Prohibition Against Installing Certain Crankshafts

(i) After the effective date of this AD, do not install any crankshaft that has a SN listed in Table 4 of Lycoming MSB No. 566, dated July 11, 2005, into any engine.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, New York Aircraft Certification Office, has the authority to approve AMOCs for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) None.

Issued in Burlington, Massachusetts, on July 19, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–14575 Filed 7–20–05; 11:52 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 2005–9]

Preregistration of Certain Unpublished Copyright Claims

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of Proposed Rulemaking

SUMMARY: Pursuant to the Artists' Rights and Theft Prevention Act of 2005, the Copyright Office is proposing regulations for the preregistration of unpublished works that are being prepared for commercial distribution in classes of works that the Register of Copyrights determines have had a history of pre–release infringement.

DATES: Comments are due no later than August 22, 2005. Reply comments are due no later than September 7, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of any comment should be brought to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If hand delivered by a commercial courier, an original and five copies of any comment must be delivered to the Congressional Courier Acceptance Site located at Second and D Streets, NE., Washington, DC, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington DC. If sent by mail, an original and five copies of any comment should be addressed to: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024–0400. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Charlotte Douglass, Principal Legal Advisor, P.O. Box 70400, Washington, DC 20024–0400, Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

This Notice of Proposed Rulemaking implements Section 104 of the Family Entertainment and Copyright Act, enacted April 27, 2005. Among other things, this new law permits owners of works in certain classes that have experienced a history of infringement prior to commercial distribution to preregister a work prior to its publication during the period when the work is being prepared for commercial distribution.

On April 27, 2005, President Bush signed the Family Entertainment and Copyright Act (''FECA''). Pub. L. No. 109–9, 119 Stat. 218. Title I of FECA is the Artists' Rights and Theft Prevention Act of 2005, or ''ART Act,'' which among other things addresses copyright infringement of works committed prior to their authorized commercial distribution, or pre–release infringement. It includes, in section 103, new criminal penalties for certain acts of pre–release infringement. Section 104 directs the Copyright Office to conduct a rulemaking proceeding to establish a procedure for preregistration of unpublished works that are being prepared for commercial distribution. The regulations are to be in place not later than 180 days after enactment of the ART Act, i.e., by October 24, 2005. This notice proposes those regulations and seeks public comment prior to the announcement of final regulations.

Sections 103 and 104 of the ART Act were enacted in response to the increasingly serious problem of pre–release infringement. As Senator Hatch, the sponsor of the legislation, stated upon introducing the ART Act, ''Obviously, the increasingly frequent situation of copyrighted works being distributed illegally via the Internet before they are even made available for sale to the public severely undercuts the ability of copyright holders to receive fair and adequate compensation for their works.'' 151 Cong. Rec. S495 (daily ed. Jan. 25, 2005). Senator Cornyn, a cosponsor, explained that the legislation ''focuses on the most egregious form of copyright piracy plaguing the entertainment industry today—the piracy of film, movies, and other copyrighted materials before copyright owners have had the opportunity to market fully their products.'' Id. at S498.

Copyright owners persuaded Congress that the existing rules making copyright registration a prerequisite for suit for infringement of United States works[1] and a prerequisite for awards of attorney's fees and statutory damages are unduly burdensome on plaintiffs seeking relief against pre–release infringement in civil suits for copyright. Because works intended for publication usually are not registered until they are in final form and are being disseminated to the public, most copyright owners' usual registration practices make it difficult to file suit and obtain full relief in cases of pre–release infringement. Accordingly, representatives of record companies and motion picture studios sought amendments to sections 411 and 412 of the Copyright Act that would remove the registration requirement in cases of pre–release infringement. Rather than take such an action that would weaken the incentive to register, Congress chose instead to instruct the Copyright Office to create a process which would permit copyright owners of works that have not yet been published and are being prepared for commercial distribution to preregister those works.

Preregistration is not a substitute for registration, but is a preliminary step prior to a full registration that will take place after the work has been published or infringed.

