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79. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov.

or email at ferconlinesupport@ferc.gov, Commission's Online Support at (202) 502–7071, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Commenter</th>
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<tbody>
<tr>
<td>APS</td>
<td>Arizona Public Service Company.</td>
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<tr>
<td>BPA</td>
<td>Bonneville Power Administration.</td>
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<tr>
<td>CEA</td>
<td>Canadian Electricity Association.</td>
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<td>EEI</td>
<td>Edison Electric Institute.</td>
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<td>Idaho Power</td>
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<td>Joint Commenters</td>
<td>Independent Electricity System Operator.</td>
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<tr>
<td>Naturener</td>
<td>Naturener USA, LLC.</td>
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<tr>
<td>NRECA</td>
<td>North American Electric Reliability Corporation.</td>
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<td>NRECA</td>
<td>National Rural Electric Cooperative Association.</td>
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<td>TVA</td>
<td>Tennessee Valley Authority.</td>
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| FR Doc. 2017–02175 Filed 2–1–17; 8:45 am |
| BILLING CODE 6717–01–P |

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 204

[Docket No. 2016–7]

Removal of Personally Identifiable Information From Registration Records

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

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is issuing a final rule to allow authors and claimants to replace or remove personally identifiable information ("PII") from the Office's online registration catalog. This rule allows authors and claimants, or their authorized representatives, to request the replacement or removal of certain PII that is requested by the Office and collected on a registration application, such as a home addresses or personal phone numbers, from the Office's internet-accessible public catalog, while retaining that information in the Office's offline records as required by law. 

The rule also codifies an existing practice that removes extraneous PII, such as driver’s license numbers, social security numbers, banking information, and credit card information, on the Office’s own volition or upon request by authors, claimants, or their authorized representatives.

DATES: Effective March 6, 2017.

FOR FURTHER INFORMATION CONTACT: Cindy Abramson, Assistant General Counsel, by email at ciab@loc.gov, or Abiye Mosheim, Attorney Advisor, by email at abmo@loc.gov. Each can be reached by telephone by calling 202–707–8350.

SUPPLEMENTARY INFORMATION: I. Background

On September 15, 2016, the Copyright Office published a notice of proposed rulemaking ("NPRM") to create procedures to request removal of certain "personally identifiable information" ("PII") from the Office’s registration records. PII is generally considered to be any information that has the potential to identify a specific individual. The NPRM concerned two distinct categories of PII. First, the Office requests and receives certain types of PII during the registration process (e.g., dates of birth, addresses, telephone numbers, fax numbers, and email addresses). The collection of some of that information is mandated by statute or regulation; other information is optional. This

The Copyright Office is the Office to gather the name and address of the copyright claimant; the name of the author(s), for works that are not anonymous or pseudonymous; the nationality or domicile of the author(s); and date(s) of death for deceased author(s). See 17 U.S.C. 409. The Act also gives the Register of Copyrights the authority to require applicants to supply any other information “upon bearing upon the preparation or identification of the work or the existence, ownership, or duration of copyright.” Id.
In 2008, the Office published a list of frequently asked questions (“FAQs”) on privacy to address some of these concerns. In the FAQs, the Office stressed that, by statute, it was required to collect certain information as part of the registration application and maintain it as part of its public records. The FAQs advised the public that if they did not wish sensitive personal information to appear in the online public catalog, they should refrain from providing it during the registration process, if possible. Applicants were advised to instead consider providing non-personal information, such as information about a third-party agent, a post office box, or a non-personal email address. But the Office warned that, if the applicant provided personal information, it would be included in the online public catalog. Both the Web page to log in to the online registration system and the Web page to download paper application forms include links to the privacy FAQs. See eCO Registration System, Privacy: Copyright Public Records, https://www.copyright.gov/registration/; Forms, https://www.copyright.gov/forms/; see also U.S. Copyright Office, Compendium of U.S. Copyright Office Practices (“Compendium (Third)”) 205 (3d ed. 2014).

The Office’s practices have differed with respect to extraneous PII—such as driver’s license numbers, social security numbers, credit card information, and banking information—that applicants sometimes include on registration applications, even though the application does not require or request such information. Given the particular sensitivity of that information, and the fact that it is not requested as part of the registration application, the Office has developed an informal practice of removing extraneous PII from its registration records, including the online public catalog and the offline records, for no fee. During the registration process, the Office may remove extraneous PII, particularly if it is sensitive information, on its own volition. After the registration is complete, the Office will remove extraneous PII upon request. See Compendium (Third) 1804.2 (“If the registration specialist discovers a social security number, driver’s license number, credit card number, or bank account number in the application, he or she will remove that information from the record without communicating with the applicant [and] [if this information is not discovered during the examination process . . . [the Office will remove [it] upon written request.”). The NPRM explained in detail the rationale for and basic operation of the proposed rule. The Office solicited and received sixteen comments on the proposed rule. Having reviewed and carefully considered all of the comments received, the Copyright Office now issues a final rule that closely follows the proposed rule, with some alterations in response to the comments, as discussed below.

