

(3) The gaining human resources activity will coordinate with the appropriate military medical and educational personnel on availability of services and inform the selectee in writing of the availability of medical, educational, and early intervention resources and services to allow the civilian employee to make an informed choice whether to accept the position. The notice will include:

(i) Comprehensive medical, dental, and educational information on the overseas community where the position is located.

(ii) A description of the local DoDEA facility and programs, specifying the programs for children with special education needs.

(iii) A description of the local EIS available for infants and toddlers with disabilities.

(iv) A statement indicating that the lack of EIS or special education resources (including related services assigned to the military medical departments) cannot serve as a basis for the denial of family travel at government expense and required services will be provided even if a local program is not currently established in accordance with 32 CFR part 57.

(d) *Use of EFMP Family Support Services.* Civilian employees may utilize EFMP family support services on a space-available basis.

Dated: February 7, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019-02107 Filed 2-12-19; 8:45 am]

**BILLING CODE 5001-06-P**

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Parts 201 and 202

[Docket No. 2017-15]

#### Group Registration of Unpublished Works

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Copyright Office is modernizing its practices and procedures to increase the efficiency and quality of the registration process. As part of this effort, this final rule establishes a new group registration option for a limited number of unpublished works, replacing the prior accommodation for “unpublished collections.” The new group registration

option will allow the Office to examine each work for copyrightable authorship, create a more robust record of the claim, and improve the overall efficiency of the registration process. In addition, the final rule makes certain technical amendments to the regulations governing the group registration option for photographs.

**DATES:** Effective March 15, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice by email at [rkas@copyright.gov](mailto:rkas@copyright.gov); Erik Bertin, Deputy Director of Registration Policy and Practice by email at [ebertin@copyright.gov](mailto:ebertin@copyright.gov); or Mark Gray, Attorney-Advisor, by email at [mgray@copyright.gov](mailto:mgray@copyright.gov); all can be reached by telephone at 202-707-8040.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Copyright Act authorizes the Register of Copyrights to specify by regulation the administrative classes of works available for the purpose of seeking a registration and the nature of the deposits required for each class. The Register also has discretion to allow groups of related works to be registered with one application and one filing fee, a procedure known as “group registration.”<sup>1</sup> Pursuant to this authority, the Register has issued regulations permitting the Copyright Office to issue group registrations for certain limited categories of works, provided that certain conditions have been met.<sup>2</sup>

On October 12, 2017, the Office issued a notice of proposed rulemaking (NPRM) proposing to create a new group registration option for unpublished works, labeled “GRUW,” to replace a longstanding registration accommodation known as the “unpublished collection” option.<sup>3</sup> Applicants have been able to use the unpublished collection option to register an unlimited number of unpublished works with one application and filing fee.<sup>4</sup> The regulation governing the existing option, however, was based on longstanding Office practices, and it was not specifically adopted under the Office’s authority to issue group registrations under section 408(c)(1) of the Copyright Act.

The NPRM explained the rationale for replacing the unpublished collection option with a new group registration

option and described key aspects of the proposal. First, applicants would be required to use a new online application specifically designed for registering groups of unpublished works, in lieu of the Standard Application or a paper application. Second, applicants would be required to upload an electronic copy or phonorecord of each work, in lieu of providing a physical deposit. Third, the filing fee for this option would be \$55, the same fee that currently applies to individual works claims submitted on the Standard Application. Fourth, applicants could include no more than five works in each claim, with a limited exception to allow applicants to register up to five sound recordings together with the musical work, dramatic work, or literary work embodied in each recording. Fifth, the author and claimant for each work in the group must be the same. Sixth, the works must be registered in the same administrative class, and the authorship statement for each work must be exactly the same. Seventh, the proposed rule confirmed that a registration for a group of unpublished works will cover each work in the group and each one would be registered as a separate work. Finally, it clarified that applicants could not assert a claim in the selection, coordination, or arrangement of the works within the group, and that the group as a whole will not be considered a compilation, a collective work, or a derivative work.

