

above-mentioned interim rule are adopted as final in this final rule.

Applicants are again notified that PCT Rules 20.4(c) and 26.3ter (a) and (c) as amended are not compatible with the national law of the United States, and thus the USPTO has taken a reservation on adherence to these Rules through its notification to the Director General of WIPO to such effect. See PCT Rules 20.4(d) and 26.3ter (b) and (d). Similarly, the USPTO continues not to adhere to the unchanged provisions of PCT Rule 49.5(cbis) and (k) with respect to the translation requirements for United States national stage applications (35 U.S.C. 371(c)(2)). See PCT Rule 49.5(l).

The above-noted changes to the PCT Regulations include the addition of new PCT Rules 89bis and 89ter (directed to electronic filing and processing of international applications) which will enter into force at the same time as the modifications to the Administrative Instructions implementing those PCT Rules. Implementation of PCT Rules 89bis and 89ter is optional with each national office. In the event that the USPTO decides to implement PCT Rules 89bis and 89ter, the USPTO will provide notice to that effect in the **Federal Register** and *Official Gazette*.

#### Discussion of Specific Rules

A section-by-section discussion of the changes to title 37 of the Code of Federal Regulations adopted as final in this final rule is set forth in the above-mentioned interim rule at 63 FR 29614-17, and 1211 *Off. Gaz. Pat. Office* 77-78.

#### Other Considerations

The United States rules of practice contained in title 37, CFR, must conform to the PCT Articles and the Regulations annexed to the PCT. See PCT Article 27(1). This final rule adopts as final changes required to conform the United States rules of practice for international applications to the amendments to the PCT Regulations which became effective on July 1, 1998. Thus, this final rule is covered by the foreign affairs function exception of 5 U.S.C. 553(a)(1), and may be adopted without prior notice and opportunity for public comment. See *International Brotherhood of Teamsters v. Pena*, 17 F.3d 1478, 1486 (D.C. Cir. 1994).

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. This final rule does not contain policies with federalism implications sufficient to

warrant preparation of a Federalism Assessment under Executive Order 12612 (October 26, 1987). This final rule has been determined not to be significant for purposes of Executive Order 12866 (September 30, 1993).

This final rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The principal impact of this final rule is to adopt as final changes that conform the United States rules of practice relating to applications filed under the PCT to the corresponding amendments made to the Regulations under the PCT.

The general purpose of the PCT is to provide a single set of standards and procedures for the filing of patent applications on the same invention in any of the over ninety PCT member countries. The PCT provides a common filing procedure and a standardized application format for international applications.

The collection of information in this final rule has been reviewed and approved by OMB under control number 0651-0021. The public reporting burden for this collection of information is estimated to average 0.95 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the information. Send comments regarding this burden estimate or any other aspect of the data requirement, including suggestions for reducing the burden to Richard Lazarus at the address specified above and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, N.W., Washington, D.C., 20503 (Attn: PTO Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act *unless* that collection of information displays a currently valid OMB control number.

#### List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, the interim rule amending 37 CFR Part 1 which was published at 63 FR 29614-29620 on June 1, 1998, is adopted as a final rule without change.

Dated: November 23, 1998.

**Q. Todd Dickinson,**

*Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks.*

[FR Doc. 98-31952 Filed 11-30-98; 8:45 am]

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

#### Copyright Rules and Regulations

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Technical amendment; correction.

**SUMMARY:** The Copyright Office is making one amendment to its rule at 37 CFR 201.22(e) and one correction to its interim rule at 37 CFR 201.5 to update these portions of the copyright regulations. The amendment concerns service of advance notice of potential infringement of certain works, the fixation of which is made simultaneously with their transmission, and the correction concerns applications for supplementary registration.

**EFFECTIVE DATE:** December 1, 1998.

**FOR FURTHER INFORMATION CONTACT:**

David O. Carson, General Counsel, or Marilyn J. Kretsinger, Assistant General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Fax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** The Copyright Office is amending its regulation concerning service of Advance Notice of Potential Infringement of certain works pursuant to 17 U.S.C. 411(b), which was amended by section 6 of the Copyright Technical Amendments Act, Pub. L. 105-80 (1997). Section 411(b) provides that a copyright owner of a work consisting of sounds, images, or both, the fixation of which is made simultaneously with its transmission, may institute an action for copyright infringement if the copyright owner has served a notice on the infringer identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work. The copyright owner must also register the work within three months after its first transmission. Prior to the 1997 amendment, section 411(b) required that the notice be served on the infringer "not less than ten or more than thirty days before such fixation." The 1977

amendment changed the time period to "not less than 48 hours before such fixation." The amendment to 37 CFR 201.22(e) similarly changes the period of time in which notice must be served from "at least ten days but not more than thirty days" to "not less than 48 hours".

