United States Supreme Court Copyright Practice Rules (1909) 1 for Practice and Procedure Under Section 25 2 of an Act to Amend and Consolidate the Acts Respecting Copyright, Approved March 4, 1909

RULE 1

Proceedings in actions brought under section 25n3 of the Act of March, 4, 1909, entitled "An Act to amend and consolidate the acts respecting copyright," including proceedings relating to the perfecting of appeals, shall be governed by the Rules of Civil Procedure, insofar as they are not inconsistent with these rules.

RULE 2

[A copy of the alleged infringement of copyright, if actually made, and a copy of the work alleged to be infringed, should accompany the petition, or its absence be explained; except in cases of alleged infringement by the public performance of dramatic and dramaticomusical compositions, the delivery of lectures, sermons, addresses, and so forth, the infringement of copyright upon sculptures and other similar works and in any case where it is not feasible.n4]

RULE 3

Upon the institution of any action, suit or proceeding, or at any time thereafter, and before the entry of final judgment or decree therein, the plaintiff or complainant, or his authorized agent or attorney, may file with the clerk of any court given jurisdiction under section 34n5 of the Act of March 4, 1909, an affidavit stating upon the best for his knowledge, information and belief, the number and location, as near as may be, of the alleged infringing copies, records, plates molds, matrices, etc., or other means for making the copies alleged to infringe the copyright, and the value of the same, and with such affidavit shall file with the clerk a bond executed by at least two sureties and approved by the court or a commissioner thereof.

RULE 4

Such bond shall bind the sureties in a specified sum, to be fixed by the court, but not less than twice the reasonable value of such infringing copies, plates, records, molds, matrices, or other means for making such infringing copies, and be conditioned for the prompt prosecution of the action, suit or proceeding; for the return of said articles to the defendant, if they or any of them are adjudged not to be infringements, or if the action abates, or is discontinued before they are returned to the defendant; and for the payment to the defendant of any damages which the court may award to him against the plaintiff or complainant. Upon the filing of said affidavit and bond, and the approval of said bond, the clerk shall issue a writ directed to the marshal of the district where the said infringing copies, plates, records, molds, matrices, etc., or other means of making such infringing copies shall be stated in said affidavit to be located, and generally to any marshal of the United States, directing the said marshal to forthwith seize and hold the same subject to the order of the court issuing said writ, or of the court of the district in which the seizure shall be made.

RULE 5

The marshall [sic] shall thereupon seize said articles or any smaller or larger part thereof he may then or thereafter find, using such force as may be reasonably necessary in the premises, and serve on the defendant a copy of the affidavit, writ and bond by delivering the same to him personally, if he can be found within the district, or if he cannot be found, to his agent, if any, or to the person from whose possession the articles are taken, or if the owner, agent, or such person cannot be found within the district, by leaving said copy at the usual place of abode of such owner or agent, with a person of suitable age and discretion, or at the place where said articles are found, and shall make immediate return of such seizure, or attempted seizure, to the court. He shall also attach to said articles a tag or label stating the fact of such seizure and warning all persons from in any manner interfering therewith.

RULE 6

A marshal who has seized alleged infringing articles, shall retain them in his possession, keeping them in a secure place, subject to the order of the court.

RULE 7

Within three days after the articles are seized, and a copy of the affidavit, writ and bond are served as hereinbefore provided, the defendant shall serve upon the clerk a notice that he excepts to the amount of the penalty of the bond, or to the sureties of the plaintiff or complainant, or both, otherwise he shall be deemed to have waived all objection to the amount of the penalty of the bond and the sufficiency of the sureties thereon. If the court sustain the exceptions it may order a new bond to be executed by the plaintiff or complainant, or in default thereof with a time to be named by the court, the property to be returned to the defendant.

RULE 8

Within ten days after service of such notice, the attorney of the plaintiff or complainant shall serve upon the defendant or his attorney a notice of the justification of the sureties, and said sureties shall justify before the court or a judge thereof at the time therein stated.

RULE 9

The defendant, if he does not except to the amount of the penalty of the bond or the sufficiency of the sureties of the plaintiff or complainant, may make application to the court for the return to him of the articles seized, upon filing an affidavit stating all material facts and circumstances tending to show that the articles seized are not infringing copies, records, plates, molds, matrices, or means for making the copies alleged to infringe the copyright.

RULE 10

Thereupon the court in its discretion, after such hearing as it may direct, may order such return upon the filing by the defendant of a bond executed by at least two sureties, binding them in a specified sum to be fixed in the discretion of the court, and conditioned for the delivery of said specified articles to abide the order of the court. The plaintiff or complainant may require such sureties to justify within ten days of the filing of such bond.

RULE 11

Upon the granting of such application and the justification of the sureties on the bond, the marshal shall immediately deliver the articles seized to the defendant.

RULE 12

Any service required to be performed by any marshal may be performed by any deputy of such marshal.

RULE 13

For services in cases arising under this section, the marshal shall be entitled to the same fees as are allowed for similar services in other cases.

FOOTNOTES:

[n1] Footnote 3. Historical note: Sections 25 and 34 of the Act of March 4, 1909, as amended, later became sections 101 and 110, respectively, of Title 17 of the United States Code by the Act of July 30, 1947 (61 Stat. 652). Sections 101(f) and 110 were repealed by the Act of June 25, 1948 (62 Stat. 869). However, see section 2072 of Title 28, United States Code , *supra*.

[n2] Footnote 4. Rule 2 was rescinded effective July 1, 1966. *383 U.S. 1031 (1966).*

[n3] Footnote 5. Historical note: Sections 25 and 34 of the Act of March 4, 1909, as amended, later became sections 101 and 110, respectively, of Title 17 of the United States Code by the Act of July 30, 1947 (61 Stat. 652). Sections 101(f) and 110 were repealed by the Act of June 25, 1948 (62 Stat. 869). However, see section 2072 of Title 28, United States Code , *supra*.

1. 214 U.S. 533 (1909), as amended by 307 U.S. 652 (1939) and 383 U.S. 1031 (1966). See also *Fed. R.Civ. P. 81(a)(1)* . 2. Historical note: Sections 25 and 34 of the Act of March 4, 1909, as amended, later became sections 101 and 110, respectively, of Title 17 of the United States Code by the Act of July 30, 1947 (61 Stat. 652). Sections 101(f) and 110 were repealed by the Act of June 25, 1948 (62 Stat. 869). However, see section 2072 of Title 28, United States Code , *supra*.