The Office received 113 comments in response to the NPRM, discussed in more detail below. The majority of comments were submitted by individuals, including photographers, illustrators, graphic designers, and other visual artists. The Office also received comments from (1) Author Services, Inc., representing the literary, theatrical, and musical works of the late L. Ron Hubbard; (2) the law firm of Browning-Smith, which represents artists, sculptors, and illustrators; (3) the Copyright Alliance; (4) the Graphic Artists Guild, Inc.; (5) the Kernochan Center for Law, Media and the Arts at Columbia Law School (“Kernochan Center”); (6) Science Fiction and Fantasy Writers of America, Inc. (“SFWA”), American Society of Journalists and Authors (“ASJA”), and The National Writers Union (“NWU”) (collectively the “SFWA Commenters”); (7) NWU, ASJA, SFWA, and the Textbook & Academic Authors Association (collectively the “NWU Commenters”); and (8) The Authors Guild, Inc., SFWA, The Association of Garden Communicators, Society of Children’s Book Writers and Illustrators,

<sup>1</sup> See 17 U.S.C. 408(c)(1).

<sup>2</sup> See generally 37 CFR 202.3(b)(5), 202.4.

<sup>3</sup> See 82 FR 47415 (Oct. 12, 2017).

<sup>4</sup> 37 CFR 202.3(b)(4)(i)(B).

and Songwriters Guild of America, Inc. (collectively the “Authors Guild Commenters”).<sup>5</sup>

While no commenter fully opposed the Office’s proposal to eliminate the unpublished collections option, nearly all objected to the proposed limit on the number of works that may be included in each claim.<sup>6</sup> Another common concern was the perceived difficulty of determining whether a particular work is published or unpublished, especially for works distributed online. Those concerns are discussed in more detail below.

Having carefully considered each of the comments, the Office now issues a final rule that closely follows the proposed rule, with some modifications. First, the final rule increases the number of works that may be included in each submission from five to ten. The final rule also makes other minor adjustments, including clarifying that applicants must obtain guidance from the Office of Registration Policy & Practice before correcting or amplifying the information in a registration for a group of unpublished works and making several technical amendments to streamline group registration of photographs by removing some prior technical limitations.

## II. The Final Rule

### A. The Number of Works in the Group

The NPRM proposed to limit the number of works that may be included in each claim to five works. The Office acknowledged that this would be a significant change, given that applicants currently may register an unlimited number of works as an unpublished collection. The Office explained that limiting the number of works in the group would allow the Office to efficiently examine each work for copyrightable authorship and improve the quality of the public registration record.<sup>7</sup>

A majority of commenters objected to this proposal. Only two organizations—the Kernochan Center<sup>8</sup> and Author

Services—supported the five-work limit. While some of the commenters sympathized with the Office’s rationale for limiting the number of works allowable in each claim, they contested the proposed limit. Several suggested that the proposal was unfair, given that photographers may register up to 750 unpublished photos with one application, while other creators would be limited to five.<sup>9</sup> The Copyright Alliance, Graphic Artists Guild, and Authors Guild Commenters, and several individuals argued that it would be cost-prohibitive for authors who create a large volume of material to file multiple applications to register their works, and suggested the limit would discourage authors from seeking registration.<sup>10</sup>

As an alternative, one commenter suggested a limit of 20 works would be appropriate for claims involving sound recordings and musical works, as the average compact disc can hold up to 20 songs.<sup>11</sup> But the Authors Guild Commenters encouraged the Office to allow “at least several hundred in the case of text-based works, perhaps more depending on the nature of the work,” or preferably “all works created in a calendar quarter.”<sup>12</sup>

As an initial matter, the Office emphasizes that the general rule requires each individual work—whether unpublished or not—to be submitted with a separate registration application and a separate fee.<sup>13</sup> The Standard and Single Applications can be used to register individual works. The Office has adopted certain narrow exceptions to this general rule, where it has determined that, absent the ability to file multiple works on one application with one filing fee, registration would not be made. In nearly every such circumstance, the Office has created a group registration option for a particular *kind* of work—e.g., serials, newspapers, photographs.<sup>14</sup> But the existing unpublished collections option is not a

at 3; *Final Rule: Group Registration of Photographs*, 83 FR 2542 (Jan. 18, 2018).

<sup>9</sup> See, e.g., Browning-Smith Comment at 1; NWU et al. Comment at 5; Judy Sorrels Comment at 1; Benjamin Hummel Comment at 1; Cherish Flieder Comment at 1.

<sup>10</sup> See, e.g., Authors Guild et al. Comment at 4–5; Copyright Alliance Comment at 2; Graphics Artists Guild Comment at 2; Barbara Tourtillotte Comment at 1; Megan D. Comment at 1; Laura Matthews Comment at 1.

<sup>11</sup> Sergey Vernyuk Comment at 1.

<sup>12</sup> Authors Guild et al. Comment at 6.

