

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2011–6]

Designation of Agent To Receive Notification of Claimed Infringement

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

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: Under the Digital Millennium Copyright Act (“DMCA”), the U.S. Copyright Office is required to maintain a current directory of agents that have been designated by online service providers to receive notifications of claimed infringement. Since the DMCA’s enactment in 1998, online service providers have used a paper form to designate agents with the Copyright Office, and the Office has made scanned copies of those paper forms available to the public by posting them on the Office’s Web site. In 2011, the Copyright Office issued a notice proposing updated regulations governing the designation of agents under the DMCA in anticipation of the creation of a new online system through which service providers could more efficiently designate agents with the Copyright Office and the public could more easily search for such agents. With the development of this electronic system approaching completion, this notice proposes an amendment of the Office’s regulations to lower the fee for designating an agent under the DMCA. **DATES:** Written comments must be received no later than 11:59 p.m. Eastern Time on June 24, 2016.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting

comments are available on the Copyright Office Web site at <http://www.copyright.gov/rulemaking/online/NPR>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT:

Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, by email at jcharlesworth@loc.gov, Sarang V. Damle, Deputy General Counsel, by email at sdam@loc.gov, or Jason E. Sloan, Attorney-Advisor, by email at jslo@loc.gov. Each can be contacted by telephone by calling 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

In 1998, Congress enacted section 512 of title 17, United States Code, as part of the DMCA.¹ Among other things, section 512 provides safe harbors from copyright infringement liability for online service providers engaged in specified activities and that meet certain eligibility requirements.² A service provider seeking to avail itself of the safe harbor in section 512(c) (for storage of material at the direction of a user) is required to designate an agent to receive notifications of claimed copyright infringement by making contact information for the agent available through its service, including on its Web site in a location accessible to the public, and by providing such contact information to the Copyright Office.³ Although the requirement to designate an agent to receive notifications of claimed infringement is detailed in subsection 512(c), the safe harbors in subsections 512(b) (for system caching) and (d) (for information location tools), incorporate the notice provisions of section 512(c)(3), which in turn require that notices be sent to “the designated agent of a service provider.”⁴ For its part, the Copyright Office is required to maintain a current online directory of designated agents that is available to the public, and is authorized to require payment of a fee by service providers to

cover the costs of maintaining the system.⁵

Because the DMCA was effective on its date of enactment and a procedure to enable the designation of agents needed to be in place immediately, the Copyright Office issued, without opportunity for comment, interim regulations governing the designation of agents to receive notifications of claimed infringement.⁶ Those interim regulations, which are still in effect today, require service providers to submit a paper form to the Copyright Office setting forth the requisite information for the designated agent.⁷ The Copyright Office then scans the forms and posts them on its Web site.⁸

In an effort to update the existing system, the Office issued a notice of proposed rulemaking (“NPRM”) on September 28, 2011, describing the Office’s proposal for a new electronic system through which service providers could more efficiently designate agents with the Copyright Office and the public could more easily search for such agents in the online directory.⁹ The NPRM sought public comment on proposed rules that would govern the submission and updating of information relating to designated agents under such a system.¹⁰ The NPRM also explained that the Office would establish new fees to file, renew,¹¹ or amend the designation of an agent, and that it would publish a notice of proposed rulemaking to seek comments on the proposed fees.¹²

Following the 2011 NPRM, the Library of Congress commenced the software development effort. Although it appeared at that time that the Library would be able to commit the necessary resources to complete development of the system without significant delay, as it turned out, the Library was unable to

⁵ *Id.* at 512(c)(2).

⁶ See 63 FR 59233 (Nov. 3, 1998).

⁷ See 37 CFR 201.38.

⁸ See <http://www.copyright.gov/online/NPR/>.

⁹ See 76 FR 59953 (Sept. 28, 2011).

¹⁰ *Id.*

¹¹ In the NPRM, the Office explained that the proposed system would require service providers to periodically “validate” the designated agent information with the Copyright Office, to ensure that the information in the Office’s directory would remain current and accurate. See *id.* at 59954–55. To avoid confusion and better reflect the actual operation of the anticipated electronic system, the Office will refer to this process as the “renewal” of the designation rather than the “validation” of the designation.

¹² *Id.* at 59956, 59959–60.

¹ Public Law 105–304, 112 Stat. 2860 (1998).

² See 17 U.S.C. 512.

³ *Id.* at 512(c)(2).

