

work or was created through employment or subject to an agreement;

(4) Where the allegedly infringing material is a derivative work, the pre-existing elements in the work, including ownership of those pre-existing elements, and rights to use those pre-existing elements;

(5) Any information indicating that the party alleging infringement does not own a copyright in the allegedly infringed work;

(6) All defenses to infringement asserted by the party and a detailed basis for those defenses. Defenses listed in timely answers and timely updated answers to the *standard interrogatories* shall be considered by the Board and will not require an amendment of the response to an infringement claim or an amendment of a claim for non-infringement;

(7) The basis for any other reasons the party believes that its actions do not constitute infringement;

(8) Any continued use or dissemination of the allegedly infringing material; and

(9) For a party responding to infringement claims or counterclaims, the revenues and profits the party has received that are directly related to the sale or use of the allegedly infringing material, as well as the deductible expenses directly related to that sale or use, and any elements of profit for that sale or use that the party believes are attributable to factors other than the copyrighted work.

(d) *For a party asserting misrepresentation.* In addition to the information in paragraph (a) of this section, the *standard interrogatories* for a party asserting a claim of misrepresentation under 17 U.S.C. 512(f) shall consist of information pertaining to:

(1) The notification or counter notification that allegedly contained a misrepresentation;

(2) The identity of the internet service provider to which the notification or counter notification was sent;

(3) Identification and a description of any communications with the internet service provider, the parties, or others related to the notification or counter notification at issue;

(4) The basis for the party's belief that the notification or counter notification

included a misrepresentation; and

(5) The harm, including a description and calculation of damages, caused by the alleged misrepresentation.

(e) *For a party responding to misrepresentation claims.* In addition to the information in paragraph (a) of this section, the *standard interrogatories* for a party responding to a claim of misrepresentation under 17 U.S.C. 512(f) shall consist of information pertaining to:

(1) All defenses asserted to the misrepresentation claim and the basis for those assertions. Defenses listed in timely answers and timely updated answers to the *standard interrogatories* shall be considered by the Board and will not require an amendment of the response;

(2) The basis for any other reasons the party believes that its statement did not constitute a misrepresentation; and

(3) Identification and a description of any communications with the internet service provider, the parties, or others related to the notification or counter notification at issue.

(f) *Duty to update.* A party has an obligation to update its interrogatory responses and serve updated responses on the other parties as soon as practicable after the discovery of new or updated information.

§ 225.3 Standard requests for the production of documents.

(a) *General.* Parties in an *active proceeding* shall use the relevant set of *standard requests for the production of documents* provided on the Board's website. *Standard requests for the production of documents* shall include copies of:

(1) All documents the party is likely to use in support of its claims or defenses;

(2) All other documents of which the party is reasonably aware that conflict with the party's claims or defenses in the proceeding;

(3) All documents referred to in, or that were used in preparing, any of the party's responses to *standard interrogatories*; and

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(b) *For a party asserting infringement.* In addition to the information in paragraph (a) of this section, the *standard requests for the production of documents* for a party asserting an infringement claim or responding to a claim for non-infringement shall include copies of:

(1) The work claimed to be infringed, its copyright registration, and all correspondence with the Copyright Office regarding that registration;

(2) The allegedly infringing material, if reasonably available;

(3) Where the allegedly infringed work is a derivative work, documents showing the preexisting works used and related to ownership of and rights to use those preexisting elements;

(4) Documents related to the allegedly infringing material, including communications about the allegedly infringing material;

(5) Documents showing or negating the ownership or rights of the party claiming infringement in the works at issue, including agreements showing the ownership or transfer or rights in the works;

(6) Documents sufficient to show the damages suffered by the party as a result of the alleged infringement; and

(7) Documents showing attempts by the party to cause the cessation or mitigation of infringement prior to bringing the claim.

(c) *For a party asserting non-infringement.* In addition to the information in paragraph (a) of this section, the *standard requests for the production of documents* for a party responding to an infringement claim or asserting a claim for non-infringement shall include copies of:

(1) The allegedly infringing material;

(2) Documents related to the allegedly infringed work, including communications regarding the allegedly infringed work;

(3) Documents related to the creation of the allegedly infringing material, including documents showing or negating rights to use the allegedly infringing material; and

(4) For a party responding to infringement claims or counterclaims, documents sufficient to show the revenues and profits the party has received directly related to the sale or use of the allegedly infringing material, as

well as the deductible expenses directly related to that sale or use, and the elements of profit for that sale or use that the party believes are attributable to factors other than the copyrighted work.