<sup>13</sup> See *U.S. Copyright Office, Compendium of U.S. Copyright Office Practices, Third Edition* sec. 511 (“As a general rule, a registration covers one individual work, and an applicant should prepare a separate application, filing fee, and deposit for each work that is submitted for registration.”) (“*Compendium*”).

<sup>14</sup> See generally 37 CFR 202.4.

group registration option,<sup>15</sup> and is not limited to certain kinds of works. These features have “always made it an oddity in Copyright Office practice”<sup>16</sup> and complicated the Office’s efforts to efficiently administer the registration system.

While the Office considered eliminating the unpublished collections option entirely, it ultimately determined that creating a group registration option for unpublished works would be beneficial for a particular class of copyright owners: “[i]ndividual creators or small businesses who might not otherwise use the more expensive standard registration application to register their unpublished works on an individual basis.”<sup>17</sup> The group registration option aims to do that, without undermining the general rule of “one work per registration.”

After carefully reviewing the comments and weighing the issues involved, the Office has decided to increase the limit on the number of works that can be included in the group from five to ten. As stated in the NPRM, the Office is committed to conducting a complete and thorough examination of each work that is submitted under this group registration option.<sup>18</sup> To maintain reasonable fees for this service, this requires an appropriate limit on the number of works included in each claim. The final rule also provides a limited exception for sound recordings, allowing applicants to include up to ten sound recordings in each claim, together with the musical work, dramatic work, or literary work embodied in each recording.

In increasing the limit, the Office considered several factors. First, the rule must anticipate the amount of effort required to examine the wide-range of claims that may be included in this group. As noted, under the GRUW option, applicants may register nearly any type of work.<sup>19</sup> But as the Authors Guild Commenters acknowledged, the amount of time needed to examine each

<sup>15</sup> See 82 FR at 47416.

<sup>16</sup> *Id.*

<sup>17</sup> See 82 FR at 47418.

<sup>18</sup> The commenters supported this objective. For example, the Authors Guild Commenters acknowledged that examining each work and documenting its findings in the record “will facilitate licensing of works while reducing the potential for works to become orphaned.” Authors Guild et al. Comment at 4.

<sup>19</sup> The Office explained in the NPRM that compilations, collective works, databases, and websites will not be eligible for this group registration option, because they typically contain multiple works of authorship. Similarly, architectural works cannot be registered with this option, because the regulations expressly prohibit the Office from registering multiple architectural works with one application. 82 FR at 47417 n.6.

<sup>5</sup> All of the comments received in response to the NPRM can be found on the Copyright Office’s website at <https://www.copyright.gov/rulemaking/group-unpublished/>.

<sup>6</sup> Though most commenters did not support retaining the unpublished collections option on its own merits, the Authors Guild Commenters requested that unpublished collections remain a registration option if the five-work limit is not dramatically increased. Authors Guild et al. Comment at 3.

<sup>7</sup> 82 FR at 47417.

<sup>8</sup> The Kernochan Center supported the proposal based on the (correct) assumption that the limit would not apply to unpublished photographs, which are eligible for registration under a separate group registration option. Kernochan Ctr. Comment

work for copyrightable authorship, will vary depending on the “class and nature of the work.”<sup>20</sup> For example, sound recordings, musical works, audiovisual works, and choreographic works take significantly more time to examine than literary or photographic works, because each file must be opened, buffered, and played to determine if the work contains a sufficient amount of creative expression. An examiner can more easily review a large set of photographs for copyrightable authorship than a large quantity of software or other visual works. These important differences between claims involving unpublished photographs and other types of works justify differential treatment in registration.<sup>21</sup> Because the GRUW registration option will not be limited in the categories of works that can be included, the GRUW option instead accommodates the full range of potential categories of works and resource demands on the Office.

Second, the Office must consider the impact of the group option on the overall registration scheme, in light of current staffing levels and the capabilities of the current registration system. In contrast to claims involving a single work, claims involving dozens, hundreds, or even thousands of unpublished works may require several hours or more to complete. Allowing more than ten works to be registered with one application and one basic filing fee would burden the Office’s resources, and the additional workload associated with those claims would have an adverse effect on pendency times for other types of works throughout the Registration Program.

Third, and relatedly, the Office must account for the financial impact of permitting a greater number of works to be filed on one application with one filing fee. In seeking an increase in the number of works filed in a single GRUW application, commenters presumably request that the Office maintain the same fee. There is no fiscally responsible way to do that. If the Office

increases the number of works permitted on one application, the Office’s examination costs will increase commensurately. Indeed, as the Authors Guild Commenters acknowledged, the resources required to adequately examine an application involving many different works “cannot be supported with the fee for a single registration.”<sup>22</sup> Those costs must be covered in some fashion, likely by raising the fee for GRUW applications. But that result would discriminate against creators trying to register relatively few works, since the same fee would apply whether creators register 5, 10, 20, or 100 works. In light of these considerations, the Office has determined that limiting the GRUW application to ten copyrighted works strikes the appropriate balance.