II. Statutory Provisions

The ART Act amends section 408 of the Copyright Act to add a new subparagraph (f), which directs the Register of Copyrights to allow preregistration for any work that is in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution. A person who has preregistered a work is required under section 408 to follow through with a registration of the work within 3

[1] For the definition of ''United States work,'' see 17 U.S.C. 101. United States works include, among others, works first published in the United States and unpublished works by United States authors.

months after the work has first been published. The ART Act also amends sections 411(a) and 412 to provide that in a copyright infringement lawsuit, preregistration will conditionally satisfy the registration requirements of sections 411(a) and 412, but only if the copyright owner follows through with a registration either within three months after the first publication of the work or one month after the copyright owner has learned of the infringement. Where a preregistered work is not registered within the prescribed time period, a court must dismiss an action for copyright infringement that occurred before or within the first two months after first publication. See 17 U.S.C. 408(f), 411(a) and 412. However, the legislative history explains: ''By its express terms, the prohibition on infringement suits contained in Section 408(f)(4) does not apply to suits concerning infringements commencing later than 2 months after first publication of a copyrighted work that had been preregistered with the Copyright Office. Therefore, notwithstanding a failure to meet the deadlines set forth in Section 408(f)(4)(A) and (B), a copyright owner of a preregistered work can register his or her work under current law and bring infringement actions for infringements occurring more than 2 months after first publication.'' H. R. Rep. 109–33, pt. 1, at 5 (2005).

III. Eligibility for Preregistration

The legislative history offers some guidance on how the Register is to determine what classes of works are eligible for preregistration. ''Section 104 expressly requires the Register of Copyrights to issue regulations to establish a preregistration system for copyrighted works. Since works are generally not formally registered until they are in final form and ready for distribution to the public, civil remedies for the distribution of pre–release works are lacking. This section will give the Register flexibility to determine which classes of works are appropriate for preregistration. The Committee believes that a class of works with only a few instances of infringement prior to authorized commercial distribution does not meet the test of a 'history of infringement' but otherwise leaves the decision to the Register of Copyrights.'' H.R. Rep. No. 109–33, pt. 1, at 4.

Of primary importance, then, is the Register's determination of the boundaries between classes of works that are eligible for preregistration and those that are not. Preregistration is limited to unpublished works being prepared for commercial distribution in a class of works that have already experienced more than a few instances of pre–release infringement.

A work submitted for preregistration must fulfill three conditions: the work must be unpublished; the work must be in the process of being prepared for commercial distribution; and the work must fall within a class of works determined by the Register to have had a history of infringement prior to authorized commercial distribution. These conditions contain terms with special meanings within the purview of copyright law in general, and in one case, within the purview of this preregistration regulation.

A. Unpublished Status

To be eligible for preregistration, a work must be unpublished at the time of its submission to the Copyright Office. Otherwise, the work should be registered in published form and should be deposited with the Copyright Office for the Library of Congress. Publication in the copyright sense means ''the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.'' 17 U.S.C. 101. Others may not be so familiar with the section of the definition which reads ''the offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance or display constitutes publication.'' *Id.* Consequently a work can be published, for example, if it is in existence and has been offered to a group of disc jockeys for purposes of public air play. A work is also published if it has been delivered to a number of distributors for purposes of theatrical exhibition.

B. Work Prepared for Commercial Distribution

The second condition for eligibility of a work for preregistration is that a work must be in the process of being prepared for commercial distribution. Although section 103(a)(3) of the ART Act, governing criminal copyright infringement, provides a definition of ''work being prepared for commercial distribution,'' that definition applies only to that particular subsection of the ART Act and presumably has no weight in determining what is a ''work being prepared for commercial distribution'' for purposes of preregistration. However, the legislative history offers no other guidance. Certainly, to be entitled to preregistration in preparation for civil enforcement, a copyright owner must have taken some steps preparatory to distribution to the public. The question is, how extensive must those steps have been? Is it sufficient that the copyright owner has a subjective intent to distribute the work once it has been finished? If that were all that was required, then arguably all works of authorship would qualify for preregistration; presumably, it is a rare author who does not believe his or her work is destined to reach its audience. Yet, some reasonable limits must be placed on what is to be considered a ''work being prepared for commercial distribution,'' lest virtually all works be considered to fall within that category. Similarly, as is discussed below, it seems unlikely that classes of works that have a history of prerelease infringement would include works whose authors have the subjective hope or intention to distribute, but for which no arrangements to distribute have been made.

