



United States Copyright Office

Library of Congress · 101 Independence Avenue SE · Washington, DC 20559-6000 · www.copyright.gov

December 16, 2022

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Submitted via www.regulations.gov

Re: Impersonation NPRM, R207000

Dear Christopher E. Brown:

The United States Copyright Office submits this comment in support of the Federal Trade Commission's notice of proposed rulemaking.¹ The Copyright Office is the federal agency tasked with administering the copyright system in the United States. As part of its duties, the Office examines and processes copyright applications, issuing registration certificates for works that meet the legal requirements for copyright protection. These are important functions that affect people's legal rights. The unauthorized use of the name and seal of the Copyright Office harms copyright owners and the public by undermining the value and legitimacy of the copyright registration system.

Copyright exists at the moment an original work of authorship is created. However, American authors must generally register their copyrights before they can sue for infringement, and registration is a prerequisite for seeking remedies such as statutory damages and attorneys' fees.² Registration also is evidence of authorship of the underlying work. Among other things, registration creates a public record of copyright claims and allows courts to rely on the Office's copyrightability expertise, which can narrow the issues that courts must resolve. The Office maintains the public record of registrations and related documents reflecting copyright ownership and transfers.

¹ Trade Regulation Rule on Impersonation of Government and Businesses, 87 Fed. Reg. 62,741 (Oct. 17, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-10-17/pdf/2022-21289.pdf>.

² 17 U.S.C. §§ 411(a), 412.

Unfortunately, the Office has increasingly encountered individuals and entities fraudulently claiming affiliation with the agency, such as issuing fraudulent certificates bearing the Office’s seal. This can result in American consumers being tricked into paying for “registration” services that lack legal effect. Others have impersonated the Office and its staff to make copyright infringement demands on individuals. Such bad actors undermine public confidence in the Office and the copyright registration system. It is our view that the Commission should have all necessary remedies to police this conduct.

As requested in the NPRM, the Office offers the below responses to questions 1, 2, 5, and 6.

I. Question 1: Support for the Proposed Rule

The Office supports the proposed rule’s prohibition against the impersonation of government entities and officers. We understand that the purpose of the rule is to allow the Commission to directly seek civil penalties in federal court against those who falsely pose as government actors. We agree that it is important that the Commission have the means to move more quickly to stop bad actors seeking to defraud and mislead the public.

As discussed above, copyright registration provides valuable benefits to American creators. Because American creators, unlike foreign ones, must register their copyrights before they can sue for infringement,³ Americans are uniquely vulnerable to bad actors impersonating the Office. By finalizing the proposed rule, the Commission would gain an important tool to protect these Americans who seek government services.

Empowering the Commission is particularly important because the Office does not have the independent ability to punish fraud. Like the United States Patent and Trademark Office, the Office does not have law enforcement authority and is unable on its own to remedy the harms resulting from misrepresentations by impersonators.⁴ The Office is considering ways to expand public awareness regarding impersonation, but only the Commission has the legal authority to treat impersonation of government as what it is: fraud perpetrated on the American public.

³ *Id.* § 411(a) (“no civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made”).

⁴ *See* U.S. Patent and Trademark Office, Comment Letter on Trade Regulation Rule on Impersonation of Government and Businesses at 1–2 (Dec. 2, 2022), <https://www.regulations.gov/comment/FTC-2022-0064-0026> (noting that the USPTO “limited in what it can do” to protect against impersonation because it “does not have a law enforcement authority to pursue either civil or criminal action against these impersonators”). The Patent and Trademark Office, unlike the Copyright Office, has issued regulations providing authority to discipline practitioners who practice before it. *See* 37 C.F.R. § 11.19(a). The Office does not have an equivalent power and is therefore more limited in how it can punish impersonators.

The proposed rule will foster public trust in government and the copyright system. When members of the public seek to register their copyrights, they expect to encounter legitimate government services to secure their legal rights. When the public is misled and tricked into paying for false services, they may begin to doubt the legitimacy of government offerings. Similarly, individuals who receive correspondence or view social media posts purporting to be issued by the Office are likely to wrongly believe that these communications are authorized by the government. These fraudulent acts result in distrust in the Office and its registration system.