The Office recognizes that applicants previously submitted dozens, hundreds, or even thousands of works through the unpublished collections option, and that going forward, some applicants will need to file multiple applications instead of registering all of their works with one submission. The Office takes seriously the additional cost and burden this may impose, especially on individual filers and small businesses. But the Office never intended unpublished collections claims to include such a large quantity of works, and this new limit is necessary to ensure that the Office can reasonably and efficiently fulfill its statutory obligations to ensure that each work constitutes copyrightable subject matter and meets the other legal and formal requirements for registration.

While the Office has determined that ten is the most appropriate limit for the GRUW option, it will continue exploring whether additional group options (or other accommodations) are necessary to ensure that the standard rule of one application per work does not drive certain creators to forgo registration altogether.<sup>23</sup> For example, since the proposed GRUW option was published, the Office not only finalized its proposed rule regarding group registration of published and unpublished photographs, with a limit of up to 750 photographs per application, it also issued a separate NPRM proposing to create a group registration option for qualifying short online literary works; under that proposed rule, applicants may submit up to 50 works with the same

application.<sup>24</sup> The Office is also preparing a proposed group option for musical works and sound recordings included as part of a music album.<sup>25</sup> These separate proposals should address some of the concerns raised by commenters about the limit for this unpublished option.<sup>26</sup>

The Office similarly recognizes that visual artists other than photographers are often prolific, and the comments provided useful information about the needs of these artists and the volume of material they typically create.<sup>27</sup> The comments suggest that—from an artist perspective—a group option for graphic and other visual art works could be limited to between 20–100 works, but the Office does not have currently sufficient information on the length of time that would be needed to examine these types of works if they were grouped together.<sup>28</sup> Consequently, the Office will monitor the amount of time needed to examine visual art claims submitted under GRUW. The Office will use that information to determine whether it would be appropriate to create a separate group registration option for visual art works other than photographs.

#### *B. Distinguishing Between Published and Unpublished Works*

The final rule confirms that this group registration option may only be used to register unpublished works. The Office recognizes that applicants may struggle with determining whether a work is published or unpublished, and this determination can be less than straightforward in many instances. But “publication” is a statutorily defined term, and the Office is required under section 409 to ask for the publication status of works on the registration

<sup>24</sup> 83 FR 65612 (Dec. 21, 2018).

<sup>25</sup> See *Update to Compendium of U.S. Copyright Office Practices*, 82 FR 45625, 45628 (Sept. 29, 2017) (explaining plans in response to comments regarding registering music on an album).

<sup>26</sup> See, e.g., Sergey Vernyuk Comment at 1 (suggesting raising the GRUW limit to 20 works to allow for group registration of “an unpublished CD’s-worth of music”); Copyright Alliance Comment at 2 (outlining needs for a group registration for musical works and sound recordings as well as new options for bloggers and other online creators); Authors Guild et al. Comment at 8 (requesting creation of additional group registration options for various classes of works).

<sup>27</sup> See, e.g., Rachel Fritz Comment at 1; Barbara Tourtillotte Comment at 1; Shari Warren Comment at 1; Jeffrey West.

<sup>28</sup> See, e.g., Jeffrey West Comment at 1–2 (estimating creation of fine art works to be several hundred images per year and suggesting limit of 250–300); Benjamin Hummel Comment at 1 (children’s book illustrators generally require creation of 20–40 images); Graphic Artists Guild Comment at 1 (citing survey that creating logo results in average of 15 works and noting that some logos require close to 50 sketches).

<sup>20</sup> Authors Guild et al. Comment at 4 & n.2.

<sup>21</sup> Many comments pointed to the difference in the number of works registrable under GRUW and the 750-work limit for group registrations of photographs. See, e.g., Cherish Flieder Comments at 1 (pointing to disparity and requesting equal rules for all visual works); Browning-Smith Comment at 1 (characterizing 750-work limit for photographs as “special treatment”). But other comments support the Office’s flexibility in crafting registration options tailored to the nuances of the works at issue. See Jeffrey West Comment at 1–2 (proposing higher limit for illustrations, graphic designs, and fine artwork based on the “reasonable number of images” created in a professional practice); Graphic Artists Guild Comment at 1–2 (member survey showed artists generate average of 15 works in the process of designing a logo).