⁴ See *id.* at 512(b)(2)(E), (d)(3).

supply the requisite resources until fairly recently. With the new electronic system now nearing completion, the Office seeks public comment on proposed fees to use it.

II. Discussion

Section 512(c)(2) of title 17 authorizes the Register of Copyrights to “require payment of a fee by service providers to cover the costs” of maintaining a directory of agents designated to receive notifications of claimed infringement.¹³ In addition, section 708(a) of title 17 more generally authorizes the Register to fix fees for certain Office services, including the electronic directory, based on the cost of providing the service.¹⁴

Currently, the fee for a service provider to designate an agent with the Office, or amend a designation, is \$105, plus an additional fee of \$35 for each group of 1 to 10 alternate names used by the service provider.¹⁵ This fee reflects the cost to the Office of receiving, reviewing, scanning, and posting the paper forms submitted by service providers, a largely manual process. Based on an analysis of the cost of operating and maintaining the new electronic system, the Office believes that the fee to designate an agent to receive a notification of claimed infringement can be much lower, and should be established at six dollars per designation—whether a new designation, a renewed designation, or an amended designation. At this time, the Office does not believe that an

additional fee to include alternate names with a designation to be warranted, as the Office does not currently foresee appreciable additional costs due to the submission of alternate names through the online process.

This significantly lower proposed fee reflects the far greater efficiency of the electronic system for the Copyright Office. The Office arrived at the six dollar amount by considering the total personnel costs associated with administering and maintaining the new service, spread across the anticipated volume of designations. The Office expects that ongoing support for any operational system will require Copyright Office staff to monitor, evaluate, and address issues that may arise with the system, as well as the portions of the Office’s Web site that will integrate with the system, as needed. Additionally, support will be needed to respond to any user concerns that may arise, as well as to manage payments received. Based on the cost of employee time spent on these tasks (including salary and benefits), the Office calculates the total costs to be approximately \$41,000 per year.¹⁶ With respect to the anticipated number of designations that will be filed, the Office notes that 23,300 designations have been filed since 1998 and are included in the existing directory.¹⁷ While it is difficult to know how many remain active, undoubtedly a significant portion—for present purposes, the Office is estimating 75% to 85%—represent service providers that

continue to operate. In addition, the Office expects a certain number of new and amended designations to be filed in the coming years. In total, the Office estimates an average of 7,000 designations to be filed per year.¹⁸ Should experience with the system suggest that the anticipated personnel and overhead expenses or estimated volume of designations is incorrect, the Office will revisit the fee.

At this time, the Office is soliciting comments only on the fee for the new system. Accordingly, comments in response to this notice should be directed solely to the appropriateness of the proposed fee.¹⁹

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes to amend 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. Revise entry (17) in the table to § 201.3(c) to read as follows:

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

* * * * *

(c) * * *

Registration, recordation and related services	Fees (\$)
* * * * *	*
(17) Designation of agent under § 512(c)(2) to receive notification of claimed infringements, including renewal or amendment of designation	6
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¹³ 17 U.S.C. 512(c)(2).
¹⁴ See *id.* at 708(a) (“The Register is authorized to fix fees for other services [not enumerated in section 708(a)(1)–(9)] based on the cost of providing the service.”).
¹⁵ 37 CFR 201.3(c)(17).
¹⁶ It is anticipated that the Office will not need to maintain the system’s IT infrastructure from a technical standpoint because the Library currently provides these services to the Office. If the Library

begins charging for these services, or if the Office takes over these IT functions in the future, the fee may need to be reevaluated.
¹⁷ The number of listings appears higher in the current DMCA directory because each alternate name in a designation is listed separately, even though each such listing links to a single designation filing.
¹⁸ These calculations assume that active existing designations will need to be refiled electronically

in the new system. The calculations also anticipate that to keep the directory up to date, designations will be renewable on a three-year basis.
¹⁹ The Office, in its prior notice, previously asked for and received comments on the design and operation of the electronic system. Those comments will be separately reviewed and discussed in conjunction with the final rule that will govern the system.

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Dated: May 19, 2016.

