



The Register of Copyrights of the United States of America
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

November 9, 2020

The Honorable Michael R. Pence
Vice President of the United States
President of the Senate
United States Senate
Washington, D.C. 20510

Dear Mr. President:

Pursuant to section 19011(a) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, I am writing to advise you that the U.S. Copyright Office has determined to extend the adjustments to certain timing provisions of the Copyright Act for persons affected by the COVID-19 pandemic. Section 19011(a), codified at section 710 of the Copyright Act, authorizes the Register of Copyrights to “toll, waive, adjust, or modify any timing provision . . . or procedural provision” in the Copyright Act if she determines that a national emergency declared by the President “generally disrupts or suspends the ordinary functioning of the copyright system . . . or any component thereof.” Under that authority, the Copyright Office has adjusted certain timing provisions from the date of the declaration of the COVID-19 national emergency by the President on March 13, 2020. As required by section 710(c), on July 10, 2020, the Acting Register advised you that the Office would extend these adjustments for a cumulative total of longer than 120 days in light of the ongoing disruptions to the copyright system caused by the national emergency.¹ For the reasons discussed below, the Office has determined that these disruptions remain in effect, and therefore is extending the timing adjustments for an additional sixty days, through January 8, 2021. The Office will consider whether there is a need for a further sixty-day extension at that time.

As discussed in detail in the July 10 letter, the timing adjustments relate to three aspects of the copyright laws for which the Copyright Office has become aware that parties are being prevented from meeting the relevant deadlines due to the pandemic.² First, for registration

¹ Letter from Maria Strong, Acting Register of Copyrights & Dir., U.S. Copyright Office, to Michael R. Pence, President of the Senate (July 10, 2020) (“July 10 Notification”), <https://www.copyright.gov/laws/hearings/notification-to-senate-regarding-extension-of-cares-act-adjustment.pdf>; *see also* Letter from Maria Strong, Acting Register of Copyrights & Dir., U.S. Copyright Office, to Nancy Pelosi, Speaker of the House of Representatives (July 10, 2020), <https://www.copyright.gov/laws/hearings/notification-to-house-regarding-extension-of-cares-act-adjustment.pdf>.

² In addition to these timing adjustments listed below, the Office previously tolled, for up to 120 days (*i.e.*, until April 15, 2021), the determination of the Board in the Web V rate determination proceedings. *See* July 10 Notification at 3; Order Setting Virtual Hearing and Addressing Other Hearing-Related Matters, *In re Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies to Facilitate Performances (Web V)*, Docket No. 19–CRB–0005–WR (2021–2025) (CRB June 25, 2020). No further extension in that proceeding is being adopted at this time.

applicants affected by the national emergency, the Office has tolled the three-month time period under section 412 within which a copyright owner must register his or her work following its first publication in order to be eligible for certain statutory remedies in an infringement action.³ Second, the Office has tolled certain statutory timing requirements for the service or recording of notices of termination, whereby authors may seek to recapture copyright interests that were transferred to others.⁴ Third, in limited circumstances related to the required delivery of paper statements, the Office has tolled certain timing requirements for the service of Notices of Intention and delivery of Statements of Account relating to the use of compulsory licenses for the making and distribution of phonorecords under section 115.⁵ For each of these adjustments, the Office has established specific eligibility criteria, including requiring parties to provide a declaration and satisfactory evidence that they would have met the statutory timing requirements but for the national emergency. Further details on each of these adjustments and their relevant background and rationale, as well as other actions taken by the Copyright Office relating to COVID-19, may be found at <https://www.copyright.gov/coronavirus/>.

The Copyright Office has continued to closely monitor the effect of the national emergency on the functioning of the copyright system. Based on current guidance regarding the ongoing response to the pandemic, as well as information received from copyright stakeholders, the Office has determined that the disruptions described in our July 10 letter remain in effect, and therefore the timing adjustments should continue beyond November 9. The national emergency declaration by the President remains in force, and according to a statement by witnesses appearing before the Senate Committee on Health, Education, Labor and Pensions on September 23, “it remains unclear how long the pandemic will last.”⁶ The Centers for Disease Control and Prevention and the White House continue to recommend that businesses permit employees to work from home where possible to promote social distancing,⁷ and the extent to which

³ See July 10 Notification at 1.

⁴ See 17 U.S.C. §§ 203(a)(4)(A), 304(c)(4)(A); July 10 Notification at 1–2.

⁵ See July 10 Notification at 2.

⁶ *COVID-19: An Update on the Federal Response*, Senate Committee on Health, Education, Labor and Pensions, at 11, 116th Cong., 2d sess. (Sept. 23, 2020), available at <https://www.help.senate.gov/imo/media/doc/HHS%20testimony%20COVID%20Senate%20HELP%2009%2023%2020204.pdf> (statement of Anthony S. Fauci, M.D., Director, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Robert Redfield, M.D., Director, Centers for Disease Control and Prevention, Admiral Brett P. Giroir, M.D., Assistant Secretary for Health, U.S. Department of Health and Human Services, and Stephen M. Hahn, M.D., Commissioner of Food and Drugs, U.S. Food and Drug Administration) (last visited Nov. 4, 2020). According to the Centers for Disease Control, during the month of October, the seven-day moving average of new COVID-19 cases has increased from just over 43,000 on October 1, to over 79,000 on October 31. *CDC COVID Data Tracker*, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited Nov. 4, 2020).

⁷ See *Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19), May 2020*, <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last visited Nov. 4, 2020); *Prepare your Small Business and Employees for the Effects of COVID-19, April 2020*, <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-small-business.html> (recommending allowing telework where possible) (last visited Nov. 4, 2020); *Opening Up America Again*, <https://www.whitehouse.gov/openingamerica/> (both Phase 1 and Phase 2 guidelines recommend allowing telework wherever possible) (last visited Nov. 4, 2020). See also *Guidance on Preparing Workplaces for COVID-19*, at 9,

businesses have resumed operations continues to vary widely across the country. Thus, in many cases, offices where necessary files are stored may be inaccessible to copyright owners or licensees.

Data compiled by the Office, as well as notification by interested parties, indicates a continuing need for these extensions. To date, at least 255 applicants for registration have included a declaration as referenced above. Moreover, because the timing adjustments permit affected parties to submit materials after the period of disruption is declared to have concluded, it is likely that the Office will receive a significant number of additional submissions at a later date. In addition, the Office has been notified by interested parties of the continued need for adjusted deadlines under section 115. Thus, while the full effect of the modifications will not be known until the disruption has ended, the evidence indicates that a substantial number of copyright stakeholders are relying upon these timing adjustments.

As was the case with previous extensions, the Copyright Office intends to implement further extensions of these provisions in 60-day increments. In the event the Office finds a continuing need for any of these modifications following an additional 120 days, I will provide further notification to Congress, as required by section 19011(a). The Office also will continue to monitor the effect of the national emergency on other aspects of the copyright system and will consider additional appropriate modifications as circumstances warrant.

Thank you for your attention to these matters. If my staff and I may be of further assistance, please do not hesitate to contact me.

Sincerely,



Shira Perlmutter
Register of Copyrights and
Director, United States Copyright Office