II. Discussion of Public Comments

Replacement of Name After Legal Name Change. The NPRM proposed to allow authors and claimants to request the removal of certain PII from the online public catalog only, and replace it with non-personal information. Names were specifically excluded from this category in the proposed rule. In the NPRM, the Office gave three reasons for not allowing authors or claimants to remove their names from the online public catalog, or replace an author or claimant’s name with a pseudonym or an anonymous designation: (1) changing or removing a name is not necessary to prevent privacy invasions as long as associated PII is removed; (2) allowing authors or claimants to alter their names in the online public catalog may lead to confusion regarding the term of copyright protection for the work; and (3) removal of a claimant’s name could lead to confusion about the correct copyright term.

Two commenters urged the Office to allow authors or claimants to replace their names in the online public catalog. They argued that, for transgender individuals, disclosure of a birth name equals disclosure of transgender status. National Center for Transgender Equality (“NCTE”) Comments at 1; T. Brown Comments. Although it may be possible to use a supplementary registration to change one’s name, both the original registration and the supplementary registration appear in the online registration record. According to these commenters, having a transgender individual’s birth name and changed name both appear in the record could jeopardize the “well-being and personal and professional life” of a transgender individual, put them in danger, or subject them to “employment discrimination, bodily harm and/or worse.” T. Brown Comments. NCTE argued that not allowing a person who has received a legal name change to replace their original name with the legally changed name may affect victims of domestic violence as well. NCTE Comments at 1.

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NCTE suggested two revisions to the NPRM, one of which the Office reproduces here:

201.2(e)(2)(iii) Names of authors or claimants may not be removed or replaced with a pseudonym. Requests to substitute the prior name of the author or claimant with the current legal name of the author or claimant must be accompanied by official documentation of the legal name change.

NCTE Comments at 1. The Office finds compelling NCTE’s and T. Brown’s arguments for allowing a name change in the online record, and adopts the above suggested language in the final rule.

NCTE also recommended that the Office not include a note in the online record indicating that the legal name has been modified because it could pose safety and privacy concerns to transgender individuals. NCTE Comments at 3. While the Office takes seriously these concerns, as mentioned in the NPRM, the Copyright Act imposes certain obligations on the Office to preserve information as part of the public record. See 17 U.S.C. 705(a), 705(b). Pursuant to the new rule, “a note indicating that the online record has been modified will be added to the online registration record.” 17 U.S.C. 201.2(e)(6). This note, however, will merely indicate that a change was made to the record but will not specify whether or not a change to the legal name was made. The Office believes that this clarification addresses NCTE’s concerns.

Retention of Original PII in Offline Records. The NPRM also proposed that the original information would be maintained in the Office’s offline records and would be available for public inspection by visitors to the Copyright Office and upon request, consistent with the Office’s statutory responsibilities to maintain such records and make them available to the public. The NPRM sought to strike an appropriate balance between the public’s interest in a robust online record and concerns of privacy and safety in individual cases.

The Software and Information Industry Association (“SIIA”) expressed concern about this aspect of the rule, commenting that “the very reason for the registration data is to enable the licensing of works” and the “proposal makes that more difficult.” SIIA Comments at 3. In SIIA’s view, “[t]hose seeking information would have to hire someone in Washington to physically go to the Copyright Office records and search them.” Id. The Office, however, crafted the rule with that exact concern in mind. The Office does not intend to make it more difficult to license works, which is why the rule does not permit a claimant to eliminate address information from the online public catalog, but instead only allows for the replacement of a home address with a verifiable substitute address, such as a current post office box or third-party address. As the NPRM explained, “allowing the wholesale removal of a claimant address would impede the public’s ability to contact a copyright owner to obtain permission to use the work.” 81 FR at 63441. The Office has made this point even more explicit in the final rule.

With respect to other types of PII, alternate information must be provided, unless a stringent standard is met: Specifically, the requester must demonstrate that the stated concern substantially outweighs the need for the information to remain in the public record. As the NPRM explained, “[t]his higher standard is warranted because removing information entirely from the online public catalog would result in a diminished record available for search via the internet.” 81 FR at 63442. The Office does not anticipate that it will liberally grant such requests. Additionally, under existing practices, one does not have to travel to Washington to physically search the diminished record available for search via the internet. As the NPRM explained, “this box, or a non-personal email address.