<sup>22</sup> Authors Guild et al. Comment at 3.

<sup>23</sup> See 82 FR at 47416–17 (citing H.R. Rep. No. 94–1476, at 154 (1976), as reprinted in 1976 U.S.C.C.A.N. 5659, 5770; S. Rep. No. 94–473, at 136 (1975) (regulatory authority to create group registration of related works is because such options are “needed and important”).

application.<sup>29</sup> As noted in the *Compendium* and other publications, the applicant is responsible for determining whether a work is unpublished, and the Office generally accepts that determination unless it is contradicted by information contained within the registration materials.<sup>30</sup>

Several commenters expressed concern about this requirement. The Copyright Alliance, Graphic Artists Guild, and Authors Guild Commenters noted that applicants find it difficult to determine whether a work is published or unpublished, especially for works distributed online.<sup>31</sup> To that end, the Graphic Artists Guild requested that the Office issue further guidance “on what constitutes publication for online works.”<sup>32</sup> Similarly, the Authors Guild Commenters suggested that the “explanations of the meaning of ‘publication’ and associated terms” in the *Compendium* “requires a knowledge of copyright law that few applicants” possess, particularly with respect to “works disseminated online.”<sup>33</sup> The Authors Guild Commenters acknowledged that the Office “cannot unilaterally amend the definition of ‘publication’” because it is “embodied” in the Copyright Act.<sup>34</sup> But they suggested that the Office could promulgate a regulatory definition for “online publication” through an administrative rulemaking, which would give interested parties the opportunity to “weigh in and ensure that all issues are properly vetted,” or perhaps replace the “published/unpublished distinction” with a “concept such as ‘disseminated to the public’ or ‘made available to the public.’”<sup>35</sup>

In light of section 409’s statutory requirement, and the Office’s longstanding existing guidance and practices regarding the need for applicants to specify whether their works are published or unpublished, the Office concludes that it is not necessary to delay implementation of the new group registration option due to any

uncertainty regarding the definition of publication.<sup>36</sup> Indeed, since this NPRM was published, the Office has adopted a final rule regarding group registration options for published and unpublished photographs that grappled with many of the same issues.<sup>37</sup> But the Office appreciates that applicants have raised important questions about their challenges in applying the definition of publication, particularly in the context of works that are only made available online, and plans to issue a notice of inquiry to solicit comments regarding issues related to online publication, and ultimately to provide additional guidance for applicants. Meanwhile, the Office believes that prompt promulgation of this final rule will aid the Office in fulfilling its statutory obligations and administering the copyright registration system.

#### C. Filing Fee

The NPRM proposed a \$55 filing fee for registering a group of unpublished works, the same fee that currently applies to claims submitted on the Standard Application.<sup>38</sup> The Office stated that it would monitor the cost of examining these claims once the final rule had been implemented. Since the NPRM, the Office has conducted a fee study that proposed a filing fee of \$85 for each GRUW submission, the same as the fee that currently applies to claims involving the group registration option for contributions to periodicals.<sup>39</sup> Until the proposed fees in the fee study go into effect, the Office has adopted the noticed \$55 fee for GRUW claims. In this regard, the Office notes that the GRUW option updates and replaces the unpublished collection option, which was also available for the same \$55 fee pursuant to the Standard Application. Accordingly, the Office does not consider the availability of the GRUW option for the same rate as the Standard Application to constitute an “adjustment” of fees.<sup>40</sup>

In response to the proposed \$55 fee, several commenters encouraged the Office to develop alternate fee structure for unpublished works in order to expand the number of works that may

be included in each claim. Browning-Smith and the Copyright Alliance urged the Office to offer a sliding fee schedule, where the amount of the fee would vary depending on the number of works submitted.<sup>41</sup> The SFWA Commenters noted that the Office uses a similar sliding-fee structure for recordation, where remitters pay extra for each additional group of ten titles listed in the document.<sup>42</sup> The Copyright Alliance also encouraged the Office to adopt a subscription-based fee that would allow applicants to pay a periodic fee for registering all the works they produce during a given timeframe.<sup>43</sup> The Office welcomes these suggestions and will take them into account in developing the business requirements for its next generation registration system.<sup>44</sup> The current registration system, however, does not permit the Office to adopt these types of alternative fee structures.

