



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

**Group Registration of Unpublished Works**

**Docket No. 2017-15**

**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following comments in response to the U.S. Copyright Office’s Notice of Proposed Rulemaking on Group Registration of Unpublished Works (“NPRM”), published in the Federal Register on October 12, 2017.

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.

As a threshold matter, we appreciate the Copyright Office clarifying that this NPRM is not intended to limit the number of photographs a claimant can register on a single application and that the Office will be issuing a rule providing for a separate group registration process for photographs.<sup>1</sup> However, we also understand that the final rule for group registration of unpublished photographs will not be revised to cover other works of visual arts such as graphic arts and illustrations. We hope the Copyright Office considers that issue with a separate regulation, given that graphic artists and illustrators face similar registration issues as photographers do, particularly when it comes to the high volume of unpublished works they may produce. For example, many graphic artists deliver sketches, revisions, rejected designs and illustrations, and final sketches digitally to their clients during the course of a project, and they choose to register each of these items to ensure they are fully protected.

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<sup>1</sup> Group Registration of Unpublished Works: Extension of Comment Period, 82 Fed. Reg. 52258 (Nov. 13, 2017).

The limit of five works on each claim would pose an insurmountable burden on copyright owners, particularly individual creators, and will almost certainly result in a decrease in the number of works registered through the Copyright Office. The cost of registration is a significant expense to many individual creators, and thus the ability to register multiple unpublished works on a single group application has been used by individual creators as a way to secure the legal benefits of copyright registration at a cost that they could bear. This is significant since the benefits of timely registration—particularly the availability of statutory damages and attorney’s fees—are critically important to individual creators.

Given the resource limitations of this population, the likely consequence of the Copyright Office’s dramatic limit on the number of unpublished works that can be registered under the proposed rule will be less works registered as most individual creators are not in the position to increase the number of registration claims they file.

As it has done with photographs, we ask the Copyright Office to consider creating separate regulations for other types of works where, for various reasons, more than five works would routinely be made on a single claim. For example, songwriters and music producers may create a high volume of unpublished works that they may wish to register before disclosing those works to third parties.

The Copyright Office should also consider closely the needs of the new generation of online creators such as bloggers, podcasters, and vloggers (like YouTube creators). In many cases, their works may remain unpublished even after they are accessible online,<sup>2</sup> and so many of these creators would welcome the legal benefits secured by registration. Yet the limits on the number of works that could be registered on a single claim would seriously impede their ability to do so. For example, a blogger that writes a new article every weekday would need to submit a new registration every week under this group registration process (assuming the articles would be considered unpublished), which would likely be prohibitively expensive.

We understand the Copyright Office’s reasoning behind the NPRM and appreciate the resource and statutory limitations it faces regarding the registration process and fee-setting authority. We have long advocated for modernization of the Office and its information technology systems. We believe modernization efforts should also consider whether greater flexibility in the Office’s fee setting authority is warranted—for example, the Office could allow for the registration of more than five works on a group registration for an additional fee. Or it could consider a subscription-based fee, allowing certain high-volume registrants to pay a periodic fee for registering all their works produced during a particular time frame.

We hope that this NPRM is only a stop-gap measure to address the Office’s current limitations and that a solution that meets the needs of the Copyright Office and the registration system in a way that fits the needs of individual creators will be put in place when the Office has the authority and capacity to do so. And as the Office continues to examine its regulations and fee schedule as part of its broader modernization efforts, we support its efforts to look for ways

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<sup>2</sup> Or not. Many individual creators have expressed concerns to us about the lack of clarity over the published/unpublished distinction, and we encourage the Copyright Office to continue efforts to address this uncertainty.

to provide incentives that encourage copyright owners to register their works without penalizing those who choose not to.

### **Conclusion**

We thank you for the opportunity to participate in the proposed rulemaking on group registration of unpublished works and look forward to reviewing the Office's final rule and working with the Office as it continues to modernize its registration process.

Respectfully submitted,

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