

Copyrights & Coronavirus: The Copyright Register Steps Into the Breach

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by J. Michael Keyes



In the midst of our national pandemic, the Acting Register of Copyrights has issued a notice related to the timing of registration of copyrights. Here's an explanation of what you need to know and why this may be an important development for your company or clients.

Section 710 of the Copyright Act authorizes the Register, on a temporary basis, to “toll, waive, adjust, or modify any timing provision . . . or procedural provision” in the Copyright Act if the Register determines that a national

emergency declared by the President “generally disrupts or suspends the ordinary functioning of the copyright system . . . or any component thereof.” In light of this statutory authority, the acting Register, Ms. Maria Strong, issued an order on March 31 that affects timing requirements for registration of copyrights.

Under section 412 of the Copyright Act, a copyright owner generally is eligible to be awarded statutory damages in an infringement action only if the work is registered prior to the infringement or within three months of the work's first publication. The effective date of registration is the date when the Copyright Office receives the application, deposit, and fee. Due to myriad travel restrictions and “stay at home” orders, the Copyright Office noted that some copyright owners of published works may be prevented from completing and submitting copyright applications in a timely manner due to lack of access to physical documents, including deposit copies of copyrighted works, or the inability to deliver materials to a mail carrier. Consequently, the Register issued the following notice that can be accessed [here](#):

Related People

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Related Capabilities

- Trademark, Copyright + Advertising
- Intellectual Property Litigation

- **For copyright applications that can be submitted entirely in electronic form** (i.e., those that do not require submission of a physical deposit), the timing provisions are unchanged.
- **If an applicant can submit an application electronically but is unable to submit a required physical deposit**, the applicant should upload, together with the application, a declaration or similar statement certifying, under penalty of perjury, that the applicant is unable to submit the physical deposit and would have done so but for the national emergency, and setting forth satisfactory evidence in support. If this requirement is met, and the three-month window for registration after the date of first publication was open as of March 13, 2020, the window will be extended such that the applicant will be eligible for the remedies under section 412, provided that the applicant submits the required deposit within thirty days after the date the disruption has ended, as stated in a public announcement by the Acting Register. Examples of satisfactory evidence include, but are not limited to:
 - a statement that the applicant is subject to a stay-at-home order issued by a state or local government
 - a statement that the applicant is unable to access required physical materials due to closure of the business where they are located
- **If an applicant is unable to submit an application electronically or physically during the disruption**, the applicant may submit an application after the Acting Register has announced the end of the disruption, and include a declaration or similar statement certifying, under penalty of perjury, that the applicant was unable to submit an application electronically or physically and would have done so but for the national emergency, and providing satisfactory evidence in support. If this requirement is met, the three-month window under section 412 will be tolled between March 13, 2020, and the date that the disruption has ended. For example, if a work was first published on February 13, 2020, the applicant would have two months following the end of the disruption to register the work in order to be eligible for the remedies under section 412. Satisfactory evidence for purposes of this option includes, but is not limited to:
 - a statement that the applicant did not have access to a computer and/or the internet
 - a statement that the applicant was prevented from accessing or sending required physical materials for reasons such as those noted above

Where the Acting Register finds satisfactory evidence that the applicant was affected by the national emergency, the Copyright Office will annotate the registration record to reflect that determination.

The Register also issued an order regarding serving and recording notices of termination that can also be reviewed [here](#).

Finally, the Register invited members of the public to contact the Copyright Office directly about other disruptions that may inhibit the public's "ability to participate in the copyright system." Should you be confronted with such a situation, you can contact the Copyright Office through its website copyright.gov/help/ or by phone at 202-707-3000.

We are wishing all of our readers the best during these difficult times!