#### D. Other Eligibility Requirements

While the remaining eligibility requirements sparked little or no opposition, the Office offers the following points of clarification:

The final rule provides that the works must be registered in the same administrative class, and the authorship statement for each work must be exactly the same. The Authors Guild Commenters and the Kernochan Center supported this idea, noting that it would eliminate the need to have examiners in different divisions review the same works.<sup>45</sup> By contrast, the Graphic Artists Guild expressed concern that it would prevent visual artists from registering unpublished works that contain multiple forms of authorship, such as children’s books, graphic novels, comics and cartoons, or illustrated short stories containing text and artwork.<sup>46</sup>

To be clear, applicants will be able to register unpublished works that contain different types of authorship. When completing the application, applicants should select the administrative class that would be most appropriate for the predominant form of authorship in each work, and the authorship term that best describes the work as a whole. For example, when registering a group of comic strips that contain a substantial amount of artwork combined with some

<sup>29</sup> See 17 U.S.C. 409(8) (requiring copyright application to include “the date and nation of [ ] first publication” if a work has been published).

<sup>30</sup> See, e.g., *Compendium* sec. 1904.1; U.S. Copyright Office, *Circular 1: Copyright Basics*, at 7 (Sept. 2017), <https://www.copyright.gov/circs/circ01.pdf>.

<sup>31</sup> Authors Guild et al. Comment at 6; Copyright Alliance Comment at 2 n.2, Graphic Artists Guild Comment at 1–2.

<sup>32</sup> Graphic Artists Guild Comment at 2.

<sup>33</sup> Authors Guild et al. Comment at 7.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 7–8. The Authors Guild Comment did not specify whether it was advocating for statutory change or suggesting that the Office could somehow “replace” the concept of publication with “made available to the public” through a rulemaking.

<sup>36</sup> *Contra id.* at 8.

<sup>37</sup> 83 FR 2542 (Jan. 18, 2018).

<sup>38</sup> See 82 FR at 47419.

<sup>39</sup> See 83 FR 24054, 24059 (May 24, 2018).

<sup>40</sup> See 37 CFR 201.3 (listing current registration fees); 17 U.S.C. 708(b) (describing process for adjustment of registration fees); see also Booz Allen Hamilton, U.S. Copyright Office, *Fee Study, Questions and Answers* at 6 (Dec. 2017), [https://www.copyright.gov/rulemaking/feestudy2018/fee\\_study\\_q&a.pdf](https://www.copyright.gov/rulemaking/feestudy2018/fee_study_q&a.pdf) (Question 3 discussing propriety of charging certain group registration options the same rate as the Standard Application if they required similar resources for processing).

<sup>41</sup> See Browning-Smith Comment at 1–2; Copyright Alliance Comment at 2.

<sup>42</sup> SFWA et al. Comment at 3.

<sup>43</sup> Copyright Alliance Comment at 2.

<sup>44</sup> See *Notification of Inquiry: Registration Modernization*, 83 FR 52336, 52339 (Oct. 17, 2018) (seeking input on whether the Office should adopt scaled fees based on the number and types of works registered).

<sup>45</sup> Authors Guild et al. Comment at 9; Kernochan Ctr. Comment at 3.

<sup>46</sup> Graphic Artists Guild Comment at 3.

text, applicants should select the class for “visual arts works” and should use the term “unpublished pictorial or graphic works” to describe those works. When registering a group of illustrated short stories that contain a substantial amount of text combined with some illustrations, applicants should select the class for “literary works” and should use the term “unpublished literary works” to describe those works. If the types of authorship in each work are roughly equal—as is often the case with a children’s book—applicants may select “literary works” or “visual arts works,” and depending on which class has been selected, they may use the term “unpublished literary works” or “unpublished pictorial or graphic works” to describe those works.

Perhaps because it represents an author who is deceased, Author Services said it would be unable to use the group registration option, because the author and claimant for each work must be the same person or organization.<sup>47</sup> To be clear, an author may always be named as the copyright claimant for purposes of this group registration option, even if that individual has transferred their copyright or has died.<sup>48</sup> But if Author Services prefers to list itself as the claimant, it would be ineligible for this group registration option and could instead register the works individually; as noted, entities to which copyrights have been transferred are not intended to be the primary beneficiary of this rule.

**E. Supplementary Registration**

A supplementary registration is a special type of registration that may be used “to correct an error in a copyright registration or to amplify the information given in a registration.”<sup>49</sup> The NPRM explained that if applicants need to correct or amplify the information appearing in a registration for a group of unpublished works, they will be required to use the online

application for supplementary registration.<sup>50</sup>

The Office created multiple versions of this form that may be used to correct or amplify the information in a registration for a group of photographs, serials, newspapers, newsletters, or contributions to periodicals. But the Office has not yet created a similar version for a registration for a group of unpublished works. Therefore, the final rule clarifies that applicants should contact the Office of Registration Policy & Practice to obtain instructions before seeking a supplementary registration involving these types of claims.