(d) *For a party asserting misrepresentation.* In addition to the information in paragraph (a) of this section, the *standard requests for the production of documents* for a party asserting a claim of misrepresentation under 17 U.S.C. 512(f) shall include copies of:

(1) The notification or counter notification at issue;

(2) Communications with the internet service provider concerning the notification or counter notification at issue;

(3) Documents directly pertaining to the truth or falsity of any representations made in the notification or counter notification; and

(4) Documents sufficient to show the damages suffered by the party as a result of the alleged misrepresentation.

(e) *For party responding to misrepresentation claims.* In addition to the information in paragraph (a) of this section, the *standard requests for the production of documents* for a party responding to a claim of misrepresentation under 17 U.S.C. 512(f) shall include copies of:

(1) Communications with the internet service provider concerning the notification or counter notification at issue; and

(2) Documents directly pertaining to the truth or falsity of any representations made in the notification or counter notification.

(f) *Document searches and productions*—(1) *General.* Each party shall have an obligation to conduct a reasonable search for any responsive documents of any files in its possession or under its control, including the files of any of the party's agents, employees, representatives, or others acting on the party's behalf who the party reasonably believes may have responsive documents.

(2) *Electronically stored information.* Documents responsive to the *standard requests for the production of documents*, or any additional requests permitted

by the Board, shall include electronically stored information (ESI), including emails and computer files. A reasonable search under the circumstances shall include the ESI of the party and the party's agents, employees, representatives, or others acting on the party's behalf who the party reasonably believes may have responsive documents, except that—

(i) ESI searches need not exceed manual searches that are easily accomplished by a layperson; and

(ii) Parties need not conduct searches that would reasonably require the assistance of third parties, such as a document vendor that the party would have to hire to assist with or accomplish document collection or storage.

(3) *Voluminous productions.* Responses to document requests that include large amounts of irrelevant or duplicative material are prohibited and may constitute *bad-faith conduct*.

(4) *Duty to update.* A party has an obligation to preserve all material documents and to update its production of documents by providing to the other parties any documents it later finds responsive to the Board's *standard requests for the production of documents* or any other document requests allowed by the Board as soon as practicable after the discovery of such documents.

(g) *Privileged documents.* Confidential communications with external counsel or in-house counsel reflecting or seeking legal advice related to the merits of the proceeding shall be considered privileged and need not be produced or logged. Parties must seek leave of the Board to withhold additional documents as privileged by filing a request with the Board. Requests to withhold additional documents as privileged and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

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§ 225.4 Additional discovery.

(a) *Requests for additional discovery.* Any party may request additional discovery within the deadlines set forth in the scheduling order.

(1) *Allowable discovery.* Except for the standard discovery provided in this part, any additional discovery re-

quested must be narrowly tailored to the issues at hand, not covered by the standard discovery set forth in this part, highly likely to lead to the production of information relevant to the core issues of the matter, and not result in an undue burden on the party responding to the request.

(2) *Standard for additional discovery.* The Board will grant a request for additional discovery upon a showing of good cause. In considering a request for additional discovery, the Board shall balance the needs and circumstances of the case against the burden of additional discovery on any party, along with the amount in dispute and the overall goal of efficient resolution of the proceeding.

(3) *Consent from parties.* Prior to filing a request for additional discovery, the requesting party should make reasonable efforts to secure the consent of, or a compromise with, the other party regarding the proposed additional discovery request.

(4) *Form of request.* Requests for additional discovery and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter. Unless otherwise specified in this section, a request for additional discovery must—

(i) Specifically indicate the type of additional discovery requested and the information sought, including the specific requests themselves;

(ii) Set forth in detail the need for the request; and

(iii) Indicate whether the other parties consent or object to the request.

(b) *Requests for expert witnesses.* An expert witness may be used in a proceeding only with leave of the Board. The use of expert witnesses in proceedings before the Board is highly disfavored and requests shall be rarely granted.

(1) *Standard for permitting expert witnesses.* The Board shall grant a request by a party to introduce an expert witness only in exceptional circumstances and upon a showing that the case cannot fairly proceed without the use of the expert. In considering a request for an expert witness, the Board shall balance the needs and circumstances of the case, and whether the request is made by one party or jointly among