



The Likely Impact of a Federal Government Shutdown on the United States Patent and Trademark Office, Copyright Office, and Federal Courts

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Like many areas of commerce to be effected in the United States, the threatened government shutdown – currently scheduled for midnight on Tuesday, October 1, 2013 – will impact trademark owners, copyright applicants, and federal court litigants. Immediately available information suggests that a brief shutdown would have little impact, but the impact of a longer shutdown is uncertain. We will keep current status information posted here.

Patent and Trademark Office

The United States Patent and Trademark Office ("USPTO") has announced that, in the event the October 1, 2013 shutdown comes to pass, it will remain open and will continue to operate as usual for a period of as much as *four* weeks. The USPTO is able to keep its doors open because it has enough available reserve fee collections to remain in operation until that date. Should a shutdown occur and continue longer than the four-week period, the USPTO has advised that it "would shut down at that time, although a very small staff would continue to work to accept new applications and maintain IT infrastructure, among other functions." The USPTO has advised that it will continue to post information on its website as it becomes available. The agency's plan for an orderly shutdown are available on page 78 of the United States Department of Commerce's shutdown plan. http://www.commerce.gov/sites/default/files/documents/2013/september/2013_doc_lapse_in_appropriations_plan_9_27.pdf



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Copyright Office

The United States Copyright Office has not issued any public release about its operations during a shutdown. Like all agencies, it will be required to follow Office of Management and Budget procedures outlining an orderly shutdown, which will leave only "exempt" (*i.e.*, essential) personnel in place. It remains unclear what effect this would have on services, such as, for example, the issuance of expedited copyright registrations during a shutdown.

Federal Courts

The federal court system will face a more urgent shutdown date. The Judiciary has announced that, should Congress not agree on a continuing resolution to fund the government before October 1, "the federal Judiciary will remain open for business for approximately 10 business days. "

On or around October 15, the Judiciary has advised that it "will reassess its situation and provide further guidance." The Judiciary also advised that, "[a]ll proceedings and deadlines remain in effect as scheduled, unless otherwise advised." The Case Management/Electronic Case Files (CM/ECF) system will remain in operation for the electronic filing of documents with the courts.

The Judiciary has not provided further guidance as to the potential shutdown after October 15. However, the contingency plans likely would be comparable to those announced at the time of the threatened April 2011 shutdown. At that time, the Judiciary described those functions as "limiting activities to those functions necessary and essential to continue the resolution of cases. All other personnel services not related to judicial functions would be suspended." Further guidance during that earlier threatened shutdown suggested that criminal trials would continue as needed, but left uncertain the impact on civil cases.

Following this expectation, late today The Department of Justice published its contingency shutdown plan which can be found at: <http://www.justice.gov/jmd/publications/doj-contingency-plan.pdf>. It "assumes" only a *five-day* furlough for planning purposes. With respect to litigation, the Department of Justice's plan assumes that the Judicial Branch will continue to operate through the furlough, noting that criminal litigation will continue without interruption as an activity essential to the safety of human life and the protection of property. However, the plan provides that civil litigation "will be curtailed or postponed to the extent that this can be done without compromising to a significant degree the safety of human life or the protection of property," and requires DOJ civil litigators to seek postponement of such cases.

Check back here for current updates.

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