
ADMINISTRATIVE DEVELOPMENTS

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Copyright Office Issues Final Rule for Initiating Copyright Claims Board Proceedings and Related Procedures. Pursuant to the Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2020 and after soliciting public comments, the U.S. Copyright Office has published a final rule establishing procedures for the initial stages of a Copyright Claims Board (CCB) proceeding.

The rule provides procedures and requirements for the initial stages of a proceeding, including the following topics:

- Filing claims,
- Opting out of proceedings,
- CCB compliance review,
- Service of the notice of proceeding and claim,
- Service and filing of other documents,
- The CCB’s “second notice,” and
- Filing responses and counterclaims.

Among other provisions, the final rule institutes a two-part fee for filing a claim; standardizes requirements for the claim, response, and counterclaim; and requires certifying parties to affirm that they have confirmed the accuracy of information in the claim.

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Copyright Office Issues Final Rule for Participation of Law Student Representatives and Business Entity Representatives before the CCB. The U.S. Copyright Office has published a final rule addressing representation of parties by qualified law students and representation of business entities by authorized individuals in proceedings before the Copyright Claims Board (CCB).

The final rule expands the scope of law student participation by providing law clinics more discretion regarding law student qualifications. In addition, law students may participate before the CCB through law school clinics and through *pro bono* legal services organizations connected to the student’s law school.

The final rule also adopts regulations permitting in-house attorneys, fiduciaries, and specifically authorized employees to represent business entities before the CCB. The final rule clarifies that a business entity’s

representative may submit a single valid certification that will remain effective throughout a proceeding.

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Copyright Office Issues Final Rule Clarification for Small Claims Expedited Registration Procedures and Final Rule Correction for Initiation of Proceedings and Related Procedures. The U.S. Copyright Office has published a technical correction regarding the Copyright Claims Board's (CCB's) designated service agent directory filing fee.

The U.S. Copyright Office also published a clarification and amendment of the regulations governing the Office's procedures regarding copyright infringement claims before the CCB that involve unregistered works. The rule amends the procedures for the Office to make a decision, on an expedited basis, to issue or deny copyright registration for an unregistered work at issue in a CCB proceeding (an "expedited registration"). The amended rule allows a claimant before the CCB to request the CCB's permission to obtain an expedited registration before the proceeding becomes active.

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U.S. Copyright Office Issues a Supplemental Interim Rule Related to the Music Modernization Act Reports of Usage and Payment. Pursuant to Title I of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act, the Copyright Office has issued a supplemental interim rule updating certain reporting requirements for digital music providers. The updates relate to reports of adjustment and annual reports of usage that digital music providers submit to the Mechanical Licensing Collective (MLC).

The supplemental interim rule establishes a process and time frame for digital music providers to receive response files and invoices for reports of adjustment and annual reports of usage from the MLC, as they do for monthly reports of usage under the current rule. The rule also makes related changes to certain annual reporting requirements and clarifies the due date for royalty payments related to annual reports of usage and reports of adjustment.

In light of concerns raised by the Digital Licensee Coordinator relating to digital music providers' challenges complying with the existing regulations and the imminence of reporting deadlines, the Copyright Office has determined that there is a need to make this interim rule effective immediately, while soliciting public comments on whether it should further modify these specific reporting requirements going forward.

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Copyright Office Releases Report on Women in the Copyright System. Today, the U.S. Copyright Office is releasing a report, *Women in the Copyright System: An Analysis of Women Authors in Copyright Registrations from 1978 to 2020*. The report draws on work by Professor Joel Waldfogel, the Copyright Office's 2021 Kaminstein Scholar in Residence. Professor Waldfogel recently completed a new assessment of women's authorship in copyright registrations between 1978 and 2020, as well as women's role in relevant copyright-based creative industries.

The report reveals that the share of registrations listing women authors has risen over time, with women representing 27.9 percent of authors of works registered in 1978 and 38.5 percent of authors of works registered in 2020. Their level of representation has increased across the board, but with significant variations among different categories of works, ranging in most cases from 20.4 percent to near parity. It is notable, however, that in nearly every category, women make up a smaller share of copyright registrants than they do of the participants in corresponding occupations.

