

Copyright Filing Deadlines Further Extended Under CARES Act

by Andrew L. Goldstein

A FREEBORN & PETERS LLP CLIENT ALERT

As an update to prior Freeborn alerts (available [here](#) and [here](#)), the United States Copyright Office announced on January 7, 2021 that, as discussed below, it is extending certain timing adjustments due to the pandemic through March 9, 2021.

Under the Copyright Act, a copyright owner generally is eligible to recover attorney's fees and costs and statutory damages ("Remedies") 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.



To mitigate the effects of the disruptions caused by the pandemic, the Copyright Office is temporarily adjusting its timing provisions as follows:

- **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 can provide a declaration or similar statement that the applicant is unable to submit the physical deposit and would have done so but for the national emergency and also providing "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, or opened after that date, the window will be extended such that the applicant will be eligible for the Remedies if the applicant submits the required deposit within thirty days after the date the disruption has ended, as stated by the Copyright Office. 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; or
 - 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 Copyright Office has announced the end of the disruption with a declaration or similar statement certifying 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 will be suspended 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. 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; or
 - a statement that the applicant was prevented from accessing or sending required physical materials for reasons such as those noted above.

The new timing adjustments also apply to notices of termination under the Copyright Act. The Copyright Act allows individual authors to terminate assignments or transfers of copyrights during the period of 35 to 40 years after the transfer. The author must provide proper notice of termination which must be recorded with the Copyright Office.

The Copyright Office will extend the period required to give the notice of termination and to record during the period of disruption caused by the pandemic if the author serves a notice of termination or records it within thirty days after the date the Copyright Office announces that the disruption has ended and the notice/recordation of termination is accompanied by a declaration or similar statement certifying, under penalty of perjury, that but for the national emergency, the author would have been able to serve the notice.

Please note that the Copyright Office's policies may evolve in the coming weeks, and Freeborn & Peters LLP is continuously monitoring the coronavirus implications regarding intellectual property rights and regulations. If you have any questions, please contact Andrew Goldstein (agoldstein@freeborn.com; (312) 360-6438) or another member of Freeborn & Peters LLP's Intellectual Property Practice Group, or visit [Freeborn's COVID-19 webpage](#).

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Andrew focuses his practice in the area of Intellectual Property and Information Technology. He has extensive experience in the areas of intellectual property law, including trademark, copyright, trade dress; internet, website, cloud computing, technology, outsourcing, IoT and computer law in general; advertising, marketing, and promotion law; and entertainment law, including video production, theater and dance-related matters.



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