The Office also corrects recently amended language in 37 CFR 201.5(b)(2)(iii)(A) by inserting the word "As" at the beginning of the sentence that comprises that paragraph. The word "As" was inadvertently omitted when the amendment was made. See 63 FR 59235 (November 3, 1998).

#### List of Subjects in 37 CFR Part 201

Copyright. General provisions.  
For the reasons stated above, the rules at 37 CFR part 201 are corrected and amended as follows:

#### PART 201—GENERAL PROVISIONS

1. The authority citation for Part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

##### § 201.5 [Corrected]

2. In § 201.5(b)(2)(iii)(A), add "As" before the phrase "an amplification,".  
3. Section 201.22 is amended by revising paragraph (e)(1) to read as follows:

##### § 201.22 Advance notices of potential infringement of works consisting of sounds, images, or both.

\* \* \* \* \*

(e) \* \* \*

(1) An Advance Notice of Potential Infringement shall be served on the person responsible for the potential infringement not less than 48 hours before the first fixation and simultaneous transmission of the work as provided by 17 U.S.C. 411(b)(1).

\* \* \* \* \*

Dated: November 20, 1998.

**Marybeth Peters,**

*Register of Copyrights.*

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#### LIBRARY OF CONGRESS

##### Copyright Office

[Docket No. 98-5 CARP]

##### 37 CFR Part 253

##### Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Office of the Library of Congress announces a cost of living adjustment of 1.5% in the royalty rates paid by colleges, universities, or other nonprofit educational institutions that are not affiliated with National Public Radio, for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is based on the change in the Consumer Price Index from October, 1997, to October, 1998.

**EFFECTIVE DATE:** January 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, at Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:** Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. 17 U.S.C. 118(c). The last proceeding to adjust the terms and rates for the section 118 license began in 1996. 61 FR 54458 (October 18, 1996).

On January 14, 1998, the Copyright Office announced final regulations governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works, including the 1998 rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities. 63 FR 2142 (January 14, 1998).

Pursuant to the regulations, on December 1 of each year "the Librarian of Congress shall publish a notice of the change in the cost of living during the period from the most recent Index published prior to the previous notice, to the most recent Index published prior to December 1, of that year." 37 CFR 253.10(a). The regulations also require that the Librarian publish a revised schedule of rates for the public performance of musical compositions in

the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities, reflecting the change in the Consumer Price Index. 37 CFR 253.10(b).

Accordingly, the Copyright Office of the Library of Congress is hereby announcing the change in the cost of living Index and performing the annual cost of living adjustment to the rates set out in § 253.5(c). 63 FR 2142 (January 14, 1998).

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published before December 1, 1997, to the most recent Index published before December 1, 1998, was 1.5% (1997's figure was 161.6; 1998's figure is 164.0, based on 1982-1984=100 as a reference base). Rounding off to the nearest dollar, the adjustment in the royalty rate for the use of musical compositions in the repertory of ASCAP and BMI is \$225, each, and \$61 for the use of musical compositions in the repertory of SESAC.

#### List of Subjects in 37 CFR Part 253

Copyright, Radio, Television.

#### PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for Part 253 continues to read as follows:

**Authority:** 17 U.S.C. 118, 801(b)(1) and 803.

2. 37 CFR 253.5 is amended by revising paragraphs (c)(1) through (c)(3).

##### § 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

\* \* \* \* \*

(c) \* \* \*

(1) For all such compositions in the repertory of ASCAP, \$225 annually.

(2) For all such compositions in the repertory of BMI, \$225 annually.

(3) For all such compositions in the repertory of SESAC, \$61 annually.

\* \* \* \* \*

Dated: November 19, 1998.

**Marybeth Peters,**

*Register of Copyrights.*

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