60 Federal Register 21983-21984 (May 4, 1995)
LIBRARY OF CONGRESS Copyright Office
37 CFR Part 202
Modification of Appeal Procedure
ACTION: Notice of policy decision.

SUMMARY: The Copyright Office of the Library of Congress issues this Policy Decision modifying the appeal procedure regarding refusals to register a copyright claim. Currently, this procedure is specified in Compendium II of Copyright Office Practices and an applicant whose claim is rejected is entitled to two reconsiderations, each handled within the Examining Division. The modified procedure establishes an interim system with a Board of Appeals to reconsider the second appeal that is the final agency action.
EFFECTIVE DATE: June 5, 1995.
SUPPLEMENTARY INFORMATION:
I. Background

One of the most significant responsibilities assigned the Copyright Office by Title 17 of the U.S. Code is the registration of copyright claims. Currently, the Copyright Office registers slightly more than 600,000 copyright claims annually, and refuses to register a small percentage of these.

Subsections 410(a) and (b) of the copyright law determine the parameters of the registration system:

(a) When, after examination, the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. The certificate shall contain the information given in the application, together with the number and effective date of the registration.

(b) In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal.

In administering these provisions, the Copyright Office usually accepts as true the facts given by the applicant.<SUP>1 The decision to register or not rests on a determination of whether a prima facie valid copyright claim has been submitted under the provisions of the Copyright Act.

\1\Section 108.05 of Compendium II of Copyright Office Practices provides: ``Factual determinations. In connection with its examining and related activities, the Copyright Office does not ordinarily make findings of fact with respect to publication or any other thing done outside the Copyright Office.'' This practice is qualified by section 108.05(b) providing: ``Administrative notice. The Copyright Office may take notice of matters of general knowledge. It may use such knowledge as the basis for questioning applications that appear to contain or be based upon inaccurate or erroneous information.''

An applicant may appeal a refusal to register using the appeal procedure specified in the Compendium of Copyright Office Practices. Under this practice, an applicant whose claim has been denied registration is entitled to two reconsideration, each handled within the Examining Division. Specifically, the procedure provides:

Refusal to register: request for reexamination. When the Copyright Office has refused a claim as submitted, it notifies the applicant in writing of the refusal to register. After such notification, the applicant may set forth in writing his or her objections to the refusal and request that the Office reconsider its action. If the claim is refused [[Page 21984]] after

reconsideration, the head of the appropriate Examining Division section will send the applicant written notification of the reasons for refusal. The applicant may again request reconsideration. If the claim is refused again, the Chief of the Examining Division will notify the applicant in writing of the reasons. The Division Chief's decision constitutes final agency action. Section 606.04 Compendium II of Copyright Office Practices.

II. Circumstances Leading to Modification

Although the Office's practice concerning appeals is long-standing, we have periodically considered modifying it. A number of commentators have criticized the current practice on the grounds that containment within the Examining Division leads to an overly closed system. Even under the existing practice, however, there has been some discussion of particular cases with the General Counsel or the Register. More recently, the Library of Congress appointed an Advisory Committee on Copyright Registration and Deposit, (ACCORD); in their meetings, members of this Committee criticized the appeals procedure and suggested that it be changed. Library of Congress, Advisory Committee on Copyright Registration and Deposit, 31 (1993).

The Copyright Office is committed to improving this procedure and will be publishing a Notice of Proposed Rulemaking seeking public comment on legal and administrative issues associated with establishing a more formal procedure at a later date. Meanwhile, as a first step, the Office has decided to establish a Board of Appeals within the Copyright Office as an interim system. By instituting this Board, we will gain experience in administering an alternative system.

After the Office has some practical experience with the new system, we will make a detailed proposal and seek public comment. Following review of these comments, the Copyright Office will publish the new appeal procedure as a regulation. Although we are now adopting as an interim system the Board of Appeals described below, the precise nature of the final appeal procedure will not be established until we publish final rules. Anyone who wishes to suggest specific guidelines for our consideration before the proposed rulemaking should submit them to the Board of Appeals, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

III. Policy Decision

The Copyright Office's appeal procedure set out in Sec. 606.04 of the Compendium is amended to read as follows:

Appeals of refusal to register: request for reconsideration. When the Copyright Office has refused to register a claim as submitted, it notifies the applicant in writing of the refusal to register. After such notification, the applicant may set forth in writing his or her objections to the refusal and request that the Office reconsider its action. The appeal letter should be addressed to the appropriate section of the Examining Division, Copyright Office, Washington, D.C. 20559. The first request for reconsideration must be received in the Copyright Office within 120 days of the date of the Office's first refusal to register, and the envelope containing the request should be clearly marked: FIRST APPEAL/EXAMINING DIVISION.

If the claim is refused after reconsideration, the head of the appropriate section of the Examining Division sends the applicant written notification of the reasons for refusal. The applicant may again request reconsideration in writing. This second appeal must be received in the Copyright Office within 120 days of the date of the Office's refusal of the first appeal, and be directed to the Board of Appeals at the following address: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C., 20024. The Board of Appeals shall consist of the Register of Copyrights, the General Counsel, and the Chief of the Examining Division, or their respective designees. The Board shall consider the second appeal and render a final decision. The designated Chair of the Board of Appeals will write the applicant setting out the reasons for acceptance or

denial of the claim. The Appeals Board's decision constitutes final agency action.

Dated: April 27, 1995.

Marybeth Peters, Register of Copyrights.

Approved by: James H. Billington, The Librarian of Congress.