Several commenters recommended that the Office amend the rule to either provide notice to applicants at the time of registration that their PII will be on the Internet and to advise them of their options for avoiding publication of their PII or to provide an ‘opt out’ mechanism on the registration application that would allow the applicant to opt out of providing his or her PII. See e.g., Copyright Alliance Comments at 3; Alexander Kunz Comments. But, as mentioned in the NPRM and above, the Office already provides links to its Privacy FAQs on both the online registration application and the Web page that houses the downloadable paper registration application. Additionally, eCO and each paper registration application contains a Privacy Act Notice that advises the applicant that by completing the application it is authorizing the Office to collect the applicant’s PII and consenting to routine uses of the PII, including publication to give legal notice of the applicant’s copyright claim. The Copyright Alliance suggested that the rule provide a “do not contact” mechanism at the time of registration.

The Copyright Alliance suggested that the rule provide a “do not contact” mechanism at the time of registration. Copyright Alliance Comments at 3. It stated that “‘providing registrants with the option of indicating they do not wish to be contacted . . . should decrease the amount of unwanted contact and encourage creators to feel more comfortable about providing their information.’ Copyright Alliance Comments at 3. Without any empirical evidence to support such an assertion, the Office declines to adopt this
recommendation; it is unclear how providing PII but asking members of the public to not contact an author using that PII will actually deter unwanted contact. Additionally, eCO is not currently designed to permit a “do not contact” option at registration, and adding such an option would require updates to the eCO system. Accordingly, at this time the Office declines to adopt the Copyright Alliance’s “do not contact” suggestion, but may consider it at a later date as part of its broader technology modernization efforts.

Finally, the Office notes that NWU/ASJA made several comments not relevant to the NPRM, including that the Office should repeal the requirement of registration for enforcement and remedies and withdraw proposed orphan works legislation. See NWU/ASJA Comments at 3. NWU/ASJA also alleges that the requirement to make contact information public is a prohibited formality under the Berne Convention and that the Office’s gathering and maintaining information on a registration application violates the Privacy Act because the information gathered is not relevant and necessary to accomplish the mission of the Copyright Office, and is not mandated by statute. See NWU/ASJA Comments at 4–5, 7. Although the Office does not agree that these requirements violate Berne or the Privacy Act, this rulemaking is not the proper forum in which to address these concerns in detail. The requirements that NWU/ASJA complain of, however, are part of the Copyright Act, and the Office cannot create exceptions to them as part of this rulemaking.

“Verified” Addresses. As the NPRM explained, the proposed rule does not allow a claimant to eliminate address information from the online public catalog, but instead would only allow for the replacement of a home address with a verifiable substitute address, such as a current post office box or third-party address.

One commenter, Music Reports, recommended the following change to the proposed rule: The Office should require the substitute address information to be “verified”—not just be verifiable—at time of application, by requiring notarized documentation of the requester’s identity, and by requiring the requester to provide evidence that one is able to receive mail at that address. Music Reports Comments at 2. The Office believes that adding this burden is unnecessary. The rule already requires that the requester provide the Office with “verifiable” information, meaning that the requester will have to aver that the replacement address is one at which the author and/or claimant can receive mail. And the requester is required to append an affidavit to the request stating as much. Therefore, the Office declines to adopt Music Reports recommendations in the final rule.

Fees. The NPRM proposed that the fee for filing an initial request for replacement or removal of requested PII was $130, and the fee for reconsideration of denied requests for replacement or removal of requested PII would be $60. There would be no fee for requests to remove extraneous PII. For reconsiderations, the NPRM proposed a flat fee of $60 per request, regardless of the number of registration records referenced in the request. As the NPRM stated, both fees are non-refundable.

Several commenters thought the initial fee for requesting the replacement or removal of requested PII was unreasonable. See e.g., Copyright Alliance Comments at 3; Cletus Price Comments; Alexander Kunz Comments; Helen Zhang Comments. The Office calculated the fee, however, after carefully considering the time and labor required to review and process these requests, including the salaries of junior and senior staff who will take part in the review, draft the decisions, and perform the data entry; costs associated with docketing and responding to requests via U.S. mail; system costs related to entering changes into the online public catalog as well as updating the offline registration records; and costs associated with printing a new registration certificate.