In determining what is meant, in the context of preregistration, by ''a work being prepared for commercial distribution,'' the background to the enactment of section 104 of the ART Act and the purposes of that section should be taken into account. As noted above, section 104 was the result of requests by record companies and motion picture studios for relief, in the context of pre–release infringement, from the provisions of sections 411 and 412 that require copyright registration as a prerequisite to suit and to certain remedies for infringement. Their concern, and the concern of the Congressional sponsors of the ART Act, was primarily with the relatively recent phenomenon of infringement on the Internet, e.g., by means of peer–to–peer file–sharing networks, of sound recordings and motion pictures prior to their official release to the public. One of the most striking examples before Congress related to the appearance on the Internet, two weeks before its theatrical premiere in 2003, of the motion picture The Incredible Hulk. As the ranking Member of the House Subcommittee on Courts, the Internet and Intellectual Property observed when the House Judiciary Committee favorably reported FECA, ''Pirates will always seek treasure, and where they have truly found gold is in obtaining a pre–released copy of a movie, sound recording or video game. In testimony on this issue almost two years ago, industry representatives testified that two weeks before the motion picture The Hulk was to be released in theaters, an incomplete work print version of the film had been illegally uploaded onto the Internet. In fact, reviews for The Hulk were available before its release in theaters. The harm to the market of a copyrighted work exponentially increases if the work is released before

the editing or promotion for the product is completed.'' Prepared Statement of the Honorable Howard L. Berman, H.R. Rep. No. 109–33, pt. 1, at 65. See also *Piracy Deterrence and Education Act of 2003: Hearing Before the Subcommittee on Courts, the Internet, and Intellectual Property of the Committee on the Judiciary House of Representatives*, 108th Cong. 61 (2003) (Statement of Maren Christensen, then Vice President, Intellectual Property Counsel, Universal Studios).

In short, the problem identified by Congress when it enacted the preregistration requirement was the phenomenon of infringement on the Internet of works that are truly en route to commercial distribution. Therefore, in order to qualify for preregistration, the creator of a work must have taken some significant action to place the work in the stream of commerce. On the other hand, we recognize that pre–release infringement may take place even before a work has been completed. Somebody who manages to get his or her hands on the dailies[2] for one day's filming of the next ''Harry Potter'' film and who posts that footage on the Internet is engaging in a serious act of infringement of that film, even if the filming of the motion picture is still in progress. One who places Norah Jones' recording of a single cut from a forthcoming album can cause serious harm, even while she is still in the recording studio completing the album.

It seems reasonable to set the threshold for works being prepared for commercial distribution not at the doing of any particular act of distribution, which would be too harsh a requirement to protect works destined for commercial distribution that are in relatively early stages of preparation, but rather at some earlier stage. We can identify two requirements that appear to be reasonably calculated to meet the statutory requirement that the preregistered work is truly being prepared for commercial distribution. First, preparation of the work must have commenced. That means, at a minimum, that some portion of the work has been fixed in a tangible medium of expression. See 17 U.S.C. 101 (definition of ''created'': ''A work is 'created' when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.'').

Second, a contract must have been entered into for distribution of the work. For a sound recording, the contract would be with a record company. For a motion picture, the contract would be with a motion picture studio. In the absence of such a contractual relationship – or of some other objective evidence that the work ultimately will be commercially distributed – the determination of whether a work is truly being prepared for commercial distribution would be subjective. Moreover, it is reasonable to conclude that the signing of a recording contract or a motion picture distribution agreement will be the first step down the road of commercial distribution. We elaborate on this requirement in our discussion of the next topic: the determination of classes of works that have had a history of pre–release infringement.

C. Classes of Works Determined to Have Had A History of Pre–Release Infringement

The ART Act requires the Register to permit preregistration for works in those classes of works that she determines have had a history of infringement prior to authorized distribution. 17 U.S.C. 408(f)(2). This requires the Register to designate classes of works that she determines have had a history of pre–release infringement. As noted above, however, the legislative report confirms that the Register does not have discretion to permit preregistration for classes of works that have had only a few instances of infringement in pre–release form. H. R. Rep. No. 109–33, at 4.