**F. Technical Amendments**

The final rule makes a few technical changes intended to clarify the regulations, update cross-references, and simplify the registration of photographs by accepting more formats and material. Specifically, the final rule removes a superfluous sentence from § 202.4(h) which states that a group of unpublished photographs cannot be registered as an unpublished collection and removes a provision from § 202.4(h) and (i), and § 202.20(c), stating that photographers should not include any form of punctuation in the file names that they upload to the electronic registration system.<sup>51</sup> The Office was concerned that punctuation in the file names might cause a technical error that could prevent the system from opening the files, but after testing the new applications the Office has confirmed that punctuation should not cause this type of problem.<sup>52</sup> This represents a change in a “rule[] of agency organization, procedure, or practice,”<sup>53</sup> that does not “alter the rights or interests of parties” to require notice and comment<sup>54</sup>—if anything, it eases the requirements for applicants that use this option.

**List of Subjects**

*37 CFR Part 201*

Copyright, General provisions.

*37 CFR Part 202*

Copyright, Preregistration and registration of claims to copyright.

**Final Regulations**

For the reasons set forth in the preamble, the U.S. Copyright Office amends 37 CFR parts 201 and 202 as follows:

**PART 201—GENERAL PROVISIONS**

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

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

■ 2. Amend § 201.3 by redesignating paragraphs (c)(8) through (22) as (c)(9) through (23) and adding a new paragraph (c)(8) to read as follows:

**§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.**

*	*	*	*	*
(c) * * *				
Registration, recordation and related services				Fees (\$)
*	*	*	*	*
(8) Registration of a claim in a group of unpublished works .....				55
*	*	*	*	*

**PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT**

■ 3. The authority citation for part 202 continues to read as follows:

**Authority:** 17 U.S.C. 408(f), 702.

■ 4. Amend § 202.3 by revising paragraph (b)(4) and adding paragraph (c)(4) to read as follows:

**§ 202.3 Registration of copyright.**

\* \* \* \* \*

(b) \* \* \*

(4) *Registration as one work.* For the purpose of registration on one application and upon the payment of one filing fee, the following shall be considered one work: In the case of published works, all copyrightable elements that are otherwise recognizable as self-contained works, that are included in the same unit of publication, and in which the copyright claimant is the same.

\* \* \* \* \*

(c) \* \* \*

(4) In the case of applications for registration made under paragraphs (b)(4) through (5) of this section or under § 202.4, the “year of creation,” “year of completion,” or “year in which creation of this work was completed”

<sup>47</sup> Author Services Comment at 1.  
<sup>48</sup> See *Compendium* sec. 619.7 (“The author may always be named as the copyright claimant . . . even if the author does not own any of the rights under copyright when the application is filed.”); *Notice of Proposed Rulemaking: Registration of Copyright: Definition of Claimant*, 77 FR 29257, 29258 (May 17, 2012) (author may always be listed as a copyright claimant “because an author may always have a reversionary or beneficial interest in the work”); see also *Compendium* sec. 619.13(Q) (“If the author is the only party who is eligible to be named as the copyright claimant, and if the author is deceased . . . the U.S. Copyright Office will accept an application that names the author as the copyright claimant.”).  
<sup>49</sup> 17 U.S.C. 408(d).

<sup>50</sup> 82 FR at 47419.  
<sup>51</sup> 37 CFR 202.4(h)(9), (i)(9); *id.* at 202.20(c)(2)(vii)(D)(8).  
<sup>52</sup> For similar reasons, the Office removed a provision from the deposit requirements for GRUW that encouraged applicants to submit their works in a .zip file, rather than uploading them one at a time.  
<sup>53</sup> 5 U.S.C. 553(b)(3)(A).  
<sup>54</sup> *JEM Broadcasting Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994).

means the latest year in which the creation of any copyrightable element was completed.

\* \* \* \* \*

■ 5. Amend § 202.4 as follows:

- a. Add paragraph (c).
- b. In paragraph (h)(8), remove the second sentence, which is in parentheses.
- c. In paragraph (h)(9), remove the second sentence.
- d. In paragraph (i)(9), remove the second sentence.
- e. In paragraph (n), remove “paragraph (g), (h), (i), or (k)” and add in its place “paragraphs (c), (g), (h), (i), or (k)”.