Jacqueline C. Charlesworth,*General Counsel and Associate Register of Copyrights.*

[FR Doc. 2016-12227 Filed 5-24-16; 8:45 am]

BILLING CODE 1410-30-P

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 17****RIN 2900-AP44****Advanced Practice Registered Nurses****AGENCY:** Department of Veterans Affairs.**ACTION:** Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its medical regulations to permit full practice authority of all VA advanced practice registered nurses (APRNs) when they are acting within the scope of their VA employment. This rulemaking would increase veterans' access to VA health care by expanding the pool of qualified health care professionals who are authorized to provide primary health care and other related health care services to the full extent of their education, training, and certification, without the clinical supervision of physicians. This rule would permit VA to use its health care resources more effectively and in a manner that is consistent with the role of APRNs in the non-VA health care sector, while maintaining the patient-centered, safe, high-quality health care that veterans receive from VA. The proposed rulemaking would establish additional professional qualifications an individual must possess to be appointed as an APRN within VA. The proposed rulemaking would subdivide APRN's into four separate categories that include certified nurse practitioner, certified registered nurse anesthetist, clinical nurse specialist, and certified nurse-midwife. The proposed rulemaking would also provide the criteria under which VA may grant full practice authority to an APRN, and define the scope of full practice authority for each category of APRN. VA intends that the services to be provided by an APRN in one of the four APRN roles would be consistent with the nursing profession's standards of practice for such roles.

DATES: Comments must be received by VA on or before July 25, 2016.**ADDRESSES:** Written comments may be submitted: Through <http://www.Regulations.gov>; by mail or hand-

delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AP44-Advanced Practice Registered Nurses." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Penny Kaye Jensen, Liaison for National APRN Practice, 810 Vermont Ave. NW., Washington, DC 20420; (202) 461-6700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 7301 of title 38 United States Code (U.S.C.) establishes the Veterans Health Administration (VHA) within VA, and establishes that its primary function is to "provide a complete medical and hospital service for the medical care and treatment of veterans, as provided in this title and in regulations prescribed by the Secretary pursuant to this title." 38 U.S.C. 7301(b). In carrying out this function, VHA has an obligation to ensure that patient care is appropriate and safe and its health care practitioners meet or exceed generally-accepted professional standards for patient care. The Secretary is responsible for the proper execution and administration of all laws administered by the Department and for the control, direction, and management of the Department, to include agency personnel and management matters. See 38 U.S.C. 303. To enable the Secretary to direct, control and manage VA, Congress authorized the Secretary "to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department and are consistent with those laws." 38 U.S.C. 501(a). The Under Secretary for Health is directly responsible to the Secretary for the operation of VHA (38 U.S.C. 305(b)). Unless specifically otherwise provided, the Under Secretary for Health, as the head of VHA, is authorized to "prescribe all regulations necessary to the administration of the Veterans Health Administration," subject to the approval of the Secretary. 38 U.S.C. 7304. To allow VA to carry out its medical care mission, Congress

also established a comprehensive personnel system for certain medical employees in VHA, independent of the civil service rules. See Chapters 73 and 74 of title 38, U.S.C. The Secretary was granted express statutory authority to establish the qualifications for VA's healthcare practitioners, determine the hours and conditions of employment, take disciplinary action against employees, and otherwise regulate the professional activities of those individuals. 38 U.S.C. 7401-7464. As an integrated Federal health care system with the responsibility to provide comprehensive care under 38 U.S.C. 7301, it is essential that VHA wisely manage its resources and fully utilize the skills of its health care providers to the full extent of their education, training, and certification. By permitting APRNs throughout the VHA system a way to achieve full practice authority in order to provide advanced nursing services to the full extent of their professional competence, VHA would further its statutory mandate to provide quality health care to our nation's veterans. This proposed regulatory change to nursing policy would permit APRNs to practice to the full extent of their education, training and certification, without the clinical supervision or mandatory collaboration of physicians. Standardization of APRN full practice authority, without regard for individual State practice regulations, would help to ensure a consistent continuum of health care across VHA by decreasing the variability in APRN practice that currently exists across VHA as a result of disparate State practice regulations. As of March 7, 2016 CRNAs have full practice authority in 17 states, while CNPs have full practice authority in almost 50% of the nation, which includes 21 states and the District of Columbia.

It would also aid in fully maximizing VHA APRN staff capabilities, which would increase VA's capacity to provide timely, efficient, and effective primary care services, as well as other services. This would increase veteran access to needed VA health care, particularly in medically-underserved areas, as well as decrease the amount of time veterans spend waiting for patient appointments. In addition, standardizing APRN practice authority would enable veterans, their families, and caregivers to understand more readily the health care services that VA APRNs are authorized to provide. This preemptive rule would increase access to care and reduce the wait times for VA appointments utilizing the current workforce already in place.