



Group Registration of Serials

Docket No. 2018-2

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

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 Serials (“Proposed Rule”), published in the Federal Register on May 17, 2018.

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.

The Copyright Alliance appreciates that the Copyright Office continues to work with stakeholders to update and modernize its registration policies and applauds that the Proposed Rule will remove the requirement to provide complimentary subscriptions or microfilms to the Library of Congress to qualify for the group registration option, update the group registration process for serials by clarifying requirements, and harmonize regulations with the Copyright Office Compendium and current practices. As the Copyright Office noted, the group registration option recognizes that authors and copyright owners may choose to submit such applications for certain works which may be burdensome and expensive to individually register, to the point where they may forgo registration altogether. Registration not only offers several incentives for authors and copyright owners to register but is also a key way for the public to discover copyright ownership information through a comprehensive record. The following comments are intended to highlight several recommendations to the Copyright Office in order to aid and

incentivize authors and copyright owners of serials in registering their works in this group registration option.

I. The Requirement That Serials Should Bear Issue Dates That Fall Within the Required Publication Period Should Be Reconsidered

The requirement that serials in a group registration should bear issue dates that fall within the three month publication period as specified in the application and in the same calendar year should be modified. Current regulations require that serials in this group registration option be “published in a given three month period” and “in the same calendar year” which the Proposed Rule updates to mandate that issues “be published within three months . . . within the same calendar year, bearing issues dates within those months . . .”

While we understand that the Proposed Rule would “reinforce longstanding requirements” and is modeled based on the regulations concerning group registration for newspapers and newsletters, it will create complications for publishers who publish issues at the end of a calendar year. Issues published with an on-sale, publication date at the end of the calendar year will typically bear an issue date of the following calendar year. Since an issue published at the end of the calendar year will bear an issue date that falls outside of the required three month and same calendar year timeframe, it will not satisfy the eligibility requirements for this group registration, and publishers will be unable to register those issues in a group registration. In order to allow publishers of these issues to use the group registration option, we ask that the Copyright Office reconsider the requirement that registered serials bear issue dates within the three-month publication period of the same calendar year to better align with real-world publication practices.

II. Other Requirements for Group Registration Eligibility Should Be Clarified

The requirement that issues be an “all new,” discrete, and self-contained collective work should be clarified to encompass the diverse forms in which serials may manifest, particularly in digital mediums. The Copyright Office proposes that “each issue must be fixed and distributed as a discrete, self-contained collective work” and that the “content of each issue does not change once it has been distributed.” However, under the Proposed Rule, publishers will be unable to register enhanced, digital issues which may contain content hosted on and linked to another platform such as videos and blogs that allow the reader to manipulate or interact with the issue in a group registration of serials. These interactive elements may disqualify the issue as a “self-contained work” that are not necessarily downloadable in an ePrint format, which would disqualify publishers of enhanced digital issues of serials from using the group registration option. To allow publishers of these issues to utilize the group registration option, we ask that the Copyright Office clarify and update the Proposed Rule to include these forms of serials.

Additionally, we point out that the Proposed Rule sets forth the definition of a serial for group registration purposes, which includes that a serial is “published at intervals of a week or longer.” Though this part of the definition exists in current regulations, it is not clear how it would accommodate cases when a publisher of a weekly serial publishes a “special” issue—separate from its regularly scheduled issues—under the same title within the same week. The publisher would be unable to meet the requirement that the issue be published weekly or for a

longer period of time, and would be unable to register the issues under the group registration for serials option. We would appreciate it if the Copyright Office can clarify and advise on how the regulation would work in this context.

III. The Regulation Should Continue to Allow for Physical Deposits for Registrations Until the Copyright Office is Able to Process and Protect Large Digital Deposits

The Proposed Rule should allow for physical deposits for registration purposes until the registration system is capable of handling large digital files. The Copyright Office proposes to require electronic deposits for registration purposes thereby eliminating physical deposits altogether. While we agree that electronic deposits will generally “increase the efficiency of the group registration process,” there are some remaining concerns with the transition. Until the Library of Congress is able to fully implement and deploy robust security measures, we ask that this Proposed Rule and all future regulations mandating electronic deposits for registration purposes be carefully examined. While major issues have not yet occurred with respect to the electronic deposits of the Copyright Office being compromised, the security of deposit materials in digital form remains a critical concern of creators and copyright owners, a concern that will only increase as the Copyright Office shifts from relying on physical deposits to electronic deposits for registration purposes.

In addition to arising concerns over the security and management of a growing digital deposit, some publishers will find the process of depositing digital files for this group registration to be extremely burdensome. We are aware that the Copyright Office is continuing to modernize and update its IT infrastructure but that it may not be able to handle or offer a method for handling the size and number of the files submitted for these group registrations at this time. This was an issue that newspaper publishers faced when the Copyright Office implemented the new rule for group registration of newspapers. As part of a pilot program, newspaper publishers were able to easily upload digital files of works registered in the group via a Secure File Transfer Protocol (“SFTP”) upload option to fulfill the registration deposit requirements. However, once the rule went into effect, the Copyright Office was unable to offer the SFTP upload option, resulting in publishers having to individually upload and submit a digital file of every single work that was registered in the group. A similar problem exists for publishers of serials, where publishers who must submit a larger number of files would be required to upload their works in a similar, cumbersome fashion. Until the registration system is able to fully accommodate the digital deposit process, we ask that the Copyright Office continue to accept physical deposits for registration purposes.

Alternatively, should the Copyright Office move forward with its plans to require digital registrations and deposits for registration, the new regulations should allow for a transition period between paper and online registrations. The Copyright Office proposes to require the use of online forms to complete group registrations of serials thereby eliminating paper forms altogether. While we agree that online forms facilitate economy and efficiency, it is equally important to ensure that registrants have time to adapt, catalog, archive, and register their works from traditional print media to digital media. We ask that the Copyright Office allow for a grace period to gradually phase out paper applications for publishers of serials who are more accustomed to traditional print media.

IV. Additional Recommendations

When or before the Proposed Rule is implemented, the Office may consider utilizing its public materials to educate registrants on all updates, particularly on the updates to the mandatory deposit requirement. The Proposed Rule establishes that registrants must submit an electronic deposit of the work during registration, but notes that this deposit will not fulfill the mandatory deposit requirements under section 407 for publishers of physical serials published in the United States. Such publishers are expected to provide the Library of Congress with two complimentary, subscription copies unless informed otherwise. To further educate publishers of serials on the differences and updates in the deposit requirements in registering a group of serials and in complying with section 407, we suggest that the Office update the *Compendium of U.S. Copyright Office Practices, Third Edition* and Circular 62b (“Copyright Registration for a Group of Serial Issues”) to reflect these differences as well as all other differences arising from this Proposed Rule

We thank you for the opportunity to participate in the proposed rulemaking on group registration of serials 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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