The Copyright Office was involved in discussions with Congress leading up to the passage of this legislation; it is therefore aware of the cases made by record companies and motion picture studios to Congress that pre–release infringement has been a serious problem in their industries. Pre–release infringement of motion pictures and sound recordings has also been reported in the press. See, e.g., ''Suspect in Movie Piracy Is Fugitive; Man Charged with Videotaping Films at Pre–Release Screenings Flees Days before Trial,'' *Los Angeles Times*, Jan. 10, 2004, p. B3; ''She's Burning Up; Madonna Blasts Pirates Who Try to Steal 'Life,''' *Newsday*, Apr. 18, 2003, p. A14. We therefore propose to include motion pictures and sound recordings among the classes of works eligible for preregistration. Because sound recordings almost always include performances of musical works, we also propose to include nondramatic musical works that are performed on sound recordings as a class eligible for preregistration. As the legislative history notes, ''a preregistration of a sound recording does not by itself constitute preregistration of the musical works embodied in the sound recording.'' H. R. Rep. No. 109–33, at 5. We do not propose that a preregistration of a sound recording would automatically constitute preregistration of any of the musical works on that recording. However, as is the case with current copyright registration practice, an applicant who is the copyright owner of both a sound recording and a musical work performed on that sound recording may preregister both the sound recording and the musical work in a single preregistration.

Although this notice of proposed rulemaking does not propose any additional classes of works, the Office seeks comments on whether there are additional classes of works that have a history of pre–release infringement. Proponents of a class of works should be prepared to document more than ''a few instances'' of pre–release infringement. See H. R. Rep. No. 109–33, at 4. And although this notice proposes to include motion pictures, sound recordings and musical works among the eligible classes, the burden remains on proponents of those three classes of works to make the case to the Office that these classes of works have indeed experienced a history of pre–release infringement. Proponents of any class should be prepared to demonstrate that there is a substantial history of pre–release infringement which is likely to continue, causing harm to copyright owners that can be ameliorated by permitting preregistration of such works.

The Office is also informed by its experience making previous determinations regarding classes of works in carrying out its responsibilities under the Digital Millennium Copyright Act (DMCA), Pub. L. No. 105–304, 112 Stat. 2860 (October 28, 1998). The DMCA added section 1201 to Title 17, requiring the Register to recommend ''classes of works,'' if any, that should be subject to exemption from one of the DMCA's anticircumvention provisions. In response to section 1201's mandate, the Register has been involved in triennial rulemaking proceedings to determine any classes of works that should be subject to an exemption from the prohibition against circumventing access control measures.

[1] ''Dailies'' (also known as ''rushes'') are ''The first positive prints made from the negatives photographed on the previous day. During filming, the director and some actors may view these dailies as an indication of how the filming and the actors' performances are progressing.'' IMDb Film Glossary, http://us.imdb.com/Glossary/D.

Section 104 of the ART Act was drafted with section 1201's ''class of works'' provision in mind, and Congressional guidance on the meaning of the phrase ''class of works'' in section 1201 is instructive. In that context, the legislative history indicates an intent ''that the 'particular class of copyrighted work' be a narrow and focused subset of the broad categories of works of authorship than [sic] is identified in section 102 of the Copyright Act (17 U.S.C. 102).'' Report of the House Committee on Commerce on the Digital Millennium Copyright Act of 1998, H.R. Rep. No. 105–551, pt. 2, at 38 (1998).

In the context of and in light of the purpose of preregistration – which is to afford a remedy to copyright owners of works which are likely to be subject to pre–release infringement, we believe that the proposed classes of works – motion pictures, sound recordings and nondramatic musical works – can be appropriately narrowed by focusing on the requirement that a distribution agreement be in place for the work that is being prepared for commercial distribution. To guard against the possibility of fraud, we believe that it would be prudent to include, as part of that requirement, that the distributor be an ''established'' distributor of motion pictures or phonorecords, as the case may be. An ''established'' distributor is an entity that is actually in the business of commercial distribution of the class of works and that has actually engaged in commercial distribution of several such works in the past year. Because nondramatic musical works are now commercially exploited primarily in the form of prerecorded music, the requirement for a nondramatic musical work would be satisfied if there is in existence a distribution agreement to distribute phonorecords of a sound recording that includes a performance of the musical work.

Such a requirement assists in ensuring that works subject to preregistration fall within classes in which there has been a history of infringement. We are not aware of any history or danger of pre–release infringement of works for which the prospect of commercial distribution is so remote that no arrangements have been made for authorized distribution. The fact that in enacting the ART Act, Congress was responding to concerns of motion picture studios and record companies about pre–release infringement of their works further bolsters the conclusion that the focus of preregistration should be on works for which distribution agreements already exist. To the community of Internet infringers who are eager to offer a motion picture or phonorecord for downloading prior to its official release, there is no glory, cachet or profit in offering a work for which there is no demand, and the existence of an agreement to distribute a work is a reliable indicator of such demand, as well as being a reliable indicator that the work is truly being prepared for commercial distribution.

