



**BEFORE THE
U.S. COPYRIGHT OFFICE**

Group Registration of Photographs

Docket No. 2016-10

COMMENTS OF THE COPYRIGHT ALLIANCE

The Copyright Alliance appreciates the opportunity to submit the following comments in response to the U.S. Copyright Office’s Notice of Proposed Rulemaking on the Group Registration of Photographs (“Notice”), published in the Federal Register on December 1, 2016.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

We endorse the joint comment being filed by the American Photographic Artists, American Society of Media Photographers, Digital Media Licensing Association, Graphic Artists Guild, National Press Photographers Association, North American Nature Photography Association, PLUS Coalition, Professional Photographers of America, and Shaftel & Schmelzer (“Joint Comment”). The broader copyright community appreciates the specific challenges visual artists face with registering their works and support the Copyright Office’s efforts to address those challenges. Our comments below are intended to highlight and reinforce the points made by visual artists in their joint comments.

I. Group Registration for Unpublished and Published Should Cover All Visual Artists

The Copyright Alliance supports the proposed regulation for creating new group registration methods for photographs, known as the group options for unpublished photographs (“GRUPH”) and the group options for published photographs (“GRPPH”). These registration

methods encourage photographers to register their works since individual works included within a group registrations receive more comprehensive and effective legal protections than individual works that are part of a database or collective work registration. Under group registrations, infringement of multiple works in the group triggers statutory damages for each infringed work, whereas under collective work or database registrations, the infringement of multiple works in a collection only triggers statutory damages once, for the collection as a whole.

The Copyright Office also highlights this advantage in the Notice, as compared to existing registration options of Unpublished Collections, Group Registration for Photographic Databases, and Collective Works. While we applaud the fact that the GRPUH and GRPPH will bring these benefits for photographers, we also note that these same protections and incentives should be extended to the larger crowd of visual artists such as graphic artists, illustrators, and designers. Like photographers, these artists also create works that can easily be repurposed and infringed, and they require the same incentives and protections enjoyed by photographers in this new regulation to adequately protect their work.

II. Recommendations for Improving GRPPH and GRUPH Registration Requirements

Though we support the Copyright Office's proposed rule, we would also like to highlight the following recommendations for improving the GRPPH and GRUPH:

a. The Regulation Should Allow for a Transition Period Between Paper and Online Registrations

The new regulation should allow for a transition period between paper and online registrations. The Copyright Office proposes to require the use of online forms to complete GRPPH and GRUPH thereby eliminating paper forms altogether. While we agree that online forms facilitate economy and efficiency, it is equally important to ensure that the creators, whom this new rule benefits, have time to "catalog, archive, and register their works" from traditional print media to digital media. We support the suggestion in the Joint Comments that the Copyright Office allow for a grace period to gradually phase out paper applications for photographers who are more accustomed to traditional print media.

b. A Flexible Pricing Structure Would Better Accommodate the Needs of Photographers and Other Visual Artists

The limited number of individual works that can be registered in these group registrations should be reconsidered in favor of flexible pricing structures that would take into account how many works a photographer needs to register while respecting the Copyright Office's operational concerns. The proposed rule for GRPPH and GRUPH seek to limit the number of works that can be registered per group registration to 750 works. This limit restricts many photographers; as the Joint Comment notes, a photographer can easily take more than 750 images in a single

photoshoot or job, and over a span of three months,¹ that number could grow exponentially. On the other hand, the Copyright Office reasons that under the proposed filing fee of \$55, the registration limit of 750 images would strike the right balance between the photographers' interests in registering as many works as possible and the administrative costs on the Copyright Office in issuing these group registrations.² We support recommendations for a flexible fee structure, which would not only allow photographers to register more than 750 works per group registration, while also taking into account the Copyright Office's concerns with administrative costs and burdens.

c. Photographers Should Be Able to Register Both Unpublished and Published Works Together in One Group Registration

The Copyright Office notes that in GRPPH and GRUPH, applicants cannot register unpublished and published works in a single group registration. However, photographers often create hundreds of works from one photoshoot but may only publish several of them, which might not warrant an entirely separate registration form and separate payment of the filing fee. We have heard from numerous photographers that the major source of confusion and the major impediment to registration of their works with the Copyright Office is the ambiguity in the definitions of and distinctions between published and unpublished photos. Allowing photographers to register both unpublished and published works together will encourage copyright registration by eliminating outmoded barriers that make registration more difficult—though we note that since the Copyright Act requires that published works be identified with a publication date and nation of publication,³ mixed registrations would not address the confusion concerning publication status.

III. Additional Recommendations

We support the Copyright Office in its intent to provide resources and guidance to visual creators in navigating these new systems of group registration. Some suggestions include updating the *Compendium of U.S. Copyright Office Practices, Third Edition*, creating a Circular dedicated to registration procedures for visual artists in light of these new regulations, updating Circular 40 (“Copyright Registration for Pictorial, Graphic, and Sculptural Works”), and updating Circular 40a (“Deposit Requirements for Registration of Claims to Copyright in Visual Arts Material”).

¹ The three month span is relevant because of 17 USC § 412, which states that to be eligible to seek statutory damages in an infringement suit, a copyright owner must register her work prior to infringement or within three months of publication of the work.

² In the Notice, the Copyright Office notes, “Given resource limitations and the modest filing fee for this group option, the Office must impose some limit on the total number of photographs that may be submitted under the group option for published photographs and the new option for unpublished photographs. Group Registration of Photographs, 81 Fed. Reg. 86643, 86649 (proposed Dec. 1, 2016).

³ 17 USC § 409(8).

IV. Conclusion

Improved group registrations will make it easier for photographers to take advantage of the legal benefits afforded by registration, which in turn will incentivize more works to be registered, contributing to the public record. The GRPPH and GRUPH will make registration easier and thus afford improved protections for photographers. However, further improvements in the proposed system are necessary as they still face some issues that must be addressed to further incentivize these creators to register their works. These new registration processes should also be extended to the entire visual arts community, who seek similar protections and benefits that are conferred upon the photography community.

We thank you for the opportunity to participate in the proposed rulemaking on group registration of photographs and look forward to reviewing the Office's final rule.

Respectfully submitted,

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Copyright Alliance