The addition reads as follows:

**§ 202.4 Group registration.**

\* \* \* \* \*

(c) *Group registration of unpublished works.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of unpublished works may be registered in Class TX, PA, VA, or SR with one application, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) All the works in the group must be unpublished, and they must be registered in the same administrative class.

(2) Generally, the applicant may include up to ten works in the group. If the conditions set forth in § 202.3(b)(1)(iv)(A) through (C) have been met, the applicant may include up to ten sound recordings and ten musical works, literary works, or dramatic works in the group.

(3) The group may include individual works, joint works, or derivative works, but may not include compilations, collective works, databases, or websites.

(4) The applicant must provide a title for each work in the group.

(5) All the works must be created by the same author or the same joint authors, and the author and claimant information for each work must be the same.

(6) The works may be registered as anonymous works, pseudonymous works, or works made for hire if they are identified in the application as such.

(7) The applicant must identify the authorship that each author or joint author contributed to the works, and the authorship statement for each author or joint author must be the same. Claims in the selection, coordination, or arrangement of the group as a whole will not be permitted on the application.

(8) The applicant must complete and submit the online application

designated for a group of unpublished works. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(9) The applicant must submit one complete copy or phonorecord of each work. Each work must be contained in a separate electronic file that complies with § 202.20(b)(2)(iii). The files must be submitted in one of the electronic formats approved by the Office, they must be assembled in an orderly form, and they must be uploaded to the electronic registration system. The file size for each uploaded file must not exceed 500 megabytes; the files may be compressed to comply with this requirement.

(10) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (c)(8) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.

\* \* \* \* \*

■ 6. Amend § 202.6 as follows:

- a. Redesignate paragraphs (e)(2) through (7) as paragraphs (e)(3) through (8).
- b. In newly redesignated paragraph (e)(8), remove “paragraph (e)(1)” and add in its place “paragraph (e)(1) or (2)”.
- c. Add new paragraph (e)(2).

The addition reads as follows:

**§ 202.6 Supplementary registration.**

\* \* \* \* \*

(e) \* \* \*

(2) To seek a supplementary registration for a group of unpublished works registered under § 202.4(c), an applicant must complete and submit the online application designated for supplementary registration after consultation with and under the direction of the Office of Registration Policy & Practice.

\* \* \* \* \*

**§ 202.20 [Amended]**

- 7. Amend § 202.20(c)(2)(vii)(D)(8) by removing the fourth sentence.

Dated: January 28, 2019.

**Karyn A. Temple,**

*Acting Register of Copyrights and Director of the U.S. Copyright Office.*

Approved by:

**Carla D. Hayden,**

*Librarian of Congress.*

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**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 202**

[Docket No. 2017–16]

**Group Registration of Newspapers**

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Copyright Office is amending its regulation governing the group registration option for newspaper issues. This rule will eliminate the three-month deadline for submitting this type of claim. Based on requests received from several newspaper publishers, the Office has determined that there is a legitimate need to make this change effective immediately.

**DATES:** Effective February 18, 2019.

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, General Counsel and Associate Register of Copyrights; Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; or Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202–707–8040 or by email at [regans@copyright.gov](mailto:regans@copyright.gov) and [ebertin@copyright.gov](mailto:ebertin@copyright.gov).

**SUPPLEMENTARY INFORMATION:** In 1992 the Copyright Office established a group registration option that allows newspaper publishers to register an entire month of issues with one application and one filing fee.<sup>1</sup> Initially, applicants were required to submit a paper application and submit microfilm deposit copies, and they had to submit these materials within three months after the publication of the most recent issue in the group.<sup>2</sup> This deadline was intended to benefit the Library of Congress by ensuring that newspaper issues could be added to its collections and made available to its patrons in a timely manner. But newspaper publishers often submitted their claims after the three-month deadline due to the high cost of producing microfilm. Many publishers could not afford to send their newspapers to a microfilm producer until they had a sufficient number of issues to justify the cost, which delayed the production and delivery of the microfilm.<sup>3</sup>

Last year the Office updated its regulation governing this group registration option.<sup>4</sup> Under the current

<sup>1</sup> 57 FR 39615 (Sept. 1, 1992).

<sup>2</sup> 37 CFR 202.3(b)(6)(F) (1992).

<sup>3</sup> 82 FR 51369, 51378 (Nov. 6, 2017).

<sup>4</sup> 83 FR 4144 (Jan. 30, 2018).