We also propose to narrow the eligible classes of works further by reference to the nature of the distribution agreements. It appears that thus far, works that have been subject to pre–release infringement are works for which there is an anticipated demand. For motion pictures, that still means that the work will be distributed for theatrical exhibition. The Office also does not propose to include motion pictures for which the distribution agreements provide only for ''direct–to–video'' or online distribution, since the Office has no reason to believe that those motion pictures, which presumably are much less in demand than motion pictures that will be distributed theatrically, have had a history of prerelease infringement. For sound recordings, that still means that the work will be distributed in physical phonorecords (e.g., CDs or DVDs). While we recognize that online distribution is becoming increasingly significant, it has not yet supplanted physical distribution as the principal means of disseminating motion pictures and sound recordings. Moreover, including works that are distributed only online would probably be overinclusive: anybody can make his or her work available for online distribution, even if there is no demand for the work. Because preregistration is intended for works that have had a history of prerelease infringement, the Office believes that including works for which the only distribution agreements relate to online distribution would be vastly overinclusive. Of course, over time that may well change and require that the Office reexamine those conclusions. We seek comments as to whether our assumptions are valid.

In considering how to determine what classes of works should be included in the preregistration system, the Office has also weighed the possibility of requiring that such works be by authors or performers who have had some track record of success, or at least who have previously had their works released for commercial distribution. While we have chosen not to include such a requirement in the proposed rules, we seek comment on whether such a requirement is desirable and workable. One reason we have chosen not to include the requirement in the proposed rules is our uncertainty as to how one would determine whether a particular author or performer has a successful track record. We seek comments on whether our proposal is based on valid assumptions.

Comments are sought as to whether the proposed classes of works are underinclusive or overinclusive, keeping in mind that the only works that are to be included are works being prepared for commercial distribution and that the Register is to designate only classes of works that have a history of pre–release infringement. Proponents of broader or additional classes of works should back up their proposals with evidence that responds to those requirements.

The proposed classes are:

1. Motion pictures subject to theatrical distribution contracts with established distributors of motion pictures; .

2. Sound recordings subject to contracts for distribution of physical phonorecords with established distributors of phonorecords;.

3. Nondramatic musical compositions performed in sound recordings subject to contracts for distribution of physical phonorecords with established distributors of phonorecords.

IV. Procedures for Preregistration

A. Overview of Preregistration Process

Preregistration is meant for those who wish to preregister a claim in a work which falls within a ''class of works that the Register determines has had a history of infringement prior to authorized commercial distribution.'' 17 U.S.C. 408(f)(2). As a general principle, preregistration will be as streamlined a process as possible. Persons wishing to preregister a copyright will be required to apply online, and the electronic application will require sufficient information to reasonably identify the work for which preregistration is sought, but no deposit materials will be required and the application will not be examined except to ascertain that all the necessary information has been provided.

Preregistration is not a substitute for registration. It is simply a means of preserving the ability to satisfy the requirements of sections 411(a) and 412 of the Copyright Act by advising the Copyright Office prior to the publication of a work that the work is being prepared for commercial distribution, and following through with a registration shortly after publication or infringement of the work. The fact that a work has been preregistered does not mean that the Copyright Office

necessarily will register the work when an application for registration is submitted.

A work that would not ultimately be eligible for copyright registration should not be submitted for preregistration. However, unlike registration, which is prima facie evidence of the validity of the copyright and of the facts stated in the certificate, preregistration carries no such presumptions. For that reason, the Office will not conduct the type of examination that is done with respect to copyright registration, and a preregistration will not be subject to cancellation.

To preserve the legal benefits of preregistration, a preregistered work must be registered within one month after the copyright owner becomes aware of infringement but in no case later than three months after first publication. In this sense, preregistration is a prelude to full registration.

B. General Observations about Preregistration Procedure

1. Form PRE

The Copyright Office is creating a new form which is specifically designed to elicit only basic information. The Form PRE must be submitted electronically and will be available only in that form, on the Copyright Office's website.

2. No Deposit Copy or Phonorecord Required

Because preregistration is not a form of registration, but is simply an indication of an intent to register a work once it has been completed and/or published, there will be no deposit requirement. However, the application form should contain a detailed description of the work, keeping in mind that the description becomes an important part of the preregistration public record and that it will not be possible to cancel or expunge this record. The space limitation for the description on Application Form PRE is 2000 characters. The Office will not pass judgement on the adequacy of the description, but a court might well conclude, based on a comparison of the finished work with the description in the preregistration application, that the preregistration does not actually pertain to the work that is alleged to have been infringed.

