

§ 205.13

or complaint to the General Counsel of the Copyright Office.

§ 205.13 Complaints served on the Register of Copyrights 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 sending such documents by registered or certified mail to the General Counsel of the Copyright Office, GC/I&R, P.O. Box 70400, Washington, DC 20024-0400, or delivery by hand addressed to the General Counsel of the Copyright Office and delivered to the Copyright Information Section, U.S. Copyright Office, Library of Congress, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC. The notice must be in the form of a letter that is clearly identified as a 411(a) notice. Both the letter and the envelope should state: "Section 411(a) Notice to the Register of Copyrights." In compliance with Fed. R. Civ. P. Sec. 4(i), a notice of the institution of the action and a copy of the complaint must also be served on both the United States Attorney for the district in which the action is brought and the United States Department of Justice, directed to the Attorney General, Attn: Director of Intellectual Property Staff, Civil Division, Department of Justice, Washington, DC 20530.

[69 FR 39334, June 30, 2004, as amended at 73 FR 37840, July 2, 2008]

Subpart C—Testimony By Employees and Production of Documents in Legal Proceedings in Which the Office Is Not a Party

§ 205.21 Scope and purpose.

(a) This subpart prescribes policies and procedures of the Copyright Office governing testimony, in legal proceedings in which the Office is not a party, by Office employees in their official capacities and the production of Office documents for use in legal pro-

37 CFR Ch. II (7–1–12 Edition)

ceedings pursuant to a demand, request, subpoena or order.

(b) The purpose of this subpart is:

(1) To conserve the time of Office employees for conducting official business;

(2) To minimize the possibility of involving the Office in the matters of private parties or other issues which are not related to the mission of the Office;

(3) To prevent the public from confusing personal opinions of Office employees with Office policy;

(4) To avoid spending the time and money of the United States for private purposes;

(5) To preserve the integrity of the administrative process, minimize disruption of the decision-making process, and prevent interference with the Office's administrative functions.

(c) An employee of the Office may not voluntarily appear as a witness or voluntarily testify in a legal proceeding relating to his or her official capacity without proper authorization under this subpart.

(d) This subpart does not apply to any legal proceeding in which:

(1) An employee is to testify regarding facts or events that are unrelated to official business; or

(2) A former employee is asked to testify as an expert on a matter in which that employee did not personally participate while at the Office so long as the former employee testifies concerning his or her personal opinion and does not purport to speak for or on behalf of the Copyright Office.

§ 205.22 Production of documents and testimony.

(a) Generally, all documents and material submitted to the Copyright Office as part of an application to register a claim to copyright are available for public inspection and copying. It is possible, therefore, to obtain those materials without use of a legal process. Anyone seeking such documents must contact the Records Research and Certification Section of the Office. 37 CFR 201.2(b)(1). Certified copies of public documents and public records are self-authenticating. FED. R. EVID. 902 and 1005; *see also*, FED. R. CIV. p. 44(a)(1). In certain specified circumstances, information contained in the in-process

files may be obtained by complying with the procedures of 37 CFR 201.2(b)(3). Correspondence between a copyright claimant or his or her agent and the Copyright Office in a completed registration, recordation, or refusal to register is also available for public inspection. Section 201.2(d) of this chapter prescribes the method for requesting copies of copyright registration records. An attorney engaged in actual or prospective litigation who submits a court order or a completed Litigation Statement may obtain a copy of the deposit if his or her request is found to comply with the requirements set out in 37 CFR 201.2(d)(2). The fees associated with various document requests, searches, copies, and expedited handling are listed in 37 CFR 201.3. Other publications containing Copyright Office procedures and practices are available to the public without charge from the Copyright Office or its Web site: <http://www.copyright.gov>. The Office website also allows online searching of copyright registration information and information pertaining to documents recorded with the Copyright Office beginning January 1, 1978. Pre-1978 copyright registration information and document recordation information is available to the public in the Copyright Office during regular business hours. If the information sought to be obtained from the Office is not available through these Office services, demands and subpoenas for testimony or documents may be served as follows:

(1) *Demands for testimony or documents.* All demands, requests, subpoenas or orders for production of documents or testimony in a legal proceeding directed to the Copyright Office, the Register of Copyrights or any other Copyright Office employee in his or her official capacity must be in writing and should be served on the General Counsel of the Copyright Office as indicated in §205.2 of this part and in accordance with the Federal Rules of Civil or Criminal Procedure.

