

Cantor Colburn Client Alert: COVID-19: USPTO and Copyright Office Announce Deadline Extensions

On Tuesday, March 31, the U.S. Patent and Trademark Office (USPTO) and the U.S. Copyright Office announced that under authority provided by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), extensions to time will be allowed to file certain documents and to pay certain fees. The USPTO extensions are effective for filings and payments due on or after March 27, 2020 through April 30, 2020. The Copyright Office extensions are effective as against filings that would have been or are due for a period of 60 days on or after March 13, 2020. The USPTO coronavirus notices page can be accessed online at <https://www.uspto.gov/coronavirus>. The Copyright Office coronavirus notices page can be accessed online at <https://www.copyright.gov/coronavirus>.

Patent Filing and Payment Deadlines May Be Extended by 30 Days

Under the CARES Act, the USPTO has announced that some patent filings due between March 27 and April 30 will be extended 30 days from the initial date it was due, provided that the delayed filing be accompanied with a statement that the delay in such filing or payment was caused by the COVID-19 outbreak. Note that while the extensions apply to most filings and payments, including Patent Trial and Appeal Board (PTAB) filings, the CARES Act extensions do not apply to replies to pre-examination notices or to the payment of maintenance fees, except for micro-entity and small-entity filers. The full USPTO CARES Act patent guidance document can be accessed online at <https://www.uspto.gov/sites/default/files/documents/Patents%20CARES%20Act.pdf>.

Trademark Deadlines May Be Extended by 30 Days

Also under the CARES Act, the USPTO has announced that certain trademark application and registration filings due between March 27 and April 30 will be extended 30 days from the initial date it was due, provided that the delayed filing be accompanied with a statement that the delay was caused by the COVID-19 outbreak, as described above. The trademark filing extension guidelines apply to a full range of filings and payments for all trademark applications and registrations.

TTAB Deadlines Are Not Specifically Extended by the CARES Act

The USPTO guidance does not list as specifically extended any filings before the Trademark Trial and Appeal Board (TTAB) but does provide that a motion for an extension of time can be made where appropriate. The full USPTO CARES Act trademark guidance

document can be accessed online at <https://www.uspto.gov/sites/default/files/documents/TM-Notice-CARES-Act.pdf>

Copyright Office Timing Provisions Are Extended in Limited Circumstances

The CARES Act has amended the Copyright Act to allow the Register of Copyrights to toll, waive, adjust, or modify any timing provision in the Copyright Act in emergency situations. The Acting Register has chosen to invoke certain emergency modifications for a period of 60 days beginning March 13. However, copyright registrants should be aware that the announced modifications are quite limited in scope.

For Electronic Filers, Copyright Registration Timing Provisions Are Unchanged

Under the Copyright Act, a copyright owner is eligible for statutory damages only if the work is registered prior to the alleged infringement or within three months of the work's first publication. The effective date of copyright registration is when the Copyright Office receives the application, deposit, and fee payment. For registration applications that do not require submission of a physical deposit, which includes most written works, the timing provisions are unchanged.

Timing Provisions are Extended 30 Days For Electronic Filers Unable to Submit a Required Physical Deposit

For applicants who are unable to timely file a physical deposit, the applicant should upload all possible electronic documents, and then submit the physical deposit along with a statement that the physical deposit would have been timely but-for the COVID-19 emergency. If the three-month window for registration after the date of first publication was open on or after March 13, 2020, the statutory damages timing provision will be extended so long as the deposit is made within 30 days of the end of the filer's disruption. The Copyright Office guidance explains that satisfactory for-cause explanations under this guidance will be interpreted generously.

Timing Provisions are Extended Two Months, For-Cause, For Applicants Unable to File Electronically or Physically

For applicants unable to timely file electronically or physically, the applicant shall be granted an extension of two months from the end date of the disruption. For purposes of this extension, the applicant must provide a statement of cause. Satisfactory cause may be, for example that the applicant could not access a computer and/or the internet; or that the applicant was unable to access or send required physical materials. The full Copyright Office CARES Act guidance may be accessed online at <https://www.copyright.gov/coronavirus>

Further Information & Assistance

Please do not hesitate to contact your Cantor Colburn attorney with any questions you may have regarding this alert and your IP. We understand that this is a challenging time and we will work with you to get through this together.

Daniel Drexler, Partner, ddrexler@cantorcolburn.com, +1 (860) 286-2929, ext. 4105.

Please note that each situation has its own unique circumstances and ramifications. This Client Alert is for informational purposes only and is not legal advice.