3. Preregistration Fee

The preregistration fee will be set to recover costs to establish the new system in the Copyright Office and provide the preregistration service. In principle, the fee should cover the actual cost to the Office of processing each preregistration, and the fees collected for preregistration should collectively cover the start–up costs for creating the new electronic preregistration program, spread over a period of time. In determining the appropriate fee that would meet those guidelines, a key element is an estimate of how many preregistrations will be received each year. While it is difficult to predict how many preregistrations will be received, the Office believes a reasonable estimate would be 300. If that estimate is accurate, then in order to recoup the costs of setting up the system over a period of five years, it would be necessary to charge a fee of $250. However, the Office recognizes that $250 would be a very substantial fee, and as a result it is proposed that the preregistration fee initially be set at $100, with the understanding that the fee will be reevaluated after several months of experience once the Office has a better idea of how many preregistrations will occur.

The Office considered requiring prepayment of the registration fee as part of preregistration, in order to provide an additional inducement to follow through with a registration, but at this time the logistical problems of requiring prepayment appear to outweigh its benefits. The Office welcomes comment on establishing a system in the future whereby the applicant for preregistration simultaneously prepays the registration fee in order to facilitate and further encourage prompt registration.

4. Verification

The applicant must verify under penalty of law that he or she is an author, a claimant, or other party authorized to submit the claim for the copyright owner and that the statements made in the preregistration application are correct to the best of the applicant's knowledge.

5. Numbering

All preregistrations will be numbered with the prefix ''PRE'' and will be numbered consecutively. Preregistration claims will not be issued according to registration class, i.e., VA, PA, or TX.

6. Online Record.

All completed preregistrations will be accessible through the Copyright Office's online database by title, author and claimant. Therefore, a search for preregistration records should enable discovery of the registration record for the same work. It is recognized that in some cases, for reasons such as changes in ownership and other changes that take place during the creation of a work, the title, author and/or claimant named on the preregistration form may be different from the actual title, author and claimant later identified in the registration record.

7. Notification of Preregistration.

Upon completion of the preregistration, the Office will issue an email notification of preregistration to the claimant. Each e–mail will remind the claimant that a timely basic registration should be made as the follow–up to preregistration and that the application for basic registration should contain a reference to the preregistration number to enable the Office's preregistration and basic registration records for the particular work to be tied together through cross–entry of the two numbers.

For further verification that a work has been preregistered, it will be possible to view the record for any preregistered work on the Copyright Office's website and to print that information. At this time, the Office does not anticipate sending a printed certificate or notification of preregistration, but we solicit comments on whether (and why) such a practice would be desirable.

8. No Cancellation or Correction of Preregistrations

Once entered in Copyright Office records, a preregistration will not be cancelled. Thus, the Office will not expunge its records, for example, of an applicant's incorrect description of a work or other error. An applicant who acts promptly before issuance of notification, however, may withdraw an application for preregistration. However, it is anticipated that preregistrations will be processed shortly after they are submitted. Nor can a preregistration be corrected, supplemented, or amended after completion. Thus, for example, the Office will not accept a Form CA (supplementary registration) to correct or supplement the information in a preregistration record. An applicant who wishes to correct the record must submit another application for preregistration containing the corrected or omitted information.

9. Preregistration as a Single Work

Just as a single registration may be made for a number of self–contained works that are first published in a single unit of publication, see 37 C.F.R. § 202.3(b)(3)(i)(A), preregistration may be made for all such works having the same copyright claimant if they will be first published in a single unit of publication. For example, if the same party owns the copyright in both a sound recording and the musical compositions embodied in the sound recording, both claims may be preregistered on one Form PRE.

10. Summary

To summarize, an applicant who owns an exclusive right in an unpublished work being prepared for

commercial distribution that falls within one of the Register's determined classes of works may preregister that work in the name of the anticipated claimant with the Copyright Office on or after October 24, 2005, by completing Application Form PRE online and paying the prescribed fee online by Deposit Account or Credit Card.

