

CLIENT ALERT

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COPYRIGHT OFFICE RESPONSE TO THE COVID-19 PANDEMIC

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KEY TAKEAWAYS

The CARES Act provides the Copyright Office with temporary authority to extend certain filing deadlines and procedural requirements in light of the COVID-19 pandemic. In conjunction with Section 710 of the Copyright Act, added by the CARES Act, the Copyright Office is authorized to “toll, waive, adjust, or modify any timing provision . . . or procedural provision” concerning the Copyright Act if the Register of Copyrights determines that a national emergency declared by the President under the National Emergencies Act “generally disrupts or suspends the ordinary functioning of the copyright system.”

As a general matter, an applicant’s ability to obtain statutory damages and attorney fees is enhanced if it files for registration within three months of a work’s first publication. Under Section 710 of the Copyright Act, the Acting Register has extended this deadline in the limited circumstances detailed below.

The Acting Register also made changes for serving and recording notices of termination, to the extent the parties are negatively impacted and are unable to comply due to the COVID-19 emergency.

The Copyright Office expanded its capabilities to receive electronic submissions for certain services. Namely, for applicants who are unable to send physical mail during the national emergency, the Copyright Office will accept submissions by email for the following services: filing notices of termination for recordation, requests for reconsideration of refusals to register, and requests for removal of personally identifiable information from the public record.

If necessary, the Copyright Office will also consider additional appropriate modifications as it becomes aware of sufficient disruption to the copyright system caused by the COVID-19 pandemic.

SUMMARY

In summary, the U.S. Copyright Office has provided the following accommodations:

- Extended the three-month window following first publication of a work for applicants to apply to register their work for statutory damages and attorney’s fees purposes, as follows:
 - If an applicant files an application electronically but is unable to submit a required physical deposit, the period to submit the physical deposit will be extended until thirty days after the date the Acting Register issues a public announcement that the disruption has ended.
 - If an applicant is unable to submit an application in either electronic or physical form, the normally applicable three-month application window will be tolled between March 13, 2020, and the date that the Acting Register announces that the disruption has ended. (For example, if a work was first published on February 13, 2020, one month before the March 13 tolling period began, the applicant would have

two months following the end of the disruption to submit the application.)

- To qualify for either deadline adjustment, an applicant must submit a statement certifying under penalty of perjury that they would have met the deadline but for the national emergency and specifying the reasons for their inability to file (e.g., to justify absence of a physical deposit, being subject to a stay-at-home order or being unable to access physical materials due to closure of a workplace; or to justify inability to file electronically or physically, having no access to a computer and/or internet or to physical materials necessary to the application).
- These timing adjustments do not apply to applications that can be submitted entirely online (e.g., no physical deposit required and applicant has access to a computer and/or the internet)
- Provided timing and electronic submission accommodations for persons who are prevented from serving or recording notices of termination within statutorily required periods.
- The Register of Copyrights has the authority to make changes and provide extensions through December 31, 2021.

Dickinson Wright’s attorneys have considerable experience in assisting companies and individuals in navigating the Copyright Office procedures and protecting their intellectual property. The firm remains committed to helping our clients navigate this unprecedented time and remains fully available to provide any assistance that may be required. Copyright owners who have been negatively affected and have experienced barriers in their ability to fully participate in the copyright system are encouraged to consult with one of Dickinson Wright’s attorneys experienced in copyright matters.

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