One commenter stated that “[r]equire[ng] [a]n applicant to submit requested PII then wait for the Office to publish it in its online records and then requiring the individual to request and pay $130 to have some of it taken down would be a very inconvenient process.” Cletus Price Comments. But the Office notes that PII does not necessarily need to be provided as part of the initial registration application. The registration application instructions, as well as the above-mentioned privacy FAQs, warn applicants at the time of registration that any PII provided on the registration application will be made public and that, in order to avoid any issues regarding security or privacy, to provide non-personal information (like a P.O. Box or business address) where possible, or where the information is optional, to not provide PII at all.

List of Subjects in 37 CFR Parts 201 and 204

Copyright, Information, Privacy, Records.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 204 of 37 CFR chapter II as follows:

PART 201—GENERAL PROVISIONS

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


2. In §201.1, revise the section heading and add paragraph (c)(8) to read as follows:

§ 201.1 Communication with the Copyright Office.

* * * * *

(c) Requests to remove PII from registration records. Requests to remove personally identifiable information from registration records pursuant to §§201.2(e) and (f) should be addressed to: U.S. Copyright Office, Associate Register of Copyrights and Director of the Office of Public Information and Education, P.O. Box 70400, Washington, DC 20024–0400. Requests should be clearly labeled “Request to Remove Requested PII,” “Request for Reconsideration Following Denial of Request to Remove Requested PII,” or “Request to Remove Extraneous PII,” as appropriate.

3. In §201.2, add paragraphs (e) and (f) to read as follows:

§ 201.2 Information given by the Copyright Office.

* * * * *

(e) Requests for removal of requested personally identifiable information from the online public catalog. (1) In general, an author, claimant of record, or the authorized representative of the author or claimant of record may submit a request to remove certain categories of personally identifiable information (“PII”) described in paragraph (o)(2) of this section from the Copyright Office’s online public catalog by following the procedure set forth in paragraph (o)(3) of this section. Where the requester provides verifiable, non-personally identifiable substitute information to replace the PII being removed, the Office will grant the request unless it determines that the need to maintain the original information in the public record substantially outweighs the safety, privacy, or other stated concern. If the requester does not provide verifiable, non-personally-identifiable substitute information, the Office will grant the request only if the safety, privacy, or other stated concern substantially

Small Business Regulatory Certainty Act.
outweighs the need for the information to remain in the public record. The Office will review requests by joint authors or claimants on a case-by-case basis.

(2) Categories of personally identifiable information that may be removed from the online public catalog include names, home addresses, personal telephone and fax numbers, personal email addresses, and other information that is requested by the Office as part the copyright registration application except that:

(i) Requests for removal of driver’s license numbers, social security numbers, banking information, credit card information and other extraneous PII covered by paragraph (f) of this section are governed by the provisions of that paragraph.

(ii) Requests to remove the address of a copyright claimant must be accompanied by a verifiable substitute address. The Office will not remove the address of a copyright claimant unless such a verifiable substitute address is provided.

(iii) Names of authors or claimants may not be removed or replaced with a pseudonym. Requests to substitute the prior name of the author or claimant with the current legal name of the author or claimant must be accompanied by official documentation of the legal name change.

(3) Requests for removal of PII from the online catalog must be in the form of an affidavit, must be accompanied by the non-refundable fee listed in § 201.3(c), and must include the following information:

(i) The copyright registration number(s).

(ii) The name of the author and/or claimant of record on whose behalf the request is made.

(iii) Identification of the specific PII that is to be removed.

(iv) If applicable, verifiable non-personally-identifiable substitute information that should replace the PII to be removed.

(v) In the case of requests to replace the names of authors or claimants, the request must be accompanied by a court order granting a legal name change.

(vi) A statement providing the reasons supporting the request. If the requester is not providing verifiable, non-personally-identifiable substitute information to replace the PII to be removed, this statement must explain in detail the specific threat to the individual’s personal safety or personal security, or other circumstances, supporting the request.

(vii) The statement, “I declare under penalty of perjury that the foregoing is true and correct.”

(viii) If the submission is by an authorized representative of the author or claimant of record, an additional statement, “I am authorized to make this request on behalf of [name of author or claimant of record].”

(ix) The signature of the author, claimant of record, or the authorized representative of the author or claimant of record.

(x) The date on which the request was signed.

(xi) A physical mailing address to which the Office’s response may be sent (if no email is provided).

(xii) A telephone number.

(xiii) An email address (if available).

(4) Requests under this paragraph (e) must be mailed to the address listed in § 201.1(c).

(5) A properly submitted request will be reviewed by the Associate Register of Copyrights and Director of the Office Public Information and Education or his or her designee(s) to determine whether the request should be granted or denied. The Office will mail its decision to either grant or deny the request to the address indicated in the request.