C. Preregistration Application Form – Electronic Only

At this time, the Office anticipates that the application for preregistration will require that the applicant provide the following information:

1. Type of work being preregistered:
Motion picture subject to theatrical distribution contract with an established distributor of motion pictures;
Sound recording subject to contract for distribution of physical phonorecords with an established distributor of phonorecords; or
Nondramatic musical composition performed in sound recording subject to contract for distribution of physical phonorecords with an established distributor of phonorecords.
2. Title
3. Additional titles [optional]
4. Author (i.e., the person who is anticipated to be given on the basic application as author under the copyright law of the completed work when the basic, follow–up registration is made).
5. Claimant (i.e., the person who is anticipated to be given on the basic application as the owner of copyright in the completed work when the basic, follow–up registration is made).
6. Claimant Address.
7. Description of the work being claimed for preregistration. (Instructions will indicate that the description should be detailed and specific in order to identify the particular work for which preregistration is sought. The maximum length of the description will be 2000 characters – approximately 330 words.) Examples:
A. A motion picture should generally be described in terms such as the subject matter it treats or a plot summary or outline; the director, if known; major actors appearing in the motion picture, if known; the principal location of filming; and any other details which would assist in identifying the particular motion picture.
B. A sound recording should generally be described in terms such as the subject matter of the underlying work recorded; the performer or performing group, if known; the genre of the work recorded, e.g., classical, hard rock, blues; the principal recording location, if known; titles of the musical compositions being performed, if known, and any other characteristics of the recording which may help in identifying the particular recording.
8. Date on which creation of the work commenced.
9. Date of anticipated completion of the work.
10. Date of anticipated commencement of commercial distribution of the work.
11. Certification under penalty of law.
12. Name of person submitting the preregistration.

List of Subjects in 37 CFR Part 202

Claims to copyright, Copyright, Registration requirements.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend part 202 of 37 CFR, chapter II in the manner set forth below:

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 is revised to read as follows:

Authority: 17 U.S.C. 408(f), 702

2. The heading of Part 202 is revised to read as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

3. A new § 202.16 is added to read as follows:

§ 202.16 Preregistration of Copyrights

(a) *General.* This section prescribes rules pertaining to the preregistration of copyright claims in works eligible for preregistration under Section 408(f) of 17 U.S.C.

(b) *Definitions.* For the purposes of this section–

(1) A work is in a *class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release* if it is one of the following:

(i) A motion picture subject to a theatrical distribution contract with an established distributor of motion pictures;

(ii) A sound recording subject to a contract for distribution of physical phonorecords with an established distributor of phonorecords; or

(iii) A nondramatic musical composition performed in a sound recording subject to a contract for distribution of physical phonorecords with an established distributor of phonorecords;

(2) An *established distributor* of motion pictures is a person or entity that is actually in the business of commercial distribution of motion pictures and that has actually engaged in commercial distribution of two or more motion pictures within the past year.

(3) An *established distributor of phonorecords* is a person or entity that is actually in the business of commercial distribution of phonorecords and that has actually engaged in commercial distribution of two or more phonorecords within the past year.

(4) A work is *being prepared for commercial distribution* if:

(i) Preparation of the work has commenced and at least some portion of the work has been fixed in a tangible medium of expression; and

(ii) a contract has been entered into for the commercial distribution of the work to the public.

(5) A *work eligible for preregistration* is a work that is:

(i) Unpublished;

(ii) Being prepared for commercial distribution; and

(iii) In a class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release.

(c) *Preregistration.* (1) *General.* A work eligible for preregistration may be preregistered by submitting an application and fee to the Copyright Office pursuant to the requirements set forth in this section.

(2)*Works excluded.* Works that are not copyrightable subject matter under title 17 of the U.S. Code may not be preregistered in the Copyright Office.

(3) *Application form.* An application for preregistration is Electronic Form PRE. The application must be submitted electronically on the Copyright Office website at: [Address to be given in the final rule].

(4) *Preregistration as a single work.* For the purpose of preregistration on a single application and upon payment of a single preregistration fee, all copyrightable elements that are otherwise recognizable as self–contained works, that are to be included and first published in a single unit of publication, and in which the copyright claimant is the same, shall be considered a single work eligible for preregistration.

(5) *Fee.* (i) *Amount.* The filing fee for preregistration is $100.

(ii) *Method of payment.* (A) Copyright Office deposit account. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services and for those who file applications electronically. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits in that account. Deposit Account holders can charge preregistration fees against the balance in their accounts instead of using credit cards for each request of service. For information on Deposit Accounts, please download a copy of Circular 5, ''How to Open and Maintain a Deposit

Account in the Copyright Office,'' or write the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559.