(2) *Affidavits.* Except when the Copyright Office is a party to the legal proceeding, every demand, request or subpoena shall be accompanied by an affidavit or declaration under penalty of perjury pursuant to 28 U.S.C. 1746. Such

affidavit or declaration shall contain a written statement setting forth the title of the legal proceeding; the forum; the requesting party's interest in the legal proceeding; the reasons for the demand, request, or subpoena; a showing that the desired testimony or document is not reasonably available from any published or other written source, (e.g., 37 CFR, Chapter II; Compendium II, Compendium of Copyright Office Practices; other written practices of the Office; circulars; the Copyright Office website) and is not available by other established procedure, e.g., 37 CFR 201.2, 201.3. If testimony is requested in the affidavit or declaration, it shall include the intended use of the testimony, a detailed summary of the testimony desired, and a showing that no document could be provided and used in lieu of the requested testimony. The purpose of these requirements is to permit the Copyright General Counsel to make an informed decision as to whether testimony or production of a document should be authorized. The decision by the General Counsel will be based on consideration of the purposes set forth in §205.21(b) of this part, on the evaluation of the requesting party's need for the testimony and any other factor warranted by the circumstances. Typically, when the information requested is available through other existing Office procedures or materials, the General Counsel will not authorize production of documents or testimony.

(b) No Copyright Office employee shall give testimony concerning the official business of the Office or produce any document in a legal proceeding other than those made available by the Records Research and Certification Section under existing regulations without the prior authorization of the General Counsel. Without prior approval from the General Counsel, no Office employee shall answer inquiries from a person not employed by the Library of Congress or the Department of Justice regarding testimony or documents in connection with a demand, subpoena or order. All inquiries involving demands, subpoenas, or orders shall be directed to the Copyright General Counsel.

§ 205.23

(c) Any Office employee who receives a demand, request, subpoena or order for testimony or the production of documents in a legal proceeding shall immediately notify the Copyright Office General Counsel at the phone number indicated in §205.2 of this part and shall immediately forward the demand to the Copyright General Counsel.

(d) The General Counsel may consult or negotiate with an attorney for a party or the party, if not represented by an attorney, to refine or limit a demand, request or subpoena to address interests or concerns of the Office. Failure of the attorney or party to cooperate in good faith under this part may serve as the basis for the General Counsel to deny authorization for the testimony or production of documents sought in the demand.

(e) A determination under this part regarding authorization to respond to a demand is not an assertion or waiver of privilege, lack of relevance, technical deficiency or any other ground for non-compliance. The Copyright Office reserves the right to oppose any demand on any appropriate legal ground independent of any determination under this part, including but not limited to, sovereign immunity, preemption, privilege, lack of relevance, or technical deficiency.

(f) *Office procedures when an employee receives a demand or subpoena:*

(1) If the General Counsel has not acted by the return date, the employee must appear at the time and place set forth in the subpoena (unless otherwise advised by the General Counsel) and inform the court (or other legal authority) that the demand has been referred for the prompt consideration of the General Counsel and shall request the court (or other legal authority) to stay the demand pending receipt of the requested instructions.

(2) If the General Counsel makes a determination not to authorize testimony or the production of documents, but the subpoena is not withdrawn or modified and Department of Justice representation cannot be arranged, the employee should appear at the time and place set forth in the subpoena unless advised otherwise by the General Counsel. If legal counsel cannot appear on behalf of the employee, the em-

37 CFR Ch. II (7-1-12 Edition)

ployee should produce a copy of these rules and state that the General Counsel has advised the employee not to provide the requested testimony or to produce the requested document. If a court (or other legal authority) rules that the demand in the subpoena must be complied with, the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

[69 FR 39334, June 30, 2004, as amended at 73 FR 37840, July 2, 2008]

§ 205.23 Scope of testimony.

(a)(1) If a Copyright Office employee is authorized to give testimony in a legal proceeding, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the Office employee. An Office employee is prohibited from giving expert testimony, or opinion, answering hypothetical or speculative questions, or giving testimony with respect to subject matter which is privileged. If an Office employee is authorized to testify in connection with his or her involvement or assistance in a proceeding or matter before the Office, that employee is further prohibited from giving testimony in response to an inquiry about the bases, reasons, mental processes, analyses, or conclusions of that employee in the performance of his or her official functions.

(2) The General Counsel may authorize an employee to appear and give expert testimony or opinion testimony upon the showing, pursuant to §205.3 of this part, that exceptional circumstances warrant such testimony and that the anticipated testimony will not be adverse to the interest of the Copyright Office or the United States.

(b) If an Office employee is authorized to testify, the employee will generally be prohibited from providing testimony in response to questions which seek, for example:

(1) To elicit information about the employee's:

(i) Qualifications to examine or otherwise consider a particular copyright application.

(ii) Usual practice or whether the employee followed a procedure set out in