"The Office is pleased to share this analysis of forty-two years of data on women authors and copyright registration, as well as the reference data set," said Register of Copyrights Shira Perlmutter. "The trends revealed are encouraging, with women making considerable progress in utilizing the copyright system. At the same time, there is work to be done in reaching gender parity in most areas. As part of the Office's commitment to 'copyright for all,' we look forward to continuing to collaborate with colleagues and stakeholders to develop programs responsive to this research, and further empower women to benefit from their creativity."

In connection with the release of the *Women in the Copyright System* report, the Office is providing a reference data set in XML format. The data set contains information from roughly 20 million copyright registration records from January 1, 1978, to July 8, 2021.

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U.S. Copyright Office Publishes Report on Copyright Protections for Press Publishers. On June 30, 2022, the U.S. Copyright Office published a report titled *Copyright Protections for Press Publishers*. At the request of Senators Leahy, Tillis, Cornyn, Hirono, Klobuchar, and Coons, the Office undertook a study to assess press publishers' existing protections under copyright law and to evaluate the viability of adding new protections, such as those the European Union has recently adopted, that are intended to

strengthen publishers' ability to demand payment for third-party online uses of their news content, specifically from large news aggregators.

In the report, the Office surveys the relationship between press publishers and news aggregators, as well as the current scope of copyright protections, limitations, and exceptions that apply to this relationship. The report also discusses recent initiatives in foreign countries that are designed to enable press publishers to benefit financially from online news aggregation by third parties and consideration of similar legislation in the United States.

The report concludes that, while adequate funding for journalism may currently be at risk, press publishers have significant protections under existing law, and the challenges of funding journalism in the internet era do not appear to be copyright-specific. The Office does not believe it has been established that any shortcomings in copyright law pose an obstacle to incentivizing journalism or that new copyright-like protections would solve the problems that press publishers face. Given the available evidence, the Copyright Office does not recommend adopting a new ancillary copyright to bolster press publishers' protections.

COPYRIGHT ROYALTY BOARD

Copyright Royalty Board 37 CFR Part 370 [Docket No. 20-CRB-0007-RM] Regulation Concerning Proxy Distributions for Unmatched Royalties Deposited During 2010-2018, 87 Fed Reg. 30,000-01 The Copyright Royalty Judges (Judges) are amending the applicable regulations to authorize the use of proxy reports of use to facilitate distribution of royalties collected for periods prior to January 1, 2019, for the licenses to make ephemeral reproduction and perform publicly sound recordings by means of digital audio transmissions. Proxy reports of use will be used for those services for which no reports of use were submitted or for which the reports of use were unusable.

COPYRIGHT ROYALTY BOARD

Copyright Royalty Board 37 CFR Part 360 [Docket No. 17-CRB-0012-RM] Procedural Regulations for the Copyright Royalty Board Regarding Electronic Filing of Claims, 87 Fed. Reg. 35,898-99. On July 8, 2019, the Copyright Royalty Judges revised their regulations to move several sections from one part to a new part. At the time, the Judges inadvertently failed to revise other regulations that include cross-references to the old part. They are now revising regulations regarding the filing of claims to reflect the change.

COPYRIGHT ROYALTY BOARD

Copyright Royalty Board 37 CFR Part 385 [Docket No. 21-CRB-0001-PR (2023-2027)], 67 Fed. Reg. 33,093-94. Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV). The Copyright Royalty Judges publish for comment proposed regulations that set rates and terms applicable during the period beginning January 1, 2023, and ending December 31, 2027, for the section 115 statutory license for making and distributing certain configurations of phonorecords of nondramatic musical works.

COPYRIGHT ROYALTY BOARD

Copyright Royalty Board 37 CFR Part 385 [Docket No. 21-CRB-0001-PR (2023-2027)] Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV, 87 Fed. Reg. 18,342-49. . The Copyright Royalty Judges withdraw a proposed rule that would have set continued, unaltered rates and terms for subpart B configurations subject to the statutory license to use nondramatic musical works to make and distribute phonorecords of those works (the Mechanical License).