



July 10, 2020

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Dear Madam Speaker:

Section 19011(a) of the Coronavirus Aid, Relief, and Economic Security Act, 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.” Pursuant to that authority, the Copyright Office has adjusted the timing provisions related to certain legal provisions beginning from the date of the declaration of the COVID-19 national emergency by the President on March 13, 2020, through July 10, 2020. In accordance with the obligation under section 710(c) to notify Congress of any action that results in a provision being modified for a cumulative total of longer than 120 days, I am writing to advise you that the Office has determined to extend these adjustments for up to an additional 120 days, in light of the ongoing disruptions to the copyright system caused by the national emergency.

The timing adjustments currently in effect relate to three aspects of the copyright laws. First, the Office has tolled the 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. Under section 412, a copyright owner generally is eligible to be awarded statutory damages and attorneys’ fees only if the work is registered prior to the infringement or within three months of first publication. To ensure that copyright owners are not excluded from these remedies as a result of the pandemic, the adjustment tolls the three-month window for applicants who demonstrate that they would have submitted an application in a timely manner but for the national emergency.

Second, the Office has tolled certain timing requirements for the service or recording of notices of termination, whereby authors may seek to recapture copyright interests that were transferred to others.<sup>1</sup> The windows for serving these notices are fixed by statute and, if missed, will result in a loss of termination rights. Therefore, the Office has adjusted the timing requirements in a manner similar to the adjustment regarding section 412, providing that a notice will be considered timely served or recorded if the terminating party meets certain requirements,

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<sup>1</sup> See 17 U.S.C. §§ 203(a)(4)(A), 304(c)(4)(A).

including demonstrating that he or she would have met the statutory deadline but for the national emergency.

Third, and in limited circumstances related to delivery of physical statements, the Office has tolled certain timing requirements for the service of Notices of Intention (NOIs) and delivery of Statements of Account (SOAs) relating to the use of compulsory licenses for the making and distribution of phonorecords under section 115.<sup>2</sup> While the Music Modernization Act (MMA) establishes a new, blanket license for digital music providers (DMPs) to be administered by a mechanical licensing collective, this blanket license is not yet available. DMPs and other licensees must continue to comply with section 115's conditions on a song-by-song basis during the current transition period. Under Copyright Office regulations, copyright owners may elect to receive NOIs or SOAs in paper or electronic format, but the default rule is paper delivery. To ensure that licensees may continue to add music to their services, consistent with the intent of the MMA, the Office has adjusted the timing requirements for licensees that are unable to physically deliver these materials during the pandemic.

In each of these areas, the Copyright Office became aware that participants in the copyright system may have been prevented from meeting the relevant deadlines due to the pandemic. For example, restrictions against discretionary travel may have limited copyright owners' ability to access physical copies of their copyrighted works, as required in some instances to register their claims to copyright, and to deliver required physical material to a mail carrier. Similarly, the closure of nonessential businesses has prevented some parties from accessing and/or processing paper documents. In addition, with respect to the section 115 license, the Office understands that a number of copyright owners receive NOIs and SOAs by paper, either because they simply have not opted into electronic delivery, or, for a smaller minority, because they have affirmatively expressed a preference for paper. 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/>.

Since these adjustments were first announced in the spring, the Copyright Office has continued to monitor the situation carefully. The Office has determined that these disruptions to the ordinary functioning of the copyright system remain in effect, and therefore the timing adjustments should continue beyond July 10. The national emergency declaration by the President remains in force. In addition, according to a recent statement by witnesses appearing before the House Energy and Commerce Committee, "COVID-19 activity will likely continue for some time."<sup>3</sup> Although states have begun to allow businesses and government services to

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<sup>2</sup> Although the original adjustment also included a provision for tolling royalty payments under section 115 upon a showing of need, the Office understands that all affected entities have been able to continue to make royalty payments, and therefore the Office is not extending that aspect of the adjustment.

<sup>3</sup> *Hearing on Oversight of the Trump Administration's Response to the COVID-19 Pandemic*, House Committee on Energy and Commerce, at 10, 116<sup>th</sup> Cong., 2d sess. (June 23, 2020), available at <https://docs.house.gov/meetings/IF/IF00/20200623/110829/HHRG-116-IF00-20200623-SD003.pdf> (statement of Robert R. Redfield, M.D., Director, Centers for Disease Control and Prevention, Anthony S. Fauci, M.D., Director, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 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).


resume operation, the extent to which those businesses and services may resume varies widely across the country. The Centers for Disease Control and Prevention and the White House recommend that businesses permit employees to work from home where possible to promote social distancing.<sup>4</sup> Thus, in many cases, corporate offices and other offices where files are stored may continue to be inaccessible. Indeed, the Office has received reports from copyright stakeholders of the continued need for these adjustments, such as requests from copyright holders seeking to make use of the extended filing period available under section 412, or a notification that certain licensees remain unable to comply with requirements to deliver certain section 115 notices and statements by physical mail due to office closures.

To allow for review of the evolving responses to the COVID-19 emergency, the Copyright Office anticipates that these further extensions will be implemented 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. 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.

In addition to these extensions, in response to a request from the Copyright Royalty Board, the Office has determined that it should toll, for up to 120 days, the determination of the Board in the Web V rate determination proceedings.<sup>5</sup> The Board made this request due to the hearing delays necessitated by the COVID-19 emergency<sup>6</sup> and the Office concurs that this extension is appropriate.

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,



Maria Strong  
Acting Register of Copyrights and Director  
United States Copyright Office

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<sup>4</sup> 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 July 10, 2020); *Opening Up America Again*, <https://www.whitehouse.gov/openingamerica/> (both Phase 1 and Phase 2 guidelines recommend allowing telework wherever possible). See also *Guidance on Preparing Workplaces for COVID-19*, at 9, available at <https://www.osha.gov/Publications/OSHA3990.pdf> (suggesting telecommuting as a means of promoting social distancing) (last visited July 10, 2020).

<sup>5</sup> *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).

<sup>6</sup> See *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).