II. Question 2: Evidence of Fraudulent Practices

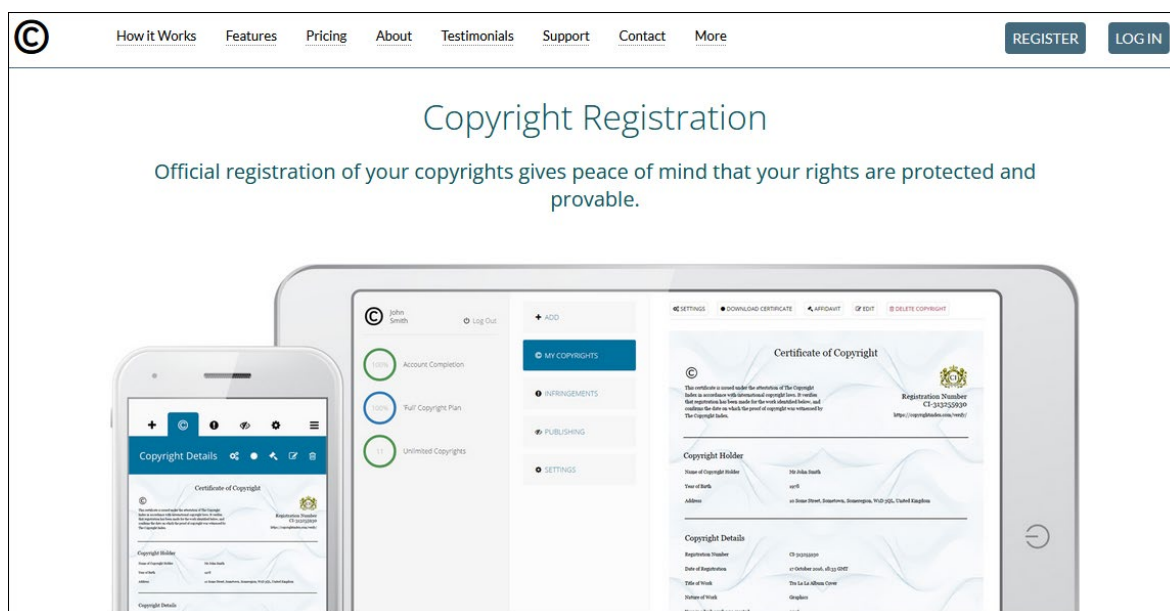
We appreciate the Commission’s request for evidence of impersonation of the Office. We have provided some examples here of those instances that have come to our attention. More concerning are the likely many instances of impersonation that never make it to us. The examples below are illustrative and not exhaustive.

The most common form of impersonation the Office encounters involves the copyright registration process. For example, the Office has encountered entities issuing false copyright “Certificates of Registration:”



In the example above, the document purports to be issued “under the seal of the copyright Office” under Title 17 of the U.S. Code and bears the signature of “Register of copyrights,” Maria Pallante. But rather than the Office’s seal, the document includes a gold seal with the outline of Africa and Europe surrounded by the words “Global Registry Forum.” And the signature of Register Pallante, dated June 17, 2020, is puzzling given that Register Pallante has not been Register of Copyrights since October 2016.⁵

Misleading registration websites abound. One service, called “Copyright Index,” claims to be “recognised [sic] in United States and countries all around the world as a copyright authority providing official copyright registration” and offers “[o]fficial registration of your copyrights.”⁶



While this is untrue—only the Copyright Office can issue copyright registration certificates in the United States—the website includes two testimonials attributed to American customers:⁷

⁵ See Maria Pallante, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/about/register/pallante/pallante.html> (last visited Dec. 16, 2022) (“Maria Pallante was Register of Copyrights from June 1, 2011, through October 29, 2016.”).

⁶ *Get Copyright Registration in United States*, COPYRIGHT INDEX, <https://copyrightindex.com/get-copyright-registration-United-States/> (last visited Dec. 16, 2022); COPYRIGHT INDEX, <https://copyrightindex.com/> (last visited Dec. 16, 2022).

⁷ *Testimonials*, COPYRIGHT INDEX, <https://copyrightindex.com/testimonials/> (last visited Dec. 16, 2022).

"...Since joining Copyright Index I really have slept easier knowing my copyrights are safe. I've never written a testimonial before, but I just had to tell you how happy I am with the service..."
Pete Olsen, USA

"I'm so happy I found Copyright Index. Your system is so easy to use and gives me the right options. And the fees are so low!
Thanks guys!"
Mr Johnson, Michigan, USA

Another now-defunct service issued false registration certificates under "Title Act 17, International Copyright Code" that are "part of the record of the Copyright Office Records."

**CERTIFICATE
OF COPYRIGHT REGISTRATION**

This certificate issued under the seal of Global Copyright Registry (GCR) in accordance with Title Act 17, International Copyright Code, attests that Copyright Registration has been made for the particular(s) identified below. The information on this certificate has been made a part of the record of the Copyright Office Records.