(B) Credit cards, debit cards and electronic funds transfer. The online preregistration filing system will provide options for payment by means of credit or debit cards and by means of electronic funds transfers. Applicants will be redirected to the Department of Treasury's Pay.gov website to make payments with credit or debit cards, or directly from their bank accounts by means of ACH debit transactions.

(C) No refunds. The fee is not refundable.

(6) *Description.* No deposit of the work being preregistered should be submitted with an application for preregistration. The preregistration applicant should submit a detailed description, of not more than 2,000 characters (approximately 330 words), of the work as part of the application. The description should be based on information available at the time of the application sufficient to reasonably identify the work. The Copyright Office will not review descriptions for adequacy except in extreme cases, but in an action for infringement of a preregistered work, the court may evaluate the adequacy of the description to determine whether the preregistration actually describes the work that is alleged to be infringed, taking into account the information available to the applicant at the time of preregistration. For motion pictures such a description should include the following information to the extent known at the time of filing: subject matter, a summary or outline, the director, the primary actors, the principal location of filming, and any other information that would assist in identifying the particular work being preregistered. For sound recordings and for nondramatic musical works, the identifying description should include the following information to the extent known at the time of filing: the subject matter of the work or works recorded, the performer or performing group, the genre of the work recorded (e.g., classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip–hop, blues, jazz), the titles of the musical compositions being recorded, the principal recording location, and the composer(s) of the recorded musical compositions embodied on the sound recording and any other information that would assist in identifying the particular work being preregistered.

(7) *Examination.* The Copyright Office will conduct only a limited examination of applications for preregistration, in order to ascertain whether the application describes a work that is in a class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release. However, a work will not be preregistered unless an applicant has provided all of the information requested on the application and has certified that all of the information provided on the application is correct to the best of the applicant's knowledge.

(8) *Notification of preregistration.* Upon completion of the preregistration, the Copyright Office will provide the claimant notification by email of the preregistration. The preregistration record will also be available to the public on the Copyright Office website, www.copyright.gov.

(9) *Effect of preregistration.* Preregistration of a work offers certain advantages to a copyright owner pursuant to 17 U.S.C. 411 and 412. However, preregistration of a work is not prima facie evidence of the validity of the copyright or of the facts stated in the application for preregistration or in the preregistration record. The fact that a work has been preregistered does not create any presumption that the Copyright Office will register the work upon submission of an application for registration.

Dated: July 18, 2005

Marybeth Peters,

Register of Copyrights.

[FR Doc. 05–14516 Filed 7–21–05; 8:45 am]

BILLING CODE 1410–33–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 155

[OPP–2004–0404; FRL–7727–9]

Pesticides; Procedural Regulations for Registration Review; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is convening two public information sessions to explain the provisions of its recently published proposed rule establishing procedural regulations for registration review in 40 CFR part 155, subpart C. These meetings are open to the public.

DATES: The first public information session will be held on August 23, 2005, from 10 a.m. to 3:30 p.m in the Washington, DC area. The second public information session will be held on September 1, 2005, from 10 a.m. to 3:30 p.m in the Chicago, IL area.

ADDRESSES: The August 23, 2005 public information session will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

The September 1, 2005 public information session will be held at the Metcalf Federal Building, Room #331, 77 West Jackson Boulevard, Chicago, IL 60604. Visitor information for the September 1, 2005 location may be found at *http://www.epa.gov/region5/visitor/index.htm.*

FOR FURTHER INFORMATION CONTACT: Nathanael Martin, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *martin.nathanael@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you hold pesticide registrations. Pesticide users or other persons interested in the regulation of the sale, distribution or use of pesticides may also be interested in action. Potentially affected entities may include, but are not limited to:

- Producers of pesticide products (NAICS code 32532)
- Producers of antifoulant paints (NAICS code 32551)
- Producers of antimicrobial pesticides (NAICS code 32561)
- Producers of nitrogen stabilizer products (NAICS code 32531)
- Producers of wood preservatives (NAICS code 32519)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions of proposed § 155.40 of the regulatory text in the **Federal Register** of July 13, 2005 (70 FR 40251) (FRL–7718–4). If you have any questions regarding the applicability of this action to a particular entity, consult the person