(b) * * *

(5) In exceptional circumstances the Register of Copyrights may allow inspection or even copying of pending applications and open correspondence files by someone other than the copyright claimant, upon submission of a written request which is deemed by the Register to show good cause for such access and establishes the person making the request is one properly and directly concerned. Any request for such access or copying of this material should be directed to the Certifications

and Documents Section which will either refer the requestor to the General Counsel, or if litigation is involved, send the requestor the Copyright Office's form known as a Litigation Statement. If a Litigation Statement is required, it must be submitted on the Office's form, comply with § 201.2(d)(2) (ii), contain an original signature, and be returned to the Certifications and Documents Section at the address given in 37 CFR 201.1(c).

(6) Direct public access will not be permitted to any financial or accounting records, including records maintained on Deposit Accounts.

(7) * * * As the Office updates and revises certain chapters of Compendium II, it will make the information available on the Copyright Office's web site. This information is also available for public inspection and copying in the Certifications & Documents Section.

(c) * * *

(4) The Copyright Office will not respond to any abusive or scurrilous correspondence or correspondence where the intent is unknown.

(d) * * *

(2) * * *

(ii) The Copyright Office receives and approves on a form requested from the Certification and Documents Section, a Litigation Statement containing a request from an attorney on behalf of either a plaintiff or defendant in connection with litigation, actual or prospective, involving a registered work or a work on which registration is sought. The following information must be included in such a request:

* * * * *

Dated: January 13, 2000.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 00-1293 Filed 1-20-00; 8:45 am]

BILLING CODE 1410-30-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99-2563; MM Docket No. 99-330; RM-9677]

Radio Broadcasting Services; Kankakee and Park Forest, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Gene Milner Broadcasting Company, Inc., proposing the reallocation of Channel 260B from Kankakee to Park Forest,

Illinois, as the community's first local aural transmission service. Channel 260B can be reallocated to Park Forest in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's licensed site. The coordinates for Channel 260B at Park Forest are 41-18-04 North Latitude and 87-49-35 West Longitude.

DATES: Comments must be filed on or before February 7, 2000, and reply comments on or before February 22, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Dennis J. Kelly, Esq., Post Office Box 6648, Annapolis, Maryland 21401 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-330, adopted December 8, 1999, and released December 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00-1470 Filed 1-20-00; 8:45 am]

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