
ADMINISTRATIVE DEVELOPMENTS

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U.S. Copyright Office Issues Notice of Proposed Rulemaking in the Ninth Triennial Proceeding Under Section 1201. The Copyright Office has published a notice of proposed rulemaking in the ninth triennial proceeding under section 1201 of Title 17. Section 1201 generally makes it unlawful to circumvent technological measures used by copyright owners to prevent unauthorized access to their works. Through the triennial rulemaking, the Librarian of Congress may, upon the recommendation of the Register of Copyrights, temporarily exempt certain classes of works from the statutory prohibition.

The Office again conducted a streamlined procedure to allow members of the public to request renewal of exemptions that were granted in the last proceeding. Based on the renewal petitions received and the lack of sufficient opposition, the Office intends to recommend readoption of all but one existing exemptions.

In addition, the notice outlines seven newly proposed classes of exemption and initiates three rounds of public comment. Comments from those who proposed new exemptions and those supporting adoption of a proposed exemption, as well as comments that neither support nor oppose an exemption, were due December 22, 2023. Comments in opposition are due February 20, 2024. Reply comments from supporters of a proposed exemption and parties who neither support nor oppose an exemption are due March 19, 2024.

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U.S. Copyright Office Issues a Supplemental Notice of Proposed Rulemaking Related to Termination Rights, Royalty Distributions, Ownership Transfers, Disputes, and the Music Modernization Act's Statutory Mechanical Blanket License The U.S. Copyright Office has published a supplemental notice of proposed rulemaking modifying an earlier proposed rule regarding the applicability of the derivative works exception to termination rights under the Copyright Act to the statutory blanket mechanical license established under the Music Modernization Act. The supplemental notice also expands the proposed rule's scope to address matters relevant to identifying the proper payee to whom the mechanical licensing collective must distribute royalties. Initial written comments had to be received no later than October 26, 2023, at 11:59 p.m. eastern time.

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U.S. Copyright Office Issues Interpretive Rule Regarding Fees for Late Royalty Payments Under the Music Modernization Act's Blanket Mechanical License. The Copyright Office has issued an interpretive rule regarding the Music Modernization Act's due date for royalty payments as it relates to late fees under the blanket statutory mechanical license. In February 2023, following requests from interested parties, the Office published a notification of inquiry soliciting public comments regarding when royalty payments should be considered late, thus triggering late fees assessments. Interested parties were in disagreement about whether the Office's regulations governing the reporting by digital music providers under the Music Modernization Act's blanket license affected the Act's due date provisions.

Having carefully considered the statutory text, legislative history, and public comments, the Office concluded that the statute's due date provisions are unambiguous. The Office is not issuing regulations on this topic and is terminating its related notification of inquiry.

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U.S. Copyright Office Issues Notice of Proposed Rulemaking Regarding Access to Electronic Deposits. The Copyright Office has issued a notice of proposed rulemaking to update its regulations regarding electronic deposits of published works submitted to the Office eligible for selection by the Library of Congress for addition to its collections. The proposed rule expands the categories of electronic deposits covered by current regulations with the same limitations on access as currently in place. The proposed changes are part of ongoing steps by the Library and the Office to encourage the submission of works in electronic form and reduce the need for copyright owners to deposit physical copies.

The notice of proposed rulemaking and instructions on how to submit comments are available *here*. Comments had to be received no later than October 2, 2023, at 11:59 p.m. eastern time. Reply comments were due by 11:59 p.m. eastern time on October 16, 2023.

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Copyright Office Issues Notice of Inquiry on Copyright and Artificial Intelligence. Today, the U.S. Copyright Office issued a notice of inquiry (NOI) in the *Federal Register* on copyright and artificial intelligence (AI). The Office is undertaking a study of the copyright law and policy issues raised by generative AI and is assessing whether legislative or regulatory steps are warranted. The Office will use the record it assembles to advise

Congress; inform its regulatory work; and offer information and resources to the public, courts, and other government entities considering these issues.

The NOI seeks factual information and views on a number of copyright issues raised by recent advances in generative AI. These issues include the use of copyrighted works to train AI models, the appropriate levels of transparency and disclosure with respect to the use of copyrighted works, the legal status of AI-generated outputs, and the appropriate treatment of AI-generated outputs that mimic personal attributes of human artists.

The NOI is an integral next step for the Office's AI Initiative, which was launched in early 2023. So far this year, the Office has held four public listening sessions and two webinars. This NOI builds on the feedback and questions the Office has received so far and seeks public input from the broadest audience to date in the initiative.

"We launched this initiative at the beginning of the year to focus on the increasingly complex issues raised by generative AI. This NOI and the public comments we will receive represent a critical next step," said Shira Perlmutter, Register of Copyrights and Director of the U.S. Copyright Office. "We look forward to continuing to examine these issues of vital importance to the evolution of technology and the future of human creativity."

Initial written comments were due by 11:59 p.m. eastern time on Wednesday, October 18, 2023. Reply comments were due by 11:59 p.m. eastern time on Wednesday, November 15, 2023.

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U.S. Copyright Office Issues Final Rule Regarding Use of *Ex Parte* Communications. The Copyright Office has issued a final rule regarding the use of *ex parte* communications in informal rulemakings. The proposed rule defines *ex parte* communications, instructs the public on how to request an *ex parte* meeting with the Office, sets forth responsibilities of parties after an *ex parte* meeting, and addresses impermissible *ex parte* communications.

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U.S. Copyright Office Issues a Final Rule Related to Copyright Claims Board Procedures, District Court Referrals, and Law Student Representation. The Copyright Office has issued a *final rule* regarding Copyright Claims Board (CCB) procedures governing district court referrals, proof

of service forms, default proceedings, and the appearance of law student representatives before the CCB. This rule finalizes the text of an interim final rule published on December 19, 2022, without change.

The final rule allows the CCB to modify or suspend certain inapplicable or unnecessary procedural rules for claims referred by a district court. The amendments also allow the CCB to accept alternative proof of service forms, clarify the rules governing default proceedings and law student representation, and make minor technical corrections.

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U.S. Copyright Office Issues a Final Rule Regarding Agreement-Based Counterclaims Before the Copyright Claims Board. The Copyright Office issued a final rule regarding the Copyright Claims Board's procedures governing "agreement-based counterclaims." Agreement-based counterclaims are counterclaims based on an agreement pertaining to the same transaction or occurrence that is the subject of a claim of infringement, if the agreement could affect the relief awarded to the claimant.

The final rule contains requirements for asserting or responding to agreement-based counterclaims as well as standard interrogatories and standard requests for the production of documents.