Chief Registration Officer, GCR



GCR Code: [REDACTED]
Copyright Registration Serial: [REDACTED]
Effective Date of Registration: [REDACTED]-2021
Date of Expiry: _____ Lifetime

Registration Type: Logo

DESIGN INFORMATION

Company Name: [REDACTED]
Design Company: [REDACTED]
Unique Features: [REDACTED]
Slogan/ Tagline (if any): [REDACTED]

CLAIMANT'S INFORMATION

Name: [REDACTED] Number: [REDACTED]
Address: [REDACTED]
Country: UNITED STATES Business Location: UNITED STATES
Date of Registration: [REDACTED]-2021

Services like these often use indicators designed to confuse the public, such as listing telephone numbers with a Washington, D.C. 202 area code and using the term “official” in describing their copyright registration process. In fact, the Office has received public inquiries about whether the websites, and the “certificates” they purport to offer, are affiliated with and furnished by the Office. But these services are unaffiliated with the federal government, and consumers who pay for their services will not gain the benefits of copyright registration provided by federal law.

Entities also impersonate the Office for purposes other than registration. Two months ago, the Office was made aware of a trademark cease and desist letter using the letterhead of the Register of Copyrights and purporting to be signed by an Office official. The use of the agency’s seal and reference to the Register was presumably intended to intimidate the recipient.



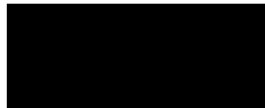
The Register of Copyrights of the United States of America
United States Copyright Office • 101 Independence Avenue SE • Washington, DC 20559-6000 • (202) 707-3000

October 19, 2022

CEASE & DESIST

Dear [REDACTED]

On behalf of the United States Copyright Office, we are requesting you Cease and Desist the use of the name(s)



This name is registered and trademarked, so you are in violation of Federal Copyright Laws. It is illegal to use a registered or trademarked name without permission of the entity or person who owns that name. At this time you may not continue with the use of this name(s). Any use of this name in print or on social media must be discontinued immediately. We received a recent submission showing you have printed or assembled a product(s) with the use of this name which is a violation of copyright laws.

We understand you may have been unaware this name(s) was registered or trademarked or you may have not done your due diligence in checking to see if this name was already filed with our office. At this time you must donate or destroy all product using this name. If you continue to violate the Federal Copyright Laws, further action may be taken by the State of California or the Federal Trademark Department of the United States leading to a submission to the courts whereas you could face federal fines or further legal action.

We appreciate you addressing this matter and discontinuing any further use of this name without written consent from the owner of this name(s).

Respectfully,
David Brunton
Special Advisor
Register of Copyrights

Shira Perlmutter
Register of Copyrights and Director, U.S. Copyright Office
of Intellectual Property and the Internet
1504 Longworth House Office Building
Washington, D.C. 20515

Finally, we note that impersonation of government agencies can confuse even sophisticated individuals. We monitor social media and flag accounts that imply affiliation with the Office, such as using the Office’s seal as a profile photo or employing suggestive profile text.



In at least one instance, we identified an account that was followed by industry groups, including a music publishers association and a professional society for copyright practitioners. The fact that multiple copyright organizations followed an account bearing the Office’s seal suggests that they mistakenly believed the account was operated by the Copyright Office.

III. Question 5: Regulatory Language Comments

We generally defer to the Commission as to whether adjustment is warranted to the regulatory language in section 461.2. In our view, the language is clear and understandable.

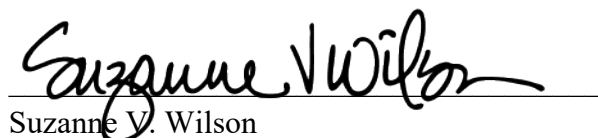
We suggest, however, considering whether the definition of “officer,” which is intended to cover authorized representatives of both government agencies and business entities, should be divided into two defined terms to provide more precise definitions of representatives of government entities and business entities, respectively.

IV. Question 6: Means and Instrumentalities Provision

We agree with the comment from the U.S. Patent and Trademark Office that the Commission should retain its proposed prohibition against providing the means and instrumentalities to commit unlawful impersonation. As that comment noted,⁸ some violators may be located abroad and a court may have trouble obtaining jurisdiction over their activities. But to the extent these entities obtain services from domestic actors, such as payment processors or online service providers, the Commission should have the power to hold them accountable.

The Copyright Office thanks you for the opportunity to provide comments on the proposed rule. Please let us know if we can provide further assistance.

Respectfully,



Suzanne V. Wilson

General Counsel and Associate Register of Copyrights
U.S. Copyright Office

⁸ U.S. Patent and Trademark Office, Comment Letter on Trade Regulation Rule on Impersonation of Government and Businesses at 10 (Dec. 2, 2022), <https://www.regulations.gov/comment/FTC-2022-0064-0026>.