(6) If the request is granted, the Office will remove the information from the online public catalog. Where substitute information has been provided, the Office will add that information to the online public catalog. In addition, a note indicating that the online record has been modified will be added to the online registration record. A new certificate of registration will be issued that reflects the modified information.

The Office will maintain a copy of the original registration record on file in the Copyright Office, and such records shall be open to public inspection and copying pursuant to paragraphs (b), (c), and (d) of this section. The Office will also maintain in its offline records the correspondence related to the request to remove PII.

(7) Requests for reconsideration of denied requests to remove PII from the online public catalog must be made in writing within 30 days from the date of the denial letter. The request for reconsideration, and a non-refundable fee in the amount specified in § 201.3(c), must be mailed to the address listed in § 201.1(c). The request must specifically address the grounds for denial of the initial request. Only one request for reconsideration will be considered per denial.

(f) Requests for removal of extraneous PII from the public record. Upon written request, the Office will remove driver’s license numbers, social security numbers, banking information, credit card information, and other extraneous PII that was erroneously included on a registration application from the public record. There is no fee for this service. To make a request, the author, claimant, or the authorized representative of the author or claimant, must submit the request in writing using the contact information listed in § 201.1(c). Such a request must name the author and/or claimant, provide the registration number(s) associated for the record in question, and give a description of the extraneous PII that is to be removed. Once the request is received, the Office will remove the extraneous information from both its online and offline public records. The Office will not include any notation of this action in its records.

4. In § 201.3, add paragraph (c)(19) to read as follows:

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

<table>
<thead>
<tr>
<th>Registration, recordation and related services</th>
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<td>(19) Removal of PII from Registration Records</td>
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<tr>
<td>(i) Initial request, per registration record</td>
<td>130</td>
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<tr>
<td>(ii) Reconsideration of denied requests, flat fee</td>
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b) With respect to requests for the correction or amendment of records that are governed by this section, the Office's response will indicate the reason for the refusal and the procedure available to the individual to appeal the refusal.

SUMMARY: In this document, the Federal Communications Commission (Commission) describes the information that must be provided in periodic progress reports (FCC Form 2100—Schedule 387 (Transition Progress Report)) by full power and Class A television stations that are eligible to receive payment of relocation expenses from the TV Broadcast Relocation Fund in connection with their being assigned to a new channel through the Incentive Auction. The Commission previously determined that reimbursable stations must file reports showing how the disbursed funds have been spent and what portion of the stations' construction in complete. These Transition Progress Reports will help the Commission, broadcasters, those involved in construction of broadcast facilities, other interested parties, and the public to assess how disbursed funds have been spent and to monitor the construction of stations.


FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Joyce.Bernstein@fcc.gov, (202) 418–1647, or Kevin Harding, Kevin.Harding@fcc.gov, (202) 418–7077.


Synopsis

The Media Bureau (Bureau) announces that each full power and Class A television station that is eligible for reimbursement of its relocation costs from the TV Broadcast Relocation Fund established by the Middle Class Tax Relief and Job Creation Act of 2012 must periodically file an FCC Form 2100—Schedule 387 (Transition Progress Report) that is attached as Appendix A to the Public Notice. The appendix is available at https://apps.fcc.gov/edocs_public/attachmatch/DA-17-34A1.docx. Reimbursable stations must file Transition Progress Reports using the Commission's electronic filing system starting with first full calendar quarter after completion of the Incentive Auction and on a quarterly basis thereafter. In addition to these quarterly reports, reimbursable stations must file the reports: (1) 10 weeks before the end of their assigned construction deadline; (2) 10 days after they complete all work related to construction of their post-auction facilities; and (3) five days after they cease broadcasting on their pre-auction channel. Once a station has filed Transition Progress Reports certifying that it has completed all work related to construction of its post-auction facilities and has ceased operating on its pre-auction channel, it will no longer be required to file reports.

In the Incentive Auction R&O, the Federal Communications Commission (Commission) adopted rules and procedures for conducting the broadcast television incentive auction. See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12–268, Report and Order, 79 FR 48442, August 15, 2014. The incentive auction is composed of a reverse auction in which broadcasters offer to voluntarily relinquish some or all of their spectrum usage rights, and a forward auction of new, flexible-use licenses suitable for providing mobile broadband services. The reverse auction incorporates a repacking process to reorganize the broadcast television bands so that the television stations that remain on the air after the transition will occupy a smaller portion of the ultra-high frequency band thereby clearing contiguous spectrum that will be repurposed as the 600 MHz